IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 213

Originating Application No 442 of 2024

Between

Sentek Marine & Trading Pte Ltd

… *Applicant*

And

Maritime and Port Authority of Singapore

… *Respondent*

JUDGMENT

[Administrative Law — Judicial review — Irrelevant considerations]
[Administrative Law — Judicial review — *Wednesbury* unreasonableness]
[Administrative Law — Natural justice — Procedural fairness – Sufficient information and opportunity to present case]

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Sentek Marine & Trading Pte Ltd
v
Maritime and Port Authority of Singapore

[2024] SGHC 213

General Division of the High Court — Originating Application No 442 of 2024
Valerie Thean J
11 July 2024

27 August 2024 Judgment reserved.

Valerie Thean J:

Introduction

1 The applicant, Sentek Marine & Trading Pte Ltd ("Sentek") is in the business of supplying bunkers to vessels calling at the Port of Singapore.[1] In this judgment, "bunkers" refer to fuel supplied to vessels for propulsion or operations and includes marine gas oil.[2] The respondent, the Maritime and Port Authority of Singapore (the "MPA"), is the statutory body charged under the Maritime and Port Authority of Singapore Act 1996 (2020 Rev Ed) ("MPA Act") with the duty to issue licences to regulate the sale and supply of fuel to vessels. On or around 8 September 2013, the MPA issued to Sentek two

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1 Affidavit of Mr Pai Kim Teck dated 8 May 2024 ("Applicant's Affidavit") at para 4.

2 Affidavit of Mr Ranabir Chakravarty dated 20 June 2024 ("Respondent's Affidavit") at para 7.

licences: (a) the Bunkering (Bunker Supplier) Licence No 93167 (the "Bunker Supplier Licence") and (b) the Bunker Craft Operator Licence No C95020 (the "Craft Operator Licence". These licences will be referred to collectively as the "Licences").[3] From 8 September 2013 until 31 August 2022, the Licences were renewed eight consecutive times, up to the period ending 28 February 2023.[4] MPA's decision not to renew the Licences thereafter is the focus of this judgment.

Background

2 The events that culminated in MPA's decision arose sometime earlier. After a representative from Shell Eastern Petroleum Pte Ltd ("Shell") filed a police report on 1 August 2017, the police started investigations into a series of offences linked to the misappropriation of gas oil from Shell's Pulau Bukom facility.[5] I refer to the series of offences in this judgment as "the Bukom Events". In January 2018, 14 men were charged in relation to the Bukom Events.,[6] Two, Mr Ng Hock Teck and Mr Alan Tan Cheng Chuan, were employees of Sentek. Sentek terminated their employment that same month.[7]

3 Subsequently, two vessels operated by Sentek, "Sentek 22" and "Sentek 26", were identified as vessels involved in the Bukom Events (see *Public*

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3 Applicant's Affidavit at para 8.

4 Applicant's Affidavit at para 9; Applicant's Written Submissions dated 3 July 2024 ("AWS") at para 23; Respondent's Written Submissions dated 3 July 2024 ("RWS") at para 7.

5 Applicant's Affidavit at para 12(a).

6 Applicant's Affidavit at paras 12(c)−12(d).

7 Applicant's Affidavit at para 12(d).

Prosecutor v Juandi bin Pungot [2022] 5 SLR 470 ("*Juandi*") at Annex A).[8] From 2020 to 2022, Sentek's then-Managing Director, Mr Pai Keng Pheng ("Mr Pai"), was also charged for multiple offences relating to the Bukom Events.[9] Thereafter, on 29 September 2022, 42 charges were filed against Sentek under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (2020 Rev Ed). The charges against Sentek alleged that, between August 2014 and January 2018, Sentek had received on board its vessels Sentek 22 and Sentek 26 a total of about 118,131 mt of marine gas oil (valued at over $US56 million) which had been dishonestly misappropriated from Shell, knowing that the marine gas oil was another person's benefits from criminal conduct.[10]

4 The MPA, concerned with the potential reputational damage to Singapore as a trusted bunkering hub, started its own investigation as to whether Sentek had complied with the terms and conditions of the Licences. They investigated, in particular, Sentek's compliance with the licence requirements for correct and accurate records.[11] On 30 November 2022 and 3 January 2023, the MPA issued to Sentek Notices to Furnish Documents and Information pursuant to s 10(1) of the MPA Act.[12] Sentek's response to both of these notices was that the documents had either been seized by the Singapore Police Force ("SPF") or had been discarded after the expiry of their regulatory retention period.[13] In response, the MPA required Sentek to write to the SPF to request

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8 Applicant's Affidavit at para 12(f).

9 Applicant's Affidavit at para 12(g); Respondent's Affidavit at para 9.

10 Respondent's Affidavit at para 10.

11 Respondent's Affidavit at paras 11−12.

12 Respondent's Affidavit at para 13; Applicant's Affidavit at para 10.

13 Respondent's Affidavit at para 13; Applicant's Affidavit at paras 14 and 19.

that the SPF provide, directly to the MPA, copies of the documents which the SPF had seized. Sentek obliged, and the MPA followed up with its investigations.[14]

5 In the meantime, the Licences were due to expire on 28 February 2023.[15] Sentek applied to the MPA (the "Applications") on 16 January 2023 for the Licences to be renewed.[16] On 27 February 2023, the MPA issued Sentek a Notice to Show Cause Against Proposed Rejection of the Renewal Applications (the "Show Cause Notice").[17] This notice referred to multiple breaches of the terms and conditions of the Licences ("the Breaches"). Sentek replied on 13 March 2023, and a series of letters between the MPA and Sentek followed.[18] Finally, on 1 April 2024, the MPA informed Sentek that the Licences would not be renewed and would expire on 31 May 2024 (the "Decision").[19]

6 In HC/OA 442/2024 ("OA 442"), Sentek applied for permission to commence an application for judicial review and, at the same time, for the following prerogative orders and declaratory relief:[20]

(a) A quashing order in respect of the MPA's decision to reject the Applications, communicated in the Decision.

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14 Respondent's Affidavit at para 13; Applicant's Affidavit at paras 15−16 and 20−21.

15 RWS at para 7.

16 Applicant's Affidavit at para 24.

17 Applicant's Affidavit at para 25; Respondent's Affidavit at p 148.

18 Applicant's Affidavit at paras 28–34.

19 Applicant's Affidavit at para 36.

20 RWS at paras 1−2; Originating Application HC/OA 442/2024 at paras 2–3.

(b) A mandatory order requiring the MPA to consider the Applications afresh.

(c) A prohibitory order preventing the MPA from rescinding the extension of the Licences that was granted on an interim basis (in the MPA's letters dated 27 February 2023 and 6 March 2023) pending fresh consideration of the Applications.

(d) Declarations that:

(i) The MPA ought to consider the Applications afresh.

(ii) The Licences extended on an interim basis subsist pending fresh consideration of the Applications.

7 In HC/OA 447/2024 ("OA 447"), Sentek applied for a declaration that the MPA's decision to reject the Applications is null and void and/or otherwise of no effect.[21] It also applied for an injunction in HC/SUM 1256/2024 ("SUM 1256") to restrain the MPA from acting upon, enforcing, and/or otherwise giving effect to the Decision, such that the Licences continue to subsist, pending the final disposal of OA 447.[22] SUM 1256 was eventually withdrawn by consent, as parties were able to agree to the extension of the Licences pending resolution of OA 442.

8 The permission application and the substantive merits of the judicial review application were heard together on a "rolled up" basis on 11 July 2024. In relation to the application for permission, it was not disputed at the hearing that Sentek possessed sufficient legal standing to make the application and that

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21 Originating Application HC/OA 447/2024 at para 2.

22 Summons for Injunction HC/SUM 1256/2024.

the matters raised were susceptible to the orders sought. The MPA submitted that there was no arguable case of reasonable suspicion.

9 In respect of OA 442, I was of the view that there was an arguable case of reasonable suspicion, and therefore gave permission to proceed with judicial review. I reserved judgment on the prayers relating to the substantive review, and I deal with these below. For OA 447, no orders were made as none were necessary.

Legal context and issues

10 The two Licences,[23] issued under Regulation 64 of the Maritime and Port Authority of Singapore (Port) Regulations, give the MPA wide discretion in considering whether to accept, either on terms or unconditionally, or to reject applications, both in relation to applications for fresh licences and for renewal of existing licences. The only contractual limitation on the MPA's discretion, with which the MPA complied, is that it must ask the licensee to show cause against a proposed rejection if it intends to reject an application to renew a licence (see cl 4.4 of the Bunkering Licence and cl 4.4 of the Craft Operator Licence).[24]

11 The parties therefore do not dispute that the scope of review is limited to the following:

(a) Legality: the MPA must exercise its discretion in good faith according to the statutory purpose for which that power was granted,

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23 Applicant's Bundle of Documents (Volume 1) ("1 ABD") at pp 170−179 (Bunker Supplier Licence) and pp 180−190 (Bunker Craft Operator Licence).

24 1 ABD at pp 173 and 184.

including, *inter alia*, that it must not take into account irrelevant considerations or fail to take into account relevant considerations (*Tan Seet Eng v Attorney-General and another matter* [2016] 1 SLR 779 ("*Tan Seet Eng*") at [80]).

(b) Rationality: the MPA must not make a decision that, despite falling within the range of legally possible answers (*ie*, satisfying (a)), is so absurd that no reasonable decision-maker could have come to it (*Tan Seet Eng* at [80]).

(c) Procedural fairness: the MPA must observe the basic rules of natural justice in its conduct of the show cause process, and in coming to its decision (see *Per Ah Seng Robin and another v Housing Development Board and another* [2015] 2 SLR 19 at [82]).

12 While Sentek initially raised the argument that it had substantive legal expectations which the MPA ignored,[25] it no longer pursued this point at the hearing.[26] Sentek's remaining contentions are that:

(a) The Decision was premised on irrelevant matters, of which there were two. The first was the Bukom Events.[27] The second was a false basis that Sentek terms the "Foundational Allegation".[28] This relates to

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25 Statement under Order 24 of the Rules of Court 2021 dated 8 May 2024 ("Applicant's Statement") at para 13.

26 Minute Sheet (11 July 2024). .

27 AWS at para 90.

28 AWS at para 89.

the MPA's statement, in its Show Cause Notice, that 45 out of the 73 Breaches involved the intentional falsification of records.[29]

(b) The Decision was unreasonable in the sense set out in *Associated Provincial Picture Houses, Limited v Wednesbury Corporation* [1948] 1 KB 223 ("*Wednesbury*"), in that no reasonable authority would have made the Decision. In this regard, Sentek points out that MPA was not limited to a binary decision of whether to renew the Licences or not. It had the power to impose appropriate terms and conditions on a renewal.[30]

(c) The Decision was procedurally improper. The MPA had breached fundamental tenets of natural justice. It did not inform Sentek specifically of the allegations that were being made against Sentek, and it did not afford Sentek a real opportunity to meet the case that was put against Sentek.[31]

Analysis

13 These contentions require examination of the background and process that led to the Decision.

The MPA's investigation and decision

14 Sentek contends that the Bukom Events were an irrelevant factor in the Decision. It is not disputed that the Bukom Events formed part of the

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29 AWS at paras 7−8.

30 AWS at paras 6 and 49.

31 AWS at paras 74−75.

background to the MPA's exercise of its discretion. After Sentek and Mr Pai were charged, the MPA issued to Sentek, on 30 November 2022 and 3 January 2023, Notices to Furnish Documents and Information pursuant to s 10(1) of the MPA Act[32] (see [4]). The first letter, on 30 November 2022, required Sentek to provide the following:[33]

(a) Terminal loading receipts or cargo receipt notes or motor lighter cargo receipt notes for Sentek 22 and Sentek 26 for all transactions between 1 August 2014 to 31 January 2018, dates inclusive (the "relevant dates").

(b) All bunker delivery notes ("BDNs") for bunker deliveries done by Sentek 22 and Sentek 26 between the relevant dates.

(c) Vessel logbook entries of Sentek 22 and Sentek 26 between the relevant dates.

(d) Stock movement record book entries or meter totaliser records of Sentek 22 and Sentek 26 between the relevant dates.

(e) Oil record book part 1 and part 2 entries of Sentek 22 and Sentek 26 between the relevant dates.

15 The second letter, on 3 January 2023, required Sentek to provide:[34]

(a) All bunker delivery notes or cargo transfer notes for every bunker or cargo delivered or transferred by Sentek 22 and Sentek

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32 Respondent's Affidavit at para 13; Applicant's Affidavit at para 10.

33 Applicant's Affidavit at para 10 and pp 327−328.

34 Applicant's Affidavit at para 10 and pp 331−332.

26, to any other MPA-licenced bunker tanker, between the relevant dates.

(b) Stock movement record book entries or meter totaliser records of all MPA-licenced bunker tankers that were owned or operated by Sentek for every bunker or cargo received from Sentek 22 and Sentek 26 between the relevant dates.

(c) Cargo receipt notes issued by all MPA-licenced bunker tankers that were owned or operated by Sentek for every bunker or cargo received from Sentek 22 or Sentek 26 between the relevant dates.

(d) BDNs issued for the delivery of bunkers to receiving ships by any MPA-licenced bunker tanker owned or operated by Sentek, that received bunker or cargo from Sentek 22 or Sentek 26 between the relevant dates.

16 Sentek granted permission for the MPA to access the documents from the SPF (see [4]). On 25 January 2023 and 7 February 2023, Mr Ranabir Chakravarty, a Deputy Director in the Standards and Investigation (Marine Fuels) Department of the MPA,[35] went with two colleagues to the SPF's office to inspect the documents.[36] They identified documents relating to Sentek 22 and Sentek 26 for the months of February and March 2017 as it appeared that these were the months for which the most documents were available for both the delivering and receiving vessels. They made copies of those documents and brought them back to the MPA's office for further review. Upon discovering various breaches within those two months, they also conducted further random

[35] Respondent's Affidavit at para 1.

[36] Respondent's Affidavit at para 14.

checks of the documents relating to Sentek 22 and Sentek 26 for other time periods in 2016 and 2017, to ascertain whether the breaches were isolated to February and March 2017. These random checks revealed further breaches.[37] It is therefore also not disputed that the MPA used only the documents which were in SPF's custody and only documents that were contemporaneous to the Bukom Events.

17 On 27 February 2023, the MPA sent Sentek the Show Cause Notice (see [5]). Sentek's allegations on the Foundational Allegation relate to this notice. The Show Cause Notice referenced various terms of the Licenses which obliged Sentek to ensure that accurate records were maintained and that no records be falsified. The Breaches, from February 2016 to November 2017, consisted of three categories:

(a) Failure to record deliveries and transfer of bunkers in the stock movement logbook: In such cases, the transfer was recorded in the stock movement logbook of the receiving vessel, but not the stock movement logbook of the delivering vessel.[38]

(b) Discrepancies in records: In such cases, the delivering vessel recorded, in its stock movement logbook and BDN, that a certain quantity of bunkers had been transferred; however, *in respect of that same transfer*, the receiving vessel recorded having received a *different quantity* of bunkers in its stock movement logbook and BDN.[39]

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37 Respondent's Affidavit at para 14.

38 *Eg*, Respondent's Affidavit at p 149.

39 *Eg*, Respondent's Affidavit at pp 150−151.

(c) Falsification of records: The MPA formed this conclusion because carbon copies of specific BDNs did not match.[40]

18 In its response on 13 March 2023 ("Response to Show Cause"), Sentek made the following points:[41]

(a) Sentek had an exemplary record through its 30 years of operation, and it would be illegitimate for the MPA to terminate Sentek's licence based on the Bukom Events.

(b) Rejecting the Applications would cause drastic and irremediable harm to Sentek and its inability to fulfil its ongoing obligations would also affect wider public interests.

(c) The Breaches were unknown to and undetectable by Sentek. They had been caused by the ex-employees of Sentek going on a "frolic of their own". No amount of vigilance or safeguards on Sentek's part could have prevented the Breaches.

(d) Sentek would be prevented by the ongoing criminal proceedings from conducting a proper investigation into the Breaches in two ways. First, the criminal proceedings prevented Sentek from communicating with its ex-employees. Second, as the documents on which the MPA based its allegations had been seized by the police, Sentek lacked access to the same.

(e) Sentek had implemented enhanced control measures following the Bukom Events.

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40 *Eg*, Respondent's Affidavit at pp 152−153.

41 Applicant's Affidavit at pp 382−391.

In its Response to Show Cause, Sentek did not explain precisely how the discrepancies between the carbon copies had come about.

19 The MPA responded to Sentek's solicitors, Lee & Lee, on 29 May 2023. The MPA offered to do the following to address Sentek's concerns at [18(d)]. First, it offered to make arrangements for Sentek to "expeditiously view" the relevant documents. Second, it asked for the names and NRIC/FIN numbers of the ex-employees that Sentek wished to interview, their roles at the relevant time, the questions that Sentek intended to pose to each of them, and the basis for Sentek's claim that they were "prevented from communicating with or interviewing the ex-employees."[42]

20 Sentek responded to the MPA's letter on 23 June 2023. It rejected the MPA's offers on the ground that the MPA "[did] not truly address the gravamen of the issues raised in [Sentek's] 13 March letter",[43] for the following reasons. Regarding the relevant documents, even if copies of all the relevant documents were made available to Sentek, it would still be challenging for Sentek to conduct any of its own investigations given that it lacked the powers of investigation vested in the police. It took the view that the MPA should allow the criminal proceedings to take their due and proper course before altering the status quo.[44] As for the request for the ex-employees' information, Sentek did not know what the MPA's purpose in asking for the information was, and

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42 Respondent's Affidavit at p 217.

43 Respondent's Affidavit at p 210, at para 3 of the letter.

44 Respondent's Affidavit at pp 211−212, at paras 7 and 9 of the letter.

without knowing that purpose, it was difficult for Sentek to provide any meaningful response.[45]

21 The MPA's response came on 7 August 2023. It explained that its investigations were independent of the SPF's criminal investigations. In relation to Sentek's query on the ex-employees, the MPA explained its intention was to interview the ex-employees to ascertain their explanation for the discrepancies, and to "then inform [Sentek] of the gist of the ex-employees' answers and to provide [Sentek] with an opportunity to respond to the answers."[46]

22 Sentek responded on 25 August 2023, rejecting the MPA's overtures. It took the position that the MPA should refrain from attempting to conduct its own parallel investigations and adjudicating on the questions of: (a) whether Sentek's employees had indeed falsified and/or doctored the documents giving rise to the suspected discrepancies; and (b) whether their primary purpose in doing so was to conceal the true facts from Sentek to avoid detection of their wrongdoings.[47] As for the MPA's offer to assist Sentek in communicating with its employees, Sentek observed that this could still give rise to witness tampering, and that in any event, the MPA should hold off regulatory proceedings until there was finality in the related criminal proceedings.[48] It asked for a "without prejudice" meeting with the MPA.[49] The MPA did not respond to this letter.

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45 Respondent's Affidavit at p 212, at para 11 of the letter.

46 Respondent's Affidavit at p 214, at para 3 of the letter.

47 Applicant's Affidavit at p 547, at paras 4−5 of the letter.

48 Applicant's Affidavit at pp 548−549, at paras 10, 12 and 14 of the letter.

49 Applicant's Affidavit at p 549, at para 15 of the letter.

23 On 1 April 2024, the MPA informed Sentek that it would not renew the Licences through the Decision, stating the following:

(a) Sentek had committed the Breaches. The consistent and recurring nature of the Breaches demonstrated systemic flaws in Sentek's processes. Sentek's assertion that it had implemented enhanced control measures was not sufficient cause for the MPA to grant a renewal of the Licences.[50]

(b) The MPA had based its assessment that Sentek had committed the Breaches on its own investigations and findings. The MPA's investigation was separate from and independent of the concurrent criminal proceedings.

(c) Sentek had not provided any basis to dispute that the Breaches were committed.[51]

Sentek's assertions as to irrelevant considerations

24 Returning to the three main contentions made by Sentek (see [12]), the Decision would be tainted by illegality if irrelevant considerations had been taken into account (see *Tan Seet Eng* at [80]). The two irrelevant considerations advanced by Sentek relate to the genesis of the investigations and the early concerns of the MPA. I therefore deal with these contentions first.

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50 Respondent's Affidavit at p 177, at para 5 of the Decision.

51 Respondent's Affidavit at p 178, at para 7 of the Decision.

Were the Bukom Events an irrelevant consideration?

25 It is not disputed that the MPA decided to conduct its own investigations after Mr Pai and Sentek were charged in the context of the Bukom Events. It is also not disputed that the documents the MPA used were those pertinent to the Bukom Events. What is disputed, however, is whether the MPA took into account matters relating to the Bukom Events in coming to the Decision itself. Sentek argues that the scope of, and the manner in which, the MPA's inquiry was conducted leads to an "irresistible inference" that the Bukom Events influenced the Decision.[52] It cites the fact that the MPA limited itself to seeking documents which the SPF seized from Sentek regarding the vessels Sentek 22 and Sentek 26, pertaining to a particular historical date range, being 1 August 2014 to 31 January 2018. This date range was the very period in which the Bukom Events occurred, a period some six to seven years before the issuance of the Show Cause Notice.[53] The very documents seized by the SPF for its investigations in the Bukom Events then became the basis for the matters stated by the MPA in its Show Cause Notice.[54]

26 To bolster its argument, Sentek relies on various parts of Mr Chakravarty's affidavit (the "MPA Affidavit") where Mr Chakravarty defended the Decision by pointing to the risk of reputational harm to Singapore as a bunkering hub.[55] Counsel for the applicant, Mr Jordan Tan ("Mr Tan") referred to various illustrative excerpts, as follows:

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52 AWS at para 104.

53 AWS at para 97.

54 AWS at para 96.

55 AWS at para 103; Minute Sheet (11 July 2024).

(a) "While the [MPA] was aware that the Charges had not been dealt with in Court, the [MPA] was concerned with the overall situation given the potential reputational damage to Singapore as a reliable and trusted bunkering hub, especially given the possible length of time required for the resolution of the criminal proceedings" (para 11).

(b) Having concentrated on the records for Sentek 22 and Sentek 26 (para 14), then concluding at para 44, "[h]owever, the [MPA] decided not to renew the Licences on terms because… the [MPA] was of the view that, given the severity of the breaches that [Sentek] had committed, allowing [Sentek] to continue to operate with the Licences risked serious reputational harm to Singapore's position as a reliable and trusted bunkering hub".

(c) Having initially considered waiting until the conclusion of the criminal proceedings to take action (para 54), at para 55, "…[g]iven the severity of the breaches, the [MPA] considered that allowing [Sentek] to continue to operate with the Licences risked serious reputational harm to Singapore's position as a reliable and trusted bunkering hub" (para 55).

27 Sentek's argument was that these excerpts allude to the MPA's concern for serious reputational harm to Singapore, in turn proving that the Bukom Events had been considered by the MPA in coming to the Decision. I do not agree with Sentek's interpretation of these excerpts. The first, at (a), explained the context for the independent MPA investigation. The latter two excerpts, (b) and (c), stated that the severity of Sentek's breaches of its Licences were the cause of the non-renewal. Further, Paragraph 44 went on to specify that the MPA assessed Sentek to be unfit to continue to hold the Licences for various

specific reasons, and paragraph 55 made clear that "[MPA's] own investigations had independently established that [Sentek] had breached the T&Cs of the Licences".

28 In my view, there is no doubt that the MPA was entitled to start its own investigations into whether the terms and conditions of its Licences had been breached. That its overarching concern was to maintain Singapore's standing as a trusted bunkering hub is not surprising in the light of its role under the MPA Act. The Bukom Events being the impetus for the independent investigations does not lead to the conclusion that the Bukom Events were given undue weight in the Decision. It is not disputed that the MPA found breaches of the Licences, which were put to Sentek to explain. Being dissatisfied with Sentek's answers, the MPA then proceeded to reject the application for the renewal of the Licences.

Was the Foundational Allegation an irrelevant consideration?

29 Sentek's second contention of another irrelevant consideration is what it defines as a Foundational Allegation, "that out of the 73 transfers, 45 records were intentionally falsified".[56] Sentek's case was that because this allegation was made by merely comparing vessel records, it was made without sufficient basis.[57] This false premise therefore rendered the Decision irrational.

30 It is relevant, at this juncture, to explain these 45 falsified records. The first 42 involve breaches of cll 11 and 14 of the Bunker Supplier Licence and

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56 AWS at para 8.

57 AWS at para 9, Minute Sheet (11 July 2024).

cl 11 of the Craft Operator Licence, both in effect from 1 January 2013 and prior to 1 April 2017. These clauses state, respectively:

> (a) "The bunker supplier shall record and ensure that bunker craft operators and cargo officers record all deliveries and transfers of bunkers correctly and accurately in the documents as specified in the latest edition of SS 600 and that no false records or entries are made in the same" (cl 11 of the Bunker Supplier Licence). (SS 600 is an abbreviation of SS 600:2014, which refers to an industry standard on the practice of bunkering that was promulgated by SPRING Singapore.)[58]
>
> (b) "The bunker supplier shall not falsify and shall ensure that cargo officers shall not falsify any records in any documents used in connection with the supply of bunkers, including any deliveries and transfers thereof, whether directly or indirectly undertaken by the bunker supplier" (cl 14 of the Bunker Supplier Licence).[59]
>
> (c) "The bunker craft operator shall not falsify and shall ensure that the crew and cargo officer shall not falsify any records in any documentation used in connection with the supply of bunkers… (cl 11 Craft Operator Licence).[60]

31 The MPA's findings at para 10 of the Show Cause Notice were as follows:[61]

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58 Applicant's Bundle of Documents (Volume 3) ("3 ABD") at p 53.

59 3 ABD at p 53.

60 3 ABD at p 45.

61 Respondent's Affidavit at p 152.

> (a) As BDNs bearing the same serial number are carbon copies of each other and copies of the original, they must be identical in their contents.
>
> (b) However, in the **40** instances detailed in Paragraphs 7(a), (d)−(f) and (h) above, while the BDNs issued for the transfer in each of these instances bore the same serial numbers, the quantity of cargo transfer of fuel recorded in the delivering vessel's BDN and stock movement logbook differed from the quantity of fuel recorded in the BDN and stock movement logbook of the receiving vessel. In these circumstances, MPA finds that the records in the BDNs and/or stock movement logbooks were falsified.
>
> (c) BDNs for the same bunkering operation should record the same quantity of fuel and have the same serial number.
>
> (d) However, in the **2** instances detailed in Paragraphs 7(b) and (c) above, the BDNs issued for the transfer in each of these instances had different serial numbers and the quantity of cargo transfer of fuel recorded in the delivering vessel's BDN and stock movement logbook differed from the quantity of fuel recorded in the BDN and stock movement logbook of the receiving vessel. In these circumstances, MPA finds that the records in the BDNs and/or stock movement logbooks were falsified.
>
> [emphasis in original]

32 Three additional instances of falsification entail breaches of cl 8.10 of the Bunker Supplier Licence and cl 8.11 of the Craft Operator Licence (in effect from 1 April 2017):

> (a) "The Licensee must not falsify, and must ensure that its management, employees, directors, officers, and the cargo officers do not falsify any records or any documents used in connection with any supply of bunkers made by it" (cl 8.10 of the Bunker Supplier Licence).[62]

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62 1 ABD at p 177.

> (b) The Licensee must not falsify, and must ensure that its management, employees, directors, officers and the cargo officers do not falsify, any records or any documents used in connection with the delivery of bunkers made using any of its bunker craft" (cl 8.11 of the Craft Operator Licence).[63]

The reason the numbering of the clauses changed in the Licences is that a different version of the Licences was in force from 1 April 2017 onwards; however, the substance of the clauses breached is essentially the same.

33 MPA's findings at para 19 of the Show Cause Notice were the following:[64]

> (a) As BDNs bearing the same serial number are carbon copies of each other and copies of the original, they must be identical in their contents.
>
> (b) However, in the **3** instances detailed in Paragraphs 16 (a) to (c) above, while the BDNs issued for the transfer in each of these instances bore the same serial numbers, the quantity of cargo transfer of fuel recorded in the delivering vessel's BDN and stock movement logbook differed from the quantity of fuel recorded in the BDN and stock movement logbook of the receiving vessel. In these circumstances, MPA finds that the records in the BDNs and/or stock movement logbooks were falsified.
>
> [emphasis in original]

34 In each transaction where fuel was transferred from vessel to vessel, there was a single process of measurement, which was then recorded on the BDN, during which two more carbon copies of the BDN were produced, for a total of three identical copies. Specifically, the BDN serial number and the

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63 1 ABD at p 187.

64 Respondent's Affidavit at p 155.

quantity of fuel supplied,[65] along with the signatures of the relevant officers, would be written on the original copy of the BDN, while being reproduced onto the two carbon copies below. This is necessary so that, following a given transfer of fuel, one copy of the BDN can be retained by the bunker supplier, another can be given to the receiving vessel, and the third can be given to the charterers of the receiving vessel or any other interested party having interest in the bunkering operation.[66] The object was to ensure that the fuel was properly accounted for amongst the three parties. However, as summed up in the MPA Affidavit:[67]

> 19 …in 43 of the 45 instances, the BDN for the delivering vessel had the same serial number as the BDN for the receiving vessel, but the quantity recorded for each BDN, which should be identical to each other given the use of carbon copies, was in fact different.
>
> 20 In 2 of the 45 instances, the BDN for the delivering vessel had a different serial number from the BDN for the receiving vessel, and also recorded a different quantity. These 45 instances demonstrate that for each of these transactions, at least one of these records had been deliberately falsified…

35 The MPA's assumption that carbon copies of the BDN would be identical unless at least one of them had been deliberately falsified, is entirely logical. When carbon paper is used, any writing on the original BDN would be automatically and simultaneously transferred to the carbon paper below. It follows therefrom that carbon copies should, in the ordinary course of events, be identical, and conversely, that if no sensible explanation is given, any differences between the various copies would have involved intentional falsification.

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65 Respondent's Affidavit at para 15(b).

66 Respondent's Affidavit at para 15(b).

67 Respondent's Affidavit at paras 19–20.

36 Premised on this sensible starting point, the MPA asked Sentek to show cause. The purpose of the show cause was to highlight MPA's cause for concern, and to ask Sentek to offer an explanation as to how that situation had arisen. Therefore, it was not the Foundational Allegation that led to the Decision. Rather, it was Sentek's inability to explain the circumstances outlined by the MPA that led to the Decision. Sentek's response of 13 March did not explain the reason for the differences in the carbon copies, but made the assertions highlighted at [18], and which I deal with in later sections.

37 The lack of explanation persisted into the oral hearing, where Sentek attempted to argue that with the passage of time and the use of manual measurement at the time, human error could not be ruled out.[68] Nevertheless, any error would have been made on the original top sheet and, because of the process, reflected within the carbon copies below. Instead, while the carbon copies stored on different vessels did not match, the stock movement logbooks and BDNs within each specific vessel did.[69]

38 A final point of procedure on this issue was raised by Mr Vincent Leow ("Mr Leow"), counsel for the MPA, who argued that the Foundational Allegation was not pleaded in Sentek's Statement under Order 24 of the Rules of Court 2021 (the "Statement"). Mr Tan argued that it was, as the Breaches were identified at para 9(b) of the Statement, in the section on irrelevant considerations. I note the Breaches were also identified as an irrational basis for reasonable action, at para 12(f) of the Statement. In my view, the Statement was broadly consistent with Sentek's written submissions, which listed the

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Foundational Allegation as an irrelevant consideration and also, in its Introduction, introduced the allegation as foundational to the Decision. The frame of the Foundational Allegation in Sentek's written submission was a device used to contend that the particular allegation of falsification could not be proved merely by comparing vessel records. This may have caused confusion. As I have mentioned at [36], the Breaches functioned as a starting premise, and it was the absence of a cogent answer by Sentek that resulted in the Decision. Para 9(b) and para 12(f), read together, were sufficient.

39 In this context, I turn to Sentek's contention that the MPA's decision was not one that any reasonable regulator would make.

Whether the Decision was reasonable

40 Parties do not dispute that in assessing whether a given act by a public authority was reasonable, the court is not entitled to substitute the public authority's decision with its view of how the public authority should have exercised its discretion (*Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board* [1997] 1 SLR(R) 52 at [78(b)]). Decision-makers may in good faith arrive at different decisions based on the same facts (*Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 ("*Chee Siok Chin*") at [95]). The relevant standard of *Wednesbury* unreasonableness (also referred to as irrationality), therefore, refers to a decision that is so outrageous and in defiance of logic or accepted moral standards that no sensible decision-maker, who had applied his mind to the question to be decided and considered the correct factors, could have arrived at that decision (*Tan Seet Eng* at [73] and [80]). The assessment of reasonableness entails an inherent measure of latitude (*Chee Siok Chin* at [95]).

41 Sentek's various arguments on reasonableness may be organised into four categories:

(a) The Breaches were not severe.

(b) The measures put in place by Sentek were sufficient.

(c) Enhanced controls had been implemented since the time of the Breaches.

(d) The MPA ought to have instead renewed the licences upon appropriate conditions.

I address each in turn.

Were the Breaches severe?

42 The breaches relating to falsification have been detailed above. Aside from these, there was another group of breaches that involved discrepancies in vessel records (the "additional breaches"). These amounted to breaches of the following clauses:

(a) Clause 11 of the Bunker Supplier Licence, and cll 10 and 32 of the Craft Operator Licence, effective from 1 January 2013.

(b) Clause 8.7 of the Bunker Supplier Licence, and cll 8.10 and 8.23 of the Craft Operator Licence, effective from 1 April 2017.

43 At the hearing, Sentek did not dispute that the discrepancies (both the deliberate falsifications and the additional breaches) had occurred, or that they amounted to breaches of the relevant terms of the Licences. Instead, it argued that the Breaches were not severe. In its written submissions, Sentek further

suggests that the Licences do not impose strict liability: any breaches must be sufficiently severe to be considered a factor in the non-renewal of the Licences.[70] The MPA, in contrast, maintains that the Breaches are severe and recurrent, reflecting the absence of a system to ensure the prevention of future similar breaches.[71]

44 Sentek's argument on the lack of severity of the breaches comprised both a qualitative and quantitative aspect.[72] Regarding the qualitative aspect, Sentek's main argument is that the Foundational Allegation of the Breaches being fraudulent could not be premised on a simple comparison of the records of two Sentek vessels.[73] As I have detailed at [34]−[36], this argument is untenable.

45 A second qualitative argument relates to how the falsification only affected internal transfers rather than transfers from a Sentek vessel to a third party customer.[74] MPA has explained that accurate documents are necessary to prevent malpractices such as short delivery, which could affect Singapore's position as a trusted bunkering hub. Sentek's position was that no customers were shortchanged of bunkers.[75] This position is not a conclusion that follows from the evidence, however. The evidence that falsification had taken place in internal transfers does not, as a matter of logic, lead to any inference that no similar falsification had not taken place during transfers between Sentek-owned

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70 AWS at para 7; Applicant's Affidavit at para 52(a).

71 Respondent's Affidavit at para 25.

72 Minute Sheet (11 July 2024).

73 AWS at para 9.

74 AWS at para 63.

75 AWS at para 63.

vessels and third party-owned vessels. It was simply that evidence regarding such transfers was not available, and MPA used the available evidence from Sentek 22, Sentek 26, Sentek 30, Sentek 31, Sentek 32 and Sentek 35.[76] Sentek did not adduce any evidence that no customers were shortchanged. It could be that Sentek's argument was that the Breaches did not concern third party customers. Nevertheless, that the Breaches concerned transfers internal to Sentek did not lead to a conclusion that no third party customers were affected. The discrepancies totalled more than 10,000 mt of fuel valued at approximately $US 6m on 2017 prices.[77] The amount of bunkers, at the original point of receipt before the internal transfer, and at the onward delivery point following the internal transfer, could have been recorded in differing amounts, allowing bunkers to go unaccounted for. Proper documentation concerning all transfers increases the likelihood of detecting fraud; conversely, improper documentation enables fraudulent behaviour to go undetected, which would eventually cause loss to third parties.[78]

46 Turning to the quantitative aspect, Sentek argued that even if I were to find that some of the Breaches had been fraudulent, the Breaches were not severe as they formed a very small proportion of the total number of bunker transfers that Sentek conducted over the time period under investigation. By Sentek's calculations, 73 discrepancies out of 1,000 transfers per month, from 2016 to 2017 (*ie*, 24 months), amounted to an error rate of 0.3%.[79] As for volume, since the Breaches entailed a total of 10,000 metric tonnes of

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76 Respondent's Affidavit, para 16.

77 Respondent's Affidavit, para 62.

78 Minute Sheet (11 July 2024).

79 AWS at paras 65−66.

discrepancies in bunker transfers, and Sentek transferred 8−10m metric tonnes of bunkers in total over the same two-year period, the volume of bunkers implicated in the Breaches was only 0.1−0.125% of the total bunker volume transferred by Sentek.[80] Drawing on this, Mr Tan submitted that the minute rate of error rendered the non-renewal of Sentek's Licences irrational.

47 In my view, Sentek has mischaracterised the MPA's investigations. It is not correct to contend that only 73 discrepancies were found amidst voluminous records, or that there were no discrepancies outside of the window highlighted by the MPA. The MPA had not in fact conducted an exhaustive review of all the documents in Sentek's vessels over the entire two-year period.[81] First, the MPA completed a "deep dive" into only two months – February and March 2016 - of documents from Sentek's vessels, within which period they found numerous breaches. Thereafter, they conducted random sampling checks, still within the broader two-year period but outside of February and March 2016, to ensure that the Breaches were not isolated occurrences (see [16]).[82] The issue is rather, whether the Breaches were sufficiently severe to require an answer from Sentek, the licensee. In that context, it was reasonable for the MPA to ask Sentek to explain. Sentek, as the licensee, had the responsibility under the Licences to maintain a system to ensure accurate records were kept. The purpose of the Show Cause Notice was to obtain Sentek's explanation. It is the Decision, issued following the Show Cause Notice and show cause process, to which the question of reasonableness is directed. This brings us to Sentek's position, then and now, that its measures in place were and are sufficient.

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80 AWS at paras 65−66.

81 RWS at para 44(c), Respondent's Affidavit at paras 14 and 72.

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Adequacy of measures in place

48 The MPA concluded, after considering Sentek's responses, that "the consistent and recurring nature of the Breaches demonstrates systemic flaws in [Sentek's] processes".[83] Sentek's contention was that it met industry norms; furthermore, industry standards did not mandate cross-vessel comparisons. MPA's case was that the industry standards relied upon, SS 600 and SS 524:2014 ("SS 524"),[84] did not supply the means of fulfilling the terms and conditions of the Licences regarding the accuracy of records. These were industry standards and it was left to the licensee to put in place the correct systems to ensure compliance with the terms and conditions of its licence. Sentek did not dispute this at the hearing.[85] Furthermore, it was not the MPA's position that Sentek was required to do cross-vessel comparisons. For the MPA, this was merely an effective way to investigate whether Sentek had met its contractual obligation to keep accurate records.

49 Relatedly, Sentek was of the view that it had taken all reasonable measures. Its best efforts had been deliberately subverted by criminal ex-employees who had been on a frolic of their own.[86] Sentek argued that declining to renew its Licences on account of these employees would be a disproportionate and irrational response. The MPA, on the other hand, argued that Sentek's response showed that it refused, or was unable, to recognise the flaws in its processes, rendering it unfit to continue holding the Licences.[87] In

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83 Respondent's Affidavit at p 177.

84 Respondent's Affidavit at para 15(b).

85 Minute Sheet (11 July 2024).

86 Minute Sheet (11 July 2024).

87 RWS at para 44(e).

my view, the Licences required Sentek to set up a system to ensure that records were accurate and to prevent their falsification. In other words, the onus was on Sentek to show that a system was in place that would ordinarily detect employees who had embarked on a frolic of their own. The fact that there was no such system is the issue of concern.

50 Sentek tried to address this difficulty in three ways. First, Sentek listed some measures that it had taken (at para 20 of its Response to Show Cause). Pertinently, however, these measures did not check the *accuracy* of the vessel records – rather, they focused only on ensuring the *consistency* of vessel records (*ie*, that the records *within* a given vessel *tallied with other records* therein):[88]

> (a) Every 4 days when the bunker craft operators and cargo officers of each bunker tanker changed shifts, they were required to bring back copies of the stock movement logbooks and the relevant supporting documents for each operation (including the BDNs) to our Client's office.
>
> (b) [Sentek's] administrative team then went through the stock movement logbooks and the supporting documents for every bunker tanker individually to ensure that they were in order. The records in the stock movement logbooks were also cross-checked against the supporting documents for each bunker tanker to ensure that they tallied.
>
> (c) If any of the stock movement logbooks or supporting documents were not in order, or if the records did not tally, the relevant bunker craft operator or cargo officer was asked to explain the discrepancy and to make the necessary correction in accordance with the stipulated procedure.
>
> (d) After the administrative team completed the checking process, copies of the stock movement logbooks and supporting documents were safekept by [Sentek] in case there was any need to refer to these documents again.

[88] Applicant's Affidavit at pp 385–386.

51 Secondly, Mr Tan also asserted that the measures outlined above merely constituted a non-exhaustive "snapshot" of the measures that Sentek put in place.[89] Notwithstanding, the argument that the measures outlined in the Response to Show Cause were merely part of a broader well-functioning internal system, did not answer the central query, which was whether a sound and well-functioning internal system existed to verify the accuracy of the relevant records. I also note that Mr Tan rightly retreated from the position that, for the MPA's view to be rational, it bore the burden of identifying the precise operational measure that Sentek had failed to implement.[90]

52 Thirdly, and finally, Sentek's answer was that its system was regularly audited.[91] Mr Tan argued that audits were significant in proving that Sentek's systems were not flawed.[92] He pointed to various findings in the SS 524 audit report done by Lloyd's Register Quality Assurance Ltd ("Lloyd's Report") for the year 2017 in which various measures undertaken by Sentek were "found acceptable".[93] However, having perused the Lloyd's Report, I do not find the cited extracts to be helpful in proving that Sentek had put in place a sound system to ensure the accuracy of its records. I deal with each of the extracts in turn.

(a) First, the Lloyd's Report evaluated bunkering activities on board the Sentek 26 for one day, involving the delivery of 17.357 mt of

89 Minute Sheet (11 July 2024).

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91 Minute Sheet (11 July 2024).

92 Minute Sheet (11 July 2024).

93 Applicant's Affidavit at pp 399−400 and 403.

bunkers to another vessel.[94] Sentek cites the part which states that "[d]aily entries of stock movement (loading/transfer/delivery) were made in the 'Stock Movement LogBook'. Records from month of July, August and September 2017 were sampled. No discrepancy was noted." However, it is unclear whether, in stating that "no discrepancy was noted", the auditor was referring to the *consistency* of records (*ie*, that there was no discrepancy between the various entries in the logbook), or whether it was referring to the *accuracy* of the records (*ie*, whether the entries in the logbook corresponded to the actual volume of the bunkers in the vessel). Even supposing that this part of the Lloyd's Report was referring to the accuracy of the records, I agree with the MPA that the accuracy of a single sample on one vessel in respect of one transaction does not lead to a conclusion that Sentek had put a system in place to ensure the accuracy of vessel records.[95]

(b) Second, Sentek cites the part of the Lloyd's Report which stated that Sentek's risk control measures were "found acceptable".[96] However, this part of the audit was concerned with "Management System Elements", which evaluated Sentek's "Organisation and Its Context & Planning", "Management of Change", and "Continual Improvement", among other things. This part of the audit appears to have focused on Sentek's strategic-level planning, with limited relevance to the question of whether Sentek had in place an operational-level process for checking the accuracy of the vessel records.

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94 Applicant's Affidavit at p 395.

95 RWS at para 40(d).

96 Applicant's Affidavit at pp 387 and 399.

(c) Third, Sentek references internal audits that were carried out aboard three bunker tankers Sentek 8, Sentek 20, and Sentek (referring to the name of a vessel). The internal audit records of these vessels were sampled and "found acceptable".[97] This was an "office audit". It is not clear if this part of the audit was concerned with the accuracy, rather than consistency, of the records.

(d) Finally, Sentek references the Lloyd's Report's finding that the bunker forms sampled for certain deliveries were "found duly updated in accordance with SS 600:2014 and TR48:2015" (the latter being another industry standard).[98] However, these standards set out what documents must be kept and the details that must be set out in the documents, but do not refer to the accuracy of the documents.

53 Therefore, the parts of the Lloyd's Report which Sentek cited in the Response to Show Cause, and continued to cite before me, did not show that there was a system in place. Sentek was unable to articulate its system, and the audits could not, in and of themselves, be the system. Mr Tan argued that the purpose of an audit was to check if there was a system in place. Nevertheless, an audit functions as a randomised check. The clearance of an audit did not show that a system was in place. Sentek's obligation under the Licences was to put a system in place.

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97 Applicant's Affidavit at pp 387, 399 and 400.

98 Applicant's Affidavit at pp 387 and 403.

Enhanced control measures

54 Sentek further argues that the MPA had not given sufficient consideration to its enhanced control measures in deciding not to renew the Licences. The enhanced measures were listed at para 36 of the Response to Show Cause as follows:[99]

> (a) Engaging a variety of accredited independent inspectors for quantity and quality verifications of cargo movement within its supply chain, including all loadings from oil terminals;
>
> (b) Operating a 24-hour randomised surveillance via a patrol craft plying in the port waters of Singapore; assigning representatives to perform random boardings to check on vessel cargoes; and implementing onboard surveillance by installing CCTV cameras to provide a continuous recording of deck activities;
>
> (c) Implementing a new ERP Trading System (including inventory management) backed by Microsoft BC for greater accountability; implementing paperless processes to eliminate documentation fraud and errors; and tightening control over inventory including fitting its fleet of tankers with approved Mass Flow Meters;
>
> (d) Training its Deck Officers to assist in cargo related operations, which allows them to cross check the Cargo Officer's work;
>
> (e) Overhauling its Human Resource System and restructuring its organisation hierarchy to allow greater visibility and accountability for individual positions;
>
> (f) Adopting a "whistle-blowing" policy and notifying its staff of the consequences of malpractice; and
>
> (g) Adopting a clear "Anti-Corruption & Anti-Bribery Policy".

55 Mr Tan clarified, at the hearing, that the enhanced control measures were relevant in two ways. First, they demonstrate that Sentek was committed

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99 Applicant's Affidavit at pp 388–389.

to "true change" after 2019.[100] Second, the opportunity for errors in vessel records was reduced following the requirement, introduced in 2019, that bunker transfers between vessels be measured electronically using mass flow meters ("MFMs").[101]

56 For its part, the MPA explained that it came to the Decision, despite Sentek's implementation of enhanced control measures, for two reasons. First, these enhanced measures were not sufficient cause for the MPA to deviate from its policy position against falsification and/or malpractice, especially where such breaches were recurring.[102] Secondly, Sentek's attitude showed that it was unfit to continue holding the Licences.[103]

57 Relatedly, Mr Tan argued that it was not fair for a regulator to rely on matters six or seven years prior to its decision. It is clear from the arguments here that while the MPA's concerns arose from a past time period, its concern was whether there was a robust system in place at the time of the licence renewal. I turn, therefore, to consider its two reasons.

(1) Whether the enhanced measures addressed the issue of falsification of vessel records

58 Sentek has not explained how the enhanced measures would prevent falsification or manipulation of records in the future.

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101 Minute Sheet (11 July 2024).

102 Respondent's Affidavit at para 78.

103 RWS at para 44(e)−(f); Respondent's Affidavit at paras 79−80.

59 Regarding MFMs (see [55]), this is not relevant to the concern of falsification. The work stream involves a single point of measurement (see [30]−[35]), and the MFMs ensure the accuracy of that measurement. Both prior to and following the introduction of the MFMs, the carbon copies would be expected to align. In other words, the MFMs do not provide a system against falsification of the records taken *following* the single point of measurement. The MPA further highlights that, as MFM data is generally only retained for three months, contemporaneous documents such as the stock movement logbook and BDNs continue to be important as they are retained for three years and assist future investigations in shedding light on discrepant documents and records.[104]

60 Coming to the measures themselves as outlined in the Response to Show Cause, and going through each in turn:[105]

(a) The engagement of independent inspectors and randomised boardings of vessels suffer from all the limitations explained regarding audits at [52(a)] and [53]. What is needed is the implementation of a system, and no such system was articulated.

(b) Regarding the CCTV surveillance, these would not be able to detect the tampering of records while these breaches are occurring.

(c) As for the paperless inventory systems and enhanced training, these do not address the problem of *detecting fraud* and ensuring the accuracy of vessel records by preventing them from being tampered with.

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104 Respondent's Affidavit at para 60.

105 Applicant's Affidavit at para 53(d) and pp 435−436.

(d) Sentek's anti-corruption and anti-bribery policy is rather vague and contains little by way of detail,[106] casting doubt on whether it would be effective in preventing future instances of the Breaches. For instance, the policy sets out a "zero-tolerance" stance towards corruption and bribery, without operationalising what this means in practice. Likewise, it requires that employees not participate in any "corrupt or improper practices with other stakeholders", but does not really explain what this means apart from stating that gifts and favours are forbidden (which is, with respect, obvious). It then asserts that Sentek "has an internal reporting structure, procedures and channels that are secure and accessible for our employees to raise concerns and report violations or suspicious activity", but gives no details as to what this internal reporting structure is, or how it works.

(e) There is even less detail on the "whistleblowing policy" mentioned. A management review noted that "[Sentek's] 'whistle-blowing' policy has been adopted";[107] however, the terms of the whistleblowing policy are not set out in Sentek's affidavit. As such, I have no information with which I can assess its effectiveness.

Therefore, Sentek has not explained how its enhanced measures would prevent future similar breaches.

106 Applicant's Affidavit at p 576.

107 Applicant's Affidavit at p 574.

(2) The quality of Sentek's responses to the MPA's concerns

61 Sentek's attitude during the show cause process was also pertinent to the Decision. The gist of Sentek's Response to Show Cause was to insist that Sentek could not have detected the Breaches, and that even if the ex-employees had perpetrated the Breaches (which Sentek did not admit at the time), they would have been on a frolic of their own.[108] As Mr Leow explained, this is not the attitude of an organisation that is genuinely committed to preventing breaches of the terms of its Licences; if Sentek were indeed regretful about the Breaches, it could have taken a very different course in its Response to Show Cause and its subsequent correspondence with the MPA.[109] For instance, Sentek, in its Response to Show Cause, acknowledged what it termed "Suspected Discrepancies", but did not discuss how these would no longer arise because of control systems it had put in place or would put in place in the future. Instead, Sentek's response was that:

(a) "[N]o amount of vigilance and safeguards could have prevented such fraud".[110]

(b) It had various processes and audits,[111] but without explaining how the Breaches could have occurred despite those processes.

(c) It had implemented enhanced control measures,[112] but again without explaining how these measures would prevent the occurrence of similar breaches in the future.

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108 Applicant's Affidavit at p 384.

109 Minute Sheet (11 July 2024).

110 Applicant's Affidavit at p 385.

111 Applicant's Affidavit at p 385.

112 Applicant's Affidavit at pp 388–389.

(d) That failing to renew the Licences would disrupt the supply of bunkers to various important clients and cripple Sentek's ability to defend itself against the criminal charges.[113]

62 Central to the MPA's consideration whether to renew the licence would be the licensee's ability to fulfil its contractual obligations in the period of renewal. In the present case, there had been breaches in a specific past period. There was neither any cogent explanation of what system was in place at the time of the Breaches or in the future, nor any assurance that any system would be in place during the period of renewal. In the circumstances, the Decision could not be said to be unreasonable.

Renewal on terms?

63 Finally, Sentek argues that the Decision was irrational as the MPA failed to consider the possibility of imposing appropriate terms and conditions on a renewal of the Licences,[114] instead adopting an all-or-nothing approach to reject the Applications.[115]

64 I disagree. Mr Chakravarty made clear that the MPA had considered the possibility of renewing the Licences on terms, but rejected the option due to the severity of the Breaches and Sentek's attitude during the show cause process.[116] He also explained why the MPA has a strict policy in respect of accurate records, and how in 2017, pursuant to that policy, the MPA revoked the bunker

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113 Applicant's Affidavit at p 390.

114 Applicant's Affidavit at para 38(f).

115 Applicant's Affidavit at para 53(e).

116 Respondent's Affidavit at paras 44, 79−80.

supplier and craft operator licences of Transocean Oil Pte Ltd because of falsifications of and discrepancies in records.[117] I have concluded in the section above (see [62]) that the rejection of the renewal application was not unreasonable. In this context, the MPA's manner of regulation was to prescribe the expectation and standards, through the use of industry standards such as SS 600 and the broad terms and conditions in the Licences. The matter of fulfilling the requisite standards and terms was understood by both licensor and licensee to be an operational matter, and thus within the remit of the licensee. Any specific system of ensuring the prevention of falsification or the accuracy of the various records would fall to be designed by the licensee. It follows, therefore, that any condition directed at the operational requirements of a system to be used to ensure accurate records, would necessarily arise out of enhancements promised by the licensee. Because Sentek's responses repeatedly failed to articulate a robust system for the future, there remained a gap in the systemic structure. It was not unreasonable on the part of the MPA to reject the renewal application rather than to mandate specific operational solutions to fill the lacuna in the systemic structure.

Procedural fairness

65 I deal, finally, with Sentek's allegations regarding procedural unfairness. Sentek argues that two fundamental tenets of natural justice were not adhered to in the present case:[118]

(a) That Sentek must be informed of the allegations being made against it, especially where there has allegedly been intentional

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117 Respondent's Affidavit at para 32.

118 AWS at paras 74−75.

falsification of records. In this context, Sentek argues that the MPA cannot tell, regarding the 45 falsified records, whether it is the record of the sending vessel or the receiving vessel that has been allegedly falsified. As it does not know its own case, it cannot expect Sentek to properly meet that case.[119]

(b) That Sentek must be allowed a real opportunity to meet the case that is being put against it.

Sufficient information

66 In my view, Sentek was sufficiently informed of the allegations against it. In the Show Cause Notice, the MPA set out, in detail and in a tabular format, each transfer that was being queried, with a comment explaining the relevant discrepancy.[120] To take an example, the first transfer in the first table (entitled "Failure to record deliveries and transfers of bunkers in the stock movement logbook") was alleged to have taken place on 1 Feb 2017, from Sentek 22 to Sentek 26. Under "remarks", the MPA explained that this transfer had been recorded in the stock movement logbook of the latter vessel but not the former.[121]

67 In respect of the records classified as falsified, which is the category of breaches that Sentek takes issue with, the MPA set out all of them under the same heading "Discrepancies in records and falsification of records",[122] and classified these breaches into different tables depending on whether or not the

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119 AWS at paras 76−78.

120 Respondent's Affidavit at pp 157−172, Annex A of the Show Cause Notice.

121 Respondent's Affidavit at p 157.

122 Respondent's Affidavit at p 161.

transfers were recorded under the same serial number on the delivering and receiving vessels. For each entry, the MPA set out the quantity that had been recorded in the relevant records of the delivering and receiving vessels, and then under the "Remarks" column, calculated the difference between the quantities noted in the delivering vessel and the receiving vessels, and also set out the serial number of the BDN(s) that had been issued for the transfer. Having set out the breaches in detail, including the date, vessels involved, the serial number of the transfer, and the exact discrepancies between the records of each vessel concerning the quantity of bunkers transferred, it can hardly be said that Sentek was not informed of the case against it.

68 In this context, it was unnecessary for the MPA to specify, as Sentek contends, whether it was the sending or the receiving vessel's record that was falsified. This is because, in creating the BDNs, the volume of bunkers transferred is measured once,[123] with that single measurement being recorded once, and subsequently being *automatically copied* onto the carbon copies of the original BDN (see [35]). It is the *discrepancy between the copies* of the BDNs, which were supposed to be carbon copies, that raised the query as to whether there was a system in place to ensure the accuracy of these carbon copies.

Sufficient opportunity to answer

69 There is no dispute that sufficient time was given for Sentek to respond. Sentek premises its lack of opportunity to present its case on the fact that it could not interview its ex-employees, as they are co-accused persons in the charges

[123] Minute Sheet (11 July 2024).

relating to the Bukom Events, and that the MPA knew this.[124] It argues that the MPA's approach, to only give Sentek, a party accused of fraud, an opportunity to interview witnesses through itself, the investigating authority, is unprecedented.[125] It is also unprecedented for only a "gist" of the witnesses' responses to be provided to a party responding to accusations of fraud.[126]

70 The MPA's response is that natural justice does not require that Sentek be given an opportunity to "fully" investigate, but rather, that it be given a reasonable opportunity to show cause.[127] In the circumstances, Sentek was given a reasonable opportunity to present its case. First, Sentek was sufficiently informed of the case it had to answer,[128] and was given sufficient time and opportunity to respond to the Show Cause Notice in the form of an extension of time, and the fact that its further letters to the MPA were entertained.[129] Second, in suggesting that Sentek could pose queries to its ex-employees through MPA, the MPA was not insisting that Sentek collect evidence second-hand through it; rather, the MPA was trying to address the concerns that Sentek had articulated in its Response to Show Cause, thereby facilitating Sentek's ability to present its case.[130]

71 In my view, Sentek was given sufficient opportunity to meet the case against it. Sentek's argument is essentially that it is unable to investigate the

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124 AWS at paras 79−80.

125 AWS at para 81.

126 AWS at para 82.

127 RWS at para 24.

128 RWS at para 26.

129 RWS at para 26.

130 RWS at para 27(a).

Breaches without speaking to its ex-employees. This is a useful argument for Sentek to employ: if the MPA agreed, it would necessarily defer all regulatory action until the conclusion of criminal proceedings. It was and is a red herring. The gravamen of the MPA's complaint was that Sentek had no effective system in place to ensure the accuracy of the records pertinent to its Licences. That complaint ought to have been answered by reference to the relevant systems which, even if not in place at the time of the breaches, ought to have been in place by the time of the Applications, or in the future period of the Licences in which they were to be renewed. No such answer was forthcoming.

Conclusion

72 I therefore dismiss the prayers for substantive relief.

73 If parties are unable to agree on costs, submissions are to be filed and exchanged within 14 days. In this event, if either party requires an oral hearing on costs, that party must make the relevant request in its submissions.

Valerie Thean
Judge of the High Court

Tan Zhengxian Jordan, Leong Hoi Seng Victor and Lim Jun Heng (Audent Chambers LLC) (instructed), Quek Mong Hua and Wong Wai Keong Anthony (Lee & Lee) for the applicant;
Vincent Leow, Tan Jia Qi, Rachel, Tan Zhongshan and Teo Siqi (Zhang Siqi) (Attorney-General's Chambers) for the respondent.