

Before the Arbiter for Financial Services

Case ASF 067/2024

AT

(the 'Complainant')

vs

Foris Dax MT Limited

C-88392

('Foris DAX' or the 'Service Provider')

Sitting of 28 February 2025

The Arbiter,

Having considered in its entirety the Complaint filed on 11 April 2024, including the attachments filed by the Complainant,¹

The Complaint

Where, in summary, the Complainant claims that Crypto.com is charging him 9% for every transaction. He explains that he cannot sell anything because the Service Provider is holding his money and will charge him 9% if he decides to sell.

The Complainant also states that the real-time price of a transaction involving 50000 ICX coins was €15840 but he would receive only €14272.83 a difference of 9.89%. He argues that the Service Provider has already taken thousands of euros by virtue of this 9% charge, despite it not being written in the terms and conditions.

¹ Complaint Form from page (p.) 1 - 6, with additional documents from p. 7 - 20

The Complainant explains that Crypto.com is not providing him with a proper justification behind the 9% charge for transactions. He argues that these fees are illegally hidden.

Consequently, by way of remedy, the Complainant is asking for €445.89, which is the difference in payment received after selling his 125000 Vechain (VET) at €5163.75 for which he received only €4717.86. Additionally, the Complainant wants to be able to sell his remaining cryptos without the 9% commission.

The reply of the Service Provider²

“Dear Arbiter,

With regard to the complaint filed by [the Complainant] with the OAFS, kindly find below a full summary of the events, which precede the formal complaint.

Background:

- *Foris DAX MT Limited (the “**Company**”) offers the following services: a crypto custodial wallet (the “**Wallet**”) and the purchase and sale of digital assets through the Wallet. Services are offered through the Crypto.com App (the “**App**”). The Wallet is only accessible through the App and the latter is only accessible via a mobile device.*
- *At the material time, the customer also utilized the services of a single-purpose wallet (the “**Fiat Wallet**”), offered by our company, which allows customers to top up and withdraw fiat currencies from and to their personal bank account(s) for the purposes of investing in crypto assets. In addition, the Fiat Wallet enables customers to convert digital assets into fiat currency. This service is offered by the legal entity Foris MT Limited.*
- *The Complainant’s e-mail address xxxxxxxx@hotmail.com, became a customer of Foris DAX MT Limited through the Crypto.com App and was approved to use the Wallet on the 24th of June, 2021.*

² P. 26 - 30

- *The Company notes that in the submitted complaints file, [the Complainant] has outlined his desired remedy as: (i) compensation of 445.89 EUR for a previously completed digital asset sale.*

Timeline:

15 February, 2024 - *The Complainant sold 125000 VET in exchange for 4717.86 EUR. For additional context, VET is the native cryptocurrency token of the VeChain platform.*

Please find the details of this sale here below, as well as a screenshot from our system labelled Fig. 1 in the Appendix provided at the end of this letter:

ID	Status	Type	Native currency	Total	Exchanged to	Timestamp
1344653257	Done	Crypto Sale	VET	-125000	4717.86 EUR	Thu, 15 Feb 2024 15:47:31 GMT

The above-mentioned sale was executed at a price of 0.03774287481341886215 EUR per 1 VET as visible on the screenshot appended under Fig. 1.

Kindly note that the full information relevant to the exchange, including the price it would be executed at and the total amount of EUR to be received, was presented up front to The Complainant within the App prior to finalizing his sale. Said information is displayed within a confirmation screen shown prior to the completion of any exchange of currency, both digital and fiat, in the App.

A screenshot showing how the above-mentioned confirmation screen looks within the App has been provided for your reference under Fig. 2 in the Appendix. While this is not the exact screen that The Complainant was presented with, as he exchanged a different amount of VET, the Complainant was provided with the same type of information as visible in our example screenshot.

Please note that any digital asset to fiat conversion, such as the one requested by the Complainant, can only be completed after explicitly confirming agreement with the presented price by clicking the "Confirm" button. As the Complainant has accepted our

quote presented via the confirmation screen, the exchange was executed, and The Complainant received the corresponding amount of EUR within his Fiat Wallet.

It should also be noted that the Crypto.com App services are intended for beginner traders and any trades are executed instantly with the available order book at the time of the transaction, as outlined during the final 15-second confirmation screen.

Kindly note that there are no restrictions in place on the Complainant's account which would prevent digital asset to fiat sales, the Complainant is at liberty to proceed with such transactions at his convenience and comprehensive details pertaining to the requested exchanges will be promptly furnished to him through the App. Moreover, the Complainant retains the option to transfer his digital assets externally without the necessity of exchanging them.

In addition, The Complainant also has the option to utilize the services of the Crypto.com Exchange platform. This platform provides a comprehensive view, complete with candlestick graphs and additional order options, enhancing transparency in real-time trade executions.

Based on our investigation, the Company is of the opinion that we are unable to honour the Complainant's compensation request, based on the fact that the above-mentioned transaction has been confirmed and accepted by the Complainant himself. The Company was merely adhering to the Complainant's instructions and providing the technical service of exchanging the Complainant's digital assets. Information about all details relevant to the transaction has been provided to the Complainant and he has explicitly provided his confirmation and approval of its execution.

We remain at your disposal for any further information you may require pertaining to the above case."

Hearings

For the first hearing of 28 October 2024, the Complainant did not appear. Consequently, the case was deferred to a later date.

During the second hearing of 26 November 2024, the Complainant submitted:

"I say that I am a young, new investor. I have experience with investing for around the last five years. I started first with this company, Crypto.com.

Crypto.com was an easy application, famous, sponsoring a lot of big brands. I think I saw their logo in Formula One also. So, I guessed it was a reliable company and I put my money there and I invested in some cryptocurrencies.

Indeed, I was doing well. I was winning in many cases some money. Every time that I looked at my amount, at my profit, it was showing me a specific number, let's say, €10,000. Let's say it was showing me that my worth of money right now is €10,000.

Every time that I wanted to sell my cryptocurrencies, the screen from €10,000 showed me that now I will only get €9,100. Something like this; so it was missing a big part of the money that I was seeing on the first screen.that was showing me my balance, maybe around 8% or 9% difference which for me is a huge percentage because nowhere is written that Crypto.com is taking 8% or 9% of commission. That's a huge amount of money, especially for people who are playing way bigger amounts.

The price of the specific crypto, if I remember correctly, was VeChain (VET) one of the coins that I sold. It was a surprise. I don't know if you have the screenshots I sent you many months ago, and I don't remember the exact price. Maybe it was around 43 cents or something like this, 46 cents or 43 cents. I don't remember exactly. Maybe you have the proofs in front of you.

And from 33 [43?] cents, for example, when it's time to sell, it shows that now it's 39 cents; from 43 cents to 39 cents. And I said to them that this coin never reached that price. It never dropped so much. So, what's going on? Is it a scam? Are you getting percentages that are hidden, commissions that are hidden? Because I never saw anywhere in the Terms and Conditions that you take such a huge percentage of 8% or 9%. And in some cases, it can even be more, 10% or 12%. It depends on the amount.

Anyway, when I contacted the Customer Support, I felt that a robot is answering me. Answering the same things and sending me links to read their terms and conditions, I read the terms and conditions; I never saw anywhere 8% or 9%. They say something about 0.0 something percent; or they always advertise these minus percentages that 'We only get 0.0 something percent or zero point whatever percent commission. So, you will make plenty of money with us!', that's the advertisement.

So, that didn't happen, and I have to mention something which is their biggest argument. When you are going to sell something, you see a price. Let's say, I see, as I said, €10,000. When I'm going to sell, they say, 'Well, if you sell now, you will get only

€9,000.’ I am just giving an example right now. And you have no other choice, and you have to press the button. They will say as an argument, ‘Yes! But you saw in your screen that it was €9,000 and you agreed, and you pressed the button.’ Correct, I pressed the button, but I had no other choice because if I leave the coin keep going without selling, the price might drop, and I might lose more money.

So, I had no other choice but selling it because this price is fluctuating, it’s going up and down. So, when a crypto goes up, you want to sell, and when the moment comes that you want to sell, they show you a price of 8% or 9% less money that you will get. And then they say, ‘But you saw what was on your screen. It was clear in your screen.’ In my screen. It was clear. But it doesn’t mean that this is against the rules, and they get this commission, which is unreasonable, and which is nowhere written in the terms and conditions. And, if I do not sell it, the price would drop even further, and I lose more money. That’s my position.”³

The Arbiter asks the Complainant whether, by way of remedy, he is requesting a compensation of €445.89 being the difference between the normal charges when trading and the high charges being referred to above. The Complainant affirms that this is correct.

Under cross-examination, the Complainant answered:

“It is being said that I have stated in my evidence that I did see a screen very clearly before I purchased or I sold my cryptocurrency, confirming the price I was going to receive for it. And that I clicked that ‘Accept’ and I agreed to sell it for that price, which I eventually received.

Asked whether this is correct, I say, correct.

Also, that I said that I had no other choice but to sell because I was afraid that the price might have dropped or fallen if I didn't sell.

I say, most probably.

It is being put to me that this wasn’t my only choice of dealing with these coins. For example, I could have transferred, sent these coins to another platform if I was unhappy with the price that Crypto.com was quoting to me; I could have transferred

³ P. 32 - 34

my tokens to another exchange, for example, and sold my coins there if I believed that I could get a more appealing price.

I say, I had this choice. I'm not sure if I could do that while my position was open before I close it.

It is being said that if I did not choose to go through with the sale of my coin, I could have cancelled my sale, said that I do not agree, and I could have transferred my cryptocurrency to another platform if I was unhappy with the price quoted to me.

I say I'm not sure if I could transfer my tokens while my position was open before selling them, owning them, and then transfer them since my position was open in Crypto.com.

It is being said that I held cryptocurrency, a balance in my account. I could have simply withdrawn them to another account on another exchange and sold them there.

I say I wasn't informed that I can do that while my position is open. I thought I should sell, close my position and then transfer my cryptos.

Asked what I mean by my position was open, I say that when you open a position in a specific price and this price increases, then you can sell your crypto and get some profit, or if it goes down, you're losing.

No, I wasn't aware that they can do this transfer.

It is being said that I have done previous transactions, and I did very well in those transactions, that I was successful in previous transactions with Crypto and that I was doing quite well, and I was happy with the way things were going. And that this is the one occasion which I am now complaining about, the commission taken by Crypto.

I am being asked whether this is the same commission that was also taken when I was doing well and when I was doing very well and is it not the same amount as it is now. So, why I am questioning the commission now when I lost the money rather than when I was doing very well when this is exactly the same amount.

I understand clearly this question. A very good question. And, indeed, it happened also in the past with other cryptos. I remember even the name Icon ICX was one of them with the big difference of thousands of euros.

At that moment, I was so confused when I saw the price and I thought, 'Hmm. Maybe it's the difference between dollars and euros because it showed me the price in dollars and in my balance, I was watching it in euros. And I thought it was maybe some mistake of my understanding between dollars and euros. Maybe it's this currency difference, but then I did it again. And I saw the same, again, this big difference that I'm telling you of 8%/9%. And again, I'm seeing a big difference in previous sales.

And again, I was so in a hurry to get the profit because it was a good moment that I was selling it even though I was seeing a way less number, a €1,000, a €1500, way bigger compensation that I'm asking for right now. But at the last moment, my transaction with the last Coin VeChain. I thought 'OK, that's enough. Maybe I'm not an idiot. I will pay attention to this thing.' I see some big differences and then I pay attention and indeed 100% was less the money that I received with this difference of percentages, probably commission, I guess from the company. And it was dollars and dollars.

So, after multiple sales, I noticed that OK, indeed there is a big gap and I'm taking less money and I should address it and see what's going on here because with my calculations, if I was making €100,000, they would take a commission of €10,000 or €12,000, which is a huge amount of money if they are taking that from millions and hundreds and thousands of people. So, yes, if I answer your question, I paid attention, I noticed it earlier, but I wasn't sure if it's the difference from the currency or it's just the commission.

The Arbiter would like to make it clear that the complaint is about this particular transaction and, in fact, he asked the question about what is the complainant seeking, which is the amount mentioned earlier. So, whilst noting that there could have been other transactions which suffered the same fate, they are not part of this complaint."⁴

During the third hearing on 4 February 2024, Mr Julian Yeung, on behalf of the Service Provider, submitted:

"I think that we don't have to go over the facts of the case because I don't think there is a dispute. A sale happened and the dispute is as to whether the sale was properly quoted.

⁴ P. 34 - 36

We have already filed evidence at the beginning of these proceedings in digital format as to what the sale transaction user interface would look like. (page 5 attached with the reply). I apologise I don't have the date with me, but it is the very first file we filed in response to the claimant's file.

You can see that when the sale is triggered, there is an immediate quote of what the full amount would be and what the rate would be as well as what the total cost of him receiving the sale of the tokens would be. Now I'm very open in saying that, of course, Crypto.com does make money on a transaction. It's very common that we make our money based on the purchases and sales of cryptocurrency and, for very obvious reasons, the price at which we buy and the price at which we sell is different.

However, it's made very clear to the user how much they are due to receive in our platform at the moment the sale is transacted. So, if the user has paid attention to every page of the sale, including this very last one, which he has to press confirm on, and a quote is given, a full amount is given, the individual rate of the individual unit of cryptocurrency is quoted and the total cost that he has to be remitted as a result of the sale is also quoted very clearly.

So, on that basis, we would say that there's been no misleading, no misleading circumstances, no misrepresentation. In this case, the complainant's sale of a total of 125,000 VET currency was quoted at €4,117.86, and that's exactly what he received. So, that's what we would say about this transaction."⁵

To clarifications sought by the Arbiter, Mr Yeung answered:

"Asked by the Arbiter whether there is anywhere on our website or official documents where a client can know beforehand, not when he's actually doing the transaction, what our tariff of charges is, I say that I do not believe it is publicly stated.

What is stated, however, is the price at which he transacts on. The complainant has positioned himself as having no choice. That's not quite true. He doesn't have to conduct a sale on our platform. He is free to transfer the cryptocurrency which he holds to any platform that he has control over an account with.

The Arbiter asks whether or tariff of charges is available anywhere to our customers so that they can know what charges to expect when they make a transaction.

⁵ P. 37 - 38

I think there is a discrepancy and certainly that it is not fair to call this a charge. The sale of cryptocurrency depends on various factors including liquidity; and that's true of any exchange or any situation. When you buy and sell a stock or an equity on Exchange, it is matched at the price in which you place an order. In our circumstance, we quote you what the price will be and you're free to accept it or not accept it. It's a terminal number of factors which cannot be stated as a percentage.

The Arbiter states that my answer to his question is that there is no price list or tariff which a client can check before entering the transaction, and that he can only see the price of the transaction and the charges involved at the time he's doing the transaction and, then he decides whether to do it or not to do it. And if he doesn't want to do it, he can transfer the asset to another platform.

I say that it is not a tariff, it's simply a price we quote you for the purchase and sale of a commodity. It's not a tariff.

The Arbiter says that he deals with banks and banks have tariffs you can check before you do the transaction or before you change currency and asks whether we have an official tariff which a client can check like banks have.

I don't think it's entirely right to say that there is a list of tariffs for currency exchange; even in the currency exchange situation you are offered a buy price and a sell price. And you choose to transact at that price, and you're not charged the service fee in most circumstances by a bank for conducting a transaction at a quoted price. A service charge is something you charge on top of a transaction. We don't charge any service fees on top of the transaction. We simply offer you the price. So, the reason why no tariffs are set out is because there is no tariff.

The Arbiter states that banks do have a tariff which is available, and one knows what margins are built in the buy and sell rate of currency exchanges, but it doesn't apply to cryptocurrency transactions.

Asked if that is what I am saying, I say, yes. If you look at the screenshot that we provided on page 5, it clearly states what the rate is, and it says also that there's zero fee. So, I would dispute the fact that a tariff is charged. We quote you a price and the price can be accepted, or you can wait, or you can transfer, or you can go somewhere else.

When we charge a fee, for instance, for the transfer of cryptocurrency, those fees are listed, but there is no tariff in this case because you're quoted the price and then, the execution of the transaction occurs at the price which you're provided with.

The Arbiter says that we are a commercial enterprise, and we have to earn our money. So, even if we say no fee, there is a margin which is built in the rates.

I say that it's a margin which is built in the rates, but that is not a tariff. It's simply the price of the transaction. You can choose to execute that A or B. That's the price.

The Arbiter says that his question was whether there is a published tariff where one can check what is normal as a margin to build up in the rate before entering the transaction and my answer is no.

I say, no, it's not the practice in this industry for there to be a margin worked into a centralised exchanges transactions."⁶

Final submissions

The final submissions of the Complainant were made verbally as follows:

"Mr Julian Yeung said that there is a liquidity subject that this difference of price of 8% or 9% percent, sometimes 10%, is a huge margin between the money that I had to get versus the money that I will receive when I sell. There is a big gap of 8% to 10%. He said that this is a matter of liquidity, and every exchange does that. I disagree with that because this is a huge percentage.

I think I sent my statements also that I didn't receive any information that I can transfer. When I contacted their charge support, nobody told me you can keep your currencies and transfer them. I was not given that information. I learned that afterwards, after I sell my positions."⁷

The Service Provider filed their note of final submissions in writing⁸ where, in essence, they reiterate that the Complainant performed the disputed transaction himself and accepted the quoted price by submitting the transaction.

⁶ P. 38 - 39

⁷ P. 40

⁸ P. 41 - 42

They maintained that Crypto.com does not charge tariffs or transaction fees in the traditional sense that a banking institution would. A bank charges fixed fees for certain transactions which can easily be listed.

However, the Service Provider's profit is derived from the exchange of cryptocurrency in which transaction rates and prices are highly variable depending on factors such as the cryptocurrency being traded, the liquidity of the cryptocurrency, volatility, etc. Therefore, an accurate price can only be provided immediately before a transaction is made.

The Service Provider holds that in carrying out these transactions, it merely carried out the Complainant's transactions as instructed, to the terms and price agreed to by the Complainant and thus, in its view, the latter should not be entitled to any compensation.

Analysis and considerations

The complaint basically is that the spread that is applied on cryptocurrency trades by the Service Provider is too wide, leading to unfair erosion of some 9% between the market price and the sale price.

The Service Provider argues that such a spread is normal in the industry because the crypto market is highly volatile and, in some cases, quite illiquid so they have to build such factors in establishing the spread.

From a simple internet research, it would result that the factors affecting the spread are:

- 1. Market Volatility:** The more volatile the market, the wider the spread tends to be. This is because higher volatility increases the risk for market makers, leading them to compensate by setting a larger spread.
- 2. Liquidity:** Liquidity is about how easily a cryptocurrency can be bought or sold in the market without affecting its price. Highly liquid cryptocurrencies usually have tighter spreads, as there is a steady flow of buy and sell orders.

- 3. Trading Volume:** A high trading volume indicates a lot of trading activity, which typically results in a narrower spread. More activity means more buyers and sellers, which often leads to a more competitive and tighter spread.
- 4. Market Demand and Supply:** The basic economic principles of demand and supply also play a role. If a cryptocurrency is in high demand, the spread might narrow as more traders are willing to buy and sell at prices closer to each other.
- 5. Time of Day:** The spread can also vary depending on the time of day. During peak trading hours when more traders are active, the spread is likely to be tighter due to increased liquidity.
- 6. News and Events:** Significant news or events can cause sudden shifts in market sentiment, leading to changes in the spread. Positive news might narrow the spread due to increased buying pressure, while negative news could widen it.

Decision

Given the high volatility of cryptocurrencies generally, and VeChain in particular, it is hardly surprising that traders have to build a much wider spread in their quotations than is, for example, applicable in popular currency trading pairs.

As an example of very high volatility, in the last 3 months, VeChain traded at a low of USD 0.01936 on 5 Nov 2024, to a high of USD 0.0775 on 4 Dec 2024, and is trading at USD 0.032 (19 February 2025).

Whilst the Arbiter understands how Complainant may have developed a perception of overcharging, the Arbiter cannot fault Crypto.com for building wide spreads to protect against risks of illiquidity and volatile trading.

Cryptocurrency trading is now a competitive market and customer has a choice to seek the best terms available on different platforms and transfer his assets according to his best advantage. However, once the term of the trade is disclosed and accepted at the dealing stage, it cannot be contested at a subsequent stage.

The Arbiter is accordingly dismissing this complaint and orders each party to carry its own costs of these proceedings.

A copy of this decision is being sent to the Malta Financial Services Authority (MFSA – the Regulator of the Service Provider) for them to consider any regulatory aspects they consider necessary for Service Providers to improve disclosures of their tariffs and deal pricing.

Alfred Mifsud
Arbiter for Financial Services

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.