

## Before the ARBITER FOR FINANCIAL SERVICES

**Case ASF 012/2023**

**AB**

**(the Complainant)**

**Vs**

**DLocal Limited**

**Reg. No C 77538**

**(the Service Provider or DLocal)**

**Sitting of 21 July 2023**

**The Arbitrator,**

### **The Complaint**

Having seen the Complaint<sup>1</sup> filed by the Complainant on 3 February 2023, wherein it is claimed that he:

*“has concluded on the <https://payop.com> website an agreement of receiving intermediary payment services. DLocal was a paying agent in this case. DLocal participated in the payment process as Payop’s intermediary. All payment transactions were acting on behalf of DLocal. The AB account was blocked in August 2021 without any justified reason. AB knows that DLocal has chargeback to the end users, but AB has returned to end users items. After the block of the AB account, he is not able to get back money on the account”.*

He claims having US\$ 19,698.01 in funds on account and the Service Provider has not given any reason for not releasing these funds to the Complainant. Nor

---

<sup>1</sup> P. 1 -21

have they informed the Complainant what needs to be done to unblock the funds. He further claims that the Service Provider is practically ignoring his requests for information.

As a remedy, the Arbiter was asked to order the Service Provider to refund the blocked amount to the Complainant.

### **The reply of the Service Provider**

Having seen the reply<sup>2</sup> of the Service Provider of 23 February 2023, wherein they state that:

1. DLocal is a Financial Institution licensed by the MFSA to undertake payment services in terms of the Financial Institutions Act.<sup>3</sup>
2. The Complainant was not an Eligible Customer in terms of Act CAP 555.
3. The Complainant has by his own admission entered into a relationship with an entity by the name of PayOp which is a client of DLocal to whom they provide payment services.
4. The Service provider is not aware of the terms of the relationship between the Complainant and PayOp and certainly is not involved in chargeback for card payments claimed. Consequently, DLocal claims it is not the proper defendant and the Complaint should be addressed to PayOp not to DLocal.
5. Complainant has not provided evidence that he can be deemed a 'Customer' in terms of Act CAP 555 (apart from not being an 'Eligible Customer') as he is a business customer but did not bring any proof of being a 'micro enterprise' as defined by Act CAP 555.
6. That Services Provider has accordingly not blocked any funds it holds in the name of the Complainant and has no knowledge of the ultimate ownership of any funds that may be held in the account of PayOp.

---

<sup>2</sup> P. 27 - 28

<sup>3</sup> CAP 376

7. DLocal has always acted in line with its regulatory and legal obligations to the highest standard and refutes allegations of wrongdoing as claimed by the Complainant.

### **Hearing**

The Arbiter held a hearing on the 30 May 2023 where the parties basically restated their case. On cross-examination, the representative of the Service provider stated that:

***“we have reviewed our records and there is no amount retained to PayOp. We do not owe money to PayOp”.***<sup>4</sup>

When asked by the Arbiter whether he has a signed agreement with the Service Provider, the representative appearing on behalf of the Complainant replied:

***“the client has conducted an agreement with PayOp online. There is no such agreement with DLocal”.***<sup>5</sup>

The Arbiter then ordered the Complainant to file a note with evidence that he is an ‘eligible customer’ of the Service Provider and ordered the Service Provider to reply to such note of submission by the Complainant.

Before entering the merits of the case, the Arbiter wants to decide about the preliminary pleas raised by the Service Provider about whether the Complainant can be considered as an ‘eligible customer’ in terms of Act CAP 555.

### **Final submissions**

The Complainant, while providing no evidence whatsoever of his being an eligible client of the Service Provider, still maintained that:

***“there is no doubt that DLocal has blocked AB account. There is outstanding AB payments, which DLocal must pay back to AB.”***<sup>6</sup>

In support, the Complainant submitted extensive exchanges between the Complainant and PayOp<sup>7</sup> which in essence seem to indicate that PayOp is

---

<sup>4</sup> P. 34

<sup>5</sup> *Ibid.*

<sup>6</sup> P. 37

<sup>7</sup> P. 38 -76

explaining that the funds that the Complainant is demanding refund for, have been eroded by chargeback claims for card payments.

In their final submission response, the Service provider again stressed that the complaint against them should be dismissed as the Complainant is not an eligible customer and that the dispute is between the Complainant and PayOp, which they claim is not a Maltese entity. In support, they also provided a letter dated 28 June 2023 from PayOp addressed to the Complainant where it is emphasized that the Complainant is a client of PayOp and not of DLocal,<sup>8</sup> and that:

**“PayOp or DLocal has no control over this over card schemes since the final decision on such disputes is not up to PayOp or DLocal ... PayOp is not providing any marketplace or escrow services and does not guarantee any protection against chargebacks. Neither PayOp, nor DLocal are responsible for any chargebacks and do not provide any guarantee, anti-fraud services or any similar chargeback protection to you.”<sup>9</sup>**

### **Analysis and consideration**

In essence, this is evidently a dispute between the Complainant and a third party who is a client of the Service Provider. The dispute seems to be caused by the fact that the number of chargebacks on card payments eroded the balances which the Complainant claims as due to him for the sales.

The Complainant maintains that the chargebacks are fraudulent as the goods have been properly delivered to their clients. PayOp claim they have no control over these chargebacks, and their representations to avoid such chargebacks were unsuccessful and, in any event, they never offered any guarantee or indemnity against such chargebacks. They maintain that it is the merchant’s responsibility to avoid doing business with high-risk regions which generate a disproportionate number of chargebacks.

**The Arbiter has no role in deciding whether the alleged fraud is due to chargebacks being generated by fraud of Complainant for not sending the**

---

<sup>8</sup> P. 82 “On behalf of PayOp we clearly confirm that DLocal is not a party in our arrangements and agreements with you, does not provide any services to you and cannot be responsible for any disputes arising from our cooperation”.

<sup>9</sup> P. 81

**goods that he was paid for, or by fraud from card holders who make abusive chargeback claims. In any event, the exact terms of the relationship between the Complainant and PayOp are irrelevant to this Complaint against DLocal.**

So, the Arbiter needs to decide on the preliminary plea of the Service Provider that the Complainant is not an ‘*eligible customer*’ in terms of Act CAP 555 and, therefore, the complaint should be dismissed on the basis that the Arbiter has no competence to hear it.

### **The Arbiter’s competence**

Article 22(2) of Chapter 555 of the Laws of Malta (‘the Act’) stipulates that:

*“Upon receipt of a complaint, the Arbiter shall determine whether the complaint falls within his competence.”*

Moreover, in virtue of Article 19(1) of the Act, the Arbiter can only deal with complaints filed by **eligible customers**:

*“It shall be the primary function of the Arbiter to deal with complaints filed by **eligible customers** through the means of mediation in accordance with Article 24 and, where necessary, by investigation and adjudication.”*

The Act stipulates further that:

*“Without prejudice to the functions of the Arbiter under this Act, it shall be the function of the Office:*

*(a) To deal with complaints filed by **eligible customers**.”<sup>10</sup>*

Thus, the Arbiter has to primarily decide whether the Complainant is in fact an **eligible customer** in terms of the Act.

Article 2 of the Act defines an ‘*eligible customer*’ as follows:

*“a customer who is a consumer of a financial services provider, or to whom the financial services provider has offered to provide a financial service, or who has sought the provision of a financial service from a financial services provider.”*

### **Decision**

---

<sup>10</sup> Article 11(1)(a)

The Complainant has not only not provided any evidence of his being a client of the Service Provider but has in fact admitted that he is a customer of a customer of the Service Provider and not of the Service Provider itself.

Considering the above and having reviewed the circumstances of the case in question, it is evident that there was no contractual relationship between DLocal and the Complainant.

The Complainant was not '*a customer who is a consumer*' of DLocal, neither that DLocal '*has offered to provide a financial service*' to the Complainant, nor that the Complainant '*has sought the provision of a financial service from DLocal for the purposes of the Act.*'

**Accordingly, the Complainant cannot be deemed an '*eligible customer*' in terms of Article 2 of the Act.**

**The Arbiter therefore decides that he does not have competence to deal with the merits of this complaint which is consequently dismissed.**

Considering that the case was decided on a procedural issue, each party is to bear its own costs of these proceedings.

**Alfred Mifsud**  
**Arbiter for Financial Services**