



Decision Notice 006/2011/ED

**Decision of the 27<sup>th</sup> June 2011 issued in virtue of the Malta Resources Authority Act (Cap.423 of the Laws of Malta), the *Petroleum for the Inland (Retail) Fuel Market Regulations, 2010* (LN 53 of 2010), the *Authorisations (Suspension, Refusal and Revocation) Regulations, 2008* to Mr. Johan Abela with regard to application to carry out the activity of a Fuel Distributor.**

## Section I

Whereas the Authority received an application from Mr. Johan Abela (I.D. No. 67787(M)) for an authorisation to carry out the activity of a fuel distributor under the *Petroleum for the Inland (Retail) Fuel Market Regulations, 2010* (L.N. 53 of 2010).

Whereas the applicant submitted the data as requested in the application except for specific details of the fuel distributor vehicle.

Whereas as part of the information submitted with the application, the applicant, through Dr. Johnaton Abela, informed the Authority that he had pending criminal action against him in court and was being charged under Articles 68-70, 92, 95, 96, 338(e), 338(dd), 338(ee) and 342 of Chapter 9 of the Laws of Malta.

Whereas the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 (LN 195 of 2008), Regulation 5 (1) (b) provides that the Authority may refuse an application if the applicant has committed a voluntary criminal offence liable to a punishment for at least one year

Whereas regulation 6. (1) of the same regulations provide that:

“Where criminal proceedings in respect of an offence to which regulation 5 refers are pending *sub-judice* against an applicant or an authorised provider, the Authority may suspend an authorisation or the consideration of an application for an authorisation or for the transfer of an authorisation during the time when the said proceedings are pending.”

Whereas the ‘Guidelines in relation to the application of the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 (LN 195 of 2008)’ approved by the Board of the Malta Resources Authority are applicable to the application under review.

The Malta Resources Authority has taken note of the application and of the aforementioned considerations and has made its review and considerations on the matter.

Therefore, also for the reasons stated in Section II of this Decision, the Malta Resources Authority hereby determines as follows:

Paragraph 4. of the “**Guidelines in relation to the application of the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 (L.N. 195 of 2008)**” apply to the matter in hand. The said paragraph states that:

“4. In the case of an applicant or an Authorized Provider who has been charged with committing a criminal offence liable to a punishment of imprisonment of at least one year, the Authority shall issue the authorisation if the case is still

pending *sub judice* during the process of review of the application. The Authority shall be entitled to reserve the right to apply a 'fit and proper' test upon renewal of the authorisation, whether such renewal occurs yearly or otherwise."

In view of the above, the Authority determines that the application for the issue of an authorisation made by Mr. Johan Abela (I.D. No. 67787(M)) for an authorisation to carry out the activity of a fuel distributor under the *Petroleum for the Inland (Retail) Fuel Market Regulations, 2010* (L.N. 53 of 2010) should be approved, provided that any other requirement is complied with by the applicant. This approval shall be without prejudice to any further review made by the Authority to satisfy itself that Mr. Johan Abela (I.D. No. 67787(M)) is a fit and proper person to hold an authorisation after the adoption of this decision.

## Section II

Mr. Abela forwarded all necessary documents and information requested in the application except for specific information relating to the fuel distributor vehicle, though he has already forwarded general specifications related to the vehicle and is already being consulted by a Dangerous Good Safety Advisor as established under the *Motor Vehicles (Carriage of Dangerous Goods by Road) Regulations, LN 211 of 2003*. When contacted Mr. Abela stated that he would only buy the fuel distributor vehicle, and hence forward specific information, if he had a positive response from the Malta Resources Authority.

Mr. Johan Abela is presently facing pending criminal action against him in court and is charged under Articles 68-70, 92, 95, 96, 338(e), 338(dd), 338(ee) and 342 of Chapter 9 of the Laws of Malta. Otherwise, from an examination of Mr. Johan Abela's Police Criminal Conduct sheet, it results that he is a person of good conduct.

Regulation 5. (1) of the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 provide that:

"The Authority may refuse the application for the issue or transfer of an authorisation, and in the case of a renewal of an authorisation, suspend or revoke an authorisation, if an applicant for the issue of an authorisation or an authorised provider has," *inter alia*,

"(b) committed a voluntary criminal offence liable to a punishment of imprisonment for at least one year."

The voluntary criminal offences of which Mr. Johan Abela is being charged with are liable to a punishment of imprisonment for at least one year.

When making this decision under regulation 5 (1) of the Authorisations (Suspension, Refusal and Revocation) Regulations, 2008 the Authority has taken into account of:

- (a) the seriousness of, and circumstances surrounding the offence or the contravention;
- (b) the explanation offered by Mr. Abela;

- (c) the relevance of the offence to the proposed role in the case of the application for the authorisation being applied for;
- (d) any evidence of actual harm or detriment to other authorised providers or consumers;
- (e) evidence pointing to risks to authorised providers and consumers from dealings with the applicant or the authorised provider.

Dr. Reuben Balzan  
Chairman, Malta Resources Authority