JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 114/2021

APPLICATION NO 251/2021

BETWEEN	**ALLIANCE FINANCIAL SERVICES LIMITED**	**APPLICANT**
AND	**THE BANK OF JAMAICA**	**RESPONDENT**

Hugh Small QC, Mrs Tana'ania Small Davis QC, Mikhail Jackson, Miss Monique Hunter and Chad Wynter instructed by Livingston, Alexander & Levy, Attorneys-at-law for the applicant

Michael Hylton QC, Sundiata Gibbs and Miss Daynia Allen instructed by Hylton Powell for the respondent

11 and 18 January 2022

IN CHAMBERS

V HARRIS JA

[1] This is an application by the applicant, Alliance Financial Services Limited ('AFSL'), for an injunction pending an appeal from the order of Palmer J ('the learned judge') made on 23 December 2021. By that order, the learned judge granted AFSL leave to seek judicial review of the decision of the respondent, the Bank of Jamaica ('BOJ'), suspending its licence to conduct cambio and remittance services and revoking its authorisation to operate as a prepayment service provider in BOJ's Fintech Regulatory Sandbox ('the Sandbox'). However, he refused AFSL's application for an injunction pending the determination of the judicial review claim, restraining BOJ, its officers, servants and/or

agents from terminating, revoking, suspending or otherwise interfering with AFSL's licence to operate as a cambio and remittance service provider and as a prepayment service provider in the Sandbox.

[2] The core issue that arises on the appeal is whether the learned judge erred, in the exercise of his discretion, when he refused to grant an injunction pending the determination of the claim for judicial review.

Background

[3] AFSL was issued a licence by BOJ to operate as a cambio and remittance service provider ('the cambio licence'). AFSL has over 40 branches and 77 sub-agent locations across Jamaica and is a local agent for MoneyGram Payment Systems Incorporated, an international money transfer and remittance company based in the United States of America. It also operated as a prepayment service provider and was granted access by BOJ to the Sandbox ('the Sandbox authorisation'). Through its electronic payment service, AFSL offers an ePay Mastercard (prepaid credit card) to several private sector entities and members of the public. The assets under AFSL's management exceed $4 billion.

[4] On 2 December 2021, three of AFSL's five shareholders and two affiliated companies (Alliance Financial Limited and Alliance Investment Management Limited) were charged with several offences relating to financial crime. AFSL itself was not charged, but its principal shareholders, Robert and Peter Chin, were. Additionally, while not facing financial crime charges themselves, the two remaining shareholders (Melwood Investment Limited and Willo Capital Limited) are wholly owned and controlled by Robert and Peter Chin, making them 100% shareholders.

[5] BOJ, as a result of the charges preferred against Robert and Peter Chin, suspended AFSL's cambio licence and revoked its Sandbox authorisation on 3 December 2021. This was on the basis, as alleged by BOJ, that Robert and Peter Chin were no longer fit and proper persons to participate in a regulated business in keeping with the "Notification to Cambio and Remittance Companies 'Fit and Proper' Criteria Operators" (as stated in a

letter of the same date). However, before the learned judge, BOJ also alleged that there was an urgent need to protect the financial system, as well as the economy of Jamaica because the prosecution of Robert and Peter Chin for financial crimes "threatened the good order in the foreign exchange market and payment systems as well as the reputation and standing of the Jamaican financial system internationally".

[6] By email dated 3 December 2021, Mr Peter Chin wrote to BOJ making certain proposals that would allow AFSL's "timely and orderly exit of the business", but those proposals were not accepted. AFSL, on 6 December 2021, then appealed to the Minister of Finance, but there was no response from him until 5 January 2022. By this time, AFSL had already filed (on 9 December 2021) its application for leave to apply for judicial review and injunctions that would require BOJ to restore the cambio licence and Sandbox authorisation.

[7] The application for leave to apply for judicial review was heard and granted by the learned judge. However, as stated previously (see para. [1]), he refused AFSL's application for injunctive relief. Accordingly, on 29 December 2021, AFSL filed notice and grounds of appeal challenging the learned judge's refusal. The details of the order being appealed are:

> "(1) The grant of leave to apply for judicial review shall not operate as a stay of the Respondent's decision to immediately suspend the Applicant's licence to conduct Cambio and Remittance Services and to revoke the Applicant's authorization to operate in the Sandbox.
>
> (2) The application for an Order pending the determination of the judicial review claim that the Respondent, its officers, servants and/or agents be restrained from terminating, revoking, suspending or otherwise interfering with the Applicant's licence to operate as a cambio and remittance service provider and as a prepayment service provider in the Sandbox created by the Respondent's Fintech Regulatory Sandbox Guidelines is refused."

[8] AFSL has filed three grounds of appeal with several sub-grounds. The overall gist of those grounds is that the exercise of the learned judge's discretion was flawed when he refused the application for injunctive relief because he failed to:

a. give sufficient regard to certain important factors in the evidence before him;
b. conduct a fair and proper balancing exercise as to where the balance of convenience lies; and
c. consider alternative remedial steps that could be implemented to alleviate BOJ's concerns while reinstating the cambio licence and Sandbox authorisation.

[9] On 29 December 2021, AFSL filed a notice of application seeking an injunction pending the appeal in the following terms:

> "1. The suspension of the Applicant's licence to operate as a Cambio and Remittance Service provider and the revocation of its authorization to operate as a prepayment service provider in the Sandbox created by the Respondent's Fintech Regulatory Sandbox Guidelines whereby the Applicant provides prepayment and Mastercard services to its customers are immediately lifted, the licence and authorisation are restored and the Respondent is restrained from terminating, suspending or taking any prejudicial action in respect of the said licence and authorization pending the determination of the appeal."

[10] The application is supported by several affidavits, including an affidavit of urgency, from Mr Wayne Wray, one of AFSL's directors. BOJ has stridently opposed the application.

Submissions on behalf of AFSL

[11] It is perhaps helpful to state at this point that learned Queen's Counsel, Mrs Small Davis, indicated during her submissions that AFSL would no longer be pursuing the appeal of the learned judge's order that the grant of leave to apply for judicial review shall not

operate as a stay of BOJ's decision to suspend the cambio licence and revoke the Sandbox authorisation.

[12] In support of its application regarding the order refusing an injunction, counsel for AFSL submitted that the learned judge correctly concluded that its arguments had a realistic prospect of success. However, issue was taken with his acceptance of BOJ's assertions that the suspension of the licence and revocation of the Sandbox authorization were necessary to protect the financial system and Jamaica's standing internationally because:

a. BOJ's assertions were "exaggerated" as they did not provide evidence that AFSL's activities breached the regulations but instead acted on an assumption of guilt prior to the successful prosecution in the courts and the learned judge failed to objectively examine those assertions;
b. the sanction on AFSL was on account of charges laid against Peter Chin and Robert Chin, the principal shareholders, while the board of directors was comprised of six other persons who were not charged with any offence, and approved as fit and proper;
c. with regards to the foreign exchange market and payments system, BOJ's approach was contrary to the Financial Action Task Force's ('FATF') risk-based approach in regulating entities, since action was taken on unproven allegations;
d. there is no plausible reason for asserting that AFSL's continuation of cambio and remittance services would cause de-risking by correspondent banks, because the correspondent banking relationships are with deposit-taking institutions, not cambios and money remitters;

e. BOJ's actions were illegal and ultra vires since it was not authorised under the Bank of Jamaica Act to immediately suspend the cambio licence;
f. the Notification to Cambios and Remittance Companies 'Fit and Proper' Criteria Operators, on which BOJ relied in its determination that AFSL's principals were no longer fit and proper, did not have legislative effect since it was not published in the Gazette in accordance with section 31(1) of the Interpretation Act;
g. the charges against AFSL's principal shareholders dated back to 2013, and concerned years during which BOJ audited AFSL and renewed its licence;
h. concerning BOJ's Fintech Regulatory Sandbox Guidelines, BOJ was only permitted to immediately revoke participation where there was an urgent need to protect the financial system, the participant, its customers and the general public, and this was not alleged in its letter to AFSL dated 3 December 2021;
i. the required written notice of 30 days stating its intention and allowing AFSL the opportunity to respond was not observed, which breached AFSL's legitimate expectation of receiving adequate notice, grounds for the revocation and an opportunity to respond to the allegations prior to the revocation;
j. the learned judge erred when he found that the balance of convenience favoured the refusal of the injunction because AFSL was burdened with a greater risk of irremediable prejudice and damage to its business if successful in its judicial review claim;
k. BOJ did not dispute that damages would not be an adequate remedy;
l. BOJ is protected by statute from liability, pursuant to section 34E of the Bank of Jamaica Act and section 25 of the Payment

Clearing and Settlement Act, and so AFSL's potential for recovering damages is defeated, therefore, the balance of convenience should be in favour of preserving the status quo, which existed prior to BOJ's actions; and

m. the learned judge failed to consider alternative remedial steps that could have been implemented to alleviate BOJ's concerns if the cambio licence and Sandbox authorisation were restored.

[13] Several authorities were relied on in support of these submissions, including **Belize Alliance of Conservation Non-Governmental Organizations v The Department of the Environment and Belize Electric Company Limited** [2003] 1 WLR 2839 ('**Belize Alliance**'), **National Commercial Bank Jamaica Ltd v Olint Corp Ltd (Jamaica)** [2009] UKPC 16 ('**NCB v Olint**'), **Bilal Khalifeh v Blom Bank S.A.L.** [2021] EWHC 1502 (QB) ('**Khalifeh v Blom Bank**'), **Garden Cottage Foods Ltd v Milk Marketing Board** [1984] 1 AC 130 and **Novartis AG v Hospira UK Ltd** [2014] 1 WLR 1264.

Submissions on behalf of BOJ

[14] Learned Queen's Counsel, Mr Hylton, indicated that BOJ was withdrawing its application, filed on 3 January 2022, to strike out certain statements in the first affidavit of Mr Wayne Wray filed in support of this application.

[15] Counsel for BOJ argued against the appropriateness of a single judge of this court hearing this application on three limbs. Firstly, it was advanced that the single judge of this court lacks the jurisdiction to grant the injunction being sought because it does not fall within rules 2.10(1)(c) or (e); secondly, the orders which AFSL seek would require the single judge to embark on a "mini trial" which would be inappropriate for an interlocutory hearing in chambers; and finally, the single judge would be required to consider and determine the very issue that the full court would have to decide at the hearing of the appeal. It was further posited that it was in the best interests of justice that the application should be remitted to the full court and the appeal be expedited. The

cases of **Kern Spencer v The Director of Public Prosecutions and the Attorney General of Jamaica** (unreported) Court of Appeal, Jamaica, Application No 121/2009, judgment delivered 24 June 2009, **Cable and Wireless Jamaica Limited v Eric Jason Abrahams** [2021] JMCA App 19 and **Khalifeh v Blom Bank** were cited in support of this submission.

[16] It was contended by counsel for BOJ that AFSL's application does not have a real prospect of success since it cannot be shown that the learned judge was plainly wrong in the exercise of his discretion. Reliance was placed on the well-known principle that this court will not interfere with a first instance judge's exercise of a discretion unless he was demonstrably wrong on the law or in his findings of facts. Counsel argued that AFSL failed to establish a strong prima facie case that would justify the grant of a mandatory injunction. It was argued that the learned judge set out the evidence presented by both parties and ultimately concluded that the balance of convenience favoured the refusal of the injunction. BOJ disputed AFSL's assertion that no evidence of risk to the financial system was presented. Counsel referred to evidence such as the de-risking from correspondent banks in the region since 2014, the loss of important correspondent relationships in the region, Bank of America's discontinuance of accepting cash from cambio operations in 2015 and FATF's monitoring of Jamaica. That evidence was accepted by the learned judge, who, as a result, was satisfied that there was a risk to be considered. The authorities of **Tri-Star Engineering Company Limited v Alu Plastics Limited and others** [2014] JMCA Civ 16, **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 1 ('**AG v Mackay**'), **R v Secretary of State for Transport, ex parte Pegasus Holidays (London) Ltd and another** [1989] 2 All ER 481 and **NCB v Olint** were relied on in support of this submission.

[17] It was further submitted that the power to approve the operation of a money transfer and remittance agency stems from section 22G of the Bank of Jamaica Act. The power to suspend or revoke that approval was implied in accordance with section 29 of the Interpretation Act, which provides that where an Act confers a power to issue

regulations, such regulations may be suspended or revoked by the same authority. Counsel argued that in light of the authorities and statutory provisions, there could be no doubt that BOJ had the power to suspend AFSL's approval. Counsel relied on the case of **Thompson v The Attorney General of Jamaica et al** (unreported), Supreme Court of Jamaica, Suit No CL T 041/1978, judgment delivered 30 May 1980, in support of this submission.

[18] Although BOJ accepts that the refusal of the injunction imposed on AFSL will cause inconvenience, it was submitted that the consequences if AFSL continues to operate while its principal shareholders are charged with serious financial crimes would be more severe. Additionally, if the injunction were granted, BOJ would not be able to respond quickly to further developments that warrant or necessitate action. Ultimately, the learned judge found that the risk to the financial sector outweighed the economic loss and inconvenience AFSL may suffer as a result of the continuation of the suspension. BOJ contended that the public interest would usually outweigh the financial welfare of an applicant. The cases of **Belize Alliance** and **Digicel (Jamaica) Limited v The Office of Utilities Regulation** [2012] JMSC Civ 91 were relied on in support of this submission. It was further submitted that in an effort to mitigate any such loss or inconvenience, the court ordered that an urgent date be set for the full hearing of the judicial review claim.

The legal basis for the grant of an injunction pending an appeal

[19] The Court of Appeal Rules 2002 (as amended) ('CAR') provides that a single judge of this court has the jurisdiction to grant an injunction pending the determination of an appeal, among other things. Given the application under consideration, the relevant rule is 2.10(1)(c), set out for ease of reference below:

> "2.10 (1) A single judge may make orders –
>
> …
>
> (c) for an injunction restraining any party from dealing, disposing or parting with possession of the subject matter of an appeal pending the determination of the appeal; …"

[20] It is now settled that to determine whether an injunction ought to be granted pending appeal, the question is whether an applicant has a good arguable appeal (see **Kingston Armature & Dynamo Works Limited v Jamaica Redevelopment Foundation Inc and Kenneth Tomlinson** (unreported) Court of Appeal, Jamaica, Application No 121/2012, judgment delivered 20 December 2010 and **Brilliant Investments Ltd v Rory Chinn** [2020] JMCA App 6).

[21] Also, in analysing whether there is a good arguable appeal, it must be borne in mind that this court, either at this stage or when the appeal is being considered, will only disturb the decision of the learned judge below if it finds that he exercised his discretion on an incorrect basis (see **Hadmor Productions Ltd and others v Hamilton** [1982] 1 All ER 1042 ('**Hadmor**') applied in **AG v Mackay** and **Rona Thompson v City of Kingston Sodality Co-operative Credit Union Limited** [2015] JMCA App 12 ('**Thompson v COK**')).

[22] Therefore, at this stage, the court is required to consider whether "it is arguable that the learned judge was in error in a significant way in the decision handed down at first instance" (per Brooks JA (as he then was) in **Thompson v COK** at para. [15] of the judgment).

[23] Should it be determined that it is arguable that the learned judge exercised his discretion on an erroneous premise (which would mean that the appeal has a real chance of success), the other relevant principles for consideration, at this point in the proceedings, are whether damages are an adequate remedy and whether the requirements of the balance of convenience or the interests of justice lies in the grant or refusal of the injunction (see **American Cyanamid Co. v Ethicon Ltd** [1975] AC 396 ('**American Cyanamid**') and **NCB v Olint**).

Discussion

[24] To determine if AFSL has an arguable appeal, an assessment of the grounds of appeal is relevant. This assessment will be conducted in a manner that will be limited to

resolving whether it is appropriate to impose an injunction pending appeal and not to usurp the course that the full court will undertake at the hearing of the appeal. However, before doing so, I will address the issue concerning the jurisdiction of a single judge to determine this application raised by Mr Hylton in the course of his submissions.

[25] Counsel for BOJ contended that a single judge of this court lacks the jurisdiction to grant an injunction of the kind being considered (the summary of his arguments is set out at para. [15] above). There were no submissions by AFSL on this matter. While I agree with counsel for BOJ that had the application been heard by the full court by way of an expedited appeal, this would have certainly conserved on judicial time and the resources of the court, I will decline to make any pronouncement on whether a single judge has the jurisdiction to hear an application of this nature. This is because, regrettably, I did not find the authorities cited in support of this submission particularly helpful in deciding the issue. Therefore, in my judgment, this is a question best reserved for another occasion when the court is provided with adequate submissions and authorities on the subject. Having refused to decline jurisdiction, I will now proceed to consider the substantive issue that arises on this application.

[26] As indicated above, the first determination to be made is whether the learned judge erred by refusing to grant AFSL's application for an injunction pending the judicial review claim. It is agreed by both parties that this decision was an exercise of the learned judge's discretion and that the applicable principles that are to guide this court are those pronounced in **Hadmor** and **AG v Mackay**.

[27] The learned judge has provided written reasons for his decision. In his reasons for judgment, the learned judge examined in detail the evidence, submissions, and authorities presented by the parties in support of their respective positions. Having done so, he concluded that AFSL had an arguable case for judicial review. However, as previously stated, the learned judge refused its application for interim injunctive relief.

[28] Having considered the submissions and authorities of **American Cyanamid** and **NCB v Olint**, the learned judge, at para. [61] of the judgment, identified the criteria that were to inform his decision as being:

> "(i) whether there is a serious issue to be tried;
>
> (ii) whether damages are a sufficient remedy;
>
> (iii) does the balance of convenience weigh in favour of a grant of the mandatory injunction;
>
> (iv) if a mandatory injunction is granted are the chances that it will turn out to be wrongly granted, a low prospect."

[29] While in **NCB v Olint** the Board pronounced that any "arguments over whether the injunction should be classified as prohibitive or mandatory are barren", Lord Hoffmann referred to a specific feature of a 'mandatory injunction' as being more likely to cause irreparable harm than a 'prohibitory injunction'. He also provided additional guidance on the essential tenets to be considered when determining whether an interlocutory injunction should be granted or refused (whether such an injunction could be termed prohibitory or mandatory). At paras. 19 and 20 of the judgment, His Lordship opined:

> "19. **There is however, no reason to suppose that in stating these principles, Lord Diplock** [in **American Cyanamid**] **was intending to confine them to injunctions which could be described as prohibitory rather than mandatory. In both cases, the underlying principle is the same, namely that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other**: see Lord Jauncey in *R v Secretary of State for Transport, ex parte Factortame Limited (No 2)* 1991 1 AC 603, 682-683. What is true is that the features which ordinarily justify describing an injunction as mandatory are often more likely to cause irremediable prejudice than in cases in which a defendant is merely prevented from taking or continuing with some course of action: see *Films Rover International Ltd v Cannon Film Sales Ltd* [1987] 1 WLR 670, 680. **But this is no more than a generalisation. What is required in each case is to examine what on the particular facts of the case the consequences of granting or withholding of the injunction is likely to be**. **If it appears that the injunction is likely to cause**

> **irremediable prejudice to the defendant, a court may be reluctant to grant it unless satisfied that the chances that it will turn out to have been wrongly granted are low; that is to say, that the court will feel, as Megarry J said in *Shepherd Homes Ltd v Sandham* [1971] Ch 340, 351, 'a high degree of assurance that at the trial it will appear that at the trial the injunction was rightly granted**.'
>
> 20. For these reasons, arguments over whether the injunction should be classified as prohibitive or mandatory are barren: see the *Films Rover* case, *ibid*. **What matters is what the practical consequences of the actual injunction are likely to be**. … " (Italics as in the original) (Emphasis added)

[30] The learned judge examined each criterion and followed the order for the consideration of the various issues formulated by Lord Diplock in **American Cyanamid**. He also considered the principle highlighted by Lord Hoffmann in **NCB v Olint**, that is, the overall justice of either granting or refusing the injunction. Having done so, the learned judge found that there was a serious issue to be tried and that damages would not be an adequate remedy. Those findings have not been challenged.

[31] He went on to consider the balance of convenience regarding the issues raised by each party and refused to grant the injunction. His reasons for doing so are at paras. [63] and [64] of the judgment and are set out below:

> "[63] The final two (2) criteria identified [as set out above at para. 24], form the basis for my refusal of the application for interim injunctive relief. Firstly, on the balance of convenience, the prejudice to the Applicant, as significant as it may be, is dwarfed by the risk of harm to the local financial sector. That international players, on whom the local financial sector and the Applicant company rely, could act on the very fact of an entity regulated by the BOJ continuing to operate where its principals are charged for financial crimes, is an issue that must be considered. The harm to the financial system, a potential for which a compelling argument has been made, places the balance of convenience in favour of refusing the application.
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> [64] As noted by Counsel for the Respondent, Lord Hoffman in the **National Commercial Bank v Olint case** decried the granting of

> mandatory injunctions except where the tribunal is certain that the chances that it will turn out to have been wrongly granted are low; or a high degree of assurance that at trial it will appear that the injunction was rightly granted. It was further submitted that this high benchmark is similar in claims for judicial review (See **R (on the Application of Zalys)**). On the affidavit evidence placed before this Court, I do not have that 'high degree of assurance', that a mandatory injunction will be found to have been rightly granted at the conclusion of the judicial review proceedings. The interim relief is refused."

[32] As indicated above (at para. [8]), AFSL's complaints in the grounds of appeal are that the learned judge failed to give sufficient or adequate regard to certain important factors in the evidence before him, did not conduct a fair and proper balancing exercise as to where the balance of convenience lies and failed to consider alternative remedial steps that could be implemented to alleviate BOJ's concerns while reinstating the cambio licence and Sandbox authorisation.

[33] However, an examination of the reasons provided clearly illustrates that the learned judge considered all the essential elements as required, including those emphasised by Lord Hoffmann in **NCB v Olint** (set out at para. [29] above), against the background of the evidence before him, the relevant authorities and the submissions of counsel to decide where the balance of convenience lies. Having reviewed the learned judge's decision and the grounds of appeal, I have formed the view that his reasons for refusing AFSL's application for injunctive relief cannot be categorised as "demonstrably wrong" or "so aberrant that it must be set aside on the ground that no judge mindful of his duty to act judicially could have reached it". It also appears to me that AFSL's task of convincing the full court that the learned judge exercised his discretion on an incorrect basis will be particularly difficult.

[34] While my decision that AFSL does not have an arguable appeal is dispositive of the application, I wish to make the following observations:

a. While I am persuaded that AFSL has the capacity to satisfy any undertaking that it gives in relation to damages (in the light of the value of its assets), it is quite doubtful, in my view, that BOJ, being a public regulatory body which acts in the interests of the public, could be protected by any undertaking as to damages since it will itself have suffered none. Therefore, it will be necessary for the court to consider the balance of convenience (see **Regina v Secretary of State for Transport Ex parte Factortame Ltd and Others (No 2)** [1991] 1 AC 603).

b. I have also taken into account the authorities of **Belize Alliance** (relied on by both parties) applied in **Telecommunications Regulatory Commission v Caribbean Cellular Telephone Limited** (unreported), Court of Appeal of the Eastern Caribbean Supreme Court, British Virgin Islands, Claim No BVIHCVAP2015/0015, judgment delivered 15 December 2015, and **R v Secretary of State for Transport, ex parte Pegasus Holidays (London) Ltd and another**. It would seem to me, on the strength of these authorities, that to warrant the grant of an injunction to restrain a public body from exercising its functions and performing its duties, AFSL is required to demonstrate that, on the face of it, it has a case strong enough to justify the imposition of such an exceptional remedy as against the interests of the public, and the interests of justice so require. In other words, there ought to be compelling evidence of apprehended harm that could affect not only AFSL's commercial activities and well-being, but also the wider public (and by extension, the Jamaican economy and the country itself), which BOJ serves. The evidence presented by AFSL, in my view, has failed to meet this threshold.

c. Should the injunction be granted on terms, given the absence of evidence to meet the threshold mentioned above, this would curtail BOJ's ability to perform its regulatory duties as it relates to AFSL while the appeal is pending (however long this may be). In addition, this would place AFSL in a position of advantage over similarly regulated entities. This would certainly not be in the best interests of the public, the Jamaican economy, and the country itself.

[35] Before concluding, I have also noted that the learned judge has directed, to AFSL's advantage, that the registrar, in the court below, is to expedite the hearing of the judicial review claim (see para. [65] of the judgment). The first hearing of the fixed date claim form has been set for 27 January 2022. Undoubtedly, this direction was given to alleviate any "potential financial loss and loss of opportunities" that AFSL may suffer due to the refusal of the interlocutory injunction. However, following discussion with the parties and consultation with the registrar of this court, in the light of the outcome of this application, it was decided that early dates for a case management conference and the hearing of the appeal would be appropriate.

Conclusion

[36] For the reasons I have sought to explain, there is no basis on which I can find that there is a good arguable appeal with respect to the learned judge's reasons for refusing the injunction pending the judicial review claim. As a result, the application for the grant of an injunction pending appeal is refused.

Costs

[37] Having heard and considered brief submissions from counsel for the parties on the issue of costs, I am of the view that, in this case, costs should follow the event. Therefore, the costs of the application should be borne by AFSL.

Order

1. The application for an injunction pending appeal is refused.
2. Costs of the application to the respondent to be agreed or taxed.
3. The appeal is set for hearing during the week commencing 28 March 2022.
4. Case management conference is set for 27 January 2022 at 2:00 pm.