



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tat-23 ta' Marzu, 2022

Appell Inferjuri Numru 70/2021LM

St. Publius Corporate Services Ltd (8716671)
(‘is-socjetà appellanta’)

vs.

Malta Financial Services Authority
(‘l-appellata’)

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mir-rikorrenti **St. Publius Corporate Services Ltd (8716671)** [minn issa ‘l quddiem ‘is-socjetà appellanta’] mid-deċiżjoni tat-Tribunal Dwar Servizzi Finanzjarji [minn issa ‘l quddiem ‘it-Tribunal’] tas-16 ta’ Ġunju, 2021, [minn issa ‘l quddiem ‘id-deċiżjoni appellata’] fil-konfront tal-

intimata l-Awtorità għas-Servizzi Finanzjarji ta' Malta [minn issa 'l quddiem 'l-Awtorità appellata'], li permezz tagħha ddecieda kif ġej:

“On the basis of the Above, the Tribunal:

- 1. Rejects the First and Second Ground of Appeal;*
- 2. Upholds in part the Third Ground of Appeal and orders the Authority to amend the second sentence of the notice in question to read as follows:*

“Accordingly the MFSA warns the public against entering into any transactions or otherwise dealing with the above-mentioned company or individual on any matters falling within the parameters of the Company Services Providers Act, Chapter 529 of the Laws of Malta.”

- 3. Upholds the Reply of the Authority to the said appeal in so far as such a reply is in line with what has been decided.*

Costs of this appeal are to be borne by the Appellant.”

Fatti

2. Il-fatti tal-proċeduri odjerni jirrigwardaw iċ-ċaħda ta' konferma bil-miktub min-naħa tal-Awtorità appellata wara l-avviż li ngħata lilha bil-miktub mis-soċjetà appellanta, kif debitament registrata mal-Awtorità regolatorja sabiex topera bħala fornitur tas-servizzi tal-kumpaniji fir-Renju Unit bħala ġurisdizzjoni approvata, fejn l-imsemmija soċjetà appellanta uriet il-ħsieb tagħha li tipprovdi servizz lil kumpaniji f'Malta.

Id-deċiżjoni appellata

3. Fid-deċiżjoni appellata, it-Tribunal ikkonstata u ddecieda kif ġej:

“Considers:

1. *The Appellant is a Private Limited Company registered with the Registrar of Companies for England and Wales bearing registration number 8716671 (fn. 6 Document A3 submitted with the appeal).*
2. *By means of a letter of the 26th March 2014 (fn. 7 Document A5 submitted with the appeal), the Appellant, through its Managing Director Peter Knappertsbusch made reference to the fact that it was a “corporate service provider based in London offering Company Formation Services, Agency & Mailbox Services, Trust Services and other related services” and that it was granted to offer the mentioned services by the “HM Revenue & Customs Authority in the United Kingdom under Registration Number 12726749 (fn. 8 Document A4 submitted with the appeal)”. The Appellant thus notified “it’s intention as required by the Maltese Company Services Provider Act XX of 2013 to execute all services it’s licensed for to execute in Malta 45 days prior to the commencing this activities. The intended start is the 15th May 2014 in 22/12 Strait Street, Valletta VLT 1432, Malta. I appreciate your confirmation”.*
3. *Mr. Knappertsbusch testified that the Appellant is still licensed (in 2017) and that the said license was renewed twice (fn. 9 Deposition of the 14th June 2017 document 11). According Mr. Knappertsbusch the said renewal involves the Appellant having to show that the companies it worked on are maintained in good condition. Mr. Knappertsbusch testified that his intention was to notify the Maltese Authorities and not to apply for a separate license.*
4. *The Authority, by means of a letter of the 3rd June 2014 (fn. 10 Document A6 submitted with the appeal) raised a number of issues with the request made by the Appellant. However, between the 26th March 2014 and the issue of this letter, a number of meetings and exchanges were held between the Authority and Mr. Knappertsbusch (fn. 11 Deposition of the 30th October 2017 document 14. In fact the Authority replied to the letter of the 26th March 2014 through an email of the 2nd April 2014 (Doc 2 exhibited on the 21st April 2021) through which the Authority listed a number of documents that the Applicant should submit). Ms Cynthia Debono Mizzi (fn. 12 Deposition of the 23rd April 2018 document 21) testified that the Authority had started*

requesting information from the Appellant. It is worth noting that the Authority, through an email of the 16th May 2014 (fn. 13 Document 6 exhibited on the 21st April 2021) requested specific information on the process adopted in the UK (fn. 14 Refer to question 6 and 7 in the said document) The reply from the Appellant of the 18th May 2014 (fn. 15 Document 7 exhibited on the 21st April 2021) attempted to address the queries raised by the Authority in its previous communication. Further exchanges of the 29th May 2014 (fn. 16 Documents 9 and 10 exhibited on the 21st April 2021) and 30th May 2014 (fn. 17 Document 11 exhibited on the 21st April 2021) did not shed much more light on the requests made by the Authority. Ms. Cynthia Debono Mizzi testified that the Authority carried out a due diligence assessment because from the checks that the Authority conducted the assessment from the HMRC was not equivalent that that requested from the Authority. This process also involved the ascertainment that the individuals proposed by the Appellant to be functioning from the Malta office were also competent people to carry out these functions. Further to the submission of PQ's the Authority carried out a due diligence assessment and also a competence assessment. Dr. Paula Bonnici (fn. 18 Deposition of the 9th October 2019 document 33) and Angele Galea St. John (fn. 19 Deposition of the 27th November 2019 document 35 and 4th March 2020 document 38) confirmed the ongoing process embarked on with the Appellant further to the request made by the Appellant for recognition.

- 5. The Appellant, by means of a letter of the 16th March 2015 (fn. 20 Document A7 submitted with the appeal) invoked the provisions of Article 49 of the "Traty (sic) of the Functioning of the European Act";*
- 6. By means of a letter of the 1st April 2015 (fn. 21 Document A8 submitted with the appeal) the Authority maintained that before a company may operate as a Company Service Provider in Malta, in accordance with provisions of Article 3 of the CSP Act, it must first obtain "a no objection" from the Authority even if it is authorised to act as such in the UK. It also referred to an email of the 5th March 2015 in which the Authority maintained that EU passporting rules do not apply to the activity of company services providers. The Appellant was further reminded that it "cannot provide any company services in Malta prior to being authorised to do so by the MFSA".*

7. *By means of a letter of the 28th September 2015 (fn. 22 Document A9 submitted with the appeal) the Authority informed the Appellant that its Supervisory Council had reached a Preliminary Decision that it was not satisfied that the registration requirements necessary to approve the issue of a registration certificate to the Company to provide company services have been met. This decision was based on (A) Transparency; (B) Corporate Governance Structures; (C) Warnings issued by the MFSA; and (D) Competence;*
8. *By means of a reply issued by the Appellant on the 9th November 2015 (fn. 23 Document A10 submitted with the appeal), the Appellant responded to the said Preliminary Decision and offered “any additional explanations or evidence of fact”.*
9. *On the 18th March 2016 (fn. 24 Document A1 submitted with the appeal), the Authority issued its final decision on the matter and after giving “due consideration to the representations made by the Company in its letter of the 9th November 2015, ... has come to the conclusion that these representations do not justify a reconsideration of the position communicated in the Authority’s letter of the 28th September 2015. Accordingly, and in terms of Article 5 of the Act, the Supervisory Council resolved that the Company’s application for registration shall not be proceeded with as it does not have the necessary comfort that the registration requirements in terms of the Act would be satisfied. In reaching this decision the Supervisory Council has taken into account in particular the following factors:” The same decision listed 5 factors (fn. 25 According to the deposition of Cynthia Debono Mizzi of the 23rd April 2018 (document 14), the reasons must be seen to cumulatively rather than independently) namely:*
 - a. *The representations provided did not deny Mr. Knappertsbusch’s involvement in Eurokasse New Zealand Limited And neither did he provide proof that he was not involved in Eurokasse New Zealand Limited at the time of the investigation (fn. 26 According to the deposition of Cynthia Debono Mizzi of the 23rd April 2018 (document 14), the PQ did not even refer to the directorship held in this company);*
 - b. *Given that this information is of direct relevance to the MFSA’s due diligence assessment, the warnings issued by the Austrian FMA (fn. 27 Document A14 submitted with the*

appeal) should have been brought to the MFSA's attention with the content of Mr. Knappertsbusch's PQ (fn. 28 The Appellant communicated with the Austrian Financial Markets Authority. Doc C and Doc D attached to Document 26)

- c. With respect to Corporate Governance structures, the information received by the MFSA with respect to training provided to proposed key officials was not sufficient to alleviate MFSA's concerns that the suggested course of action with regards to improving the competence aspect would be enough to enhance the weak governance structure that was proposed;*
 - d. Warnings have already been issued by the MFSA against Mr. Knappertsbusch and St. Publius Malta Limited in connection with licensable activities being carried out without any authorisation from the Authority (fn. 29 Documents A11 submitted with the appeal); and*
 - e. Although Mr. Knappertsbusch claims that he has been working in the area of corporate services since 2010, he did not demonstrate a good track record on which the Authority could rely.*
- 10. The said decision also noted that "this letter precludes the Company and Mr. Knappertsbusch from offering CSP activities in Malta with immediate effect. In addition the Authority will include a notification on its website that the Company cannot conduct CSP activities".*
- 11. On the 21st March 2016, the Authority issued a "Warning" (fn. 30 Document A2 submitted with the appeal) stating that St. Publius Corporate Services Limited and Mr. Knappertsbusch are not registered by the MFSA to provide any corporate services in or from Malta in terms of the Company Services Providers Act, Chapter 529 of the Laws of Malta. Accordingly the MFSA warns the public against entering into any transactions or otherwise dealing with the above-mentioned company or individual". Mr. Knappertsbusch interpreted this Warning as meaning that the Appellant could not conduct any business "worldwide" (fn. 31 Deposition of Mr. Knappertsbusch of the 30th October 2017 Document 14)*

12. *Mr. Knappertsbusch had another company already registered in Malta by the name of St. Publius Corporate Services Limited. This company eventually changed its name to St. Publius Malta Limited at the request of the Authority (fn. 32 Deposition of Mr. Knappertsbusch of the 30th October 2017 Document 14). The Maltese company was issued with a warning by the Authority on the 25th October 2013 (fn. 33 Document A11 submitted with the appeal). A subsequent Notice was published by the Authority on the 13th January 2014 (fn. 34 Document A11 submitted with the appeal) through which the Authority notified the general public that the Maltese company and Mr. Knappertsbusch were making the necessary arrangements to transfer its business to duly authorised fiduciaries and financial services providers.*
13. *Cynthia Debono Mizzi (fn. 35 Deposition of the 23rd April 2018 document 21) explained that for the Authority an application for “registration” would be submitted by an individual or a company who will be applying for the fully-fledged application. Whereas a “notification”, would be applied for by a company situated in an approved jurisdiction, who would be availing of its registration or license or the authorisation it has in that approved jurisdiction to act as a corporate services provider, and the Authority would be recognising that authorisation. This recognition process is governed by Article 3(5)(a) of the CSP Act. It was confirmed that in the Appellant’s case, the Authority was assessing a recognition (or notification) process. It was further explained that whereas the Authority did recognise the UK as an approved jurisdiction, it felt that the assessment in relation to the fitness and properness carried out in the UK did not match the one expected or followed by the Authority. So whereas the Authority did recognise the fact that the Appellant was registered with the HMRC (fn. 36 The Authority communicated with the HMRC as per Doc A and Doc B attached to Document 26), and that such a certificate was in line with the provisions of Article 3(5)(a) of the SP Act, the Authority deemed it necessary to request more information from the Appellant to “bridge the gaps” (fn. 37 Deposition of the 23rd April 2018 document 21). Angele Galea St. John (fn. 38 Deposition of the 4th March 2020 document 38) stated that the Authority was not even sure whether the activities that the Appellant was registered to carry out in the UK were similar to what they wanted to do in Malta. It is also clear that in this case, the Authority adopted the whole process as if the Appellant was*

actually applying for a registration rather than for a recognition. Cynthia Debono Mizzi stated that in her opinion, the Authority was authorised or had the discretion to ask for any or more documents when it was not comfortable with what was already submitted, and this in accordance with the provisions of Article 3(5)(b) of the CSP Act.

Considerations on the First Ground of Appeal:

14. *It must be noted that even though Mr. Knappertsbusch had bound himself to provide the documentation that lead to the authorisation issued by the HMRC in favour of the Appellant (fn. 39 Deposition of Mr. Knappertsbusch of the 30th October 2017 Document 14), no such documents were ever presented. It must also be noted that the Authority exhibited a letter that it sent to the HMRC and the reply that it got from the HMRC. At no stage did any of the parties to this appeal exhibit any documents and/or material that could shed some light on the licensing process adopted by the HMRC and also the “gaps” that exist between the due diligence and competence assessment carried out by the HMRC and the one demanded by the Authority. The Letter sent by the MFSA to the HMRC, and most importantly the reply the MFSA received from the HMRC does not shed any light on this issue, since the HMRC, on the 20th May 2014, merely replied that Mr. Knappertsbusch and the Appellant “is currently registered with HMRC under the Money Laundering Regulations.”*

15. *Article 3(5) of the CSP Act:*

3.(5)(a) Any person having a licence or registration to provide company service, issued by the relevant regulatory authority in an approved jurisdiction, shall not be subject to registration under this Act, provided that such person notifies the Authority, in writing, of its intention to provide company service in Malta at least forty-five days prior to commencing such activities in Malta and that such person receives from the Authority a confirmation in writing that it does not object thereto.

(b) A notification under this sub-article shall outline the proposed activities and shall be accompanied by such information as may be required by the Authority from time to time.

(c) To the extent that the Authority lays down any restrictions or conditions for such activities, on initial response to a notification or at

any other time, such restrictions and conditions shall come into effect as stated in the response or by subsequent notice of the Authority.

16. In Article 2(1) of the CSP Act,

“approved jurisdiction” means an EEA State or an EU Member State or any other jurisdiction which has an equal or comparable level of regulation regarding company service providers to that in Malta; and

“overseas regulatory authority” means an authority in any country or territory outside Malta which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the Authority as defined in the Malta Financial Services Authority Act;

17. In Article 2(1) the Maltese version of the CSP Act:

“Awtorità regolatorja barranija” tfisser Awtorità f’xi pajjiż jew territorju barra minn Malta li tkun teżercita xi funzjoni regolatorjajew superviżorja dwar servizzi finanzjarji li jkunu jikkorrispondugħal xi funzjoni tal-Awtorità kif imfissra fl-Att dwar l-Awtorità għas-Servizi Finanzjarji ta’ Malta; and

“għurisidizzjoni approvata” tfisser Stat ŻEE jew Stat Membru tal-UE jew kull għurisidizzjoni oħra li jkollha livell ugwali jew paragonabbli ta’ regolament dwar provdituri ta’ servizz lil kumpanniji ma’ dak li jkun jeżisti f’Malta;

18. Hence, the issue is not whether the Authority, in a recognition procedure, has the power to demand such documentation that it may deem necessary, but what type of documentation may the Authority request, and whether the provisions of Article 3(5) enable the Authority to subjectively determine such a recognition request even on the basis of the documentation that it requested. Hence, the question being asked is whether the Authority, in a notification procedure of a CSP registered in an EU member state can carry out the competence assessments such as the once carried out in this case.

19. There is no doubt that the fact that Mr. Knappertsbusch was already involved in a Maltese company bearing the same name as that of the Appellant, the fact that Mr. Knappertsbusch opted to request the recognition of the Appellant, rather than applying for a registration for the Maltese company which was already conducting similar activities,

and the fact that the Maltese company was already warned by the same Authority that it was not operating according to law, justifies, in principle, the requests made by the Authority for the further documentation.

20. *The Appellant maintains that the Authority is only empowered to seek such additional information in relation to the registration that the Appellant had obtained in the UK. The Authority, on the otherhand argues that since Article 3(5) enables it to request information and eventuell issue a no-objection, intrinsically empowers it to carry out such assessments that it deems necessary for it to reach such a decision.*

21. *The provisions of Article 3 of the CSP Act impose a registration requirement for anyone wanting to carry out CSP activities in Malta. The proviso to Article 3(1) lists two exemptions from this registration requirement with however an obligation on the persons therein listed to “notify the Financial Intelligence Analysis Unit established under the Prevention of Money Laundering Act, that they are acting as company service providers by way of business and that they are not required to register with the Authority under this Act.”*

22. *Article 3(2) states:*

(2) A person in possession of another licence, authorisation or recognition in terms of the Investment Services Act who intends providing company services by way of business shall apply for registration and, in such case, the Authority shall consider any due diligence process already carried out by it.

23. *Article 3(4) however states that:*

(4) In the event of reasonable doubt as to whether the carrying out of a particular activity would be subject to registration in terms of this Act, the matter shall be conclusively determined by the Authority.

24. *The reading of the provisions of Carticle 3 of the CSP Act clearly impose an obligation of registration with the Authority on any person wanting to carry out CSP activities in Malta. Yet certain categories of people (such as warranted lawyers) are exempted from this requirement to register with the Authority, albeit having an obligation to notify the FIAU. People licensed under the Investment Services Act are not*

exempted from the registration requirement with the Authority, with the only “concession” being that the Authority, in considering the registration, shall use the same Due Diligence it had already carried out.

- 25. The position of someone who is already registered abroad is somewhat less clear. The CSP Act introduces the concept of “notification” which has to be however followed by a “no-objection” by the Authority. This is contrary to the position of the exempted persons mentioned beforehand (such as a warranted lawyer) who are obliged to notify the FIAU, without however the obligation to await some form of no-objection from the same FIAU.*
- 26. The interpretation of “approved jurisdiction”, especially when comparing same to the Maltese version of the CSP Act, leaves little doubt that the qualification “which has an equal or comparable level of regulation regarding company service providers to that in Malta” applies to “other jurisdictions” and not to EU Member States or EEA States.*
- 27. Hence it is doubtful whether the Authority can argue that it had the right to consider this particular notification more as a registration because the procedure of registration in the UK is less onerous and is not accompanied by a due diligence or a competence assessment procedure.*
- 28. As already stated, the Authority did consult with the HMRC, which consultation did include specific questions related to the applicant. Yet the reply of the HMRC simply confirmed the fact that the same applicant was indeed registered.*
- 29. The Tribunal also notes the exchange between the Authority and the Applicant during which the Authority made it clear that it was seeking more information.*
- 30. It is quite clear that the Authority was faced with a request under Article 3(5) by an Applicant who had a regulatory history in Malta. The authority had already taken measures against the Maltese company for regulatory breaches in Malta. The same Maltese company had its bank accounts closed by Maltese Banks. To compound matters even further, the applicant opted to register as a CSP in another jurisdiction through a company bearing the same name of the company that the same applicant operated in Malta and which was subject to regulatory*

sanctions in Malta. In an email of the 9th June 2014 (fn. 40 Document 14 exhibited with the note of the 21st April 2021), the Appellant justified this process because the Maltese company had been blacklisted by the Maltese Banks.

31. It is also unclear as to why the Appellant did not provide any documentation submitted by him to the HMRC to enable its registration with the HMRC. This documentation was never submitted to the Authority, and neither did Mr. Knappertsbusch submit anything of this sort to the Tribunal as he had bound himself to do during his deposition.

32. It is also clear that the set up proposed for the CSP activity in Malta by the Appellant involved personnel and procedures which were different from the ones adopted by the appellant in England, and with the information made available the Authority, the Appellant failed to show that the proposed set up was actually the set up that was authorised in England.

33. On the basis of these facts, the Authority was, in the opinion of the Tribunal, vested with the right, if not also the duty, to request clarifications and eventually, carry out such assessments that it may deem necessary.

34. Finally, the Tribunal cannot determine and decide whether the same CSP Act is compliant with the Services Directive (2006/123/EC) transposed into Maltese law by way of the Services (Internal Market) Act, Chapter 500 of the Laws of Malta. The CSP Act enables the Authority to request documentation and the Authority acted within the parameters of the said CSP Act.

35. On the basis of the above, the Tribunal is rejecting the First Ground of Appeal.

The Second Ground of Appeal:

36. The Appellant maintains that the Refusal constitutes an Abuse of Discretion as it is based on improper and irrelevant considerations and is manifestly unfair.

37. The Tribunal analysed the documentation submitted by the Appellant and the reasoning and conclusions of the Authority. The said conclusions were initially notified to the Appellant on the 28th

September 2015 with the final decision communicated through the decision of the 18th March 2016.

38. The same decision listed 5 factors (fn. 41 According to the deposition of Cynthia Debono Mizzi of the 23rd April 2018 (document 14), the reasons must be seen to cumulatively rather than independently.) namely:

a. The representations provided did not deny Mr. Knappertsbusch's involvement in Eurokasse New Zealand Limited And neither did he provide proof that he was not involved in Eurokasse New Zealand Limited at the time of the investigation (fn. 42 According to the deposition of Cynthia Debono Mizzi of the 23rd April 2018 (document 14), the PQ did not even refer to the directorship held in this company.);

b. Given that this information is of direct relevance to the MFSA's due diligence assessment, the warnings issued by the Austrian FMA (fn. 43 should have been brought to the MFSA's attention with the content of Mr. Knappertsbusch's PQ (fn. 44 The Appellant communicated with the Austrian Financial Markets Authority. Doc C and Doc D attached to Document 26);

c. With respect to Corporate Governance structures, the information received by the MFSA with respect to training provided to proposed key officials was not sufficient to alleviate MFSA's concerns that the suggested course of action with regards to improving the competence aspect would be enough to enhance the weak governance structure that was proposed;

d. Warnings have already been issued by the MFSA against Mr. Knappertsbusch and St. Publius Malta Limited in connection with licensable activities being carried out without any authorisation from the Authority (fn. 45 Documents A11 submitted with the appeal); and

e. Although Mr. Knappertsbusch claims that he has been working in the area of corporate services since 2010, he did not demonstrate a good track records on which the Authority could rely.

39. The Authority, in its reply maintains that the discretion of the Authority may not be queried by the Tribunal on the strength of the provision of Article 21(9) of Chapter 330 of the Laws of Malta and that in

determining how the Authority exercised its discretion two important considerations must be made, namely (i) one must transpose oneself backwards in time to the time when the Authority was exercising its discretion; and (ii) one must see how the discretion was exercised based upon the information that the Authority had at the time when it was exercising its discretion;

40. *Article 16(3) of the CSP Act states:*

The provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to appeals that may be brought before the Financial Services Tribunal in terms of this article.

41. *Article 21(9), invoked by the Authority, states:*

The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant –

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

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

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

42. *On the basis of the fact that the Tribunal feels that the Authority was correct in the procedure adopted, and hence the Authority had the right to carry out the a due diligence assessment and also a competence assessment, the Tribunal must now assess whether the conclusions reached by the Authority ought to be confirmed.*

43. *Having seen the documents submitted by the Appellant, and certain arguments made by the Appellant during the application stage (fn. 46 Most of which were confirmed by the Appellant in the submissions before this Tribunal), the Authority was correct in the conclusions reached by it.*

44. *The first two reasons refer to the fact that the representations provided by the Appellant did not deny Mr. Knappertsbusch's involvement in Eurokasse New Zealand Limited. Furthermore, the*

explanations given by Mr. Knappertsbusch did not prove that he was not involved in Eurokasse New Zealand Limited at the time of the investigation in question. The Authority was correct to perceive such information as having direct relevance to the due diligence assessment, and was thus correct in assuming that the warnings issued by the Austrian FMA should have been brought to the Authority's attention with the content of Mr. Knappertsbusch's PQ. Ultimately, the Tribunal understands that the scope of the PQ is to provide the Authority with ALL the information, and the Authority must then assess such information. If the compiler of the said PQ unilaterally determines the relevance of the information that he ought to provide, even though this is clearly requested in the same PQ, the whole scope of the said PQ becomes irrelevant. The fact that such information was not provided correctly led the Authority to consider this as a material consideration in its decision.

45. The same reasoning applies to the Authority's assessment on the Corporate Governance structures proposed by the Appellant. Once again the information provided was sporadic and never much in line with clear directions that the Authority was giving to the Appellant in this regard.

46. The final two reasons may also be considered together. The Authority rightly felt that the warnings that had already been issued against Mr. Knappertsbusch and St. Publius Malta Limited in connection with licensable activities being carried out without any authorisation, were another material consideration in its decision. The said warnings related to activities similar to the ones subject matter of the notification process in question and the replies given by the Appellant as to how and why it carried out such activities without a license were not conducive to alleviate the concern of the Authority that the Appellant does not understand the necessity of regulation in such a service. The fact that the Appellant also started advertising services through Malta when the Authority had not yet issued its decision or no-objection, as required at Law, further confirms that the Authority was correct in this regard.

47. These reasons taken together, and analysed in the light of the scope of the CSP Act (fn. 47 Refer to Article 1(2) and Article 5(2)), lead the Tribunal to confirm the conclusions reached by the Authority.

48. On the basis of the above, the Tribunal is rejecting the Second Ground of Appeal.

The Third Ground of Appeal:

49. *The Appellant maintains that the Warning issued as part of the Decision likewise constitutes a wrong application of the Law, is ultra vires and disproportionate.*

50. *On the 21st March 2016, the Authority issued a “Warning” (fn. 48 Document A2 submitted with the appeal) stating that “St. Publius Corporate Services Limited and Mr. Knappertsbusch are not registered by the MFSA to provide any corporate services in or from Malta in terms of the Company Services Providers Act, Chapter 529 of the Laws of Malta. Accordingly the MFSA warns the public against entering into any transactions or otherwise dealing with the above-mentioned company or individual”.*

51. *Mr. Knappertsbusch interpreted this Warning as meaning that the Appellant could not conduct any business “worldwide” (fn. 49 Deposition of Mr. Knappertsbusch of the 30th October 2017 Document 14)*

52. *It must be noted that the said notice applies to the Appellant, i.e. the Company registered in England, and also Mr. Knappertsbusch.*

53. *The Tribunal finds that the first part of the notice is factually and legally correct.*

54. *Yet, the wording used in the second part of the notice, namely “Accordingly the MFSA warns the public against entering into any transactions or otherwise dealing with the above-mentioned company or individual” may or should have been written better.*

55. *The Authority should appreciate that such notices are read universally and not just by the general public of Malta (fn. 50 The Authority itself uses similar notices issued in other jurisdictions in its due diligence and/or competence assessments). Such notices show up in simple internet searches and are hence available to any member of the general public worldwide, or any person carrying out a search on the Appellant and/or Mr. Knappertsbusch. The use of*

the phrase “warns the public against entering into any transactions or otherwise dealing” is somewhat too generic and may give the wrong impression on the otherwise possible good standing, commercial or otherwise, of the Appellant and/or Mr. Knappertsbusch. The scope of the notice is to notify the public of the Appellant’s failure in relation to the CSP activity that he applied for.

56. The Authority should endeavour to be more precise and accurate in its notices to the public and ensure that such notices are faithful to the official decision taken by the Authority.

*57. The Tribunal feels that in this case, the Authority may not have been so accurate and hence, is minded to **uphold in part the third ground of appeal**”.*

L-Appell

4. Is-soċjetà appellanta intavolat ir-rikors tal-appell tagħha fis-6 ta’ Lulju, 2021 fejn qiegħda:

“...titlob bir-rispett lil din l-Onorabbli Qorti jogħgobha tirrifirma s-sentenza tat-Tribunal għal Servizzi Finanzjarji ta’ nhar is-16 ta’ Ġunju 2021 fl-ismijiet premessi (FST 03/16) u dan billi:

1. Thassar u tirrevoka d-Deciżjoni tat-Tribunal limitatament għas-segwenti:

- a. Il-parti fejn it-Tribunal jiċċhad l-ewwel aggravju sollevat mis-Socjetà hawn Appellanti fir-rikors tal-appell quddiem it-Tribunal għal Servizzi Finanzjarji u minflok tilqa’ l-ewwel aggravju imsemmi;*
- b. Il-parti fejn it-Tribunal jiċċhad it-tieni aggravju sollevat mis-Socjetà hawn Appellanti fir-rikors tal-appell quddiem it-Tribunal għal Servizzi Finanzjarji u minflok tilqa’ t-tieni aggravju imsemmi;*
- c. Il-parti fejn it-Tribunal jilqa’ r-risposta tal-Awtorità limitatament għal dak konformi mad-Deciżjoni tat-Tribunal u minflok jiċċhad ir-risposta tal-Awtorità msemmija*

- d. Il-parti fejn it-Tribunal jakkorda l-ħlas tal-ispejjeż għas-Soċjetà Appellanti u minflok jordna illi l-ispejjeż jitħallsu mill-Awtorità jew skont kif din l-Onorabbli Qorti jogħġobha tiddeċiedi;*
- 2. Tikkonferma dik il-parti d-Deciżjoni tat-Tribunal limitatament għall-parti fejn it-Tribunal jikkonferma it-tielet aggravju sollevat mis-Soċjetà hawn Appellanti fir-rikors tal-appell quddiem it-Tribunal għal Servizzi Finanzjarji.”*

Tgħid li l-aggravji tagħha huma dawn: (i) interpretazzjoni żbaljata tat-Tribunal dwar id-dritt tal-Awtorità appellata li tapplika proċess ta' registrazzjoni u assessjar għal proċessi ta' notifika *ai termini* tal-para. (a) tas-subartikolu 3(5) tal-Kap. 529; (ii) it-Tribunal naqas milli jikkonsidra u jiddeċiedi dwar l-aggravji tagħha dwar ksur tal-Awtorità appellata tad-dispożizzjonijiet tal-Kap. 500; u (iii) it-Tribunal naqas milli jikkonsidra l-provi kollha bi ksur tal-prinċipji tal-ġustizzja naturali.

5. L-Awtorità appellata wiegħbet fid-29 ta' Lulju, 2021 fejn issottomettiet li fil-fehma tagħha d-deċiżjoni appellata hija waħda ġusta u għandha tiġi kkonfermata.

Konsiderazzjonijiet ta' din il-Qorti

6. Din il-Qorti qabel xejn tagħmel riferiment u tiċċita d-dispożizzjonijiet tas-subartikolu 16(2) tal-Kap. 529, li jipprovdu kif ġej:

(2) Bla ħsara għad-dispożizzjonijiet ta' dan l-Att, jista' jsir appell quddiem it-Tribunal dwar Servizzi Finanzjarji dwar:

- (a) kull nuqqas li jitgħarraf applikant jew provditur ta' servizz lil kumpanniji awtorizzat biċ-ċħid tal-applikazzjoni tiegħu jew bit-tħassir tal-awtorizzazzjoni tiegħu skont l-artikolu 7;

- (b) kull penali amministrattiva imposta taħt l-artikolu 9 u l-artikolu 15(8);
- (ċ) kull ċhid ta' applikazzjoni għal awtorizzazzjoni jew tħassir ta' awtorizzazzjoni skont l-artikoli 5 u 6;
- d) kull direttiva mogħtija taħt l-artikolu 11 jew taħt l-artikolu 16(2)(b) tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta;
- (e) il-bdil ta' kull kundizzjoni jew li tiġi imposta xi kondizzjoni ġdida skont l-artikolu 7".

7. Wara qari ta' dan is-subartikolu, mill-ewwel il-Qorti tirrileva li l-ebda waħda miċ-ċirkostanzi kkontemplati ma jirriżultaw fl-appell odjern, fejn l-Awtorità appellata għażlet li ma tagħtix il-konferma bil-miktub għall-avviż ipprezentat lilha mis-soċjetà appellanta *ai termini* tal-para. (a) tas-subartikolu 3(5) tal-istess liġi, li din tipprovdi servizz lill-kumpanniji hawn Malta. Kull wieħed mill-paragrafi tas-subartikolu 16(2) tal-Kap. 529 fuq ċitat jittratta sitwazzjonijiet ferm diversi għal dawk li jirriżultaw fil-każ odjern, u għalhekk il-Qorti tqis li s-soċjetà appellanta qatt ma kellha dritt tipprezenta appell quddiem it-Tribunal, li huwa prekluz milli jittratta l-kwistjoni tar-rifjut tal-konferma tal-avviż mogħti mis-soċjetà appellanta lill-Awtorità appellata, wisq aktar li tressaq appell mid-deċiżjoni tiegħu quddiem din il-Qorti.

Decide

Għar-raġunijiet premessi, din il-Qorti tastjeni milli tieħu konjizzjoni tal-appell odjern kif magħmul mis-soċjetà appellanta.

L-ispejjeż ta' din il-proċedura għandhom ikunu a karigu tal-imsemmija soċjeta appellanta.

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.
Imħallef**

**Rosemarie Calleja
Deputat Registratur**