PUBLIC CONTRACTS REVIEW BOARD

Case 1204 – Application in terms of Regulation 277 of the Public Procurement Regulations by Virtu Holdings Ltd in relation to the Preliminary Market Consultation regarding Fast Ferry Services

On the 22nd June 2018 Virtu Holdings Ltd filed an application requesting the Public Contracts Review Board to declare the contract signed between Gozo Channel and Island Ferry Networks Ltd ineffective in terms of Regulation 277 et seq. of the Public Procurement Regulations, and to make such other orders as it deems fit.

On 31th August 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the application.

The attendance for this public hearing was as follows:

Virtu Holdings Ltd

Dr Adrian Mallia Legal Representative

Gozo Channel (Operations) Ltd

Dr Simon Schembri Legal Representative

Island Ferry Networks Ltd

Dr Paul Lia Legal Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and stated that it was the Board's view that this application should be treated separately from the previous case (preliminary market consultation) and hence the need for this hearing.

Dr Simon Schembri, on behalf of Gozo Channel (Operations) Ltd stated that Gozo Channel declares that the contract signed with Island Ferries Network Ltd has been signed subject to the eventuality that Gozo Channel wins the concession of the Ministry of Transport's PSO regarding ferry services between Malta and Gozo.

Dr Adrian Mallia, representing Virtu Holdings Ltd, confirmed that all parties agree and declare that submissions have already been made in regard to this matter and such submissions should form the basis for a decision by the Public Contracts Review Board.

The Chairman thanked the parties for their submissions and declared the hearing closed.

This Board,

having noted this Objection filed by Virtu' Holdings Limited, (hereinafter referred to as the Appellants) on 22 June 2018, refers to the contentions made by the same Appellant with regards to the signing of a contact between Gozo

Channel (Operations) Limited and Island Ferry Networks Limited.

Appearing for the Appellants: Dr Adrian Mallia

Appearing for the Contracting Authority (Gozo Channel (Operations) Limited and Gozo Channel Holdings Company Limited), referred to as Gozo Channel: Dr Simon Schembri.

Whereby, the Appellants contend that:

a) Gozo Channel signed an agreement with Island Ferry Networks

Limited for the provision of a "Fast Ferry Service", whilst an Objection

has been filed involving the same service being contracted for, by Gozo

Channel, the latter being one of the prospective bidders for the PSO

Tender issued by the Ministry for Transport and Infrastructure. In this

regard, the Appellants contend that this contract should be deemed

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ineffective in terms of Regulation 277 of the Public Procurement Regulations.

This Board has also noted the Contracting Authority's "Reasoned Letter of Reply" dated 25 June 2018 and its verbal submissions during the Public Hearing held on 31 August 2018, in that:

a) Gozo Channel insists that the contract signed with Island Ferries Network Limited, submissions on which had already been made during the Public Hearing held on 25 June 2018, is only effective if and when Gozo Channel wins the concession of the PSO Tender issued by the Ministry for Transport and Infrastructure.

This Board would respectfully confirm that the issue of the agreement signed between Gozo Channel and Island Ferry Networks Limited has been considered at length, during the Public Hearing held on 25 June 2018.

During such hearing, it was established that Gozo Channel, (one of the prospective bidders for the PSO tender issued by the Ministry for Transport and Infrastructure), concluded an agreement for the provision of a "fast ferry service", with Island Ferry Networks Limited, to obtain such a service, so as to enable Gozo Channel to bid for the concession of a conventional and fast ferry PSO tender.

Without going into repetitive considerations already treated during the Public

Hearing held on 25 June 2018, this Board notes that the agreement which

Gozo Channel entered into with Island Ferry Networks is, in actual fact, not

effective, at present, as it will only come into force, subject to Gozo Channel

winning the award of the PSO Tender.

At the same instance, this Board notes that while Gozo Channel has in fact

concluded a contract before a final decision has been given by the Public

Contracts Review Board, however, due to the fact that this Board deems that

the agreement is not effective at present and is operative only on condition

that Gozo Channel wins the PSO Tender, this Board does not deem it

necessary to declare it ineffective in terms of Regulation 277 of the Public

Procurement Regulations.

Dr Anthony Cassar Chairman Dr Charles Cassar Member Mr Carmel Esposito
Member

11th September 2018

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