

**Decision 003/03/ED of 25<sup>th</sup> September 2003  
in virtue of Malta Resources Authority Act (Cap. 423)  
on the complaint by Falzon Service Station Ltd.  
with regard to its hawker's licence**

**I. Determination**

**Whereas**

- A. In July 2001, the Malta Resources Authority received a complaint from Falzon Service Station Limited claiming that although the company is in possession of a hawker's licence, it is not being allowed to uplift kerosene under this licence from Enemalta Corporation's depots and requesting the Authority to resolve the situation;
- B. MRA has taken note of the request and has investigated the matters raised in it;
- C. MRA had numerous meetings with the complainant on the matter in question;

**Now, therefore, for the reasons stated in Section II.B. of this Decision, the Malta Resources Authority hereby determines as follows:**

- I.1. Falzon Service Station Limited ('FSSL') has a valid licence to operate as a hawker (licence KH 81) but does not have an allocated district within which to operate such licence.
- I.2. As each of the currently operational hawker's licences is attached to a given territory, and there is no case where a hawker's licence is operating on the national territory, irrespective of districts, the current situation of FSSL, who is a licensed hawker without an allocated district, is anomalous.
- I.3. Within the parameters of the current licensing regime, the removal of this anomaly necessarily requires a redistribution of the national territory to include an allocated district for FSSL.
- I.4. This solution, however, would not resolve many difficulties and issues associated with the current licensing regime. A new revised licensing regime is urgently required in line with current policies for the resources sector. In this regard, MRA is in the process of making a complete review and overhaul of the licensing framework governing the method of land distribution of fuel.
- I.5. Although this general review and redesign of the fuel land distribution system is underway, in the short term, in order to render operative FSSL's

licence, MRA shall proceed with an exercise of a transparent, fair and equitable redistribution of hawkers' districts. This interim exercise is without prejudice to the concurrent exercise of a complete review of the licensing framework for land distribution of fuel.

- I.6. In order to provide FSSL with a workable immediate solution, pending the finalisation of the exercises above-mentioned, MRA shall direct Enemalta Corporation to provide FSSL with a limited monthly quota of kerosene fuel to be uplifted with the commission applicable to other hawkers.
- I.7. In determining the quota mentioned in the previous paragraph the Authority shall examine a fully substantiated and justified proposal for such a monthly quota by FSSL. On satisfying itself that the proposal for such a quota is fully substantiated and justified, the Authority shall issue its approval, with or without modification and/or conditions, as it deems necessary in its discretion. In issuing the quota the Authority shall take the sale of kerosene to non-household customers as the basis for the calculation of the quota. It shall furthermore take into account the territorial limitations of other hawkers as well as other regulations governing the use of kerosene.
- I.8. Being an interim measure, the quota approved by the Authority shall remain in force strictly subject to the principle of proportionality, that is, insofar as the actual effect of such a measure in the market is not disproportionate to the purposes for which this measure has been taken. In view of this principle, the quota itself is therefore subject to revision by MRA, at any time, on the basis of MRA's regulator monitoring of the market.

## **II. Considerations**

### **II.A. Facts**

The facts of the case are as follows:

- II.A.1. The Malta Resources Authority ('MRA' or 'Authority') received a complaint from Falzon Service Station Limited ('FSSL'), submitted by its director, Mr J V Falzon, on 24<sup>th</sup> July 2001.
- II.A.2. In the complaint FSSL claimed that although it is in possession of a Hawker's licence (KH 81), the company is not being allowed to uplift kerosene under this licence from Enemalta depots.
- II.A.3. Mr Falzon claimed that kerosene hawkers are uplifting large amounts of kerosene and supplying factories, hotels and other such establishments and are not restricted to the confines of their allocated district, which places FSSL in a precarious situation due to unfair practices in the market. He further claimed that FSSL is losing industrial clients to such hawkers who undercut his price, because they procure the fuel at 0.8 cents less than FSSL as a jobber.

- II.A.4. FSSL requested the Authority to allow FSSL to uplift kerosene under the company's Hawker's licence, which has been duly paid at all times.
- II.A.5. The Authority requested Enemalta Corporation ('Enemalta') to explain the situation in a letter dated 17<sup>th</sup> September 2001. On 10<sup>th</sup> October 2001 Enemalta advised MRA that since FSSL does not have an allocated district it is not allowed to uplift kerosene under the said licence. FSSL is however allowed to uplift kerosene under its licence as a jobber (OA 178). In the same mentioned letter from Enemalta dated 10<sup>th</sup> October 2001, it was further stated that apart from an anomaly with FSSL, there were other various anomalies with other hawkers' licences.
- II.A.6. In a letter of 25<sup>th</sup> July 2002, FSSL also requested the Authority to grant a licence for the importation and resale of kerosene to the local industry for heating purposes. FSSL stated in the letter that issuing the licence would help to circumvent 'the negative effects being suffered by the company in the face of the unfair competition being created by the more advantageous kerosene prices being granted by Enemalta Corporation to hawkers as opposed to jobbers, even though the product uplifted by both hawkers and jobbers is ending up in the local industry'.
- II.A.7. In a letter dated 11th December 2002, FSSL requested the Authority to take the necessary actions to regularise the situation, that is to instruct Enemalta to allow FSSL to uplift kerosene in virtue of the company's hawker's licence, and pending which to grant FSSL a licence to import kerosene and resell it to the local industry.
- II.A.8. On 13th January 2003, MRA requested Falzon for data on total uplifts of both kerosene and gas oil over the last 5 years to fill in the unfilled part of the questionnaire sent to him and all other operators in October 2002. The information was supplied with an attached letter re-iterating that unless the MRA takes action, FSSL would reduce its workforce and would institute legal action. Moreover, FSSL also named hawkers who allegedly supply industry with kerosene at approximately 1c lower than FSSL, further stating that this can be done because of their higher commissions as kerosene hawkers.
- II.A.9. On 3<sup>rd</sup> February 2003 FSSL and Carmelo Falzon filed a judicial protest in the 1<sup>st</sup> Hall, Civil Court, against Malta Resources Authority and Enemalta Corporation, reiterating the position explained above.
- II.A.10. Furthermore numerous meetings have been held between MRA and FSSL with regard to the complaint under consideration.

## **II. B. Assessment**

- II.B.1. Currently, there are several types of licences that are applicable to the inland market of fuels, which is separate and distinct from other markets (i.e. bunkering and aviation). Distribution in the inland market is carried out as follows: Enemalta's own road tankers (petrol stations), by hawkers (general

public, by district), by jobbers (no limitation). A person may have several licences. FSSL is licensed for the following: bunkering, petrol stations, jobber, hawker, waste oils.

- II.B.2. Hawkers have a restricted area of distribution (district) allocated to them, while jobbers have no such restrictions. The areas of distribution for hawkers have not been updated since 1978.
- II.B.3. Hawkers sell in small quantities, particularly to consumers (i.e. households), while jobbers sell unlimitedly to industry and, thus, sell in much higher quantities.
- II.B.4. Hawkers are paid a higher (compared to jobbers) commission for kerosene by Enemalta. It is not uncommon for the percentage of commission to decrease as the quantity of scale increases.
- II.B.5. While Enemalta grants hawkers better commissions than jobbers, jobbers are granted better credit facilities by the Corporation. These terms are assumingly based on the concept that (1) hawkers have a restricted area of distribution (district), while jobbers have no such restrictions, and that (2) hawkers sell in smaller quantities, particularly to households while jobbers sell unlimitedly to industry in bulk and thus, sell in much higher quantities.
- II.B.6. The zoning of the districts and other conditions of licences are not specified in the law but come out from Enemalta's policy which is reflected in the licence as cited above.
- II.B.7. Though originally Enemalta had issued 28 hawkers' licences, there are currently 21 operative hawkers (each with a district) and 5 jobbers (3 in Malta and 2 in Gozo). There are no licensed hawkers in Gozo. One of the operating hawkers, Mr Philip Borg of Mellieha, has a hawker's licence with an allocated district, together with a separate jobber's licence. FSSL, a jobber, has a hawker's licence to which no district has been allocated.
- II.B.8. Currently, the practices of kerosene selling are such that hawkers no longer sell exclusively to consumers since they are also 'authorized' to sell to small businesses (such as bakeries, hotels, catering establishments, although the term "small business" remains undefined). Furthermore, hawkers no longer sell by means of the traditional single small tanker in small quantities. Hawkers have a mixed clientele, both households with kerosene-fired large/small heaters and the small businesses. The latter and the large household consumer are supplied fuel by pump to their storage tanks.
- II.B.9. In May 2001 the GRTU requested Enemalta to re-define the districts of kerosene hawkers and to give a clear definition of what is exclusive to a hawker and what to a jobber. Enemalta referred this matter to MRA, and it is currently under consideration.
- II.B.10. FSSL has a valid licence to operate as a hawker but, as Enemalta stated in its reply to the relevant query from MRA, FSSL does not have an allocated district within which to operate such a hawker's licence. Each of the

hawker's licences is attached to a given territory: there is no case where a hawker's licence is operating on the national territory, irrespective of districts. The current situation of a licensed hawker who does not have an allocated territory is anomalous.

- II.B.11. Within the parameters of the current licensing regime, the removal of this anomaly necessarily requires a redistribution of the national territory to include an allocated district for FSSL.
- II.B.12. However, even this solution, would not resolve the many difficulties and issues associated with the current licensing regime. A new revised licensing regime reflecting the current needs of the market is required in line with the current policies for the resources sector. In this regard, MRA is in the process of making a complete review and overhaul of the licensing framework governing the method of land distribution of fuel.
- II.B.13. Although, this general review and redesign of the fuel land distribution system is underway, in the short term, in order to render operative FSSL's licence, MRA shall proceed with an exercise of a transparent, fair and equitable redistribution of hawkers' districts. This interim exercise is without prejudice to the concurrent exercise of complete review of the licensing framework for land distribution of fuel.
- II.B.14. In order to provide FSSL with a workable immediate solution, pending the finalisation of the exercises above-mentioned, MRA shall direct Enemalta Corporation to provide FSSL with a limited monthly quota of kerosene fuel to be uplifted with the commission applicable to other hawkers. In determining this monthly quota the Authority shall examine a fully substantiated and justified proposal for such a quota by FSSL. On satisfying itself that the proposal for such a quota is fully substantiated and justified, the Authority shall issue its approval, with or without modification and/or conditions, as it deems necessary in its discretion. In issuing the quota the Authority shall take the sale of kerosene to non-household customers as the basis for the calculation of the quota. It shall furthermore take into account the territorial limitations of other hawkers as well as other regulations governing the use of kerosene.
- II.B.15. Being an interim measure, the quota approved by the Authority shall remain in force strictly subject to the principle of proportionality, that is, insofar as the actual effect of such a measure in the market is not disproportionate to the purposes for which this measure has been taken. In view of this principle, the quota itself is therefore subject to revision by MRA, at any time, on the basis of MRA's regulatory monitoring of the market.

J N Tabone  
Chairman