



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

GINO CAMILLERI

Seduta tas-6 ta' Mejju, 2014

Appell Civili Numru. 14/2012

**Paul Henri Christian Selis f'ismu propju u f'isem il-Malta
Convention Bureau (C-51613)**

vs

L-Awtorita' tat-Turizmu ta' Malta

Il-Qorti

Rat li fit-2 ta' April 2012 il-Bord tal-Appelli tat-Turizmu ppronunzja s-segweni decizjoni, bil-lingwa Ingliza, fil-vertenza fl-ismijiet premissi:-

“The Board:

Has examined the appeal lodged by Paul Henri Christian Selis in his personal capacity and on behalf of Malta Convention Bureau (C-51613) dated 9th January 2012 in virtue of which the appellant pro et noe felt aggrieved by a decision of the Malta Tourism Authority (MTA) dated 28th December, 2011, consisting of an Enforcement Notice in virtue of which, following investigations by the MTA, the MTA

claimed that the appellant in the said capacity breached articles 13(1)(a) and 13(1)(b) of the Tourism Operations (General) Regulations (Subsidiary Legislation 409.08) on the 28th December 2011 and on the previous days when, via the internet, the appellant described or advertised, or permitted to be described or advertise a tourism operation consisting of a Destination Management operation conducted by Malta Convention Bureau, in respect of which there is no valid licence issued by the MTA to operate and also there is no approval by the MTA of the trading name used. The MTA requested the appellant to stop this breach of the Law within 2 working days from delivery of the said Enforcement Notice and requested the appellant to desist from operating or advertising, directly or indirectly, or from permitting to be operated or advertised, directly or indirectly, any activity of a destination management company unless the appellant is in possession of a valid licence issues by the MTA.

Took note of the appellant's grievances against the said decision being:

- 1. that the decision de quo is null and void as it was not signed by '.....by the Chairman or the Chief Executive of the Authority or by the Chairman or Director of the appropriate directorate of the Authority or by any other person so authorised on their behalf as is required by article 20(1) of the Tourism Operations (General) Regulations but was, instead, signed by Mr Charles Grech (Senior Manager Quality Assurance Directorate);*
- 2. that the said decision addressed to the appellant in his personal capacity should be declared null and void since Mr Paul Henri Christian Selis in his personal capacity does not operate any activity in connection with the merits of the appeal;*
- 3. that the said decision insofar as it is addressed to Malta Convention Bureau (C51613) is once again null and void since the appellant is a imited liability company names Malta Convention Bureau Limited;*
- 4. that the appellant company does not operate a destination management company (DMC) but aims to be a marketing platform to promote Malta as a premier business events destination; and*
- 5. that an objective analysis of the operation of the Company that should exclude any reference to the appellant company's website and to the trading objects contained in the company's Memorandum of Association would prove further the appellant's claims that it is not a DMC but a marketing platform as described above.*

Held two sittings on the 23rd January, 2012, during which sitting the appellant gave evidence and was cross-examined, and on the 22nd February, 2012, during which sitting Mr Josef Formosa Gauchi, CEO of the MTA, Mr Charles Grech, Senior Manager Quality Assurance Directorate, and Mr Nigel Bruno, MTA Enforcement Officers, produced by appellant, gave evidence and were cross-examined.

Took note of the fact that during the sitting held on the 23rd January, 2012, the MTA withdrew the Enforcement Notice against Mr Paul Henri Christian Selis in his personal capacity and the Board, following a request to that effect by the MTA's legal counsel that was unopposed by appellant, authorised an amendment to the

Enforcement Notice such that any and all references to Malta Convention Bureau (C51613) are now to read Malta Convention Bureau Limited (C51613).

Heard the oral submissions made by the appellant's legal counsel during the sitting of the 22nd February, 2012, following which the parties requested this Board to adjourn the proceedings and to decide the merits of the appeal.

Issued a Decree dated 20th March, 2012, in virtue of article 173 of Chap. 12 of the Laws of Malta, requesting the MTA to submit by the 21st March, 2012, to the Secretary of the Board and all documentation showing that Mr C Grech in his capacity as Senior Manager of the Quality Assurance Directorate was authorized to sign the enforcement notice dated 28th December 2011 issued by the MTA in accordance with article 20(1) of the Tourism Operations (General) Regulations that establishes that 'any notice, communication or other document, and any authorisation issued by or on behalf of the Authority shall be signed either by the Chairman or the Chief Executive of the Authority or by any other person so authorised on their behalf.' #Took note of the documentation forwarded to the attention of the Board by the MTA in reply to the said Decree consisting of:

- 1. a reference to articles 20(1) and 22 of the Tourism Operations (General) Regulations (Subsidiary Legislation 409.08); and*
- 2. a document entitled 'Position Description' signed by Mr C Grech and the CEO of the MTA showing inter alia that Mr C Grech's duties and responsibilities include those of investing complaints related to MTA licensed operations (point 7), of taking the required action as set out by the Malta Travel and Tourism Services Act and regulations in cases of non-compliance (point 9) and of acting as public prosecutor and representing the MTA in legal proceedings instituted by the MTA (point 17).*

Also took note of the documentation exhibited during the proceedings consisting of:

- a. an email dated 18th January, 2012, relating to the International Symposium of Fireworks being organised by the MTA, and in virtue of which the MTA purports to enquire about sourcing a Quality Assured DMC (Doc IV1);*
- b. a snapshot of a website entitled 'Malta Tourism Authority, MICE Segment Team' (Dok IV2);*
- c. an e-mail dated 11th August, 2011, relating to a French Association's request to hold their annual meeting in Malta in 2012 and, in virtue of which, the MTA purports to forward the request to a number of DMCs (Doc. IV3);*
- d. a letter dated 4th November, 2011, addressed to Mr Nigel Bruno and signed by Mr Paul Henri Christian Selis (Doc IV4);*
- e. a snapshot of the appellant's website (<http://maltaconvention.com>) (Doc IV5);*
- f. a snapshot of the appellant's website (<http://aholi.net>) (Doc NB1);*
- g. a snapshot of the appellant's website (<http://maltacvb.org>) (Doc NB2);*
- h. a snapshot of a google search on the Malta Convention Bureau together with print-outs of press releases related to the Malta Convention Bureau (Doc NB3);*

- i. a document entitled 'Membership Prospectus' issued by the Malta Convention Bureau (Doc NB4);*
 - j. snapshots of the web-sites www.maltacvb.org and aholi.net printed on the 28th December 2011 (Doc. NB5); and*
 - k. a copy of the Memorandum of Association of the Malta Convention Bureau Ltd (Doc NB6).*
- (Doc IV1 – IV5 were exhibited by appellant whereas doc NB1 – NB6 were exhibited by Mr Nigel Bruno).*

Considers:

Mr Paul Henri Christian Selis explained, in essence, that:

- 1. he is already licensed separately as a DMC;*
- 2. that the Malta Convention Bureau Ltd aims to be a marketing platform and portal for its members to promote Malta as a destination for large format events;*
- 3. that upon an expression of interest by a potential organiser of a large format event, the Malta Convention Bureau Ltd aims to act as a portal through which its members will be able to submit bids to host the particular event;*
- 4. that, if any such bid is accepted by a potential organiser, such organiser will deal directly with the member;*
- 5. that the Malta Convention Bureau Ltd is a non-profit or not-for profit organisation unlike DMCs that are aimed at making a profit;*
- 6. that the Malta Convention Bureau Ltd cannot be deemed to be a DMC as, otherwise, it would not have offered an observatory board seat to the MTA on its board of directors;*
- 7. that a number of meetings were held with the MTA, including with the CEO, Mr Formosa Gauci, during which the objectives and modus operandi of the Malta Convention Bureau Ltd were clearly explained and that showed that the operations of the said company did not fall within the jurisdiction of the MTA;*
- 8. that, merely to dispel and misunderstandings, the objects clause of the company were amended in order to strengthen the claim that the Malta Convention Bureau Ltd is a marketing company and not a DMC;*
- 9. that, following the issue of the Enforcement Notice de quo, the company's website/s were placed off-line pending the outcome of these proceedings;*
- 10. that, in any case, the web-site/s were merely test-sites intended to generate interest in the company and not intended to advertise or market the company's operations since the company has not begun operating yet;*
- 11. that page 6 of the snapshot taken from the aholi.net web-site (Doc NB1) entitled 'Conventions & Events' and which referred to various items of food clearly indicated that the web-site/s in question were merely intended as test-sites.*

Mr Formosa Gauci confirmed that he met Mr Paul Henri Christian Selis a number of items in connection with the proposed operations of the Malta Convention Bureau Ltd. That he had informed Mr Selis that the MTA did not consider favourably his offer to grant the MTA and observatory seat on the board of directors and that the MTA had reservations with regards to the name chosen since he felt that the name may be misleading as it was indicative of State involvement whereas, in reality, it was a private venture. Mr Formosa Gauci pointed out that the MTA had a discretion to vet names in virtue of article 29 of the Malta Travel and Tourism Services Act (Chapter 409 of the Laws of Malta). That Mr Selis had informed him during these meetings that many operators had agreed to become members of the company. That he was told by certain operators that Mr Selis was informing them that the MTA would be represented on the board of directors of the Malta Convention Bureau Ltd. That he remained unconvinced that the company was simply intended as a marketing platform but felt that its operations could be deemed to fall within the definition of a DMC and, accordingly, requested the Enforcement Directorate of the MTA to investigate the activities of the company.

Mr C Grech merely confirmed that he issued the Enforcement Notice de quo acting on the findings of the MTA Enforcement Officer, Mr Nigel Bruno.

Mr Nigel Bruno, Enforcement Officer of the MTA, confirmed that following investigations on the company and, in particular, its web-sites and the trading objects as contained in the Memorandum of Association he came to the conclusion that the company's operations were those of a DMC. He exhibited snapshots of the web-sites posted by the company and highlighted a number of paragraphs that he felt were indicative of the fact that the company was, indeed, a DMC (Doc NB1 and NB2). Mr Bruno also confirmed that following the Enforcement Notice de quo and in the days before this, the company's web-site/s were still available for viewing on the internet and that these, in his opinion, were not indicative of test-site/s.

Motivations

The first three preliminary grievances put forward by appellant referred to above claiming the nullity of the Enforcement Notice de quo can be set aside with ease since the case notes show that the MTA withdrew the Enforcement Notice against the appellant in his personal capacity and the Enforcement Notice de quo insofar as it referred to Malta Convention Bureau was amended to read Malta Convention Bureau Ltd. Moreover, following the above-mentioned Decree, the document submitted by the MTA entitled 'Position Description' clearly indicated that Mr C Grech's action was in accordance with article 20(1) of the Tourism Operations General Regulations.

This Board has, therefore, to examine and decide on the merits of the appeal and, in this connection, observes that there are two separate elements to the MTA's action that both have to be proved, these being:

Kopja Informali ta' Sentenza

1. *that the Malta Convention Bureau Ltd's activities are, effectively, those of a DMC; and*
2. *being without a licence, the appellant described or advertised, or permitted to be described or advertised, such a DMC operation.*

In the first place, it is clear that article 27(1) of the Malta Travel and Tourism Services Act requires a DMC to be in possession of a licence issue by the MTA:

"No person shall carry on, or hold himself out as carrying on, the business of an incoming tourism agent, a travel agent or of a destination management company unless he shall have previously obtained and is in possession of a licence.2

The Malta Travel and Tourism Services Act defines a DMC as:

"... any person whose principal line of business, whether as principal or agent, is the creation planning and operation of high level motivational and specialised programmes for tourists and other persons, whether singly or in groups, and which programmes include the provision of all or any of the following services: accommodations in a hotel or other suitable establishment; travel, conference facilities; excursions, guides, interpreters; technical support, entertainment and all other matters normally connected with motivational programmes, congresses, meetings and conference and incentive travel".

Given that the appellant has claimed that the Malta Convention Bureau Ltd had not commenced operations as such, which claim was not contested by MTA, this Board feels that it must necessarily base its decision on whether the Malta Convention Bureau Ltd's activities could fall within the definition of a DMC or otherwise on the documentation presented during the proceedings consisting of snapshots of the web-sites (Dok IV5 and NB1-5) and the Memorandum of Association (Doc NB6). Due to the fact that the appellant had not yet commenced operations; it is this Board's view that what he intends to do is to a certain extent irrelevant to the merits of this appeal: the appellant must necessarily be judged on what he has declared he intends to do in the said web-sites and in the Memorandum of Association of the Company. This Board must, consequently, determine whether taking all the said documentation into consideration a reasonable person would come to the conclusion that the operation is effectively that of a DMC.

As the appellant correctly submitted in his appeal, for a company to be deemed to be a DMC its principal line of business must be the creation, planning and operation of high level motivational and specialised programmes for tourists and other persons. All three elements must subsist for an operation to fall within the definition of a DMC.

The Board had examined the Memorandum of Association (Doc NB6) and notes that, whilst clauses 4(a) and 4(c) refer to organisation, management and promotion that could be indicative of the fact that the appellant company may be at the very least involved in some stage of the planning and operation elements of the definition, the element of creation (that is also an essential element of the definition of a DMC)

seems to be is lacking. Hence, this Board is of the opinion that the Memorandum of Association on its own is not per se indicative of a DMC.

The snapshots of the websites of appellant company present a more complex scenario. On the one hand, statements such as 'The Malta Convention Bureau is a company that markets Malta as a premier Business Events destination...' (page 1 of Doc NB1), 'Our charter is to market Malta internationally, in conjunction with local organisations, as a destination for conventions, exhibitions and other large scale events' (page 2 of Doc NB1 – About us) and 'The Malta Convention Bureau is in the business of connecting you with all the elements you need to stage a successful business event in a surprising destination' (page 2 of Doc NB1) all suggest that the appellant company is, indeed, a marketing platform and not a DMV.

On the other hand, as Mr Bruno pointed out, certain other statements seem to suggest that the appellant company's operations are not exclusively that of a marketing company. The Board has, in particular, noted the following relevant experts of Doc NB1 that suggest that the activities of the appellant company go well beyond that of simply marketing Malta as a large scale event destination:

- 1. Contact the Convention Bureau team with your conference plans and let us do the groundwork for you (Doc NB1 page 1);*
- 2. We offer a range of services that will assist you in making your next conference the best it can be, and the best part is the majority of our services, assistance and advice is free (Doc NB1 page 2);*
- 3. The Malta Visitors Bureau tailors its services to assist in every aspect of bidding, planning advice and support (Doc NB1 page 3);*
- 4. Our expertise includes strategic planning, leadership, event management, lobbying, unique bidding and presentation concept and delivery (Doc NB1 page 3);*
- 5. Event Planning: 'No problem'. 'Sorted'. 'Leave it to me'. Sweet words to hear when you're faced with planning an event. Any when they're spoken by the experts at the Malta Convention Bureau you can relax, safe in the knowledge you're in good hands (Doc NB1 page 12);*
- 6. Planning and holding a green conference, meeting, event or incentive travel program in Malta is easier than ever before using the Malta Convention Bureau CSR service (Doc NB1 page 13);*
- 7. Begin Organising your Green Conference: For more information on holding a green event on Malta contact our Event Servicing team (Doc NB1 page 13);*
- 8. The Malta Convention Bureau has a wealth of resources to assist Event and Conference Organisers in securing an event and boosting delegate numbers (Doc NB1 page 15).*

The matter that has to be considered by the Board is whether these statements taken singularly or as a whole present the three key elements of a DMC being that of creation, planning and operation. It is this Board's view that points 1, 3, 4, 5 and 6 are highly suggestive of the fact that the web-site in question implies that the appellant company is involved to some degree in two of the activities of a DMC being

the planning and operation stages of such events. However, this Board is also of the view that the element of creation seems to be lacking meaning that the three elements of the definition have not been proven.

The above leads this Board to conclude that, taking into consideration that the appellant has not yet commenced operations and purely on the basis of the documentation submitted to it during the proceedings and referred to above, the operational activities of the appellant company – though suggestive of a DMC – do not fall completely within the definition of a DMC since, at least, one essential element, being that of creation, seems to be missing.

For these reasons, it is not necessary for this Board to determine whether the websites in question fall under the definition of advertisement contained in the Malta Travel and Tourism Services Act.

For the reasons given above, the Board upholds the appeal lodged by the Malta Convention Bureau Ltd against the decision of the Malta Tourism Authority (MTA) dated 28th December, 2011, consisting of an Enforcement Notice in virtue of which the MTA claimed that the Malta Convention Bureau Ltd breached article 13(1)(a) and article 13(1)(b) of the Tourism Operations (General) Regulations (Subsidiary Legislation 409.08) and, on the basis of the documentation submitted to it during the proceedings, decides that the operational activities of the appellant company – though suggestive of a DMC – do not fall completely within the definition of a DMC, at least, being that of creation, seems to be missing. Consequently, the MTA's Enforcement Notice dated 28th December 2011 issued against the appellant company is being revoked in toto.

The Board also recommends that the Enforcement Section of the MTA monitor closely the appellant company on a regular basis especially when it commences operations since this Board remains unconvinced of the fact that the appellant company is exclusively a marketing company.

In virtue of article 14(3) of the Malta Travel and Tourism Services Act it is being declared that this judgement is supported by the opinion of two of its members.”

Rat li l-Awtorita intimata, l-Awtorita tat-Turizmu ta' Malta hassitha aggravata bl-imsemmija decizjoni u interponiet appell minnha quddiem din il-Qorti.

Rat ir-rikors tal-appell tal-imsemmija Awtorita' intimata fejn gie premiss:-

Illi permezz ta' Awiz ta' Infurzar datat 28 ta' Dicembru, 2011, l- Awtorita' esponenti avzat lill-Mr. Selis ta' 19, Triq Salvu Camilleri, Mellieha, kemm fil-kapaita tieghu personali, kif ukoll in rapprezentanza tal-Malta Convention Bureau C-51613 li:- Following investigations carried out by the Malta Tourism Authority it was found that a breach under the Malta Travel and Tourism Services Act, 1990 and relative regulations has been committed at:

<http://aholinet/ourservices.html;www.maltacvb.org>

Illi dan il-ksur kien jikkonsisti fis-segweni:

- i) Bi ksur tal-artikolu 13(1)(a) u 13 (1)(b) tal-L.S. 409.08 talli fit-28 ta' Dicembru 2011 u l-granet ta' qabel, fuq l-internet, http://alioli.net/our_services.html; www.maltacvb.org) l-appellati kienu iddeskrivew jew irreklawmaw, jew ippermettew li jsir deskrizzjoni jew relkamar ta' operazzjoni turistica, (Desitnation Management Company)-Malta Convention Bureau, u dan meta l-istess socjeta appellata ma kellhiex licenzja valida u cioe' licenzja mahruqa mill-Awtorita esponenti sabiex topera din l-attivita - DMC-, u
 - ii) *In oltre* l-istess appellati ma kienux kisbu l-approvazzjoni tat-*trade name* li ghazlu ghal din l-attivita, minghand l-Awtorita appellata.
- 1.3 Illi konsegwentement u permezz ta' dan l-avviz ta' infurzar, l-Awtorita" appellata kienet orndat li dan il-ksur jieqaf *entro* jumejn mid- data tan-notifika tal-istess avviz ta' infurzar.
- 1.4 Illi l-appellati hassew riihhom aggravati bid-decizjoni tal-Awtorita^v u appellaw mill-istess a bazi tas-segweni aggravji li permezz taghhom huma hassew li d-decizjoni ossia l-awviz ta' infurzar datat 28 ta' Dicembru 2011 kien infondat fil-fatt u fid-dritt, u dan ghar- ragunijiet/aggravji indikati fl-Appell li interponew quddiem il-Bord tal-Appell li kien jikkonsisti fis-segweni:
- a) *By way of a -preliminary ground the decision /communication above mentioned is null and void as it is not in conformity with Article 20 of Cap 409.08. The said article states that any communication issued by the authoirty shall be signed either by the Chairman or the Chief Executive of the Authority or by the Chairman or Director of the appropriate directorate of the authoirty or by any other person so authorised on thieir behalf The communication in question is signed by a senior manager within the Quality Assurance Directorate with no indication whatsoever of his authoirsation/mandate given to him by any of the persons identified in law, to sign the said communication;*
 - b) *Subsequently and without prejudice to the above, also by way of a preliminary ground, the decision addressed to appellant, in his personal capacity and on behalf of the Malta Convention Bureau should be declared null and void and this for the followin reasons.*
 - c) *Paul Selis in his personal capacity does not operate any activity in connection with the issue under appeal The operation under scrutiny is carried out via the limited liability company Malta Convention Bureau Limited hence for this reason any decision addressed to him mut be declatred null and void.*

- d) *In so far as relates to Malta Convention Bureau, this is a trade name and licence cannot ever be the recipient of a decision. The correct identification of the recipient of the Authority's decision ought to have been the Malta Convention Bureau limited - a limited liability company with its own distinct juridical personality - hence in this instance too, the decision in so far as addressed to Paul Selis on behalf of Malta Convention Bureau should likewise be declared null and void.*
- e) *Furthermore and without prejudice to the above, Malta Convention Bureau Limited aims to be a marketing platform to promote Malta as a premier business events destination. Its operation is not remotely similar or at par to the operation of a Destination Management Company (DMC)*
- f) *According to the interpretation clause Cap 409 - in order to be classified as a destination management company, the principal line of business must be that of "... creation, planning and operation of high level motivational and specialised programmes for tourists and other persons ..." Therefore for a company to be classified as a DMC all three elements i.e. (i) creation, (ii) planning and (iii) operation must co-exist.*
- g) *Malta Convention Bureau does not create nor does it plan let alone operate a specialised programme for tourist and or other persons. The company simply and purely operates a marketing tool/platform to promote Malta as a destination. All this is reflected in the carefully chosen wording of the company's web site. The opening lines in the website clearly spells out the company's core operation. "The Malta Convention Bureau is a company that markets Malta as a premier business event destination." Furthermore emphasis on this focused setup is found in the description of its central function by positioning itself as a company that "... provides free assistance to associations to bid for business events..."*
- h) *It is clearly evident, further along in the text of the whole website, that the company's aim is that "... to market Malta internationally, in conjunction with local organisations, as a destination for conventions, exhibitions and along with other large scale events." "The Malta Conventions Bureau is in the business of connecting with you the elements you need to stage a successful event..." through cooperative marketing opportunities, ..we work with our members to increase Malta's share of business events..."*
- i) *Further probing and examination of the text of the website is welcome and this would most certainly leave no doubt that the Malta Convention Bureau Limited is absolutely a marketing company as opposed to DMC in terms of the interpretation clause of Cap 40.*
- j) *Another grievance that highlights the decision in question as incorrect, is that the Malta Tourism Authority has taken a subjective approach (and an*

Kopja Informali ta' Sentenza

erroneous one for the matter) rather than an objective analysis of the operation of the company. In reality it is the actual operation of the company that determines whether the company is a DMC or not and not simply (a reference to) the website of for that matter the object clauses of the company.

It must be recalled that Paul Selis held various meetings with the Authority to explain, in straightforward and sincere terms, the aim /operation and modus operandi of the Malta Convention Bureau Limited. There was no obligation for this explanation but it was necessary to show that the company was not a service provider that fell within the jurisdiction of the Malta Tourism Authority.

- k) *To further strengthen and support the reality that the company is a marketing company and not a DMC, the object clauses of the company have been modified. This is not to be interpreted as a recognition of the Authority's interpretation, but was done merely to eliminate any possible reservations as to the true and correct operation of the company"*

2. Sentenza tal-Bord tal-Appell

2.1 Illi permezz ta' sentenza datata 2 ta' April, 2012, l-Onorabbli Bord ta' 1- Appelli Dwar it-Turizmu kkonkluda s-segwenti:

"...For the reasons given above, the Board upholds the appeal lodged by the Malta Conventions Bureau Ltd against the decision of the Malta Tourism Authority (MTA) dated 28th December, 2011, consisting of an Enforcement Notice in virtue of which the MTA claimed that the Malta Convention Bureau Ltd. breached article 13(1)(a) and 13(1)(b) of the Tourism Operations (General) Regulations (Subsidiary Legislation 409.08) and, on the basis of the documentation submitted to it during the proceedings, decides that the operational activities of the appellant company - though suggestive of a DMC - do not fall completely within the definition of a DMC since, at least, one essential element, being that of creation, seems to be missing. Consequently, the MTA's Enforcement Notice dated 28th December 2011 issued against the appellant Company is being revoked in toto.

This Board also recommends that the Enforcement Section of the MTA monitor closely the appellant company on a regular basis especially when it commences operations since this Board remains unconvinced of the fact that the appellant company is exclusively a marketing company."

3. II-Fatti fil-Qosor

- 3.1 Illi l-Awtorita* esponenti rceviet ilment fuq l-operazzjoni li hija l-mertu ta' dan l-appell, fejn l-Awtorita" esponenti kienet giet infurmata li is- socjeta appellata kienet qiegħdha topera attivita turistika - ossia dik magħrufa bħala destination management company, u dan meta l-istess socjeta^v appellata ma

Kopja Informali ta' Sentenza

kelliex l-awtorizzazzjoni sabiex topera din l-attività *stante* l-fatt li ma kelliex licenzja necessarja mill-Awtorita.

- 3.2 Illi konsegwentement u fil-qadi ta' dmirijietha, l-Awtorita" esponenti ghamlet l-investigazzjonijiet li dehrilha necessarji u anki ffixsat laqghat mar-rapprezentant tas-socjeta" appellata sabiex tistabilixxi konkretament il-posizzjoni fuq l-operazzjoni in kwistjoni.
- 3.3 Illi l-Awtorita' esponenti irrizultalha li s-socjeta' appellata kienet fil-fatt qed tiddekrivi jew tirreklama operazzjoni turistica minghajr ma kienet l-ewwel kisbet il-licenzja relattiva taht l-Kap. 409 tal-Ligijiet ta' Malta sabiex taghmel din l-attività", u a bazi ta' dan wasslet ghall-konkluzjoni li din is-socjeta" kienet qed tikser ukoll id-disposizzjonijiet tal-Ligi sussidjarja 409.08 bi ksur tal-artikoli 13(1)(a) u 13(1)(b).
- 3.4 Illi bazikament u fi ftit kliem, is-socjeta" appellata Malta Convention Bureau Ltd topera minn diversi siti tal-internet, fosthom is-sit bl- indirizz: [http://aholi.net/our services .html](http://aholi.net/our%20services.html); www.maltacvb.org.
- 3.5 Illi l-Awtorita^v esponenti ghamlet ir-ricerka taghha fejn ezaminat bir- reqqa l-operazzjoni tas-socjeta" esponenti u anki dak li kien mfassal fil- *Memorandum and Articles of Association* registrat mar-Regolatur tal- kumpanniji f'pajjizna, u ixunn dan kollu l-Awtorita[^] esponenti kienet f'posizzjoni li tistabilixxi u tikkonkludi li s-socjeta appellata effettivament, kienet qiegħdha tiggestixxi xejn inqas minn Destination Management Company (DMC).
- 3.6 Illi s-socjeta^N appellata naqset milli tapplika mal-Awtorita" esponenti sabiex tikseb il-permess u l-licenzja relattiva sabiex topera l-istess operazzjoni turisitka *ai termini* tal-Kap 409 u r-regolamenti li jirregolaw l-istess attività".
- 3.7 Illi matul il-laqghat li saru bejn l-Awtorita^v esponenti u r-rapprezentant tas-socjeta^v appellata, is-socjeta" appellata allegat li l-operazzjoni taghha kienet ta' *marketing company* u mhux DMC.
- 3.8 Illi wara laqgha li kienet saret mar-rapprezentant tas-socjeta appellata, b'referenza specifika għal dik li saret fil-15 ta' Novembru, 2011, l-Awtorita" esponenti kienet harget twissija, fejn is-socjeta' appellata kienet giet ordnata sabiex tieqaf l-operazzjoni taghha, izda sussegwentement u nonostante l-fatt li l-ittra in kwistjoni giet debitament ikkonsenjata bl-idejn, l-operazzjoni baqghet għaddejja u dan tant li fuq is-sit tal-internet tal-istess socjeta' appellata gie avzat li kien ser ikun hemm il-*launch* tas-socjeta^s appellata bejn id-29 ta' Novembru u l-1 ta' Dicembru, 2011 u dan waqt il-fiera tal-EIBTM.
- 3.9 Illi sat-30 ta' Novembru, 2011, is-socjeta appellata baqghet topera l- attività" taghha. Sadanittant l-Awtorita^v esponenti kienet saħansitra anki gabet a konjizzjoni tal-istess socjeta' appellata li fuq *il-website* taghha stess, l-istess socjeta' kienet qed tirreklama lilha nnifisha bħala DMC.

3.10 Illi konsegwentement u fit-28 tra' Dicembru, 2011, l-Awtorita^v esponenti harget awiz ta' infurzar kontra s-socjeta" appellata fejn hija giet mitluba sabiex tieqaf topera din l-attivitax^x fi zmien jumejn mid-data tan-notifika tal-istess awizz ta' infurzar.

3.11 Illi s-socjeta' appellata appellat minn dan l-awiz.

3.12 Illi matul is-seduti quddiem il-Bord tal-Appell, l-aggravji preliminari gew sorvolati fejn gie sorvolat ukoll l-fatt li l-avviz ta' infurzar kien intiz li jindirizza s-socjeta" appellata biss.

3.13 Illi fis-sentenza tieghu, il-Bord ma qabilx fis-shih ma' l-interpretazzjoni u applikazzjoijiet tad-definizzjoni ta' destination management company u konsegwentement laqa' l-appell tas-socjeta' appellata fis-sens li rrevoka *in toto* l-Awiz ta' infurzar mahrug kontra din is-socjeta^x u dan ghaliex fi kliem l-istess Bord:- "On the basis of the documentation submitted to it during proceedings> decides that the operational activities of the appellant company - though suggestive of a DMC - do not fall completely within the definition of a DMC since, at least, one essential element, being that of creation seems to be missing. Consequently, the MTA's Enforcement Notice, dated 28th December, 2011 issued against the appellant company is being revoked in toto."

3.14 *In oltre* jsir accenn fuq l-ahhar parti tas-sentenza fejn il-Bord ikkonkluda bis-segweni suggeriment:- "This Board also recommends that the Enforcement Section of the MTA monitor closely the appellant company on a regular basis especially when it commences operations since this Board remains unconvinced of the fact that the appellant company is exclusively a marketing company."

4. L-Aggravju

4.1 Illi l-Awtorita" esponenti hasset ruhha aggravata bis-sentenza moghtija mill-Bord ta' l-Appelli Dwar it-Turizmu nhar it-2 ta' April, 2012, fejn dan il-Bord irrevoka kompletament l-avviz ta' infurzar datat 28 ta' Dicembru, 2011, mahruqa kontra s-socjeta appellata.

4.2 Illi l-aggravji huma cari u manifesti u jikkonsistu fis-segweni:

(1) Decizjoni ibbazata fuq interpretazzjoni zbaljata tal-Kap 409

4.3. Illi l-azzjonijiet ta' l-Awtorita' appellata mertu ta' dan l-appell huma bbazati fuq id-definizzjoni ta' '*destination management company*' li tinstab fil-Kap. 409, fis-sezzjoni tad-definizzjonijiet, u l-konkluzjoni ta' l-istess Awtorita' li effettivament is-socjeta" appellata qed tiggstixxi l-operazzjoni taghha minghajr il-licenzja rikjesta taht il-ligi (Kap. 409) u dan bi ksur ukoll tal-

artikoH 13 (1)(a) u 13(1)(b) tal-Legislazzjoni sussidjarja 409.08 (*Tourism Operations (General) Regulations*).

- 4.4 Illi fil-fehma ta' l-Onorabbli Bord ta' l-Appelli Dwar it-Turizmu:
"As the appellant correctly submitted in his appeal, for a company to be deemed to be a DMC its principal line of business must be the creation planning and operation of high level motivational and specialised programmes for tourists and other persons. All three elements must subsist for an operation to fall within the definition of a DMC."
- 4.5 Illi jigi sottomess bir-rispett li tali decizjoni mhux talli hija zbaljata, izda hija zbaljata minhabba interpretazzjoni u applikazzjoni hazina tal-Ligi.
- 4.6 Illi kif jirrizulta mis-sentenza tal-Bord, l-istess Bord wasal ghad- decizjoni tieghu minhabba l-fatt li qabel mal-interpretazzjoni moghtija mis-socjeta appellata fuq tad-definizzjoni ta' DMC fil-Kap 409.
- 4.7 Illi fl-umli opinjoni tal-esponenti, din l-interpretazzjoni hija skorretta u dan minhabba l-fatt li din iz-sezzjoni tal-ligi m'hijiex bbazata fuq diet kriterji (creation, planning and operation) li huma kumulattivi bhala *sine qua non* kif allegat is-socjeta appellata u kif adirittura qablet l-Onorabbli Bord tal-Appelli dwar it-Turizmu.
- 4.8 Illi b'referenza ghad-definizzjoni in kwistjoni insibu fejn insibu is-segweni: " .. any person whose principal line of business, whether as principal or agent, is Hie creation, planning and operation of high level motivational and specialised programmes for tourists and other persons, whether singly or in groups, and which programmes include the provision of all or any of the following services: accomodation in a hotel or other suitable establishment; travel; conference facilities; excursions; guides; interpreters; technical support; entertainment and all other matters normally connected with motivational programmes, congresses, meetings and conference incentive travel".
- 4.9 Illi fl-umli opinjoni tal-esponenti, il-bran ossia definizzjoni tal-ligi kkwotata m'ghandhiex tigi interpretata b'tali mod li ir-rekwiziti ta' *creation, planning and operation* huma rekwizi kumulattivi. Li kieku il- legislatur ried li din id-definizzjoni tigi interpretata b'dan il-mod, huwa kien jaghmel minn kollox biex inehhi kull bzonn ta' interpretazzjoni u minflok jabbozza din is-sezzjoni b'mod different!. Dan kieku kien jaghmlu permezz ta' inkluzjoni tal-kelma 'shall ' jew 'shall consist of' qabel il-kelmiet *creation, planning* u *operation*. Minghajr il-kliem 'shall' il- kliem ikkwotati in kwistjoni u li tant ghamlet enfasi fuqhom il-Bord, m'ghandhomx jitqiesu bhala rekwiziti kumulattivi, kif erronjament ddecieda l-Bord.
- 4.10 Illi dan l-aggravju ta' l-Awtorita^v esponenti jsib aktar sahha minhabba l- fatt li l-ligi stess, u dan permezz ta' l-istess klawzola fejn insibu d- definizzjoni ta'

DMC, titkellem fuq *'principal or agent'*. B'dan 1-Awtorita' esponenti trid tfigher is-segwenti:

Kif jirrizulta mis-sentenza in kwistjoni tal-Bord tal-Appelli, il-Bord wasal ghal korikluzjoni li 1-opijoni tal-Awtorita' hija zbaljata, fejn socjeta' tista titqies bhala DMC meta: "Its principal line of business must be the creation, planning and operation of high level motivational and specialised programmes for tourists and other persons."

- 4.11 Illi dan m'huwix korrett, stante il-fatt li I-ligi ma tillimitax ruhha ghal dak ikkowitzat mill-Bord. Minn qari tal-klawsola in kwistjoni, wara 1- kliem "*any person whose principal line of business...*," nsibu 1-kliem "*..whether as principal or agent*". Imbaghad il-klawsola tkompli "*is the creation planning and operation of high level motivational.*"
- 4.12 Illi konsegwentement u permezz tal-kliem *whether as principal or agent* kull argument li r-rekwiziti ta' *creation, planning and opration* huma kumulattivi, jitwaqqa, u dan minhabba l-fatt li 1-agent zgur li ma jidholx fl-aspetti kollha *tal-creation, planning u operation*. Nonostane dan il-ligi hija car a li anki 1-agent ghandu jitqies bhala DMC.
- 4.13 Illi minghajr pregudizzju ghal dak kollu suespost, mill-apprezzament tal-provi li tressqu mill-Awtorita' quddiem il-Bord tal-Appelli irrizulta bl-aktar mod flagranti li s-socjeta' appellata m'hija xejn inqas minn DMC u dan fis-sens li fil-fehma tal-Awtorita' d-dokumenti ezebti fuq din is- socjeta' huma xiedha konkreta tal-fatt li topera b'tali mod li t-tliet rekwiziti in kwistjoni huma prezenti ghal kollox fl-operazzjoi taghha.

4.14 Illi ghal dan isir referenza ghas-segwenti dokumenti: Il-google page ezebta u mmarkata bl-isfar fejn taht 1-isem ta' *Malta Convention Bureau - About Memebership*, nsibu: "The Malta Convention Bureau works to create new business opportunities for its members, introducing them to the lucrative conventions and large scale events..."

MiII-u?efc shot ezebta fl-atti ta' <http://www.maltacvb.org/index.html> insibu: "...Contact the Convention Bureau team withyur conference plans and let us do the groundwork for you. We offer free and impartial support and advice on all aspects of holding an event in Malta"

U f'pagna ohra intestata Malta Convention Bureau - About us - insibu:, "... The Malta Convention Bureau is in the business of connecting you with all the elements you need to stage a successful business event in a surprising destination. We offer a range of services that will assist you in making your conference the best it can be..."

- 4.15 Illi dawn ir-riferenzi juru bl-aktar mod car li l-operazzjoni fil-konfront ta' liema hareg l-avviz ta' infurzar in kwistjoni hija fil-fatt DMC kif kontemplata fil-ligi u mhux sempliciment *marketing company*, kif allegat is-socjeta' appellata. Meta kumpanija tirreklama s-servizzi taghha b'dan il-mod hija ma tista' qatt titqies bhala *marketing company*. Marketing company ma toffrix is-servizzi reklamati permezz *tsU-websites* tas-socjeta' appellata.
- 4.16 Illi fil-fatt jinghad ukoll li lanqas il-Bord stess ma accetta l-fatt li s-socjeta' appellata kienet biss *marketing company* kif is-socjeta' appellata allegat waqt il-proceduri ta' l-appell. Dan qed jinghad ghaliex kien il-Bord stess li kkonkluda d-*decide* tieghu b'dan il-mod: "The Board also recommends that the Enforcement Section of the MTA monitor closely the appellant company on a regular basis when it commences operations since tis Board remains unconvinced of the fact tht the appellant company is exclusively a marekting company".
- 4.17 Illi fl-umili opinjoni tal-Awtorita* esponenti, il-Bord seta' facilment jikkonkludi b'mod konkret li fil-fatt is-socjeta' appellata ma tillimitax l-operazzjoni taghha ghal *marketing* izda toffri is-servizzi kollha li jofru id-DMC's kollha ohra f'pajizna. Id-DMC's li huma licenzjati mal-Awtorita esponenti ma jaghmlu xejn iktar minn dak li taghmel is-socjeta' appellata, u sfortunatament b'din is-sentenza is-socjeta' appellata irnexxielha tinheba wara l-idea li hija biss *marketing company* u konsegwentement m'hijiex ser ikollha tillicenzja ruhha kif jaghmlu s- socjetajiet l-ohra li jaghmlu l-istess tip ta' xoghol, liema xoghol huwa regolat bil-prowedimenti tal-Kap 409 u r-regolamenti kollha li johorgu mill-istess Att.
- 4.18 Illi dwar dan isir referenza ghad-dokumenti kollha li gew ezebiti mill- ufficjal tal-infurzar fi hdan l-Awtorita esponenti, u cioe Nigel Bruno, u b'mod partikolari u sabiex dan l-aggravju jigi konkluz issir referza ghal pagna ohra li giet reklamata fuq l-internet fejn gew elenkati is-servizzi tal-Malta Services Bureau. Pagna tas-socjeta' appellata , fejn fl-umli opinjoni tal-esponenti hija prova korikreta li topera jew inkella tirreklama li topera socjeta' ta' DMC.

Ghal dawn ir-ragunijiet kollha l-Aworita appellanti qed titlob li din il-Qorti thassar u tirrevoka sentenza appellata fejn gie revokat in toto l-avviz ta' infurzar mahrug kontra s-socjeta' appellata u minflok jigi kkonfermat l-istess Aviz ta' infurzar, u dan billi jigi michud l- appell interpost mis-socjeta' appellate.

Bl-ispejjez taz-zewg istanzi kontra s-socjeta' appellata.

Rat ir-risposta tal-appellat Paul Henry Christian Selis fil-kapaçita` personali tieghu u ghan-nom ta' Malta Convention Bureau fejn gie sottomess:- Illi d-deciżjoni appellata moghtija mill-Bord tal-Appelli dwar it-Turizmu fit-2 ta' April 2012 hija tajba u għusta u skond il-ligi u timmerita li tigi konfermata.

Kopja Informali ta' Sentenza

Illi l-esponenti jirrileva illi l-aggravju mressaq mill-appellant huwa infondat fil fatt u fid-dritt stante illi l-klawżola tat-Tifsir f'Kapitolu 409 tal-Liġijiet ta' Malta ċarament titlob illi sabiex eżerċizzju kummerċjali jkun jista' jiġi kklassifikat bħala *destination management company*: 'l-linja prinċipali tal-kummerċ tagħha, kemm bħala prinċipal jew agent, hi li tohloq, tippjana u topera programmi motivati u speċjalizzati għal turisti jew persuni oħra'. (Enfasi miżjuda).

Għaldaqstant, sabiex persuna tkun tista' tiġi meqjusa bħala *destination management company* trid ikollha bħala l-għan prinċiplai tagħha it-tliet elementi flimkien, jiġifieri l-holqien, l-ippjanar u l-operar ta' programmi għal turisti jew persuni oħra, kif gustament rilevat mill-Onorabbli Bord tal-Appelli dwar it-Turiżmu fid-deċiżjoni appellata.

Fil-fatt, kuntrarjament għal kif qed jiġi sottomess mill-awtorita` appellanti, il-legiżlatur, kemm fit-test bil-Malti kif ukoll bl-Ingliż, ma jhalli ebda dubju dwar l-effett kumulattiv tar-rekwiziti illi jfissru *destination management company*. Li kieku l-legiżlatur ried ifisser illi wiehed mit-tliet element kien waħdu jkun biż-żejjed sabiex tissusiti tali tip ta' soċjeta` , kien faċilment jagħmel dan billi jinqeda' bil-kelma 'jew', mingħajr il-htieġa ta' kostruzzjonijiet superfluwi. Kif sottomess tajjeb mill-awtorita` appellanti, f'każijiet fejn il-legiżlatur ried iwessa' t-tifsira tal-liġi għal aktar minn rwol wiehed jew possibilita` waħda, jinqeda faċilment bil-kelma 'jew', haġa illi esplicitament jagħzel illi ma jagħmilx meta jiddeskrivi r-rekwiziti li jikkonsistu *destination management company*.

Illi mingħajr preġudizzju għas-suespost, is-soċjeta` appellata la tohloq, la tippjana u wisq anqas topera programmi speċjalizzati għal turisti jew persuni oħra. Fil-fatt, is-soċjeta` appellata topera fuq bażi bla qligħ u biss bħala *marketing platform*, illi l-għan ewlieni tagħha huwa illi tippromwovi lil Malta bħala destinazzjoni attraenti. Dan kollu jiġi rifless fil-kliem użat fis-sit elettroniku tas-soċjeta`, illi fl-ewwel ftit kliem tiegħu jissintetizza x-xogħol imwettaq mis-soċjeta`: '*The Malta Convention Bureau is a company that markets Malta as a premier business event destination*' (Enfasi miżjuda).

Ulterjorment, is-soċjeta` tišhaq illi l-għan ewlieni tagħha huwa illi tagħti '*free assistance to associations to bid for business events*' u li '*The Malta Convention Bureau is in the business of connecting you with the elements you need to stage a successful event... through our co-operative marketing opportunities, ... we work with our members to increase Malta's share of business events...*'. Dan kollu ċarament jeskludiha milli tkun tista' tippjana, tohloq jew topera xi tip ta' program turistiku u juri biċ-ċar ir-rwol tas-soċjeta` bħala wiehed ta' *marketing* u mhux ta' organizzar ta' programmi jew eventi turistiċi kif erronjament sottomess mill-appellanti.

Għalhekk l-appellati rriżervaw li jissottomettu waqt is-smiġħ tal-appell u ssottomettew illi l-appell tal-Awtorita` Appellanti għandu jiġi miċhud.

Kopja Informali ta' Sentenza

Rat l-atti l-oħra kollha tal-Appell, kif ukoll l-atti kif kompilati quddiem l-imsemmi Bord tal-Appelli.

Rat id-dokumenti kollha esibiti

Semghat it-trattazzjoni orali tad-difensuri tal-partijiet.

Rat li l-appell gie differit sabiex tinghata s-sentenza.

Ikkonsidrat:-

Dan hu appell minn decizjoni tal-Bord tal-Appelli dwar it-Turizmu f'Malta fil-vertenza fl-ismijiet "Paul Henri Christian Selis f'ismu propju u f'isem il-Malta Convention Bureau (C-51613) vs L-Awtorita' tat-Turizmu ta' Malta" tat-2 ta' April 2012. L-appell quddiem l-imsemmi Bord gie presentat minn Paul Henri Christian Selis propjo u ghan- nom tas-socjeta' Malta Convention Bureau. L-imsemmi appell quddiem il-Bord kien minn decizjoni tal-Awtorita Maltija tat-Turizmu datata 28 ta' Dicembru 2011.

L-imsemmija decizjoni kienet dwar il-hrug ta' "Enforcement Notice" li biha wara investigazzjoni tal-imsemmija Awtorita' skond l-istess Awtorita' s-socjeta' appellata marret kontra l-artikoli 13(1)(a) u 13(1)(b) tar-Regolamenti tat-"Tourism Operations (General) Regulations" - (Subsidiary Legislation 409.08) u dana f'Dicembru 2011 meta permezz tal-internet, l-imsemmija socjeta' rreklammat operazzjoni turistika konsistenti f' "Destination Management Operation" u għall-liema operazzjoni ma kellix licenzja valida mahruġa mill-imsemmija Awtorita', u inoltre l-isem li tahtu kien qed isir l-imsemmi negozju ma kienx gie approvat mill-istess Awtorita'.

Il-Bord tal-Appelli ddecieda l-vertenza billi ddikjara li wahda mill-elementi necessarji għal DMC kienet nieqsa u cioe' "l-kreazzjoni" mentri kienu presenti l-elementi l-oħra cioe' "l-ippjanar" u "l-operazzjoni." Għalhekk skond il-Bord ma gewx ippruvati l-elementi kollha necessarji għal finijiet tat-tifsira tal- operazzjoni. Il-Bord għalhekk ikkonkluda li għalkemm l-attivatajiet tas-socjeta' appellata kienu jindikaw li seta kien hemm DMC wiehed mill-elementi essenzjali ma giex ippruvat. Inoltre l-Bord iddikjara li in vista ta' dak li gie deciz minnu ma kienx il-kaz li jigi deciz jekk il-"web-sites" in klwestjoni jaqghux taht it-tifsira tal-kelma "advertisement" skond "the Malta Travel and Tourism Services Act." In vista ta' dan kollu il-Bord ikkonkluda billi laqa l-appell tas-socjeta' Malta Convention Bureau Ltd u a bazi tad-dokumenti prodotti ddikjara li l-attivatajiet tal-imsemmija socjeta' m'għandhomx jigu klassifikati bhala DMC, u konsegwentement irrevoka in toto l-imsemmija "Enforcement Notice" datata 28 ta' Dicembru 2011.

Inoltre l-Bord stranament irrikmanda li s-Sezzjoni tal-Enorzar tal-Awtorita' appellanti kellha isegwi mill-vicin u regolarment l-operat tas-socjeta' appellanti meta din tibda l-operazzjonijiet tagħha. Inoltre l-Bord iddikjara li qed jagħmel tali rakkomandazzjoni

Kopja Informali ta' Sentenza

stante li mhux ghal kollox konvint li s-socjeta' appellanti hi esklusivament "marketing company."

Din ir-rakkomandazzjoni, ghal din il-Qorti, mhux f'lokha stante li hu x-xoghol tal-imsemmija Sezzjoni li ssegwi kumpaniji ta' dan it-tip u x-xoghol li jkunu qed jaghmlu. Inoltre l-istess dikjarazzjoni tqajjem diversi dubju dwar l-operat tal-appellant u l-ghan li ghalih gie kostitwit il-Bord hu appuntu biex ma jhallix tali dubji. Hu ovvju li b'tali konsiderazzjoni l-Bord offra lill-Awtorita' bazi ghall-appell taghha quddiem din il-Qorti tant li fir-rikors tal-appell taghha l-Awtorita' appellanti diversi drabi taghmel referenza ghal-imsemmija dikjarazzjoni.

Qabel ma jigu ezaminati l-varji aggravji sollevati mill-appellanti ghandu jigi precezat li bl-Aviz ta' Infurzar li ta bidu ghall-dawn il-proceduri, datat 28 ta' Dicembru, 2011, l-appellanti infurmat lill-appellat Selis kemm personalment kif ukoll in rapprezentanza tas-socjeta' Malta Convention Bureau (C-51613) li kienu nstabu xi rregolaritajiet u nuqqassijiet taht il-"Malta Travel and Tourism Services Act (1990)" kif ukoll taht ir-regolamenti relattivi u f'dawn in-nuqqassijiet l-imsemmi appellat propio et nomine permezz tal-"internet" kien irreklama Operazzjoni Turistika cioe' "Destination Management Company" minghajr ma kien debitament licenzjat, bi tal-artikolu 13(1)(a) u 13 (1)(b) tal-L.S. 409.08. Inoltre l-istess Selis propio et nomine kien gie informat li ma kienx kiseb l-approvazzjoni necessarja tat-"trade name" li intghazel ghal din l-attivita, minghand l-Awtorita appellanti. Selis gie informat ukoll li fi zmien specifikat huwa kellu jiddesisti minn dan l-agir.

In segwitu ta' l-imsemmi avviz ta infurzar, l-appellat Selis interpona appell minnu quddiem il-Bord tal-Appell, li eventwalment iddecieda l-vertenza bl-imsemmija decizjoni tat-2 ta' April 2012 li issa qed tigi appellata mill-Awtorita' Maltija tat-Turizmu.

Hu car, mill-provi prodotti li l-istanza proposta mill-appellanti kif mibdija permezz tal-imsemmi Aviz ta' Infurzar hi principalment diretta kontra l-imsemmija soxcjeta' li hi rapprezentata minn Selis. Difatti l-kwestjoni kollha tinvolvi x'tip ta' negozju ggestixxi l-istess socjeta'. Is-socjeta appellata tippretendi li hi esklusivament "marketing company" u ma torganizza operazzjonijiet turistici (DMC) u ghalhekk il-kwestjonijiet sollevati kontra taghha mill-Awtorita' appellanti ma jistghux ikunu diretti kontra taghha.

Jidher ghalhekk li s-socjeta' appellata tippretendi li hi ma toperax bhala "destination management company" cioe' ma torganizzax attivitajiet turistici izda bi semplicement kumpanja li tipprova twassal lill pubbliku li tali attivitajiet qed jigu organizzati mhux minnha izda minn terzi. In effett l-imsemmi Bord tal-Appelli qabel mal-imsemmija

Kopja Informali ta' Sentenza

sottomissjonijiet tas-socjeta' appellata u konsegwentement rrevoka in toto l-Aviz ta' Infurzar.

Kwantu ghall-aggravji tal-Awtorita' appellanti, l-ewwel wiehed jirreferi ghall-allegata interpretazzjoni zbaljata tal-Kapitolu tal-Ligijiet ta' Malta in kwestjoni da parti tal-Bord. Il-kwestjoni hawnhekk tinvolvi t-tifsir ta' socjetajiet li ghandhom jaqghu taht il-kategorija u d-definizzjoni ta' "destination management company" kif definita fl-imsemmi Kapitolu tal-Ligijiet ta' Malta.

Fl-opinjoni ta' din il-Qorti t-tifsira adottata mill-Bord tal-Appelli hi korretta. Sabiex organizzazzjoni tikkwalifika bhala "DMC" iridu jigi ppruvati li jesistu t-tlett elementi li, skond il-ligi, huma necessarji sabiex l-istess organizzazzjoni tista titqies li hi "DMC" ghal finijiet u effetti kollha tal-ligi. Dawn l-elementi johorgu mill-istess tifsira kif moghtija fl-imsemmi Kapitolu. Ghall-ligi Destination Management Company tfisser li s-socjeta' tohloq, tippjana u topera attivitajiet turistici. Ghal din il-Qorti ma hemm xejn zbaljat f'dan ir-ragunament u l-konsekwenzjali konkluzjoni. Hu necessarju li jigu ppruvati t-tlett elementi u jekk ikun hemm wiehed minnhom nieqes, l-organizzazzjoni partikolari m'ghandiex titqies li hi "DMC."

L-artikolu in kwestjoni jinkludi fl-applikazzjoni tieghu mhux biss dawk li jagixxu bhala principali izda ukoll dawk li jagixxu bhala l-agenti taghhom. Hu pero' ovvju li jekk il-principal hu debitament licenzjat ma hemmx bzonn li l-agent ikun ukoll licenzjat. Izda jekk jirrizulta, bhal ma jirrizulta f'dan il-kaz partikolari, li l-appellati jaghmlu biss xoghol ta' "marketing" ghalhekk ma hemmx bzonn tal-licenza in kwestjoni stante li hemm elementi necessarji li huma neqsin.

L-Awtorita' appellanti tirreferi ghal uhud mid-dokumenti esibiti mill-istess appellati u tissottometti li anke minn dawn id-dokumenti jirrizulta li l-attivitajiet tas-socjeta' appellata hi appuntu ta' "DMC." Essenzjalment din hi kwestjoni ta' fatt u ta' apprezzament tad-dokumenti prodotti. Din hi Qorti ta' revizjoni u kwindi m'ghandiex taghmel hi apprezzament tal-provi stante li dan ikun sar mill-Bord tal-Appelli, li f'dan il-kjaz kien l-ewwel qorti. Din il-qorti taghmel biss tali apprezzament f'kaz li dak li sar mill-ewwel qorti hu lampantement zbaljat jew mhux ibbazat fuq ir-rizultanzi. Dan ma jirrizultax f'dan il-kaz.

In vista ta' dak kollu li gie premiss dan l-appell jisthoqqlu li jigi rigettat.

Ghal dawn il-motivi kollha:-

Tiddeciedi billi tichad l-appell tal-Awtorita' Maltija tat-Turizmu u fl-istess hin tikkonferma fit-totalita' kollha taghha d-decizjoni appellata tal-Bord tal-Appelli tat-2 ta' April 2012 fl-ismijiet premissi.

Spejjez ta' dawn il-proceduri jithallsu kollha mill-Awtorita' appellanti.

< Sentenza Finali >

-----TMIEM-----