

Before the Arbiter for Financial Services

Case ASF 224/2024

OK

(the 'Complainant')

vs

Foris Dax MT Limited

C-88392

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

Sitting of 28 March 2025

The Arbiter,

Having considered in its entirety the Complaint filed on 28 November 2024, including the attachments filed by the Complainant,¹

The Complaint

Where, in summary, the Complainant claims that Crypto.com failed to honour a reward promised in their marketing campaign which he claims he was entitled to when it fell due on 19 October 2024.

He claims that after complaining to the Service Provider, they delivered the reward by awarding 4800 units of CRO digital assets based on the price prevailing on 22 November 2024. Service Provider stated the award was an exception as they argued the Complainant was, in fact, not entitled to any reward based on the terms and conditions of the campaign.

¹ Complaint Form from page (p.) 1 - 7, with additional documents from p. 8 - 25

The Complainant remained unhappy with the offer as he maintained that the award should have been calculated on the CRO price of 10 October 2024 and this would have entitled him to 10,180.75 units of CRO.

By way of compensation, he demanded to be reimbursed for the full 10,180.75 units of CRO as well as a payment of €2,000 as compensation for the time and energy lost and stress he claims to having suffered through the Service Provider's failure to honour the reward as promised in their campaign. He also demanded a letter of apology.

Reply

In the reply of 16 December 2024,² the Service Provider gave a detailed explanation why the Complainant was, in their opinion, not entitled to any reward as the criteria set in the promotion were not met, but stated:

“Regardless, since customer was misinformed by CS that he eligible, we’ll grant exceptional handling to the customer, and credit him the CRO within the next 2 weeks.”³

However, they insisted that they were right to calculate the reward on the basis of the exchange rate for the CRO token distribution (was) determined at the time of the credit, in accordance with the promotional terms of use.

Hearing

At the hearing of 19 February 2025,⁴ the Service Provider raised a preliminary plea on the competence of the Arbiter to hear and adjudicate this complaint on the basis that the complaint relates to a promotion campaign which was not related to any financial product or service offered to the Complainant.

At the request of the Arbiter, Service Provider made written submissions⁵ elaborating their plea about the Arbiter's non-competence to hear and adjudicate the complaint in question.

They submitted:

‘C. The competence of the Arbiter for Financial Services

² P. 31 - 35

³ P. 33

⁴ P. 36 - 37

⁵ P. 40 – 54

- (8) *The Service Provider contends that according to Chapter 555 of the Laws of Malta, the Arbiter is competent to hear disputes which relate to financial services offered or provided to an eligible customer and it is not within his competence to determine whether the calculation of a reward is apt or whether the eligibility criteria of a reward are fair. In fact, the Parliamentary debates leading to the promulgation of Act XVI of 2016 (which lead to the government wanted to create an Ombudsman for Financial Services which will be an independent adjudicating body competent to investigate and decide upon disputes arising between investors and financial service providers and not entrants and marketing campaigns.⁶*
- (9) *Reference is made to Jean Luke Azzopardi vs BNF Bank p.l.c. (COA – 13.10.2021) where the Courts clarified that the Arbiter’s competence is limited to that established by law and specifically stated that ‘Din il-Qorti mill-ewwel qiegħda tagħmilha ċara li mhux kull imġiba ta’ provditur tas-servizz finanzjarju tista’ jew għandha tiġi mistħarrġa mill-Arbitru, anki esklussivament, altrimenti l-Kap. 555 kien jagħti kompetenza assoluta, iżda l-għan ta’ din il-liġi ma kienx dan.’*
- (10) *The Service Provider contends that if the Complainant feels that the challenged campaign conveys a deceptive CRO calculation message to entrants, then the complaint ought to be classified as an alleged breach of marketing obligations under the Consumer Affairs Act or a contractual dispute which falls within the competence of another adjudicating body and not the Arbiter. The Service Provider refutes the allegations made by the Complainant and it is the Complainant who must bring evidence to demonstrate that the advertising of the campaign is either false or misleading.*
- (11) *The Complainant’s grievance arises from participation in a promotional campaign and its associated rewards scheme, which is **not** a regulated financial service or product within the meaning of applicable financial services legislation. The dispute does not pertain to the provision of financial*

⁶ “Onor. E. Scicluna: ‘B’konsultazzjoni mal-MFSA nwaqafu Ombudsman għas-servizzi finanzjarji bil-għan li jassumi l-funzjoni, jinvestiga l-ilmenti tal-investituri u dispute bejn l-investituri u istituzzjonijiet finanzjarji, filwaqt li jkollu s-saħħa legali li jagħti sentenzi eżekuttivi. Dan bil-għan li l-investitur ikun aktar protett u l-kors tal-gustizzja jkun wieħed aktar mgħaġġel u f’waqtu.’ – Seduta Nru 295, 20 ta’ Lulju 2015.

advice, credit, banking, insurance or any other regulated financial service, but rather to the discretionary terms and conditions of a promotional reward program. Accordingly, the Arbiter lacks competence to adjudicate this matter, as it falls outside the scope of its statutory mandate.

- (12) *Furthermore, the fact that the terms and conditions governing the reward scheme expressly refer to the Marketing Privacy Policy reinforces this understanding. This reference confirms that the reward scheme is promotional in nature and not a financial service, further corroborating that the Complaint does not fall within the jurisdiction of the Arbiter.*
- (13) *If the Arbiter were to determine that the Complaint concerns the rate of exchange applied by Crypto.com, this must be seen in the context of a specific promotional campaign during a defined campaign period. This exchange of rate formed part of the promotional offer and was not related to any financial service regulated under Maltese law. The determination of the exchange rate within a marketing initiative is a commercial decision made at the sole discretion of Crypto.com and does not constitute a financial service, investment service or any other regulated activity within the remit of the Arbiter. The Arbiter, as established under Chapter 555 of the Laws of Malta, is limited to determining complaints concerning financial service providers in the execution of their regulated activities.*
- (14) *The Complainant has not demonstrated that the alleged grievance pertains to any breach of financial services regulations or any failure in the provision of a regulated financial service. Instead, the Complaint concerns the internal mechanics of a promotional offering within which it was made clear to entrants that Crypto.com was under no obligations to provide a specific exchange rate outside the scope of the campaign's terms.*

D. Conclusion

- (15) *In light of the above, Foris DAX respectfully requests that the Arbiter declares itself incompetent to hear this Complaint, as it falls outside its statutory jurisdiction. The matter pertains to a marketing initiative and not a regulated financial service, and as such, any dispute concerning it should not be*

investigated or adjudicated by the Financial Services Arbiter. Accordingly, the Service Provider requests that the Complaint be dismissed in limine.⁷

The Complainant was requested to submit his reply contesting the Arbiter's claimed non-competence but failed to do so within the set time

Decision

The Arbiter considers that the Service Provider's claim of his not having competence to adjudicate a matter concerning marketing terms and conditions not related to any financial service or products, has merits and is accordingly dismissing the Complaint without further considering its merits.

This is without prejudice to the Complainant's right to seek justice in a court or tribunal competent to hear his case.

Parties are to carry their respective cost of these proceedings.

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.

⁷ P. 42 - 43

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.