

DR. CHRIS CILIA LL.D.

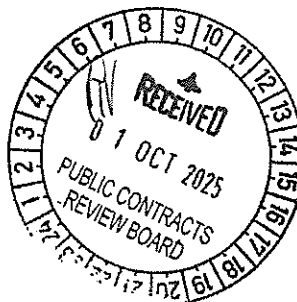
-ADVOCATE-

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01.10.2025

Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriana VLT2000



Dear Sirs,

Re: Concession Agreement for the Public Service Concession for the Provision of Passenger Ferry Services Between Malta and Comino dated 25 October 2019 ('the Concession')

I write for and on behalf of the Authority for Transport in Malta of Malta Transport Centre, Pantar Road, Lija ('the Authority').

Reference is made to the application filed by Ian Azzopardi (ID No: 472277M) trading as Bluewaves Watersports and Blue Waves Marine Company Limited (C98678) (the Claimants) to declare the Concession ineffective in terms of Regulation 113 of the Concession Contracts Regulations ('CCR').

By means of this Reasoned Letter of Reply the Authority is submitting the reasons for which the Claimants' application merits to be refused.

Preliminarily, it is being submitted that the reasons on which the claim submitted by the Claimants is based, do not fall within the parameters established by the disposition of Regulation 113 of CCR. Consequently, the application is to be declared null and void.

Subsidiarily, and without prejudice to the above-stated plea, the Claimants are claiming that the Concession has been substantially modified and therefore a new tender procedure should have been issued.

Said claim which constitutes the basis for Claimants' application is wholly refuted by the Authority.

The Claimants indicate four (4) reasons on the basis of which they content that the Concession has been 'substantially modified'.

These four reasons are as follows:

- (i) no ECO Vessels have been employed by the Concessionaire although this was an express obligation in the Concession;

- (ii) the berthing facilities at Blue Lagoon were not upgraded by Transport Malta;
- (iii) Government changed the parameters of the market *ex post* through restrictions it imposed on the Concessionaire's competitors; and
- (iv) the Concessionaire is not offering trips to Santa Marija Bay in Comino although this was an express obligation in the Concession.

The Authority shall now proceed to address these four reasons submitted by the Claimants *seriatim*.

1. No ECO Vessels have been employed by the Concessionaire although this was an express obligation in the Concession

Whilst it is true that the employment of ECO Vessels was an express obligation in the Concession, it is equally true that the Concessionaire was not in a position to operate the Concession by reason of *force majeure*. In fact, the Authority was prohibited pursuant to a warrant of prohibitory injunction from granting the Concessionaire priority berthing rights which was absolutely vital to the operativity of the Concession. Simply put, without having priority berthing rights, a concession for the provision of scheduled ferry services to Comino is impossible to operate. In order to explain this issue in very simple terms, when the Concessionaire's boat running on a scheduled time-table arrives at the Comino landing, it must perform having priority berthing rights in order for passengers to be able to alight and go on board at the times established in the schedule. Without such priority berthing rights, no time-table could possibly be observed and honoured, as the Comino landing would be completely occupied by other boats providing unscheduled services. Having priority berthing rights was fundamental for the operability of the scheduled service – and this was not possible until such time that the said warrant of prohibitory injunction was removed on 30th August, 2024.

Consequently, whereas the Concession Agreement stipulated that the Concessionaire was bound to "*commence Operations in accordance with Schedule 1 of this agreement by the 25th January 2020 or within three (3) months from the signing of the Agreement, whichever comes first*", as a result of the above-stated court procedures, in reality the Concessionaire could not commence operations prior to the removal of the above-mentioned warrant of prohibitory injunction.

The Concession Agreement stipulates that the Concessionaire was bound to employ "*a minimum of one (1) brand new Eco vessel within the first year of operation from the signing of this Agreement and another brand new Eco vessel within eighteen (18) months of operation from the signing of this Agreement to operate this service with the specifications outlined in Schedule 6 to this Agreement.*"

This time-window is to be construed as not having commenced to run during such time that, due to *force majeure*, for the reasons above-explained, the Concessionaire was effectively precluded from commencing Operations.

Hence, the Concessionaire is still within the time allowed for the employment of the brand new Eco vessel and consequently the Claimants are in no position to argue that the Concession has been "substantially modified" due to the fact that this brand new Eco vessel is not currently in use.

2. The berthing facilities at Blue Lagoon were not upgraded by Transport Malta

The argument based on this 'reason' is completely fallacious. Whilst as a state of fact the berthing facilities were not upgraded, for reasons which shall be explained hereunder, this cannot in any way or form be interpreted as a substantial modification of the Concession. *Semmai*, it is the Concessionaire which could lament the lack of upgrade to the berthing facilities at Blue Lagoon, since such upgrade would have obviously benefitted the Concessionaire, and therefore it is the Concessionaire which has not benefitted from the upgrade. But this is certainly not a reason which may be raised by the Claimants to support their argument that the Concession has been "substantially modified". Indeed, with the upgrade or without it, the Concession has remained the same, and the scheduled services which the Concessionaire is duty-bound to provide in terms of the Concession Agreement have not been modified in any way (even less so "substantially") by the fact that the berthing facilities at Blue Lagoon have not been upgraded. Had the berthing facilities been upgraded, the Concessionaire would have benefitted from such upgrade; once the berthing facilities were not upgraded the Concessionaire had to provide the scheduled services in the same manner and with the same berthing facilities which existed at the time when the RFP was issued – an RFP in which the Claimants did not even participate.

Indeed the argument which is being raised by the Claimants is being made not wearing the cap of an interested party in the scheduled service, but rather wearing the cap of an operator of unscheduled services since the upgrade of the berthing facilities would have benefitted mostly the unscheduled services operators, such as the Claimants, who do not enjoy the priority berthing rights given by the Concession Agreement to the Concessionaire and which the Concessionaire is now finally in a position to enjoy with the lifting of the warrant of prohibitory injunction.

Hence it is clear that the claim is not being made in good faith by a person who is truly an interested party in the Concession (the concession being for the provision of scheduled services) but is being made by an operator of unscheduled services whose only interest is to turn the clock back to the time when no scheduled services existed and when the measures introduced by Government this summer in order to preserve the Comino eco-system were not yet in place. The claimants have no interest in the Concession, so much so that they did not participate in the RFP, and their only interest is to protect their business as unscheduled

services operators, and the application made by the Claimants is one further measure in an endless litany of actions and procedures undertaken by unscheduled services operators to return back to the *status quo* which existed prior to the introduction of scheduled ferry services and the capping of visitors.

Now, for sake of completeness, it is to be stated that indeed the Authority had filed the necessary applications in order to undertake the works for the upgrading of the berthing facilities of the Blue Lagoon but was faced with very strong opposition from ERA and at one point in time the application was withdrawn and now everything has been superseded by events with the holistic master plan for the island of Comino.

3. Government changed the parameters of the market *ex post* through restrictions it imposed on the Concessionaire's competitors

Once again, this reason is completely irrelevant. The fact that the Government, as it has every right to do, decided to impose a capping on the daily amount of visitors to Comino in order to preserve the eco sustainability of the island and provide for a better tourist experience, cannot, by any stretch of the imagination, be considered to be a "substantial modification" of the Concession.

The fact that Government has decided to regulate the maximum number of persons who can visit Comino daily is completely extraneous to the Concession and to argue that the Concession has been "substantially modified" due to such reason is absolutely fallacious.

The Government did not impose restrictions on the Concessionaire's competitors – that argument was put forth, and refuted by the Court, in the warrant of prohibitory injunction which bearing number 675/2025MH in the names "Stephanie Louise Grech et -vs- Segretarju Permanenti tal-Ministeru tat-Turizmu et" filed by a number of unscheduled services operators who were attempting to resist the capping on visitor numbers introduced by Government. (It is to be noted and underlined that the applicants in these procedures were themselves a party to the said warrant of prohibitory injunction and it is clear that these procedures constitute a further measure which applicants and other non-scheduled operators are resorting to in order to attempt to stop the scheduled service at all costs.)

What the Government did, as it had every right to do, was to introduce measures intended to preserve the eco sustainability of Comino from over exploitation, and to state that this is tantamount to a "substantial modification" of the Concession is completely baseless, spurious and unfounded.

Indeed what this argument goes to show is the true motivations behind the motivations of this Application filed by Claimants – to undermine the scheduled service Concession in order to protect the financial interests of unscheduled services providers such as the Claimants. The Claimants never had and do not have any interest whatsoever in the Concession other than to undermine it for its financial gains, and for no other reason.

Hence this reason is also completely fallacious and baseless.

4. The Concessionaire is not offering trips to Santa Marija Bay in Comino although this was an express obligation in the Concession

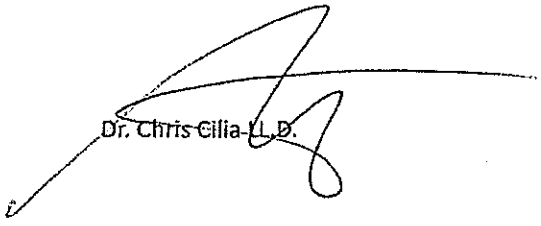
Although this is an issue which the Concessionaire is in a better position to comment upon, the Authority is not informed that trips to Santa Marija Bay are not being offered by the Concessionaire and has never received any complaints from passengers wanting to go to Santa Marija Bay being refused by the Concessionaire. The Authority is also fully aware that the Blue Lagoon is the preferred stop for practically all persons visiting Comino and making use of the scheduled service.

Indeed, from a practical point of view, it is more beneficial for the Concessionaire to carry passengers to Santa Maria Bay rather than to the Blue Lagoon since the former, as opposed to the latter, are not regulated by the capping.

Hence this reason is also completely unfounded and the Claimants certainly cannot argue that the Concession has been "substantially modified" for this reason.

Hence, by way of conclusion, the Authority by means of this Reasoned Letter of Reply respectfully submits that the Claimants' Application merits to be summarily refuted.

Yours Truly



Dr. Chris Cilia L.D.