



QORTI TA' L-APPELL

**ONOR. IMHALLEF
PHILIP SCIBERRAS**

Seduta tas-26 ta' Frar, 2010

Appell Civili Numru. 24/2009

**Peter J. Azzopardi, Adrian P. Azzopardi, Paul S.
Azzopardi, u Mario W. La Pira bhala promoturi ta'
Sibylline Capital Management Company Limited li
tinsab f'fazi ta' formazzjoni**

vs

Awtorita` ghas-Servizzi Finanzjarji

Il-Qorti,

Fid-19 ta' Ottubru, 2009 t-Tribunal dwar Servizzi Finanzjarji ppronunzja s-segwenti decizjoni fl-ismijiet premessi:-

“FI-24 ta' Awissu 2006 it-tribunal ircieva s-segwenti ittra minghand l-Avukat Dottor Pio M. Valletta ghan-nom tal-promoturi ta' Sibylline Capital Management Company Limited (in

formation) Peter J. Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi u Mario W. La Pira:

This is an application for an appeal in terms of Article 21 of the Malta Financial Services Authority Act - Chapter 330 of the Laws of Malta and Article 19 of the Investment Services Act - Chapter 370 of the Laws of Malta filed by the undersigned on behalf of Peter J. Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi and Mario W. La Pira as per attached mandate which is being marked "APP 1".

An appeal is being sought from the decision by the Malta Financial Services Authority dated the 4th August, 2006 to refuse an application for a license to provide an Investment Service, and to hold or to control clients' money or customers' assets, but not to deal for the Applicant's account or to underwrite (Category 2 Licence). The licence was originally submitted by my clients Messrs. Peter J. Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi, Mario W. La Pira and Joseph N. Fava, however during the processing stage Joseph N. Fava withdrew his interest in the application. Copies of the letter of refusal of the 4th August, 2006 and of the Application are being attached herewith and marked "APP 2" and "APP 3".

Also attached are copies of all correspondence exchanged between the applicants or their legal counsel and the Malta Financial Services Authority, which copies are collectively marked "APP 4".

GROUND'S for REFUSAL

From an examination of the Malta Financial Services Authority's letter of the 4th August,

2006 and from a reading of all previous correspondence the grounds for refusal are the lack of the MFSA's competence requirements including the failure on the part of the Applicants to satisfy the fit and proper test as set out in the applicable legislation and regulations.

GROUND'S for APPEAL

Lack of MFSA's competence requirements and failure on the part of the applicants or any of them to satisfy the fit and proper test as set out in the applicable legislation and regulations.

MFSA's refusal to grant the license requested on the ground of lack of competence requirements apart from constituting an abuse of the authority's discretion and is manifestly unfair taking account of the local general situation, is based on the wrong application of the applicable provisions of the relevant and applicable legislation.

According to Article 6 (1)(a) and Article 6 (3) of the Investment Services Act 1994 and of Section 2 of the Investment Services Guidelines (Part A) it is clearly envisaged and provided that the fit and proper test is aimed at establishing whether an applicant is a "fit and proper person to provide the relevant Investment Services and that the same applicant will comply and observe the appropriate rules and regulations."

*Moreover according to the applicable Investment Services Guidelines the three criteria which must be met to satisfy the "fit and proper" test are: a. **Integrity**; b. **Competence**; and c. **Solvency**.*

None of the facts, situations and circumstances on the basis of which the MFSA are founding their refusal adversely affect or can be interpreted as adversely affecting the three criteria required to satisfy the fit and proper test according to the Investment Services Guidelines, which guidelines clearly set the parameters within which the Supervisory Council must exercise its discretion.

In fact according to the Investment Services Guidelines integrity "involves the Licence Holder and its employees acting honestly and in a trustworthy fashion in relation to its clients and other parties". There is nothing in the declared findings of the MFSA which in any way adversely affects the integrity criteria as defined in the Investment Services Guidelines and hence the application and interpretation of MFSA's findings as adversely affecting the integrity criteria under the Investment Services Guidelines is clearly an excess of the discretionary powers of the MFSA, is manifestly unjust and is based on the wrong application and the interpretation of the applicable regulation. No clear and factually verifiable objective reason has been brought to confirm, substantiate or corroborate the MFSA's contention that the findings of the due diligence exercise indicate or prove that my clients "are likely not to act honestly and in a trustworthy fashion in relation to their clients and other parties".

With respect to competence, according to the Investment Services Guidelines the people carrying on the business of the Licence Holder must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. It is clear from the MFSA's correspondence more particularly the letters of

the 23rd June, 2006 and the 4th August, 2006 that the MFSA's application and interpretation of its findings as adversely affecting the competence criteria is again in excess of the discretionary powers of the MFSA and is manifestly unfair as it is based on wrong and unlawful considerations. In fact the findings from the due diligence exercise conducted by the MFSA have absolutely no relevance whatsoever to the exercise of determining the competence criteria and when the MFSA considered these findings in its evaluation of this aspect of the criteria it exceeded its discretionary powers and based its decision on a wrong and unlawful consideration. According to the competence criteria set in the Investment Services Guidelines my clients had to prove that they had an acceptable amount of knowledge about the activity they were requesting a licence for and clearly from objectively verifiable evidence submitted this can easily be established and confirmed. My clients also had to prove professional expertise and again they have clearly proven that they have the required professional expertise to undertake the licensable activity they applied for since persons capable of providing trading signals with very positive and satisfactory comments to back the successfulness of these signals surely qualify as experts in their field. The comment contained in your 23rd June 2006 letter, that providing trading signals on a web-site in an unregulated environment counters any claim for professional expertise is clearly a very superficial way of motivating a decision and is clearly a blatantly and highly biased view. It is clear that the MFSA has not tried to establish who the frequent users of this web-site are and what degree of importance these give to the signals which are provided. Nor did the MFSA attempt to investigate and establish

what the comments provided by the vast users of the Global View web-site to the signals furnished by Messrs. Paul and Peter Azzopardi were. Clearly the MFSA based its judgment on other considerations rather than those clearly established and set in the Investment Services Guidelines. A clear indication of this is the MFSA's comment regarding Peter Azzopardi's degree. The MFSA should know that Spot FX market is not specifically covered in any syllabus leading to an Investment Services Business degree and is based on the application of technical factors and/or economic fundamentals. Moreover the competence criteria does not envisage a specific qualification in the particular activity but speaks of qualifications of a licence holder in general. The specific criteria lays importance on the knowledge, professional expertise and experience in the field. It may also be very pertinent if the MFSA had to delve through and investigate licences granted in the past to establish whether its treatment of my clients' application with reference to this specific criteria of the fit and proper test is consistent with its treatment of other applications for which licences were granted. This is being said since the MFSA as a regulator and also a provider of the required financial services licences must ensure equality of treatment in the processing of every licence submitted to it.

*With respect to the **solvency criteria** according to the Investment Services Guidelines this criteria is intended to ensure that proper financial control and management of liquidity and capital are applied meaning also that the business should have sufficient financial resources to meet not only the financial demands on the business but also the financial resources requirements*

established by the MFSA. It is clear from MFSA's letters of the 23rd June, 2006 and the 4th August, 2006 that no reason has been given why the Supervisory Council is not satisfied that this criteria (solvency) has been met. This means that again on this very specific criteria of solvency the MFSA has exceeded its discretionary authority and acted in a manifestly unjust and unfair manner when it clearly based its decision on wrong and unlawful considerations since it has ignored altogether the fact that my clients have clearly provided a system of operation which will apply and guarantee a proper financial control and management of liquidity and capital. Furthermore the MFSA is also in breach of the rules of fair hearing since as an authority vested with the power to decide whether to grant or not to grant a licence it is legally required to provide the full and clear reasons why the specific criteria required for the acceptance or refusal of the licence has been considered not to have been fulfilled.

It may be relevant in this context to refer to specific and important excerpts attributed to highly notable legal masters in the field of Administrative Law. Specific reference is made to the book Judicial Review of Administrative Action, where the author Professor S. A. De Smith in page 253 (3rd Edition) amongst other things, states when writing about the Principles governing the exercise of discretionary powers:

"The authority in which discretion is vested must act in good faith, must have regard to all relevant consideration and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or the spirit of the legislation that gives it power

to act, and must not act arbitrarily or capriciously."

Moreover the well known English Jurist Coke said that discretion was scire per legem quod sit justum; it was "a science or understanding to discern between falsity and truth, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences and not to do according to their wills and private affections."

These dictas help one to set out the rules of revision of any act of discretion such as that conferred to the MFSA by Article 6 of the Investment Services Act - Chapter 370 of the Laws of Malta.

When examining all the justifications and motivations advanced by the Malta Financial Services Authority to give strength to their decision that, there existed lack of the competence requirements provided under the relevant legislation in the persons assigned with the duty to exercise the licensable activity, it should result that those safeguards so ingrained in our legal system to counter any misuse or misapplication of discretion, have been overstepped.

It will result that in the examination of all the facts provided to MFSA by the applicants with respect to the ground of refusal, MFSA failed to take regard of all relevant considerations, the spirit of the legislation was not sought and furthermore the arguments used to back this ground for refusal lacked objectivity and were highly arbitrary and capricious.

Competence is assessed on qualifications, training and work experience, in this order. These three criteria are however to be solely

relevant and judged by reference to that type of market one intends to deal in. Judging these criteria by reference to markets which one does not intend to deal with would clearly mean that one is to bring into the exercise of his discretion irrelevant considerations.

The Spot FX market is distinct and separate from the derivatives market and therefore qualifications for the latter in no way apply to the former. Spot FX traders simply make decisions using technical factors and / or economic fundamentals. Mr Peter Azzopardi, a UK graduate in Economics and Accountancy, therefore without doubt satisfies the 'qualifications' criteria.

On the other hand, a person can be 'qualified' without having a degree or diploma. Mr. Jay Meisler's letter submitted with the applicants' letter confirms that Mr Paul Azzopardi is qualified in providing trading signals. This was evident from the beginning; one hardly expects that a premiere FX site like Global-View.com would allow an 'incompetent' to manage a pay service on their esteemed site. The provision of consistently correct trading signals, coupled with a multi-defence risk management strategy, are the sole keys to successful FX trading.

Furthermore, 'track-records' can also serve as a 'qualification', especially if the results achieved are favourable. Whilst it is accepted that consistent profitable past performances can never be assessed as a guide to future achievements, the opposite is to be also more than true. Therefore, unprofitable past performances automatically signify 'incompetence'. A verifiable accumulation of 'pips' attained for years 2002, 2003 and 2004 respectively would prove this. Regrettably,

applicants offer for an audit, to be conducted by a prime audit firm, confirming net 'pip' acquisitions, together with their respective monetary value, under the protective umbrella of their highly effective risk management strategy, was dismissed as almost irrelevant by the MFSA.

The other two criteria namely training and experience, coupled with qualifications, are more than inter-linked, in fact either cannot exist without the other. One cannot have work-experience without having undergone training. Furthermore, for one to undergo training means that one must have a knowledge of the subject matter. This knowledge on the other hand cannot be simply restricted to information acquired from books, courses etc., but must be more profound, as we have demonstrated above, vis-a-vis positively consistent trading signals, coupled with our risk-management strategy.

In this respect, research conducted on the System in 1998, using data extrapolated from the 6 previous years, confirmed that the results yielded in 1998 were no fluke and that the system maintained a notable level of accuracy. This massive exercise served as a pseudo form of training for both Mr. Peter Azzopardi and Mr. Paul Azzopardi considering that the trading environment was an important factor of this research.

Work-experience can, on the other hand, be said to have initiated during 2001, precisely when Paul Azzopardi and Peter Azzopardi started posting trading recommendations on the Forex Forum of Global-View.com. Since 2002 Paul Azzopardi and Peter Azzopardi were invited to start a trading signal

recommendation service, which is still active to date.

Furthermore it is not correct to argue as MFSA have done and continue to do, that in the absence of training / qualifications and in order to satisfy the competence test, one must prove undergoing relative work experience of a minimum number of years with an authorised financial institution. In the first instance there is an unlimited number of authorised financial institutions, but only a select few can be deemed to be specifically authoritative on the subject matter. In the second instance one must discern exactly what designation the word 'trader' implies. The majority of so called 'traders' simply follow 'in-house' signals and can be simply termed as 'deal-executors'. A sound and authoritative financial institution would have a team of 'technical and economic' advisors, whose sole purpose would be to generate trading signals. Traders and advisors work independently of each other, with the latter enjoying the only onerous role. It would therefore be correct in saying that traders working for a top notch financial institution cannot be considered as competent to generate trading signals and this irrespective of the number of years in the institution's employment. On the other hand advisors, by MFSA's standards, would not qualify as being competent, primarily because they have never actually traded.

In the case of the applicants however MFSA was informed that both Mr. Peter Azzopardi and Mr. Paul Azzopardi had positive signalling skills and the art of actual trading, the latter coupled with an effective risk management strategy.

In the light of the above consideration it is felt that the refusal on the part of MFSA to grant a licence based on the proposal submitted by my clients has wrongly applied the relevant provisions of the law regulating Investment Services and apart from being manifestly unfair constitutes an abuse of discretion. Consequently the Tribunal is respectfully requested to reverse the decision of the Malta Financial Services Authority and to grant a licence to the applicants under such conditions as the Tribunal may deem fit and appropriate and to order the Malta Financial Services Authority to issue the appropriate licence with all the appropriate and applicable conditions.

Ir-Risposta ta' L-Awtorita ghas-Servizzi Finanzjarji ta' Malta

2. L-Awtorita ghas-Servizzi Finanzjarji ta' Malta rispondiet hekk:

Risposta ta' l-Awtorita ghas-Servizzi Finanzjarji ta' Malta ghan-nota ta' appell ta' l-avukat Pio M. Valletta tat-23 ta' Awissu 2006 ghan nom tal-promoturi ta' Sibylline Capital Management Co. Limited, Peter J. Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi u Mario W. La Pira

L-Awtorita ghas-Servizzi Finanzjarji ta' Malta (l-"MFSA" jew l-"Awtorita") tikkontesta l-appell ta' Sibylline Capital Management Co. Limited, socjeta 'in formation' (aktar il-quddiem imsejha "is-socjeta"). L-MFSA tissottometti bir-rispett illi d-decizjoni tas-Supervisory Council ghan-nom tal-MFSA hija korretta, xierqa u gusta, kemm fl-apprezzament tal-fatti kif ukoll fl-applikazzjoni tal-ligi, u kemm bhala procedura u kemm bhala kontenut. L-MFSA lesta turi li dan huwa il-kas b'xhieda dokumentata u

xhieda ohra li disposta ittella ghal dan l-iskop. L-MFSA tikkontesta bhala kompletament infondati u bla bazi l-allegazzjonijiet tas-socjeta' attrici u ghaldaqstant qeghda bir-rispett titlob lit-Tribunal sabiex jichad dan l-appell odjern, bl-ispejjez, jekk ikun il-kas, kontra s-socjeta attrici.

L-MFSA mhix ser toqghod tirrabbatti punt punt ghal hafna allegazzjonijiet fiergha li ghamlet is-socjeta fil-konfront taghha fl-ittra ta' l-appell taghha, sakemm ma tkunx mitluba taghmel dan mit-Tribunal, u ser tillimita ruhha ghal xi punti selettivi dwar il-mertu u li jidhrilha f'dan l-istadju li huma aktar relevanti sabiex wiehed jista jifhem ahjar ghala l-applikazzjoni giet michuda. Post ir-ragunijiet li fuqhom l-MFSA qeghda tikkontesta l-appell tas-socjeta jinkludu dawn il-kunsiderazzjonijiet li gejjin, minghajr pregudizzju ghal ragunijiet ohra li jistghu jittellghu matul il-kontinwazzjoni tal-proceduri quddiem dan it-Tribunal.

Skond is-subartiklu 9 ta' l-Artiklu 21 ta' l-Att dwar Awtorita ghas-Servizzi Finanzjarji ta' Malta (Kap. 330 tal-Ligijiet ta' Malta), it-talba ghad-decizjoni f'appell lit-Tribunal ghandha tkun, ghar-ragunijiet migjuba mill-appellant -

- (a) jekk l-Awtorita tkunx, fid-decizjoni taghha, applikat hazin xi wahda mid-disposizzjonijiet ta' dan l-Att; jew*
- (b) jekk id-decizjoni ta' l-Awtorita tikkostitwix abbuz ta' diskrezzjoni jew tkunx ingusta manifestament.*

Fil-fehma tal-MFSA u ghar-ragunijiet esposti aktar 7 isfel jew li jirrizultaw mid-dokumentazzjoni tal-kas, l-appellant naqas milli juri b'liema mod l-MFSA naqset timxi bil-bwona fede jew b'xi mod iehor abbuzat mid-diskrezzjoni li taghtiha l-ligi, jew inkella li

applikat hazin xi wahda mid-disposizzjonijiet ta' dan l-Att, hekk kif filfatt qed isostni l-istess appellant. Fl-istess subartiklu 9 ta' l-artikolu 21 il-ligi tghid ukoll illi d-diskrezzjoni ta' l-Awtorita kompetenti ma tistax, sakemm tkun giet ezercitata b 'mod xieraq, tigi mistharrga mit-Tribunal.

L-MFSA umilment tissottometti illi t-talba kontenuta fl-appell intavolat mill-appellanti essenzjalment tikkonsisti f'ripetizzjoni ta' l-asserzjoni tal-promoturi tas-socjeta li huma ma jaqblux mal-konkluzjonijiet ta' l-Awtorita. Il-fatt wahdu li l-promoturi ma jaqblux mal-konkluzjonijiet tal-Awtorita ma jikkostitwixxix bazi sufficjenti sabiex fuqha jinbena appell skond l-artikolu 21 tal-Kap. 330. L-oneru li jigi ppruvat b 'mod car li d-diskrezzjoni ta' l-Awtorita ma gietx ezercitata b'mod xieraq huwa fuq l-appellant, u mill-appell intavolat johrog car li din il-prova ma saritx.

Permezz tad-dokumenti li diga gew ipprezentati fl-atti u permezz ta' provi ohra li ghad iridu jigu pprezentati aktar 'l quddiem, l-Awtorita thoss li tinsab f'posizzjoni li turi lit-Tribunal li hija hadet id-decizjoni li tichad li taghti licenzja lill-kumpannija in kwistjoni wara li studjat bir-reqqa t-talba tal-promoturi tal-kumpannija, liema talba dejjem giet ikkunsidrata bl-akbar serjeta' u in bwona fede. Fit-tehdid ta' din id-decizjoni, bhal fil-kaz ta' kull decizjoni ohra li tiehu l-Awtorita, il-principju baziku li jiggwida d-decizjonijiet taghha huwa li hija qeghda hemm primarjament sabiex tibza' ghal interessi pubblici u mhux sabiex takkomoda dawk privati.

L-appell tal-atturi fil-fatt jonqos li jindirizza l-punti krucjali mqajma fl-ittra tad-Direttur Generali ta' l-Awtorita' (datata 23 ta' Gunju 2006 u li tinsab annessa mad-dokumenti

mmarkati bhala 'APP 4' flimkien ma' l-appell) li insistiet b'mod inekwivoku fuq il-htiega ta' harsien ta' l-interess tal-pubbliku. F'din l-ittra gie spjegat ampjament kif l-Awtorita, meta tikkunsidra jekk taghtix jew tichadx licenzja ghandha, b' mod partikolari, tikkunsidra l-harsien ta' investituri u tal-pubbliku in generali, kif espressament mitlub mill-paragrafu (a) tas-subartikolu (3) ta' l-artikolu 6 ta' l-Att dwar Servizzi ta' Investiment. Il-ligi fl-istess artikolu (specifikament f'paragrafu (a) tas-subartikolu (1) ta' l-artikolu 6) titlob - anzi tobbliga - lill-Awtorita sabiex ma taghtix licenzja ghal servizzi ta' investiment jekk ma tkunx sodisfatta li l-applikant ikun persuna addattata u xierqa biex tipprovdi s-servizzi ta' investiment koncernati u li l-applikant ikun se jhares u josserva kull regoli u regolamenti maghmula taht dan l-Att u applikabbi ghalih.

F'dan il-kaz kien jorbot hafna l-kriterju dwar jekk il-promoturi kienux persuni 'addattati u xierqa' (fit and proper) sabiex jipprovdu dawn is-servizzi ta' investiment partikolari. Mid-'due diligence exercise' irrizultaw zewg fatturi li jimpingu negattivament fuq jekk l-applikant hix persuna addatta u xierqa ai termini ta' l-Artikolu fuq imsemmi:

1. Il-kontijiet bankarji tas-segwenti kienu mizmuma b'mod mhux sodisfacenti -

(a) Mario W. La Pira ghal dak li ghandhom x'jaqsmu kemm l-HSBC Bank Malta p. L c., kif ukoll il-Lombard Bank;

(b) Adrian P. Azzopardi mal-Bank of Valletta; u

(c) Carlton Holdings Ltd (kumpannija li fiha d-diretturi u l-azzjonisti huma Adrian P.

Azzopardi, Peter J. Azzopardi u Paul S. Azzopardi) mal-Bank of Valletta;

2. *Carlton Holdings Ltd (C 9944) ghandha storja twila u negattiva ta' ksur tal-provvedimenti ta' l-Att Dwar il-Kumpanniji ghal dak li ghandu x'jaqsam ma' registrazzjoni tal-kontijiet annwali taghha. Carlton Holdings Ltd filfatt ma rregistratx il-kontijiet annwali taghha mar-Registratur tal-Kumpanniji ghal dawn l-ahhar hames snin u naqset ukoll milli thallas il-penalitajiet li sa s-26 ta' April lahqu s-somma ta' elf tlett mija tnejn u hamsin liri Maltin u sittin centezmu (Lml,352.60). Dan in-nuqqas da parti ta' Carlton Holdings Ltd baqa' jissussisti minkejja erba' ittri li ntbghatu mir-Registratur tal-Kumpanniji jitolbu l-hlas ta' dawn il-penali. L-ahhar kontijiet li gew registrati mar-Registratur tal-Kumpanniji jmorru lura ghas-sena 2000, u juru li l-kumpannija tinsab fi stat ta' insolvenza. Dan kollu huwa ta' rilevanza minhabba l-fatt li Paul, Peter u Adrian Azzopardi huma unikament responsabbli ghall-mod kif titmexxa din il-kumpannija, inkluz li l-kumpannija tosserva l-obbligi legali taghha. Huwa ghalhekk li dan kollu ghandu konnessjoni diretta mal-kapacita ta' Paul, Peter u Adrian Azzopardi li josservaw ir-regoli u regolamenti li huwa wiehed mill-asperti li l-Awtorita trid tkun sodisfatta minnu skond l-artikolu 6(1)(a) ta' l-Att dwar Servizzi ta' Investment.*

Ghar-rigward ta' punt numru (1) hawn fuq, huwa car mir-risposti, li l-Awtorita rciviet mill-Banek bhala rizultat tad- 'due diligence enquiries' li jsiru f'kazijiet bhal dawn, li l-azzjonisti u d-diretturi proposti ghall-kumpannija Sybilline naqsu millijzommu b'mod sodisfacenti dawk il-facilitajiet li nghatawlhom mill-banek rispettivi. Fil-fatt, f'numru ta' drabi, jirrizulta li arrangamenti specjali kellhom isiru

mal-banek sabiex il-problemi u d-diffikultajiet li nqalghu minhabba l-fatt li l-kontijiet bankarji ma kienux mizmuma b 'mod sodisfacenti setghu jigu ndirizzati. Meta dan jigi meqjus flimkien mat-tieni punt, juri li l-individwi koncernati fil-passat urew nuqqas ta' dixxiplina u affidabbilita' li hija mistennija minn persuni li jkunu nvoluti f'attivattijiet licenzjabbli, partikolarment meta jkunu f'posizzjoni sensittivi u ta' fiducja fejn serji rcievu u jhaddmu flus ta' terzi-klijenti.

In vista tas-suespost, l-Awtorita ma kenitx soddisfatta li d-diretturi proposti ghal din is-socjeta huma kapaci li jezercitaw dik il-kura u attenzjoni mehtiega sabiex imexxu attivattijiet, li l-ligi riedet li jkunu licenzjabbli u regolati, b'mod prudenti. Dan kollu ghalhekk jimpingi negattivament fuq il-kriterju ta' kompetenza li huwa parti mill-'fit and proper test'. L-Awtorita lanqas ma hija sodisfatta li d-diretturi proposti tal-kumpannija huma sufficjentement kapaci u kompetenti li jizguraw dik it-tmexxija u kontroll f'manzjarju li hija mehtiega fil-kumpannija, aspekk li jiforma parti mill-kriterju ta' 'solvenza' tal-'fit and proper test'. Anke f'dan il-kamp, l-Awtorita ma hijiex sodisfatta li s-socjeta se tosserva u timxi mar-regoli u regolamenti maghmula taht l-Att dwar Servizzi ta' Investment u li huma applikabbli ghalha.

Ugwalment importanti huwa l-fatt li kull applikant ghal-licenzja taht l-Att dwar Servizzi ta' Investment irid jissodisfa lill-Awtorita, bhala parti wkoll mill-'fit and proper test', li huwa ghandu dik l-esperjenza, stharrig u kwalifici mehtiega li jizguraw ghalhekk certu livell ta' kompetenza. Peter u Paul Azzopardi, li huma z-zewg persuni li principalment kienu sejrjn jipprovdu s-servizzi ta' investment proposti mill-kumpannija, baqghu qatt ma wrew lill-Awtorita li huma jipposjedu esperjenza

adegwata f'din l-attivita, li qatt ircevw dak l-istharrig speċjalizzat mehtieg, jew inkella li ghandhom kwalifici rilevanti ghall-servizzi t'investment u/jew swieq finanzjarji.

L-Awtorita ikkunsidrat bir-reqqa l-esperjenza li Paul u Peter Azzopardi jsostnu li akkwistaw tramite l-involviment taghom ma' 'Global View' u hadet ukoll kont tar-referenza tal-proprietarju ta' din il- 'web portal', is-sur Jay Meisler. Kif gie spejgat ampjament f'diversi drabi lill-appellanti, din l-esperjenza hija limitata ghall-provvediment ta' 'trading signals' fuq 'web site' f'ambjent li mhuwiex regolat. Konsegwentement, l-Awtorita ma tikkunsidrax din bhala esperjenza adegwata u lanqas mhija konformi ma' dawk l-istandards ta' kompetenza normalment mehtiega. Ghar-rigward tar-referenza tas-sur J. Meisler, din hija semplicement referenza mahruga minn persuna fil-kapacita' privata-kummercjali taghha u li tahdem f'ambjent li mhux regolat, u ghalhekk ma' tiggustifikax dik l-importanza kollha li qed jattribulha l-appellanti. L-appellanti qatt ma' rnexxielhom jipprovdu lill-Awtorita b'xi referenzi ohra addizzjonali li normalment jkunu accettabli, per eżempju minn persuni maghrufa li jahdmu fambjent regolat, u dan minkejja li dan in-nuqqas gie indikat lilhom diversi drabi.

Ghal dak li ghandu x'jaqsam ma' kwalifici: l-Awtorita kkunsidrat ukoll ir-relevanza tal-kwalifici ta' Peter Azzopardi (B.A. (Hons) degree in Accounting and Economics). Fuq il-bazi tad-dettalji provduti dwar din il-kwalifika, din ma tkoprix xi suggetti li ghandhom relevanza diretta ghall-attivita' proposta tal-kumpannija u ghalhekk wahedha mhix sufficjenti sabiex tikkwalifika lil Peter Azzopardi sabiex jezercita' l-attivita proposta ta' servizzi t'investment.

Fid-dawl tas-suespost, u wara li kkunsidrat b'attenzjoni il-kwalitajiet rilevanti individwali u kollettiva tal-promoturi, l-Awtorita umilment tikkonferma il-posizzjoni taghha illi r-rekwiziti mehtiega mil-ligi ta' kompetenza u solvenza taht il-'fit and proper test' ma' gewx sodisfatti mill-promoturi; u illi l-ftit evidenza prodotta mill-atturi f'dan ir-rigward zgur li ma tissoddisfax il-livelli mistennija mil-ligi minn persuni li jippretendu li jidhlu ghall-attivitajiet regolati li tinvolvihom fi thaddim tal-flus tar-risparmjaturi.

Ghaldaqstant, ghar-ragunijiet suesposti, l-Awtorita titlob li dan it-Tribunal jichad l-appell.

Il-fatti in succinct u d-disposizzjonijiet rilevanti tal-Kap. 330 u tal-Kap. 370 applikabbli ghal dawn il-fatti

3. Illi a tenur ta' l-artikolu 3(1) tal-Att Dwar Servizzi ta' Investment (aktar il quddiem imsejjah il-Kap. 370):

"Ebda persuna m'ghandha tipprovdi, jew turi lilha nnifisha li tipprovdi servizz ta' investment f'Malta jew minn Malta kemm-il darba ma jkollhix licenza valida ghal servizzi ta' investment. "¹

4. Illi permezz ta' applikazzjoni datata 26 ta' April 2005 Adrian P. Azzopardi, Paul S. Azzopardi, Peter J. Azzopardi, Mario W. La Pira u Joseph N. Fava² bhala promoturi tal-kumpannija Sibylline Capital Management Company Limited,

¹ Skond l-artikolu 2(1) tal-Kap. 370 "servizz ta' investment" tfisser kull servizz li jaqa' taht l-Ewwel Skeda meta jkun provdut in relazzjoni ghal strument. Skond l-istess artikolu "strument" tfisser kull strument, kuntratt jew jedd li jinsab fit-Tieni Skeda u sew jekk mahrug jew le f'Malta.

² Is-Sur Joseph N. Fava sussegwentement irtira l-interess tieghu f'din l-applikazzjoni.

kumpannija fl-istat li tigi ffurmata, applikaw a bazi ta' l-artikolu appena citat ghal licenza ghal servizzi ta' investiment kategorija 2 u dan sabiex ikun hemm

*"A public call for investor funds (not by way of unit participation nor issue of shares) ... to Maltese and non-Maltese residents, whether they be Private and Non-Private and Collective Investment Schemes, of which circa 95.24% shall be traded abroad, as per our own **in-house trading philosophy** on the short term (day trading) **Spot Forex Market**, via a trading platform provided by either a prime broker or bank and supported by a written agreement between our applicant company and this same trading platform provider."*³

5. Fl-applikazzjoni taghhom u fid-dokumenti akkumpanjanti, l-applikanti spjegaw l-operat tan-negozju li kien fi hsiebhom jaghmlu. Fi ftit kliem l-ghan ta' dan in-negozju kien li jsir profit mill-kambjament kontinwu fil-valur li jkun hemm bejn munita u ohra billi simoltanjament jinxtraw u jinbieghu muniti ewlenin bhall-euro, id-dollaru amerikan, il-yen gappuniz, l-isterlina, il-frank svizzeru, id-dollaru kanadiz u d-dollaru awstraljan fuq bazi "*short term (day trading)*". Dan it-tip ta' negozju prattikament ma jieqaf qatt fis-sens li l-gurnata tibda hekk kif jiftah is-suq f'New Zealand u jibqa' ghaddej bil-ftuh sussegwenti tas-swieq fl-Awstralja, l-Asja tal-Lvant, l-Indja, l-Ewropa u l-Amerika sakemm, hekk kif dan l-ahhar suq jaghlaq, ikun sar il-hin li jerga' jiftah is-suq f'New Zealand.

6. Illi a tenur ta' l-artikolu 6(1) (a) (i) tal-Kap. 370:

³ Ara l-applikazzjoni esibita bhala Dok. APP3 ma' l-ittra riprodotta fil-paragrafu 1 *supra*.

(1) L-awtorita` kompetenti tista' taghti jew tichad li taghti licenza li dwarha tkun saret applikazzjoni skond dan l-Att:

Izda l-awtorita` kompetenti m 'ghandiex-

(a) (i) taghti licenza ghal servizzi ta' investment kemm-il darba ma tkunx sodisfatta li l-applikant ikun persuna addattata u xierqa ('fit and proper' fit-test ingliz) biex tipprovdi s-servizzi ta' investment koncernati u li l-applikant ikun se jhares u josserva kull Regola ta' Servizzi ta' Investment u regolamenti maghmulin taht dan l-Att u applikabbli ghalih;

7. Illi skond il-*Glossary of Terms* — Annex III tal-formola ta' l-applikazzjoni (Dok. APP3) il-

Fit and Proper Test - which must be satisfied at the outset and on a continuing basis, focuses on the following criteria:

Integrity - this requires the licence holder and its employees to act honestly and in a trustworthy fashion in relation to its clients and other parties. In this respect, the MFSA will carry out due diligence enquiries on the information contained in the Individual Questionnaires (which form part of the Application documents). The MFSA must be satisfied that this information indicates nothing adverse about anyone concerned.

Competence - those persons who will be transacting the business of the licence holder must act in a knowledgeable, professional and efficient way, in compliance with the regulations. The extent of the competence required will depend upon the nature of the investment services to be provided. The MFSA will take into account the qualifications, training and experience of those involved.

Furthermore, the MFSA has to be satisfied that adequate systems and controls are in place.

Solvency - checks refer to the proper financial control and management of the business. The Applicant should have sufficient financial resources to meet the requirements established by the MFSA and the business' financial demands. Solvency requirements differ on the category of Investments Services Licence.

8. Illi a tenur ta' l-artikolu 6(3) tal-Kap. 370:

Meta tkun qed tikkunsidra jekk taghtix jew tichadx milli taghti licenza l-awtorita` kompetenti ghandha, b'mod partikolari, tikkunsidra-

a. il-harsien ta' investituri u tal-pubbliku in generali;

b. il-harsien tar-reputazzjoni ta' Malta meta jkunu konsidrati l-obbligi internazzjonali ta' Malta;

c. il-promozzjoni ta' kompetizzjoni u ghazla; u

d. fil-kaz ta' licenza ghal skema ta' investment kollektiv, ir-riputazzjoni u kemm ikunu xierqa l-applikant u l-partijiet l-ohra li jkollhom x'jaqsmu ma' l-iskema.

9. Illi skond l-artikolu 8 tal-Kap. 370:

(1) Meta l-awtorita` kompetenti jkollha l-hsieb -

(a) li tibdel xi kundizzjoni li ghaliha tkun suggetta licenza jew li timponi kundizzjoni maghha; jew

(b) li tichad applikazzjoni ghal licenzja jew li thassar jew tissospendi licenzja,

ghandha taghti lill-applikant jew, skond il-kaz, lid-detentur tal-licenzja jew lil manager u trustee jew il-kustodju ta' skema ta' investment kollettiv, jew lill-ekwivalenti taghhom bil-miktub tal-hsieb taghha li taghmel hekk fejn taghti r-ragunijiet ghad-decizjoni li tkun bi hsiebha tiehu.

(2) Kull avviz moghti taht is-subartikolu (1) ghandu jghid li min jircievi l-avviz jista', f'dak iz-zmien xieraq wara li jircievi n-notifika kif jinghad fl-avviz (li jkun zmien ta' mhux inqas minn tmienja u erbghin siegha u mhux izjed minn tletin jum), jaghmel rapprezentazzjonijiet bil-miktub lill-awtorita` kompetenti fejn jghid ghaliex m'ghandhiex tittiehed id-decizjoni proposta u l-awtorita` kompetenti ghandha tikkunsidra kull rapprezentazzjoni hekk maghmula qabel ma tasal ghal decizjoni finali.

(3) L-awtorita` kompetenti ghandha kemm jista' jkun malajr tinnotifika d-decizjoni finali taghha bil-miktub lil kull wahda mill-persuni li lilhom ghandu jinghata avviz taht is-subartikolu (1).

10. Illi permezz ta' ittra datata 23 ta' Gunju 2006 (esibita mill-appellanti mad-dokumenti mmarkati APP4) l-awtorita appellata nfurmat lill-appellanti li kien fi hsiebha tichad l-applikazzjoni taghhom. Fl-imsemmija ittra hija tathom ir-ragunijiet ghad-decizjoni taghha u tathom sat-12 ta' Lulju 2006 sabiex jaghmlu r-rapprezentazzjonijiet bil-miktub imsemmija fl-artikolu 8(2) tal-Kap. 370 appena citat.

11. Illi l-appellanti ghamlu r-rapprezentazzjonijiet bil-miktub taghhom permezz ta' ittra datata 7 ta'

Lulju, 2006 (esibita minnhom mad-dokumenti mmarkati APP4).

12. Illi l-awtorita appellata, permezz ta' ittra datata 4 ta' Awissu 2006 (Dok. APP2), infurmat lill-appellanti bid-decizjoni finali taghha li kienet qieghda tichad l-applikazzjoni taghom.

13. L-appellanti sussegwentement appellaw minn din id-decizjoni permezz ta' l-ittra indirizzata lil dan it-tribunal u riprodotta fil-paragrafu 1 *supra*. Dan a bazi ta' dak li jipprovd i-artikolu 19(2)(d) tal-Kap. 370 li jghid li jista' jsir appell lil dan it-tribunal dwar kull cahda ta' licenza taht l-artikolu 8(3).

14. Illi a tenur ta' l-artikolu 19(3) tal-Kap. 370:

"Id-disposizzjonijiet ta' l-artikolu 21 ta' l-Att dwar l-Awtorita ghas-Servizzi Finanzjarji ta' Malta ghandhom japplikaw mutatis mutandis ghal appelli li jistghu jingiebu quddiem it-Tribunal taht dan l-artikolu"

15. Illi l-artikolu 21 ta' l-Att dwar l-Awtorita ghas-Servizzi Finanzjarji ta' Malta - aktar il quddiem msejjah il-Kap. 330 - hu l-artikolu li permezz tieghu dan it-tribunal huwa mwaqqaf.

16. Illi skond l-artikolu 21 (13) tal-Kap. 330:

Fis-smigh ta' appell li jsir lilu taht xi ligi, it-Tribunal ikollu s-setgha-

a. li jikkonferma, jaqleb jew ivarja d-decizjoni ta' l-awtorita kompetenti taht il-ligi rilevanti u li jaghti direzzjonijiet li jkunu fis-setgha tieghu taht dan l-Att jew xi ligi ohra lill-imsemmija awtorita kompetenti biex timplimenta d-decizjoni tat-Tribunal;

b. li jehtieg il-produzzjoni ta' kull dokument jew informazzjoni ohra;

c. li jordna l-hlas ta' l-ispejjez minn xi parti fl-appell.

17. Illi skond l-artikolu 21 (9) tal-Kap. 330:

It-talba ghad-decizjoni tat-Tribunal ghandha tkun, ghar-ragunijiet migjuba mill-appellant —

(a) jekk l-awtorita kompetenti tkunx, fid-decizjoni taghha, applikat hazin xi wahda mid-disposizzjonijiet ta' dan l-Att; jew

(b) jekk id-decizjoni ta' l-awtorita kompetenti tikkostitwix abbuz ta' diskrezzjoni jew tkunx ingusta manifestament:

Izda d-diskrezzjoni ta' l-awtorita kompetenti ma tistax, sakemm tkun giet ezercitata b'mod xieraq, tkun mistoqsija mit-Tribunal:

Izda ukoll, ma ghandu jkun hemm ebda appell minn decizjoni li tkun timponi piena li ma teccedix mitejn u tnejn u tletin euro u erbgha u disghin centezmu (232.94).

It-Tezi ta' L-Awtorita` Appellata

18. Mill-ittri ta' l-awtorita` appellata tat-23 ta' Gunju 2006 u ta' l-4 ta' Awissu 2006 jirrizulta illi l-applikazzjoni ghall-hrug tal-licenza *de quo* giet michuda ghaliex l-istess awtorita` ma kienitx sodisfatta li

(a) l-appellanti huma persuni addattati u xierqa biex jipprovdu s-servizzi ta' investiment concernati billi ma ssodisfawx il-kriterji ta' kompetenza u solvenza *tal-fit and proper test*⁴, u

⁴ Issir riferenza, *inter alia*, ghas-segwenti paragrafu ta' l-ittra ta' l-awtorita` appellata ta' l-4 ta' Awissu 2006:

"With regards to the representations made to the 'integrity' criterion, it should be noted that the Authority's 23rd June 2006

(b) L-appellanti kienu se jharsu u josservaw kull regola ta' servizzi ta' investiment u regolarmenti maghmula taht il-Kap 370 applikabbli ghalihom.

19. Fl-imsemmija zewg ittri tat-23 ta' Gunju 2006 u ta' l-4 ta' Awissu 2006 l-awtorita appellata specifikat is-segwenti ragunijiet li a bazi taghhom hija waslet sabiex tichad it-talba ta' l-appellanti ghall-hrug tal-licenza mitluba minnhom:

(a) Li s-Sur Mario La Pira ma zammx il-kontijiet bankarji tieghu mal-HSBC Bank u l-Lombard Bank b'mod sodisfacenti;

(b) Li s-Sur Adrian Azzopardi ma zammx il-kontijiet bankarji tieghu mal-Bank of Valletta b'mod sodisfacenti;

(c) Li l-kumpannija Carlton Holdings Ltd, li taghha s-Sinjuri Adrian Azzopardi, Peter Azzopardi u Paul Azzopardi huma l-unici azzjonisti u diretturi, ma zammitx il-kontijiet bankarji taghha mall-Bank of Valletta b'mod sodisfacenti;

(d) Li l-istess Carlton Holdings Limited naqset milli tibghat lir-Registratur tal-Kumpanniji l-*annual accounts* taghha ghall-hames snin precedenti u b'rizultat ta' dan sas-26 ta' April 2006 kellha taghti lir-Registratur tal-Kumpanniji Lml,352.60 in linja ta' penali;

(e) Li l-ahhar *accounts* mibghuta lir-Registratur tal-Kumpanniji ghas-sena 2000 juru li l-istess Carlton Holdings Ltd tinsab fi stat ta' insolvenza;

letter did not include any reference to conclusions reached by the MFSA specifically submitted on the 'integrity' of the promoters and therefore the representations submitted in this regard have no basis. Rather, the reasons why the Authority was not satisfied that the applicant satisfies the Jit and proper test related to the findings which adversely affect the satisfaction of the 'competence' and 'solvency' criteria".

(f) Li l-appellanti naqsu milli jippruvaw li ghandhom **l-esperjenza** relattiva adegwata sabiex jikkonducu l-attivitá proposta minnhom. Fuq dan il-punt l-awtorita appellata kkummentat hekk fl-ittra taghha tat-23 ta' Gunju 2006:

".....the Authority has considered the experience which Messrs. Paul and Peter Azzopardi claim to have acquired through their involvement with Global View and have also taken into account of the reference by the proprietor of such web-portal, Mr. Meisler. However, taking account of the fact that their experience in this regard is limited to providing trading signals on a web-site in an unregulated environment, the Authority does not consider this to be adequate and in line with the necessary competence standards ordinarily required"

(g) Li l-appellanti naqsu milli jippruvaw li ghandhom **il-kwalifiki** necessarji fil-qasam tas-servizzi ta' investiment u/jew swieq finanzjarji. F'dan ir-rigward l-awtorita appellata qalet hekk fl-ittra taghha tat-23 ta' Gunju 2006:

"... the Authority has also considered the relevance of Mr. Peter Azzopardi's B.A. (Hons.) degree in Accounting and Economics. On the basis of the details provided in relation to this degree, it was noted that it does not appear to cover directly relevant subjects to the Company's proposed business and as such, is not in itself sufficient to qualify Mr. Peter Azzopardi to carry out the proposed investment services business."

(h) Li l-appellanti naqsu milli jippruvaw li ghandhom **it-tahrig** speċjalizzat sabiex jikkonducu n-negozju propost minnhom.

20. Fir-rigward tal-konsiderazzjonijiet (a), (b), (c), (d) u (e) elenkati fil-paragrafu precedenti l-awtorita appellata sostniet li dawn il-konsiderazzjonijiet, apparti milli jincidu fuq il-kriterju ta' kompetenza (*the ability of the Company's proposed directors to exercise due skill care and diligence required to manage the Company's affairs in a sound and prudent manner — which is an aspect falling under the 'competence' criterion of the 'fit and proper' test*⁵), l-istess konsiderazzjonijiet jincidu wkoll:

(i) fuq il-kriterju ta' solvenza *stante* li minhabba fihom *"the Authority is not satisfied of the Company's proposed directors' ability to ensure proper financial control and management of the Company — which forms part of the 'solvency' criterion of the 'fit and proper test' "*⁶, u

(ii) fuq l-abilita' tal-appellanti li jharsu u josservaw kull Regola ta' Servizi ta' Investiment u regolamenti maghmulin taht il-Kap 370 u applikabbli ghalihom.

21. L-awtorita` appellata sostniet illi hija ttrattat l-applikazzjoni ta' l-appellanti bl-akbar serjeta, skond il-prijoritajiet imposti fuqha mill-artikolu 6(3) tal-Kap. 370, u li fil-kors li hija kienet qiegħda tezamina l-istess applikazzjoni hija dejjem tat lill-appellanti l-opportunita *"sabiex jindirizzaw dawk l-asperti ta' l-applikazzjoni tagħhom li ma kienux konformi ma dak rikjest mill-ligi"*⁷. L-awtorita` appellata sostniet ukoll li la applikat hazin xi wahda mid-disposizzjonijiet rilevanti tal-ligi, la abbużat mid-diskrezzjoni tagħha u l-anqas ma d-decizzjoni tagħha kienet ingusta manifestament. Fi ffit kliem, dejjem skond l-awtorita appellata, ma tezisti l-ebda wahda mic-cirkostanzi kkontemplati

⁵ Ara l-ittra ta' l-awtorita` appellata tat-23 ta' Gunju 2006.

⁶ Ara l-ittra ta' l-awtorita` appellata tat-23 ta' Gunju 2006.

⁷ Paragrafu 5 tan-nota ta' l-osservazzjonijiet ta' l-awtorita` appellata.

mill-artikolu 21(9) tal-Kap. 330 li fihom dan it-tribunal ghandu d-dmir li jintervjeni. Mhuwiex bizzejjed u sufficjenti li sempliciment ma taqbilx sabiex tikkontesta d-decizjoni ta' l-awtorita appellata.

It-Tezi ta' L-Appellanti

22. Illi l-appellanti wiegbu l-ittra ta' l-awtorita appellata tat-23 ta' Gunju 2006, li permezz taghha l-istess awtorita infurmathom li kien fi hsiebha tichad l-applikazzjoni taghhom, permezz ta' ittra datata 7 ta' Lulju 2006 u appellaw mid-decizjoni finali ta' l-awtorita lil dan it-tribunal permezz ta' l-ittra li giet riprodotta *in toto* fil-paragrafu 1 *supra*.

23. It-tribunal ezamina bir-reqqa dawn iz-zewg ittri sabiex jara x'kellhom xi jghidu l-appellanti *a tempo vergine* dwar ir-ragunijiet li wasslu lill-awtorita` appellata sabiex tirrifjuta l-licenzja *de quo*.

24. Ghar-rigward il-kriterju ta' kompetenza u r-ragunijiet ta' l-awtorita appellata elenkati fis-subparagrafi (a), (b), (c), (d) u (e) tal-paragrafu 19 *supra* (cioe z-zamma mhux kif suppost tal-kontijiet bankarji, in-nuqqas li jintbaghtu lir-Registratur tal-Kumpanniji l-*annual accounts* ta' Carlton Holdings Limited u l-istat ta' insolvenza ta' l-istess Carlton Holdings Limited) l-appellanti ma qalu xejn specifiku f'dawn iz-zewg ittri. Aktar tard⁸ issottomettew:

"L-allegat nuqqas ta' thaddim soddisfacenti tal-kontijiet bankarji, n-nuqqas li jigu segwiti regoli dwar prezentata ta' avvizi jew returns taht l-Att dwar is-Socjetajiet huma lkoll konsiderazzjonijiet irrilevanti u certament bl-ebda mod ma kellhom u ma setghu jincidu negattivament fuq ir-raggungiment tal-kriterju ta' kompetenza. "

⁸ Ara paragrafu 14 tan-nota ta' sottomissjonijiet ta' l-appellanti.

25. Dejjem fir-rigward tal-kriterju ta' kompetenza, pero specifikatament ghar-rigward ir-ragunijiet ta' l-awtorita appellata elenkati fis-subparagrafi (f), (g) u (h) tal-paragrafu 19 *supra* (cioe esperjenza, kwalifiki u tahrig), fl-ittra ta' l-appell lil dan it-tribunal, l-appellanti ghamlu sottomissjonijiet dettaljati. Qalu:

According to the competence criteria set in the Investment Services Guidelines my clients had to prove that they had an acceptable amount of knowledge about the activity they were requesting a licence for and clearly from objectively verifiable evidence submitted this can easily be established and confirmed. My clients also had to prove professional expertise and again they have clearly proven that they have the required professional expertise to undertake the licensable activity they applied for since persons capable of providing trading signals with very positive and satisfactory comments to back the successfulness of these signals surely qualify as experts in their field. The comment contained in your 23rd June 2006 letter, that providing trading signals on a web-site in an unregulated environment counters any claim for professional expertise is clearly a very superficial way of motivating a decision and is clearly a blatantly and highly biased view. It is clear that the MFSA has not tried to establish who the frequent users of this web-site are and what degree of importance these give to the signals which are provided. Nor did the MFSA attempt to investigate and establish what the comments provided by the vast users of the Global View web-site to the signals furnished by Messrs. Paul and Peter Azzopardi were. Clearly the MFSA based its judgment on other considerations rather than those clearly established and set in the

Investment Services Guidelines. A clear indication of this is the MFSA's comment regarding Peter Azzopardi's degree. The MFSA should know that Spot FX market is not specifically covered in any syllabus leading to an Investment Services Business degree and is based on the application of technical factors and/or economic fundamentals. Moreover the competence criteria does not envisage a specific qualification in the particular activity but speaks of qualifications of a licence holder in general. The specific criteria lays importance on the knowledge, professional expertise and experience in the field. It may also be very pertinent if the MFSA had to delve through and investigate licences granted in the past to establish whether its treatment of my clients' application with reference to this specific criteria of the fit and proper test is consistent with its treatment of other applications for which licences were granted. This is being said since the MFSA as a regulator and also a provider of the required financial services licences must ensure equality of treatment in the processing of every licence submitted to it.

-omissis-

Competence is assessed on qualifications, training and work experience, in this order. These three criteria are however to be solely relevant and judged by reference to that type of market one intends to deal in. Judging these criteria by reference to markets which one does not intend to deal with would clearly mean that one is to bring into the exercise of his discretion irrelevant considerations.

The Spot FX market is distinct and separate from the derivatives market and therefore qualifications for the latter in no way apply to

the former. Spot FX traders simply make decisions using technical factors and / or economic fundamentals. Mr Peter Azzopardi, a UK graduate in Economics and Accountancy, therefore without doubt satisfies the 'qualifications' criteria.

On the other hand, a person can be 'qualified' without having a degree or diploma. Mr. Jay Meisler's letter submitted with the applicants' letter confirms that Mr Paul Azzopardi is qualified in providing trading signals. This was evident from the beginning; one hardly expects that a premiere FX site like Global-View.com would allow an 'incompetent' to manage a pay service on their esteemed site. The provision of consistently correct trading signals, coupled with a multi-defence risk management strategy, are the sole keys to successful FX trading.

Furthermore, 'track-records' can also serve as a 'qualification', especially if the results achieved are favourable. Whilst it is accepted that consistent profitable past performances can never be assessed as a guide to future achievements, the opposite is to be also more than true. Therefore, unprofitable past performances automatically signify 'incompetence'. A verifiable accumulation of 'pips' attained for years 2002, 2003 and 2004 respectively would prove this. Regrettably, applicants offer for an audit, to be conducted by a prime audit firm, confirming net 'pip' acquisitions, together with their respective monetary value, under the protective umbrella of their highly effective risk management strategy, was dismissed as almost irrelevant by the MFSA.

The other two criteria namely training and experience, coupled with qualifications, are

more than inter-linked, in fact either cannot exist without the other. One cannot have work-experience without having undergone training. Furthermore, for one to undergo training means that one must have a knowledge of the subject matter. This knowledge on the other hand cannot be simply restricted to information acquired from books, courses etc., but must be more profound, as we have demonstrated above, vis-a-vis positively consistent trading signals, coupled with our risk-management strategy.

In this respect, research conducted on the System in 1998, using data extrapolated from the 6 previous years, confirmed that the results yielded in 1998 were no fluke and that the system maintained a notable level of accuracy. This massive exercise served as a pseudo form of training for both Mr. Peter Azzopardi and Mr. Paul Azzopardi considering that the trading environment was an important factor of this research.

Work-experience can, on the other hand, be said to have initiated during 2001, precisely when Paul Azzopardi and Peter Azzopardi started posting trading recommendations on the Forex Forum of Global-View.com. Since 2002 Paul Azzopardi and Peter Azzopardi were invited to start a trading signal recommendation service, which is still active to date.

Furthermore it is not correct to argue as MFSA have done and continue to do, that in the absence of training / qualifications and in order to satisfy the competence test, one must prove undergoing relative work experience of a minimum number of years with an authorised financial institution. In the first instance there is an unlimited number of

authorised financial institutions, but only a select few can be deemed to be specifically authoritative on the subject matter. In the second instance one must discern exactly what designation the word 'trader' implies. The majority of so called 'traders' simply follow 'in-house' signals and can be simply termed as 'deal-executors'. A sound and authoritative financial institution would have a team of 'technical and economic' advisors, whose sole purpose would be to generate trading signals. Traders and advisors work independently of each other, with the latter enjoying the only onerous role. It would therefore be correct in saying that traders working for a top notch financial institution cannot be considered as competent to generate trading signals and this irrespective of the number of years in the institution's employment. On the other hand advisors, by MFSA 's standards, would not qualify as being competent, primarily because they have never actually traded.

In the case of the applicants however MFSA was informed that both Mr. Peter Azzopardi and Mr. Paul Azzopardi had positive signalling skills and the art of actual trading, the latter coupled with an effective risk management strategy.

26. Dwar l-element ta' esperjenza, kwalifiki u tahrig, l-appellanti, fin-nota ta' sottomissjonijiet taghom ziedu jghidu:

L-istess jista' jinghad ghall-kwalifiki; il-linji gwida jtkellmu dwar kwalifiki b'mod generali u mhux kwalifiki li ghandhom ikollhom rabta qrib u diretta mas-servizz li ghalih tkun qieghda tintalab il-licenzja. L-appellant Peter Azzopardi ghandu kwalifiki akkademici u huma kwalifiki akkademici li ghalkemm ma' jirreferux b'mod qrib u dirett ghall-attivita' ta' Spot Forex

Trading (infatti tali kwalifiki akkademici ma jezistux) - l-attivit  li ghalha l-appellanti ressu l-applikazzjoni taghom - ghandhom rabta valida u importanti billi jkopru s-suggetti tal-matematika u ta' l-ekonomija, zewg suggetti li ghandhom valenza xejn zghira ghall-attivit  in kwistjoni. Dwar l-esperjenza ta' Paul Azzopardi u Peter Azzopardi fl-attivit  ta' lis-Spot Forex l-appellata tichad li tezisti din l-esperjenza minhabba li l-imsemmija individwi jfornu trade signals fuq web site f'ambjent mhux regolat. Kif spjegaw kemm Peter Azzopardi u b'mod aktar dettaljat Paul Azzopardi fix-xhieda taghom, is-suq ta' lis-Spot Forex ma huwiex fih innifsu suq regolat. Il-website li jikkontribwixxu fiha hija website rikonoxxuta bhala wahda mill-aktar importanti u l-kontribut taghom huwa possibli kawza u b'rizultat kemm tat-taghrif li kuma jippossjedu fis-suggett u kemm ta' l-esperjenza li huma akkwistaw matul iz-zmien. L-ahwa Peter u Paul Azzopardi spjegaw li t-taghrif f'lis-Spot Forex ma jigix minn tahrig akkademiku. Dan l-istess fatt huwa rikonoxxut mix-xhieda ta' James Farrugia u l-Avukat Dottor Andre Camilleri u johrog mix-xhieda traskritta taghom, kif johrog mix-xhieda ta' dawn l-istess xhieda li f'din l-attivit  hija l-esperjenza l-fattur determinanti. Paul Azzopardi fix-xhieda tieghu u b'riferenza diretta ghall-informazzjoni akkwizibbli minn fuq l-internet spjega kif hafna mill-aktar operatori kbar u importanti fis-settur ma kellhomx tahrig akkademiku izda akkwistaw dak li jafu billi haddmu fis-suq u esponew ruhhom ghall-elementi kollha ta' dak is-suq. Paul Azzopardi fix-xhieda tieghu wera kemm ir-riferenza li huwa kellu minghand Jay Meisler kellha tinghata piz billi kienet gejjja minghand persuna li huwa awtorita mondiali fis-suq partikolari. Huwa sinjifikattiv dak li stqarr James Farrugia fix-xhieda tieghu meta kien mistoqsi dwar ir-referenza ta' Meisler u

wiegeb li riferenza ta' persuna wahda ma kinitx bizzejjed u kien mehtieg li jkun hemm mill-anqas zewg referenzi ohra u li dawn iz-zewg referenzi ntalbu izda qatt ma inghataw. Dan juri kemm l-appellata u l-ufficcjali taghha kienu qeghdin jiehdu attegjament kapriccuz u arbitrarju fil-konfront ta' l-appellanti billi barra li qatt ma talbu referenzi addizzjonali tali talba kienet tikkonferma l-arbitrarjeta u l-kapriccozzita tal-esercizzju tad-diskrezzjoni da parti ta' l-appellata specjalment meta kellha quddiemha referenza ta' persuna li huwa awtorita mondiali fis-suq specifiku. Fis-suq ta' lis-Spot Forex l-aktar elementi importanti huma li wiehed ikun kapaci jaghti trading signals korretti marbut ma' sistema sikura u affidabbli ta' risk management li jkollha insita maghha wkoll sistema ta' protezzjoni u difiza multipla tal-investment. Certament li kemm Peter Azzopardi u aktar u aktar Paul Azzopardi ghandhom u urew li jippossjedu tahrig, taghrif u esperjenza fl-ghoti ta' trading signals u flimkien ma' l-appellanti l-ohra pproponew fl-applikazzjoni taghhom sistema ta' risk management bil-protezzjoni kollha mehtiega tal-investment.

27. Dwar ic-cahda tal-licenzja stante li ma giex sodisfatt il-kriterju ta' solvenza ghar-ragunijiet moghtija mill-awtorita appellata kif riprodotti fil-paragrafu 20 *supra*, fl-ittra ta' l-appell taghhom l-appellanti ssottomettew:

With respect to the solvency criteria according to the Investment Services Guidelines this criteria is intended to ensure that proper financial control and management of liquidity and capital are applied meaning also that the business should have sufficient financial resources to meet not only the financial demands on the business but also the financial resources requirements established

by the MFSA. It is clear from MFSA's letters of the 23rd June, 2006 and the 4th August, 2006 that no reason has been given why the Supervisory Council is not satisfied that this criteria (solvency) has been met. This means that again on this very specific criteria of solvency the MFSA has exceeded its discretionary authority and acted in a manifestly unjust and unfair manner when it clearly based its decision on wrong and unlawful considerations since it has ignored altogether the fact that my clients have clearly provided a system of operation which will apply and guarantee a proper financial control and management of liquidity and capital. Furthermore the MFSA is also in breach of the rules of fair hearing since as an authority vested with the power to decide whether to grant or not to grant a licence it is legally required to provide the full and clear reasons why the specific criteria required for the acceptance or refusal of the licence has been considered not to have been fulfilled.

28. Fin-nota ta' sottomissjonijiet taghhom l-appellanti komplew jghidu:

Applikata r-raguni ta' l-appellata fuq esposta ghal dak mitlub mil-linji gwida kwantu l-indagini dwar jekk il-kriterju ta' Solvenza giex soddisfatt wiehed jerga' jara kemm l-analizi u l-konsiderazzjoni ta' l-appellata hija wahda assolutament approssimattiva u tiehu kont ta' fatturi u konsiderazzjonijiet irrilevanti. Filwaqt li l-linji gwida jitolbu analizi dwar jekk l-appellanti joffrux assikurazzjoni dwar kontrol finanzjarju adegwat u korrett u dwar il-gestjoni tal-likwidita u tal-kapital uzat kwantu s-servizz propost minnhom l-appellata hasset li wara l-analizi li ghamlet u ma giex raggunt il-kriterju tas-solvenza min-naha ta' l-appellanti peress li l-appellanti allegatament ma hadmux il-kontijiet

bankarji taghhom b'mod sodisfacenti u peress li s-socjeta' Carlton Holdings Limited kienet tinsab fi stat ta' insolvenza fis-sena 2000. Dan jerga' juri kemm l-appellata naqset serjament fl-esercizzju tad-diskrezzjoni taghha billi la qaghdet ghal dak li jitolbu l-linji gwida kemm litteralment u lanqas fl-ispirtu taghhom, striedet fuq konsiderazzjonijiet irrilevanti u ghamlet valutazzjoni arbitrarja u assolutament kapricuza. Minn qari tal-linji gwida kellu jirrizulta car lill-appellata li l-analizi tal-kriterju tas-solvenza kellu jsir fl-isfond tas-servizz propost u tar-rizorsi finanzjarji rikjesti mill-appellata ghas-servizz propost. L-ebda analizi f'dan il-kuntest ma saret jew hekk saret l-inferenza naturali hija li r-rizultat kien wiehed posittiv ghax kieku l-appellata kienet tindika ir-ragunijiet ghala dawn il-htigijiet espressi fil-linji gwida ma gewx raggunti.

29. Dwar ic-cahda tal-licenzja *stante* li, skond l-awtorita appellata, l-appellanti naqsu milli jissodisfaw il-kondizzjoni li huma kapaci li jharsu u josservaw kull Regola ta' Servizi ta' Investiment u regolamenti maghmulin taht il-Kap. 370 u applikabbli ghalihom, l-appellanti ma qalu xejn specifiku fl-imsemmija zewg ittri taghhom.

30. In succinct l-appellanti qeghdin jghidu li l-awtorita appellata, meta rifjutat l-licenzja mitluba minnhom, applikat hazin id-disposizzjonijiet tal-Kap. 370, abbuat mid-diskrezzjoni taghha u li d-decizjoni tar-rifjut tal-licenzja *de quo* hija ingusta manifestament.

II-Konsiderazzjonijiet tat-Tribunal

31. L-artikolu 21(9) tal-Kap. 330⁹ jillimita ferm ic-cirkostanzi li fihom dan it-tribunal jista' jiccensura decizjoni ta' l-awtorita kompetenti. Mhuwiex

⁹ Riprodott fil-paragrafu 17 *supra*.

bizzejjed li, ghal kwalsijasi raguni, it-tribunal ma jaqbilx mad-decizjoni ta' l-awtorita kompetenti. Sabiex dan it-tribunal jintervjeni jrid jirrizulta jew

a) li fid-decizjoni taghha l-awtorita kompetenti applikat hazin xi wahda mid-disposizzjonijiet tal-Kap. 370 jew tal-Kap. 330; jew

b) li d-decizjoni ta' l-awtorita kompetenti tikkostitwixxi abbuz ta' diskrezzjoni; jew

c) li d-decizjoni ta' l-awtorita kompetenti tkun ingusta manifestament.

It-tribunal ma jistax jissindaka d-diskrezzjoni ta' l-awtorita kompetenti jekk din tkun giet ezercitata b'mod xieraq.

32. Jinkombi fuq min jallega xi wiehed jew aktar mit-tliet nuqqasijiet ta' l-awtorita kompetenti elenkati fl-artikolu 21(9) tal-Kap. 330 – f'dan il-kaz l-appellanti - li jipprova tali nuqqas. Dan a bazi tal-principju stabbilit mill-artikolu 562 tal-Kap. 12¹⁰.

33. Issa meta l-awtorita kompetenti tkun qiegħda tikkonsidra applikazzjoni għall-hrug ta' licenza għal servizzi ta' investiment bhal dik *de quo* hija **ghandha**, skond l-artikolu 6(3) tal-Kap. 370¹¹, b'mod partikolari tikkonsidra il-harsien ta' l-investituri u tal-pubbliku in generali.

34. Dan necessarjament ifisser illi, *inter alia*, l-awtorita kompetenti hija obligata bil-ligi li tistabbilixxi l-*istandards* u l-kriterji li jehtieg li jkunu sodisfatti sabiex licenza tinhareg. Il-livell li jrid jigi milhuq għall-hrug ta' kull tip ta' licenza ta' servizzi ta' investiment jigi stabbilit mill-awtorita kompetenti mwaqqfa b'ligi specifika għal dan il-ghan; f'dan il-

¹⁰ Artikolu 562: Bla hsara ta' kull disposizzjoni ohra tal-ligi, l-obbligu tal-prova ta' fatt imiss dejjem lil min jallegah.

¹¹ Riprodott fil-paragrafu 8 *supra*.

kaz l-Awtorita ghas-Servizzi Finanzjarji ta' Malta¹². Gholi kemm hu gholi l-livell stabbilit, id-diskrezzjoni ta' l-awtorita` kompetenti f'dan ir-rigward hija assoluta u sakemm il-kriterji stabbiliti huma rilevanti ghal licenza partikolari u japplikaw *erga omnes* m'ghandhomx jigu mistharga ghaliex l-entita li tistabbilhom hija bil-ligi l-imsemmija awtorita kompetenti u hadd aktar.

35. Ikkunsidrat dan kollu jmiss issa li dan it-tribunal jindaga jekk, mill-provi prodotti mill-appellanti, irrizultax li l-awtorita kompetenti kkommettix xi wahda mit-tliet nuqqasijiet ikkontemplati mill-artikolu 21(9)tal-Kap. 330.

36. It-tribunal ezamina r-ragunijiet li tat l-awtorita kompetenti appellata ghac-cahda minnha tal-licenza mitluba mill-appellanti, liema ragunijiet gew sintetizzati fil-paragrafu 20 *supra* kif ukoll l-argumenti u s-sottomissjonijiet ta' l-appellanti ghal kull wahda mill-imsemmija ragunijiet, liema argumenti u sottomissjonijiet ta' l-appellanti huma riprodotti estensivament fil-paragrafi 25, 26, 27, 28, 29 u 30 *supra*.

37. Minn dan l-ezami t-tribunal jikkonkludi li r-ragunijiet li tat l-awtorita kompetenti appellata ghac-cahda minnha tal-licenza mitluba mill-appellanti huma msejsa fuq *standards* u kriterji li huma kollha rilevanti ghall-ghoti tal-licenza mitluba mill-istess appellanti. Applikant jista', forsi, jhoss li xi *standards* u kriterji stabbiliti mill-awtorita kompetenti huma gholjin, pero dan mhuwix bizzzejjed sabiex jadixxi lil dan it-tribunal u jitolbu jissostitwihom b'*standards* u kriterji anqas oneruzi ghaliex jekk jaghmel hekk it-tribunal ikun qiegheed juzurpa l-funzjoni ta' l-Awtorita ghas-Servizzi Finanzjarji ta' Malta u jaghmel lill-awtorita kompetenti in materja minflokha.

¹² Imwaqqfa bl-artikolu 3 tal-Kap. 330.

38. Kif ga nghan it-tribunal ghandu l-obbligu li jiccensura lill-awtorita kompetenti fit-tliet kazijiet elenkati fl-artikolu 21(9) tal-Kap. 330.

39. Galadarba

(a) ma rrizultax li l-awtorita kompetenti applikat hazin xi wahda mid-disposizzjonijiet tal-ligi - per ezempju ma tatx l-opportunita lill-appellanti sabiex jaghmlu s-sottomissjonijiet taghhom fic-cirkostanzi imsemmija fl-artikolu 8(1) tal-Kap. 370¹³, jew

(b) ma rrizultax li l-awtorita kompetenti abbuzat mid-diskrezzjoni taghha - per ezempju wzat kriterji u *standards* differenti fir-rigward ta' applikazzjonijiet identici minn persuni differenti jew

(c) ma rrizultax illi d-decizjoni ta' l-awtorita kompetenti kienet ingusta manifestament - per ezempju billi insistiet fuq xi kondizzjoni li tkun assolutament irrilevanti,

it-tribunal ma jistax jintervjeni. Anzi a tenur ta' l-istess artikolu 21 (9) tal-Kap. 330 *"d-diskrezzjoni ta' l-awtorita kompetenti ma tistax, sakemm tkun giet ezercitata b'mod xieraq, tkun mistoqsija mit-Tribunal"*.

40. Mill-provi prodotti rrizulta illi l-awtorita kompetenti segwiet skrupolozament id-dispozizzjonijiet rilevanti tal-ligi, ezercitat id-diskrezzjoni taghha b'mod xieraq u waslet ghal decizjoni gusta a bazi ta' *standards* u kriterji rilevanti.

41. B'mod specifiku t-tribunal ma jistax jaqbel mas-sottomissjoni ta' l-appellanti li *"n-nuqqas ta' thaddim soddisfacenti tal-kontijiet bankarji"* tas-Sur Mario La Pira, is-Sur Adrian Azzopardi u tal-kumpannija Carlton Holdings Ltd (li diretturi

¹³ Riprodott fil-paragrafu 9 *supra*.

taghha huma s-Sinjuri Adrian Azzopardi, Peter Azzopardi u Paul Azzopardi) huma "*konsiderazzjonijiet irrilevanti*"¹⁴ meta dawn is-Sinjuri kienu se jmexxu l-kumpannija li applikat ghall-licenza *de quo*. L-istess haga tinghad ghall-insolvenza tal-kumpannija Carlton Holdings Ltd. Din hija konsiderazzjoni rilevanti.

42. Fil-fatt dawn huma kollha fatturi li jincidu direttament fuq il-kriterji ta' kompetenza u solvenza tal-*fit and proper test*. Skond il-*jargon* uzat fin-negozju finanzjarju, il-passat (tajjeb) mhuwiex garanzija tal-futur. Pero passat (imcajpar) ta' nuqqas ta' thaddim sodisfacenti ta' kontijiet bankarji kif ukoll insolvenza ta' kumpannija gustament jaghtu lok ghal thassib ghal futur u huma konsiderazzjonijiet ferm rilevanti meta jkun qieghed jigi propost servizz finanzjarju li se jkun immexxi minn persuni li fil-passat haddmu kontijiet bankarji b'mod insodisfacenti u huma involuti direttament f'kumpannija li ma haddmitx kif suppost il-kontijiet bankarji taghha u li tinsab fi stat ta' insolvenza. Il-protezzjoni ta' l-investituri u tal-pubbliku in generali huwa obbligu impost bil-ligi fuq l-awtorita` kompetenti. Ghalhekk l-istess awtorita` tkun qieghda tagixxi b'mod irresponsabbli jekk ma tqisx cirkostanzi bhal dawn fl-ghoti ta' licenza ghal servizzi ta' investment.

43. Huwa rilevanti wkoll il-fatt kif l-appellanti, li kienu jafu minn ferm qabel ma gie intavolat dan l-appell bil-preokkupazzjoni ta' l-awtorita kompetenti dwar (a) il-kontijiet bankarji li ma kienux gew mizmuma b'mod sodisfacenti u (b) l-insolvenza tal-kumpannija Carlton Holdings Limited, naqsu milli jindirizzaw din il-preokkupazzjoni b'spjegazzjonijiet cari bhal, per ezempju, bix-xhieda tar-rapprezentanti tal-banek in kwistjoni u ta' l-awditur ta' Carlton Holdings Limited. Wara kollox jista' jkun hemm raguni valida 'l ghala

¹⁴ Ara paragrafu 14 tan-nota ta' l-osservazzjonijiet ta' l-appellanti.

kontijiet bankarji nzammu b'certu mod jew ghala kumpannija tinsab fi stat ta' insolvenza. Dan kif ammetta James Farrugia, manager ma l-awtorita appellata, waqt li kien qieghed jixhed.

44. L-istess jista' jinghad ghall-kunsiderazzjonijiet ta' l-awtorita kompetenti appellata fir-rigward ta' l-esperjenza, il-kwalifiki u t-tahrig tal-persuni li l-promoturi ta' Sibylline Capital Management Company Limited (in formation) ipproponew sabiex imexxu n-negozju *de quo*. Filwaqt illi l-appellanti ma qablux ma l-*standards* u l-kriterji uzati mill-awtorita kompetenti, it-tribunal ma jikkondividix it-tezi taghhom illi dawn l-*standards* u l-kriterji huma irrilevanti. Wiehed jista' jargumenta li l-*standards* u l-kriterji stabbiliti mill-awtorita kompetenti f'dan il-qasam huma gholjin, pero irrilevanti certament mhumiex. L-awtorita kompetenti ghandha l-obbligu li tistabbilixxi *standards* u l-kriterji gholjin jekk hi tal-fehma li dan hu necessarju sabiex thares l-interessi ta' l-investituri u tal-pubbliku in generali. Dment li dawn l-*standards* u l-kriterji huma rilevanti, dan it-tribunal ma jistax jintervjeni u jekk jintervjeni f'dawn ic-cirkostanzi jkun qieghed jikser il-ligi.

45. Mill-kumulu ta' l-informazzjoni li kellha a disposizzjoni taghha, l-anqas ma wiehed jista' jlum lill-awtorita kompetenti li tiddubita serjament mill-abbilita ta' l-appellanti li jharsu u josservaw kull Regola ta' Servizzi ta' Investiment u regolamenti maghmula taht il-Kap 370 applikabbli ghalihom; dan kif ikkontemplat fl-artikolu 6(l)(a)(i) tal-Kap. 370¹⁵.

Decizjoni

Ghal dawn il-motivi t-tribunal jirrespingi l-appell ta' tal-promoturi ta' Sibylline Capital Management Company Limited (in formation) Peter J.

¹⁵ Riprodott fil-paragrafu 6 *supra*

Azzopardi, Adrian P. Azzopardi, Paul S. Azzopardi u Mario W. La Pira u jikkonferma d-decizjoni ta' l-Awtorita` ghas-Servizzi Finanzjarji ta' Malta fl-interita` taghha, bl-ispejjez kontra l-istess appellanti.”

Ir-rikorrenti appellaw minn din is-sentenza li kkonfermat id-decizjoni ta' rifjut da parti ta' l-Awtorita` ghal-koncessjoni lilhom ta' licenzja (Kategorija 2) taht l-Att dwar is-Servizzi ta' Investiment (Kapitolu 370);

Sostanzjalment, ghal dak li hu rilevanti, l-aggravju hawn sottopost bl-appell hu, f'bosta aspetti tieghu, identiku ghal dak devolut bl-appell l-iehor Numru 25/09. Ukoll hawn l-appellanti jillamentaw mill-motivazzjoni ta' l-Awtorita` illi huma ma ssodsifawx il-kriterji tal-“*fit and proper test*”; in partikolari, il-kriterji rigwardanti l-kompetenza u s-solvenza taghhom. Ugwalment huma wkoll jikkuntrastaw dik l-istess motivazzjoni ta' l-Awtorita` bl-addebitu ta' abbuz ta' diskrezzjoni u li b'mod ingust hadet konjizzjoni ta' cirkostanzi li ma kellhom ebda rilevanza ghal dak l-istess test;

Fid-decizjoni taghha fuq dak l-appell il-Qorti, filwaqt li rrikonoxxiet, entro certi limiti, li l-appell kien ammissibbli, ghaddiet biex tirriezamina l-principji involuti, interpretahom, u finalment sejset il-gudizzju taghha fuq il-konsiderazzjoni illi, kuntrarjament ghal dak dedott mill-appellanti, id-decizjoni ta' rifjut da parti ta' l-Awtorita` ma kienetx karatterizzata minn konsiderazzjonijiet irrelevanti u estraneji ghal-linji gwida skond il-ligi, jew, altrimenti, bazata b'mod approssimattiv u b'ezercizzju arbitrarju u kapriccjuz tad-diskrezzjoni;

A skans ta' ripetizzjoni l-Qorti tirreferi ghall-konsiderandi minnha zvolti f'dak l-appell l-iehor u taghmilhom applikabbli *mutatis mutandis* ghall-appell odjern anke jekk dan strettament jikkoncerna d-decizjoni ta' rifjut mill-Awtorita` moghtija fl-4 ta' Awissu, 2006. Li forsi tista' taghmel hawn b'rikapitolazzjoni huwa li tenfasizza dawn l-aspetti:-

Kopja Informali ta' Sentenza

1. Tnehi l-kaz fejn il-ligi specifikament tipprovdi ghal-limitazzjoni ta' sindikar, l-ezercizzju tas-setgha diskrezzjonali mhix priva minn kontrolli gudizzjarji fil-kaz ta' abbuz jew ta' ingustizzja manifesta;

2. Id-determinazzjoni ta' dak l-abbuz trid tirrizulta minn motivi obbjetti jew, xort'ohra, mhux meritevoli ta' tutela;

3. L-att hu soggett ghal gudizzju duplici tal-validita` u tal-konformita` ghal bwona fede b'mod li r-rizultat jista' jigi rettifikat fejn jinstab li hu ingustifikat jew mhux ekwilibrat skond l-oghla principji tad-diligenza u tal-korrettezza;

4. Fir-realta` tal-vicenda processwali, ukoll fuq l-istregwa tal-precitati strumenti ta' evalwazzjoni, il-Qorti ma tarax kif tista' tirnexxi d-denuncja ta' l-appellanti illi kien hemm da parti ta' l-Awtorita` ipotesi ta' abbuz li jimmerita s-sanzjoni tat-Tribunal, u issa ta' din il-Qorti. Dan qed jigi rilevat, u wkoll sottolinejat, ghaliex jekk xejn, l-inadempiment ma huwiex attribwibbli lill-Awtorita` izda, kif mit-Tribunal ikkonstatat, lill-istess appellanti in kwantu dawn ma impenjawx ruhhom kif imiss biex jaghtu rassikurazzjoni sodisfacenti u debita ghall-preokkupazzjonijiet mqanqla mill-Awtorita` appellata, u li, skond il-fehma taghha, kienu influwenti fuq il-kriterji u l-*standards* li bihom aggudikat il-fatti;

5. Kollox ma' kollox hi l-fehma konsiderata ta' din il-Qorti illi anke fil-kaz prezenti sew l-Awtorita`, kif ukoll it-Tribunal warajha, pprovde motivazzjoni li turi li r-ragonament taghom gie mfassal skond regoli xierqa ta' gudizzju.

Ghal dawn il-motivi u dawk tal-konsiderazzjonijiet dedotti fl-appell l-iehor Numru 25/09, kontestwalment deciz, il-Qorti qeghda tichad l-appell u, ghaldaqstant, tikkonferma s-sentenza appellata, bl-ispejjez kontra l-appellanti.

Kopja Informali ta' Sentenza

< Sentenza Finali >

-----TMIEM-----