

4. Sitting No. 1.

OPM 536/58/114

The Royal Netherlands Harbour Works Company Limited, who were entrusted with the construction of the Marsa Deep water quay, have filed an application with the Aids to Industries Board for assistance under the Aids to Industries Ordinance and for financial assistance towards the establishment at Marsaxlokk of a central equipment base to store, repair and assemble their own civil engineering plant and that of affiliated companies, in between contracts. The Company is currently engaged on contracts in the Mediterranean and the Persian Gulf.

2. The Company originally requested that Government should put up the works and provide the facilities on the site at Marsaxlokk shown edged in red on enclosed plan, necessary for the Company to carry out its business of repair and maintenance. This was not acceptable and the Company subsequently agreed to bear the cost of constructing the required quay wall, slipway, workshop, storeroom and shed and to fill and pave the area as necessary, if it were made available to them. On this basis the Aids to Industries Board agreed that the application should be recommended.

3. The Company are engaged on the Dockyard conversion and the Board stressed the importance to the Island's economy of the Company establishing itself in Malta, and not elsewhere, which could be the case if their application failed, since it would provide employment for Maltese labour and generate trade both within and outside Malta.

4. The site required by the Company adjoins the sea and is owned by the heirs of the late Carmelo Cassar Torregiani. During discussions in the Aids to Industries Board it was established that the Company would find it very difficult indeed, if not impossible, to acquire the site desired solely by their own efforts, the reason being that the owners were not in need of selling their property and could, therefore, be expected to be unresponsive to attempts at negotiating a sale. The nature of the business which the Company proposes to carry on demands that the works site must be (a) near the sea, and (b) in a sheltered harbour not facing the open sea. These essential requirements limit the choice of a suitable site to the extent that there is no acceptable alternative to that at Marsaxlokk. In view of these considerations the Board also agreed to recommend that the land required for this project should be acquired under the Land Acquisition (Public Purposes) Ordinance and made over to the Company.

5. There are two distinct points at issue. The first is whether the project itself qualifies for assistance under the provision of the Aids to Industries Ordinance; the second is whether the Government should exercise its powers under the provisions of the Land Acquisition (Public Purposes) Ordinance, to acquire the site required compulsorily for the purpose of making it over to the Company.

6. As regards the first point the Aids to Industries (Emergency) Ordinance, 1959, states that "industrial undertaking" means an undertaking carrying on or intended to carry on in Malta a trade which consists in the production manufacture or improvement of any article or commodity or in the provision or improvement of any service" and that "production day" means a day on which the industrial undertaking will commence to produce in marketable quantities the articles or commodities produced, manufactured or

improved by it or to run on a commercial scale the service provided or improved by such undertaking". The legal view, with which the Hon. Minister of Justice is unable to disagree, is that the proposed equipment base would not in itself be a business to carry on a trade, but rather a means for the repair of the equipment used for the purposes of a trade. The Ordinance qualifies aid in relation to production in marketable quantities or the provision of a service on a commercial scale. It is contended that the Company would produce nothing in marketable quantities, nor would it be running the repair depot on a commercial scale. It would simply be running the depot for its own purposes, and no trading would be involved. On these grounds, the Attorney General considers that the Royal Netherlands Harbour Works Company's application for aid does not qualify in terms of the Ordinance.

7. It should be pointed out, however, that the Company has stated that it would give out sub-contract work to various existing enterprises in the island (engineering et similia) to the order of £12,000-£15,000 per year (vide their letter of 8/6/62). In this manner it will be providing and/or improving a service.

8. On the other hand, the Director of Industrial Development and Chairman of the Aids to Industries Board argues that the question whether the Company would be providing a service on a commercial scale or not, should be determined not by the sale of such services to outside parties or not, but by the degree of employment the setting up of the depot would generate. Applicants are stated to be offering an employment figure of 25 in this case. The Hon. Minister of Industrial Development and Tourism is inclined to favour the grant of the Company's application, pointing out that the depot would provide a "service" of economic advantage to Malta.

9. As regards the second point, i.e. whether the Government should use its powers to assist the Company to acquire the site they want, this is really a matter of policy and must, in my view be considered in relation to the decision taken on the first point, since if the Company's request for assistance under the Aids to Industries Ordinance is turned down, the Company may conceivably not be prepared to go ahead with the project without such aid and on the strength of Government assistance in acquiring the site only. If the Company's request for 'industrial' aid is acceded to, there are a number of precedents to support a decision to acquire compulsorily on behalf of the Company, as for example, the case of the industrial estates at Marsa and Mriehel, and the Rigg Welts Factory at Mriehel. In all these cases, however, goods are being produced and aid was given by Government under the Aids to Industries Ordinance. The expense inherent in the acquisition of the site under the Land Acquisition (Public Purposes) Ordinance, would of course be borne by the Company themselves, the Government merely utilizing its machinery on behalf of the Company.