



DECISION of the FEI TRIBUNAL

dated 1 September 2017

In the matter of

Ms. CLAIRE LOCKHEAD

"Claimant"

Ms. NANNA-LOUISE WILDFANG LINDE

Mr. KIM KJAERGAARD

"Persons Responsible"

together "Claimants" or "Appellants"

represented by Ms. Jacqueline Brown, Keystone Law, 48 Chancery Lane, London, WC2A 1JF, United Kingdom, and Dr. Stephan Netzle, TIMES ATTORNEYS, Falkenstrasse 27, 8024 Zurich, Switzerland.

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE ("FEI")

"FEI" or "Respondent"

I. COMPOSITION OF PANEL

Mr. Henrik Arle, one member panel

II. SUMMARY OF THE FACTS

- 1. Case File:** The Tribunal duly took into consideration the Parties' written submissions and communications received to date.
- 2. Oral hearing:** On 22 August 2017 at the FEI Headquarters in Lausanne, Switzerland.

Present:

Mr. Henrik Arle, one member panel
Ms. Erika Riedl, FEI Tribunal Clerk

For the Appellants:

Ms. Jacqueline Brown, legal representative
Dr. Stephan Netzle, legal representative

For the FEI:

Mr. Francisco Lima, FEI Senior Legal Counsel
Ms. Aine Power, FEI Legal Counsel

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2015 ("Statutes").

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017 ("GRs").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("IRs").

FEI Jumping Rules, 25th edition, 1 January 2014, updates effective 1 January 2017, Annex XI ("JRs").

Veterinary Regulations, 13th edition 2015, effective 1 January 2017, Chapter IV ("VRs").

FEI Code of Conduct for the Welfare of the Horse.

2. The relevant Legal Provisions:

Article 38.1 of the Statutes:

"Subject to Articles 38.2 and 38.4, the FEI Tribunal shall decide all cases submitted to it by or through the Secretary General, whether Appeals from or matters not otherwise under the jurisdiction of the Ground Jury or Appeal Committee. These cases may be:

- (i) Any infringement of the Statutes, General Regulations, Sport Rules, or Procedural Regulations of a General Assembly or of violation of the common principles of behavior, fairness, and accepted standards of sportsmanship, whether or not arising during an FEI meeting or Event;
- (ii) Any issue of interpretation of the Statutes, General Regulations, and

Sport Rules;

(iii) Notwithstanding anything to the contrary in this Article, the FEI Tribunal may review and decide upon any matter involving abuse of horses.”

Article 165 of the GRs – Appeals:

“1 An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see paragraph 2 below):

- 1.1 With the Appeal Committee (or with the FEI Tribunal if there is no Appeal Committee) against Decisions by the Ground Jury.
- 1.2 With the FEI Tribunal against Decisions of the Appeal Committee or any other person or body.
- 1.3 With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the Secretary General and provide him with copies of the statement of Appeal. (...)

3 Appeals to the Appeal Committee must be in writing, signed and accompanied by supporting evidence in writing or by the presence of one or more witnesses and must be lodged no later than one (1) hour after the Decision of the Ground Jury.

4 If there is no Appeal Committee, Appeals to the FEI Tribunal must be in writing, signed and accompanied by supporting evidence in writing or by the presence of one or more witnesses and must reach the FEI Tribunal no later than fourteen (14) days after the end of the Event. So far as Competitions are concerned, the right of Appeal is limited to questions of the eligibility of an Athlete or Horse and questions involving the interpretation of the Sport Rules.

5 Appeals to the FEI Tribunal must be dispatched to the Secretary General and signed by the appellant or his authorised agent and accompanied by supporting evidence in writing or by the presence of one or more witnesses at a designated hearing and must reach the FEI Tribunal within thirty (30) days of the date on which the Secretary General’s notification of the earlier Decision was sent. (...)"

Article 17.1 of the IRs - Jurisdiction:

“In accordance with Article 36 of the FEI Statutes, the FEI Tribunal has the competence to hear and determine any matter properly submitted to it, including, but not limited to, those matters specified in Article 163 (Protests) and Article 165 (Appeals) of the FEI General Regulations and all disputes and procedures arising under the Equine Anti-Doping and Controlled Medication Regulations.”

Articles 19.23 and 19.24 of the IRs:

“19.23. The Claimant shall have the burden of proving that the Respondent committed the infringement(s) alleged in the Claim.

19.24. Unless otherwise stated in the relevant rules, the standard of proof on all questions to be determined by the Hearing Panel shall be by the balance of probabilities.”

VRs – Chapter IV:

"Article 1042 Definitions:

1. A Pony is a small Horse whose height at the withers does not exceed 148.0cm without shoes.
2. A height allowance is made for Ponies being measured at FEI Events; for Ponies being measured at an FEI Event the Pony's height must not exceed a maximum of 150.0cm without shoes or a maximum of 151.0cm with shoes.

Article 1043 Measurement Procedure at FEI Events and Championships

1. Ponies may be subject to Pony Measurements at various Pony Competitions, as determined by the FEI Veterinary Department.
2. At Pony Competitions where Pony Measurement may take place the schedule must state the time of the Pony Measurement which should usually be before the Pony Competition Horse Inspection. Notwithstanding anything contrary regulated in the GRs when Pony Measurement is scheduled, the Period of an Event shall commence when the Pony Measurement starts.
3. On the request of the GJ and following consideration by the Veterinary Department, any Pony that appears to exceed the height permitted for a Pony in Competition during an Event where there is no formal Measurement may be subject to Out-of-Competition Measurement procedure, as described in this article. The Ground Jury member must advise the Veterinary Department in writing of this request.
4. Ponies competing at Pony Competitions are subject to Pony Measurements. If a PR refuses to submit their Pony to Pony Measurement the Pony will not be permitted to Compete. (...)"

IV. Procedure

- "(...) 22. The measurement will then be taken at the highest point of the withers, that is immediately above the spinous process (usually) of the 5th thoracic vertebra, which should be identified by palpation if necessary before any measurements are made.
23. Each Pony will be measured in succession by the two Measuring Veterinarians.
24. Should the measurements of the Measuring Veterinarians differ, the lower of the 2 heights will be taken as definitive. (...)"

VI. Out-Of-Competition Measurement

- "29. For any Pony that cannot be measured, for any reason as described above, or when the Veterinary Department support the GJ's request to request an Out-Of-Competition Measurement of a Pony; the PR

must agree arrangements with the FEI Veterinary Department for the Pony to be Re-Measured within 6 weeks of the date of the Competition at stake. Any additional costs of such a measurement will be met by the PR as also when an Appeal has been made (See Art 1045)

VII. Measuring In & Measuring Out

30. Following the Initial Measurement, as described herein, a Pony will either be:
 - a) "Measured In", and permitted to Compete, or
 - b) "Measured Out".

31. Ponies Measured Out will be notified by the GJ, and are eligible for Measurement as described below in VIII. (...)

VIII. Second Measurement

32. A Pony may be presented for Second Measurement within 1 hour of the Initial Measurement. (...)"

"Article 1044 Ponies Measured Out During FEI Events

1. The PR, or representative, of a Pony Measured Out must be notified by the Ground Jury and the Pony is not permitted to compete in the Competition.
2. The Passport of the Pony Measured Out must be marked in red on the Identification Page, stating the date and Event and the words "*Measured Out -Pending an Appeal*", this must be signed by the GJ at the Competition.
3. The GJ is responsible for ensuring that the VD is informed of any Pony that has been Measured Out; the VD will then inform the Veterinary Department, at the time of submission of the Veterinary Report.
4. The FEI will inform the respective NF that the Pony was Measured Out.
5. It is the responsibility of the NF to ensure that any Pony Measured Out is not entered in any further FEI Pony Event.

Article 1045 Pony Measurement Appeal System

1. The PR, or representative, may request in writing an Appeal Measurement following a Pony being Measured Out at an Event. An Appeal request must reach the FEI Veterinary Department within 7 days of the conclusion of the Event.
2. For any Appeal Measurement the Pony must be microchipped, in accordance with the VR microchip standards, to facilitate the identification process.
3. The PR, or representative, is responsible for all costs related to the Appeal Measurement. This includes transport, accommodation, meals

and fees for the Measuring Veterinarians, an FEI representative, if applicable a Testing Veterinarian, the costs of FEI Approved Laboratory analysis, use of a suitable measuring floor and all other associated costs.

4. The Appeal Measurement should take place as soon as possible and within a maximum of 40 working days, of the written request being submitted to the FEI Veterinary Department.
5. The Pony must be available at any time within the 40 working days of the written request for an Appeal Measurement.
6. If the Appeal Measurement appointment is cancelled or postponed by the PR or representative, for any reason, a minimum fee of CHF 500 may be charged.
7. The PR, or representative, must be present during the Appeal Measurement procedure.
8. During an Appeal Measurement no additional height allowance is permitted, the Pony's height at the withers must not exceed the maximum height of 148.0cm without shoes. Ponies must not be presented in shoes.
9. The Appeal Measurement will be carried out by 2 Measuring Veterinarians, ideally who were not the Measuring Veterinarians who measured the Pony during the Competition.
10. The Appeal Measurement must be witnessed by an FEI representative.
11. The Appeal Measurement must be carried out under the conditions and according to the protocol described above.
12. The suitable floor will be provided by the NF and approved by the Measuring Veterinarians as per the protocol described above.
13. The Pony should be in a good physical condition, as determined by the Measuring Veterinarians, (including appropriate length of hoofs and not foot sore) and free from all substances listed on the FEI Equine Prohibited Substances List.
14. The lower result of the 2 Measuring Veterinarian's measurements will be taken as definitive, final and binding; no further re-measurement will be permitted thereafter. Immediately after the appeal measurement the pony may be tested in accordance with the EADCMR by an OV present. This testing is however compulsory only when the Pony has measured in.
15. No retrospective Competition adjustment is permitted following an Appeal Measurement.
16. The Appeal Measurement will be recorded in the passport on the Identification Page by the Measuring Veterinarians, stating the date and place of the measurement and either the words:
 1. "*Appeal Measurement – Pony Measured In*", if the Pony measures within the height, or
 2. "*Appeal Measurement - Pony not eligible for FEI Pony Competitions*", if the Horse measures above the defined height for a Pony.

A copy of the relevant sections of the Passport must be sent to the FEI Headquarters and the NF."

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during the oral hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 The FEI Event CSIO-P OPGLABBEEK, Belgium took place from 10 to 14 May 2017 (the "**Event**"). The pony measurement took place on 11 May 2017.
- 1.2 Ninety-six (96) ponies were measured by two (2) FEI Measuring Veterinarians. One of the ponies measured was the equine CLAGGAN GYPSY DELIGHT (FEI ID 103ZU94) (the "**Equine**"). The Equine's Person Responsible is Ms. Claire Lockhead (the "**Claimant**"). Furthermore, the equines BEL AIR (FEI ID 103UE27) and VIE'NKA DU LAVANDIN (FEI ID 104QF74), together (the "**Ponies**") were also measured. The Persons Responsible for the Ponies are Ms. Nanna-Louise Wildfang Linde and Mr. Kim Kjaergaard respectively, together (the "**Persons Responsible**").
- 1.3 Six (6) ponies were over height and measured out, among them the Equine and the Ponies.
- 1.4 Appeal Measurements in accordance with Article 1045 of the VRs were carried out on the Equine and on the Ponies (on 19 and on 20 June 2017), where the Ponies measured in (148 cm without shoes) and the Equine measured out (149.2 cm without shoes). In addition to the Ponies also a further equine FLINTSTONE B measured in following the Appeal Measurements. The Person Responsible of the equine FLINTSTONE B has originally joined the Appeal, but did not maintain the Appeal following the Appeal Measurements.

2. Procedural Background

- 2.1 On 28 May 2017, the Appellants submitted an Appeal, and on 12 June 2017, the Appellants submitted a supplement to the initial Appeal.
- 2.2 On 15 June 2017, the Tribunal confirmed receipt of the Appeal and appointed Mr. Henrik Arle (FIN) as one member panel in the case at hand.
- 2.3 On 3 July 2017, the Tribunal decided to fix a schedule of dates for further submissions of the Appellants and of the Respondent.

- 2.4 On 4 July 2017, and after the Appeal Measurements, the representatives of the Appellants confirmed that the Appeal is maintained with respect to the Equine (the “**Full Appeal**”), but no longer pursued in relation to the pony FLINTSTONE B.
- 2.5 On 6 July 2017, the representatives of the Appellants confirmed that the Persons Responsible maintained their Appeal but only regarding the Tribunal’s determination of the meaning of Article 1045 para. 14 of the VRs (as outlined further below) (the “**Partial Appeal**”).
- 2.6 On 26 July 2017, the FEI provided its Answer to the Appeal.
- 2.7 On 14 August 2017, the Appellants provided a list of witnesses to be heard during the hearing. On the same day, the FEI clarified that the FEI did not accept any of the witness statements. The FEI however did not object to the witnesses being heard via telephone rather than in person.
- 2.8 On 22 August 2017, – upon request by the Appellants – a hearing took place.

3. Appeal by the Appellants

Full Appeal:

Jurisdiction and burden of proof:

- 3.1 To start with, the Claimant argued that the FEI was put to strict proof that it adhered to the Pony measurement requirements as outlined in the VRs, including but not limited to Articles 1003, 1018, 1024 VII, 1024 VIII, 1043, paras 5, 6, 8(b), 9, 10, 11, 20, 32, 33 and 37 A. That the FEI was requested to supply a copy of the Report required pursuant to Article 1043 para 37 A of the VRs and the weights and measures certification for the measuring sticks used. Finally, the Claimant argued that these requirements were mandatory and where they had not been fulfilled the measuring had to be annulled.
- 3.2 Furthermore, that – in accordance with Article 165 of the GRs -, the Tribunal had competence to hear and determine any matter properly submitted to it, including, but not limited to Appeals. Further, that the Claimant had not lodged a Protest at the Event, as FEI representatives had misdirected her in this regard.

First argument - Pony measurement at Event in breach of FEI Rules:

- 3.3 In this respect the Claimant argued that the pony measurements conducted at the Event had been in breach of the VRs.
- 3.4 The Claimant submitted that she held four main objections to the procedure, facility and requirements, namely as follows:

- "(i) *The procedure was defective as the schedule failed to include in it the time of the measurements until shortly before the event in the online version and further and in any event the times provided in the online schedule were not adhered to for any of the teams for which these ponies were presented, namely Ireland, Denmark and Great Britain.*
 - (ii) *The measuring "pad" was slippery. In this regard, the Tribunal is referred to PR's witness statements and also to the evidence of Asa Hellström a representative of the Swedish team, and photographs of the measuring area, which verify the condition of the measuring "pad" as being unsatisfactory as it was slippery.*
 - (i) *The ponies were not given time to relax and stand in a natural position. The measuring officials were unusually, interventionalist and often placed the ponies' legs in an unnatural position and / or manhandled the ponies forcing them in to an unnatural stance and upsetting them, thus tensing them. The process was rushed as a result of the timetable being behind and so the ponies were not afforded adequate time to settle, relax and stand naturally.*
 - (ii) *There was no separate entrance and exit."*
- 3.5 Together with her submission, the Claimant submitted various witness statements regarding the Pony Measurements conditions at the Event. Since the Tribunal finds that it has no jurisdiction to decide on this part of the Appeal, i.e., the conditions of the pony measurements at the Event (as outlined in the Decision part), it is not necessary include any of the witness statements in detail in this Decision.

Second argument – FEI's refusal to re-measure equines at 151 cm:

- 3.6 The Claimant argued that the Appellants had requested to the FEI to exercise its discretions (examples and witness statements were provided in this respect), as it had done previously, to permit the Equine and the Ponies to be re-measured at 151 cm. That at least one of the previous re-measuring had not been conducted at a show, but at a clinic, where the pony had measured back in as a result of a third and discretionary, re-measuring by the FEI. The FEI had however refused such request by the Appellants.

Third argument – Unfairness and inconsistency of the Appeal Measurement mechanism (Article 1045 of the VRs):

- 3.7 In this respect, the Claimant in essence argued that the Appeal Measurement mechanism of the VRs (Article 1045) whereby different height allowance was permitted (148 cm without shoes outside of competition and 150 cm without shoes and 151 cm with shoes in competition) was unfair and inconsistent with general rules of fairness in circumstances, the objectives of the FEI as set out in its Statutes and the sporting spirit, as referred to in the Preamble to the JRs.
- 3.8 As a result, the Claimant requested to (i) permit the Equine to be presented to be re-measured at 151 cm with shoes; and subsidiarily (ii) declare Article 1045.16 subpara. 2 of the VRs inadmissible and to allow

the Equine to apply for future FEI Pony Competitions and to be measured at future FEI events.

- 3.9 Related to this argument, the Claimant provided a statement by Mr. Richard Pay. Mr. Pay stated as follows:

"1. I am a farrier with thirty years' experience. I specialize only in shoeing horses and ponies which compete in showjumping.

2. I am frequently called specifically to shoe ponies which are border line in height and which, with normal shoes, may not meet the mandatory 151cm height requirement. These ponies are generally seasoned international campaigners which have competed internationally and often on national teams.

3. The standard height for a shoe for a pony is 8mm. Where the height of a pony is a potential issue it is standard practice to grind down the shoe and the nails to a wafer thin height of 1mm, thus giving the ponies which are measured with shoes an immediate advantage of almost a full 1cm over those ponies which are measured without shoes. (...)"

- 3.10 Mr. Pay furthermore stated that in his experience it was true that ponies might hold themselves in a more alert state and so stand taller at a show. However, the same was true in any other unfamiliar environment, where the ponies were not able to relax.

- 3.11 More specifically, with regard to general rules of fairness in circumstances, the Claimant argued as follows:

(i) *"Where the requirement for a 148cm Appeal System measurement is necessary as a consequence of procedural, facility and requirement defects on the day when the ponies were measured in Opglabbeek, none of which were in the control of the PRs and all of which were in the control of the FEI. A list of these complaints is noted in paragraphs 14 – 16 below."*

(ii) *Where one failure to "measure in" at 148cm under the Appeal System results in ponies who have stopped growing, are often seasoned competition ponies and which have often been measured in, being excluded forever from FEI competitions. This contrasts with ponies which fail the vet check only being prevented from competing at the show at which they fail.*

(iii) *There is an inherent unfairness in the competition measurement and the appeal measurement not being the same height, resulting in capricious and inconsistent outcomes and creating an unlevel playing field for competition.*

*a.Requiring a measurement at a height of 148cm at any time within 40 days of a pony being measured out at 151cm operates unfairly to the disadvantage of some competitors.
b.The 3cm (2cm without shoes) allowance for a show*

measurement¹ cannot be rationalised as being simply to provide for the ponies being "taller" (or less relaxed), in a show environment; it can be rationalised to account for the aforesaid and the level of fitness of the ponies in competition. It is the case however that even this rationalisation is flawed as not all ponies will react in the same way, some may be just as tense at a show as not and indeed some may react on any given day to any given factor in any manner of ways.

d.early in the year when ponies are unfit and not competing they will generally measure to a lower height than when they are fit and competing. To require a 148cm re-measurement when the ponies are fit and ready to compete is not to treat all competitors equally.

e.The allowance also assumes shoes are 1cm in height however this is not a requirement which means that ponies measuring without shoes are immediately disadvantaged to those which are measured with shoes of less than 1cm.² Thus the margin allowed at shows above the Appeal System height of 148cm, can be as much as 2.9cm, not just 2cm.

(iv) *Where the FEI has exercised its discretion most recently to permit further 151cm re-measurements (some for the fourth time), following "measured out" decisions taken in April 2017 at CPSI Bonehiden and also permissions granted to re-measure other ponies at 151cm following other "measured out" decisions in the past, and so where the "lex sportif" requires the FEI not to deviate from the same course on this occasion. In particular where the FEI has exercised its discretion to permit this remeasurement other than at a show – the very factor it says justifies the height differential."*

- 3.12 In addition, the Claimant argued that she entirely supported the FEI's efforts and desires to promote welfare. However, requiring ponies to re-measure at 148 cm without shoes, rather than permitting them to be presented again to be measured at 151 cm with shoes, did not assist this aim.
- 3.13 Furthermore, it had to be the aim of an international federation such as the FEI, which had monopolistic power to control participation in its sport, to permit and encourage as broad a level of competition in that sport as possible, and to do so on a level playing field, consistent with any reasonable restrictions designed to protect the legitimate interests of competitors. There was no legitimate interest of any competitor that would be affected adversely by the FEI permitting these ponies to be presented for re-measurement at 151 cm without delay. There were no limits upon the numbers of those permitted to participate in pony competitions and those who were competing were doing so subject to the 151 cm height restriction.

¹ See Vet Regs Art 1042 and 1045 (8)

² See evidence of Richard Pay Dip WCF

- 3.14 The Claimant further argued that in the case at hand (i) all ponies had reached an age where natural growth had stopped quite some time ago and whose natural height would therefore remain stable, and (ii) all ponies had a long history of height measurements never exceeding the thresholds set by Article 1042 of the VRs. In this respect, the Claimant provided the ponies ages (8 to 15 years old) and a list of when each pony had been measured. The Claimant argued that it was difficult to understand why - all of a sudden - the ponies were at risk losing their eligibility for future FEI Pony Competitions because of measurement failures at the Event and an inconsistent regulatory concept which made a difference between the height measured at an event and the height measured by an Appeal Measurement.
- 3.15 Moreover, in the view of the Claimant the rational of having an allowance above the internally recognised height of a pony was understandable, but there did not appear to be a rational for having different thresholds, and if there was one it was flawed. That requiring the ponies to re-measure at 148 cm or be excluded from competition in the pony classes for life, presented "*a capricious, inconsistent and an unintended outcome, and the outcome which disadvantages individual Athletes and Nations who are prevented competing with these ponies against those who have been permitted to compete with the same ponies in the past*". It also resulted in ponies being ruled out of peak performance and so their competition schedule and results and thereby depreciated their value.
- 3.16 Finally, the Claimant argued that there was no reasonable explanation for such arbitrary treatment, but that it obviously was only a deterrent against requesting Appeal Measurement. Such a sanction was "*disproportionate*" and also "*illegal*". It was disproportionate because there was no valid justification for unequal treatment. If a pony was excluded from one event there was no reason why it should be excluded also from the next one, if it then met the requirements of Article 1042.2 of the VRs, *i.e.*, the height allowance at events. The sanction was also illegal because it constituted an immediate and irreparable depreciation of the pony, which can no longer be registered with FEI Pony Competitions. In many instances the respective ponies had been acquired and trained in good faith precisely for this purpose; these ponies had often been purchased for substantial sums, in reliance upon the FEI having measured them in at 151 cm (often on more than one occasion). That this constituted a monetary sanction against the owner of the respective pony for which no legal basis existed in the FEI Statutes.
- 3.17 The Claimant argued that, while the Tribunal was obliged to apply the Rules and Regulations of the FEI, it did not have to follow them blindly. Where a rule in the FEI Rules and Regulations turned out to be illegal because it violated the principle of proportionality, which was mandatory under the applicable Swiss law, or if it constituted an unjustified punishment without sufficient statutory basis, the Tribunal had to disregard it and find a solution which complied with the applicable Swiss law. The Claimant therefore submitted that Articles

1045.8 and 1045.16 subpara. 2 had to be disregarded.

Partial Appeal:

- 3.18 Regarding the Partial Appeal, the Persons Responsible seek the Tribunal's determination of the meaning of Article 1045 para. 14 of the VRs. Particularly, that the Ponies which measured in on the Appeal Measurements on 19 June 2017 and on 20 June 2017 respectively, never needed to be measured again in their lifetimes. The Persons Responsible argued that this was consistent with the FEI's approach that the ponies who measure out on the Appeal system are excluded from FEI pony competitions for life.

4. Answer of the FEI

Full Appeal:

Jurisdiction and burden of proof:

- 4.1 On 26 July 2017, the FEI submitted its answer to the Appeal (the "**Answer**"). The FEI argued that, in line with a previous Tribunal Decision concerning a pony measurement (FEI Tribunal Decision of 26 August 2013) and as previously communicated to the Claimant, the Appeal regarding the conditions of a pony measurement at an FEI event was inadmissible, as the Claimant had not exhausted the administrative remedies available to her at the Event under the GRs and the VRs, *i.e.*, a Protest with the Ground Jury. That this remedy foreseen under the GRs and the VRs had been the adequate remedy, as the matter in question had arisen during the Event. The Tribunal therefore lacked jurisdiction in this respect.
- 4.2 Furthermore that, according to Article 19.23 of the IRs, the burden of proof was with the Claimant to proof what FEI rules were infringed in the pony measurement at the Event. The FEI also provided two Certificates of Calibration for "Pony Measuring Stick" by the Swiss Federal Institute of Metrology (METAS).

First argument - Pony measurement at Event in breach of FEI Rules:

- 4.3 In addition, the FEI provided answers to the pony measurement conditions at the Event, and the four main objections to the procedure, facility and requirements invoked by the Claimant. In essence, the FEI argued that none of the Articles of the VRs were breached, and that the Pony Measurements at the Event had been compliant with the respective FEI Rules. Since the Tribunal holds that it has no jurisdiction to decide on this part of the Appeal, *i.e.*, the conditions of the Pony Measurements at the Event (as outlined in the Decision part), it is not necessary to include the FEI arguments in the present Decision.
- 4.4 Finally, with regard to the Claimant's allegation that she did not lodge a Protest in writing at the Event in accordance with the GRs, as she had

been misdirected by FEI representatives, the FEI argued that the Claimant had brought this argument only after the FEI had informed her that in the FEI's view the Tribunal was not the appropriate forum to discuss the conditions of the Pony Measurements at the Event. The FEI further argued in essence that the Claimant had the obligation to know the FEI rules and when a protest had to be lodged. That it was unfortunate should the Claimant have received misleading information from FEI officials, which had not been confirmed. However, even if the Appeal was admitted by the Tribunal, none of the Pony Measurements conditions invoked by the Claimant were maintained.

Second argument – FEI's refusal to re-measure equines at 151 cm:

- 4.5 The FEI explained that the FEI indeed had in the past (specifically: 1 event in 2012; none in 2013 and 2014; 2 events in 2015; none in 2016 and 1 event in 2017) accepted some ponies that, having measured out at an FEI event, were accepted by the FEI to be re-measured again at 151 cm with shoes. In view of some procedural defects and honest mistakes in the pony measurement procedure (either the time of the pony measurement was not stated in the competition schedule, the measurement was done in a first instance by one single measuring veterinarian instead of two or the conditions of the measuring area were not optimal) and because of fair and justice considerations towards the owners and persons responsible, the FEI did exceptionally agree on a further re-measurement of those ponies.
- 4.6 That these decisions by the FEI had been taken following a thorough investigation of the pony measurement conditions at these particular events. In the case at hand however, the FEI, after a thorough and detailed investigation of the pony measurement conditions at the Event, concluded that the relevant rules were correctly applied and followed. Consequently, that there was no reason for the FEI to grant the Claimant the exceptional right to have the Equine re-measured at 151 cm. The FEI provided – among others – the Chief Steward Report from the Event confirming that "*The seating for this measurement was perfect and according to the rules.*"
- 4.7 Finally, that the decision of the FEI to not agree on a further re-measurement at 151 cm was not against "*lex sportif*" as the FEI had not deviated from any other decision adopted in the past. That in the present case the FEI had just applied FEI rules in a fair and consistent way.

Third argument – Unfairness and inconsistency of the Appeal Measurement mechanism (Article 1045 of the VRs):

- 4.8 To start with, the FEI provided a background to the legal system concerning Ponies in the VRs (Chapter IV, Articles 1041 to 1045), including pony measurements. This legal system had been introduced on 1 January 2007 after it had been approved by the FEI General Assembly in May 2006 in Kuala Lumpur, Malaysia. These new pony regulations introduced important changes, such as the abolition of

measuring certificates which had previously been in place. The FEI argued that in the over 10 years of existence of the present FEI pony rules no one had ever appealed either the pony measurement system or any particular pony rule.

- 4.9 According to an article in the eurodressage.com newsletter (20 Nov 2006) provided by the FEI, the pony community seemingly welcomed the "new regulations" and they were hailed as a "*big step forward in the improvement of the international sport, by abolishing the measurement certificates which were often corrupted by national veterinarians who signed the documents. Also, measuring at international events will make sure that pony sport is being conducted with ponies and not horses. This will make the sport fairer to the children.*" It has also been reported that 50 % of all measured dressage ponies during the 2006 European Pony Championships had been measured above 148 cm and almost all of the show jumping ponies had in fact been horses, i.e., taller than 148 cm shoeless and 149 cm with shoes. Media reported as follows in this respect: "*The major consequence and problem of competing horses in pony classes is that it creates an unfair competitive environment in which kids on 'real' ponies are disadvantaged to children riding 'horses' who have more scope, suspension and ground covering gaits and, therefore, will automatically score higher in dressage tests or jump higher over fences. It is a fact that at the 2006 European Pony Championships, several medals were given to horses instead of ponies.*" According to the FEI the current FEI Pony measurement system moved away from the corrupted life height certificate and established a system where ponies can be repeatedly measured in order to ensure the fairest system and also to avoid cases of abuse and mistreatment of animals.
- 4.10 Furthermore, the FEI pointed out that, according to the legal definition in the VRs, "*A pony is a small Horse whose height at the withers does not exceed 148.0cm without shoes*". That this represented the general, fundamental, primary and basic rule about ponies, and was an international and standard definition that could be found anywhere, as well as a well-accepted definition that had been in force within the FEI competitions for many years.
- 4.11 However, and for the benefit of the owners and athletes, the FEI graciously allowed for a height allowance as set forth in Article 1042.2 of the VRs when ponies are measured at FEI events ("**Measurement In-Competition**"). This was because following scientific advice the FEI had taken into consideration the fact that measuring ponies In-Competition created a different set of circumstances which might lead (or might not) to fluctuation in height and following much consultation with the relevant FEI technical committees it was agreed to allow for a margin of 2 cm. The FEI argued that even the Claimant recognised the rational for having a height allowance.
- 4.12 That one of the main problems in the pony community was in fact that many owners, including the Claimant, had taken as a general rule that a pony is a small horse whose height was 150 cm without shoes or a maximum of 151 cm with shoes, which was obviously wrong; and that

countless ponies of these height were subject of business transactions for a high price every day. The pony industry in Europe represented an important economic and business sector. The FEI had no official figures, but estimated that an elite pony might cost several hundred thousand euros; there were even numbers mentioned above 1 million euros, which was however not confirmed.

4.13 And that a terrible consequence of this desire to win competitions and the financial/business interest to sell the ponies for the highest price possible was that ponies over height (*i.e.*, over 148 cm without shoes) were abused and mistreated in order to measure in. That tricks to "measure in" ponies were for example withholding water for 2 days or overworking a pony so it can barely stand up to its normal height. Painkillers and tranquilizers were also applied for relaxing ponies and making them stand smaller. Since withers might be artificially manipulated, the FEI had been forced to pass a new rule whereby FEI measuring veterinarians have the option not to measure ponies if there was any evidence or doubt that the pony's wither, or any part in that anatomic region, may have been interfered with to artificially lower the pony's height (Article 1043.26 c) of the VRs). Furthermore, that as confirmed by Mr. Pay, conscious manipulations of the height of the shoes of ponies were taking place.

4.14 Finally, that it was the FEI's duty to keep a watchful eye over animal welfare while measuring ponies but also to guarantee a level playing field. Animal welfare and fairness conditions of competition were the two priorities of the FEI.

4.15 Regarding the fairness argument of the Claimant, the FEI argued that according to the definition of the Cambridge dictionary "*fairness*" meant "*the quality of treating people equally*". That there was no doubt that all participants in FEI pony competitions were treated equally and the FEI rules applied in the same and consistent way to everyone. Therefore, the FEI argued that the FEI pony measurement was not, as argued by the Claimant:

- "a. Unfair: it applies the same for all participants in FEI pony competitions;*
- b. Capricious: there is a reason for the difference between ponies measured in competition and out of competition;*
- c. Unreasonable: the reason for such difference of measurement in-competition and out of competition is completely reasonable. Even the Claimant recognises that "The rational for having an allowance above the internationally recognised height of a pony, is understandable" (paragraph 19 of the Appeal)".*

4.16 Regarding the claim that the Equine was 13 years old and had been measured satisfactorily in numerous occasions, the FEI argued that this was irrelevant given the current pony measurement system whereby ponies can be measured at any time subject to the conditions

mentioned in the VRs. Furthermore, that for the FEI only measurements conducted by FEI Measuring Veterinarians according to the VRs were relevant and valid, and that none of the measurements listed by the Claimant seemed to be FEI measurements.

4.17 The FEI argued that the reason for ponies measuring out at an Appeal Measurement not to be re-measured again, and as a result not to be eligible for future FEI Pony Competitions, was to avoid mistreatments of ponies, *i.e.*, becoming object of tricks to "measure in" if such re-measurement was allowed.

Partial Appeal:

4.18 Regarding the Partial Appeal, the FEI argued as follows:

"66.1. Article 1045.14 of the FEI Veterinary Regulations establishes that: "The lower result of the 2 Measuring Veterinarian's measurements will be taken as definitive, final and binding; no further re-measurement will be permitted thereafter".

66.2. Despite the effort of the persons responsible for these ponies to get rid of further pony measurements the correct interpretation of this article, as it has been widely accepted since its implementation and it is consistent with the pony measurement system described in Article 1043 (particularly with Article 1043.1 "Ponies may be subject to Pony Measurements at various Pony Competitions, as determined by the FEI Veterinary Department"), is that at the Appeal Measurement the relevant pony will be measured by 2 FEI measuring veterinarians (a maximum of 2 times in line with Articles 1043.23, 1043.24 and 1043.32) then the lower of the 2 heights will be taken as definitive.

66.3. The last sentence of Article 1045.14 "no further re-measurement will be permitted thereafter" logically means that at the Appeal Measurement and after the measurements described above, no further measurement will be allowed. It does not mean, as claimed by the persons responsible of "BEL AIR" and "VIE'NKA DU LANVANDIN" that their ponies never need to be measured again in the ponies' lifetime."

4.19 Based on the foregoing the FEI submitted the following prayer for relief:

"1. Regarding the "Full" Appeal, reject all allegations brought by the Claimant, particularly:

- a. Confirm the correct pony measurement procedure done at the Event;*
- b. Confirm the FEI's decision of not allowing the Equine to be re-measured again at 151cm;*
- c. Confirm that the Appeal Measurement system of the FEI Veterinary Regulations is fair;*
- d. Confirm the validity and FEI's interpretation of Article 1045.14 of the FEI Veterinary Regulations.*

2. *Regarding the "Partial" Appeal, declare the Appeals filed by the Claimant and by the persons responsible of "BEL AIR" and "VIE'NKA DU LANVANDIN" as inadmissible.*
3. *Should the FEI Tribunal for any reason no to find satisfactory the height allowance of 2 cm for measurement In-Competition to declare null such height allowance and require the FEI to have one single measurement height for all ponies at 148.0cm without shoes or 149.0cm with shoes as per the international and standard definition of pony.*

In any event:

4. *Dismiss any other relief sought by the Claimant;*
5. *To order the Claimant and Persons Responsible to cover all legal costs."*

5. Hearing

- 5.1 The Parties had full opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' final submissions, the Tribunal closed the hearing and reserved its final decision. The Tribunal heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.
- 5.2 At the end of the hearing, upon being questioned by the Tribunal, the Parties acknowledged that they have had the opportunity to be heard and to present their case. During the hearing the Parties also agreed not to hear any witnesses.
- 5.3 To start with, the FEI agreed that it did not dispute the content of the witness statements as such, but wished to clarify certain points, especially concerning the issues around the "exceptional measurements" granted by the FEI. Furthermore, the Parties discussed at length whether the Equine had been previously measured by the FEI at an FEI event or not. The Claimant argued in this respect that the identification page of the passport of the Equine showed that the pony had been measured on three occasions at FEI events, once in 2013, and twice in 2015. The FEI however argued that pony identification only meant that the pony corresponded to the passport, and that not at every FEI event Pony Measurements took place. That a pony passport was therefore no proof that Pony Measurements took place at the events listed in the identification page of a passport of a pony. Finally, and taking into account one of the witness statements, the FEI accepted that the Appellants provided evidence that Pony Measurements took place at one of the events listed on the identification page in the passport of the Equine, and thus that the Equine had to be measured also then, i.e., in June 2015. The FEI however argued that it was irrelevant whether the Equine had been measured by the FEI previously, and whether it had

measured in previously, *i.e.*, prior to the Event, and that the age of the pony was also irrelevant, as according to the FEI rules currently in force a pony was subject to being measured at any time.

- 5.4 In essence, both Parties maintained their submissions in writing. Regarding the conditions at the Pony Measurements during the Event, the Claimant agreed that the proper legal remedy to contest those conditions would have been at the Event, and that she could no longer contest them. The Claimant however clarified that she did nonetheless not agree with the Pony Measurements conditions at the Event.
- 5.5 Furthermore, the Appellants argued that the ponies in the case at hand had stopped growing years ago, and have been measured at different heights at different occasions without any reasonable explanation of the measuring differences with huge consequence. That this created "uncertainty, unequal, disproportionate results", and was not in accordance with Swiss association law. That in this respect on a national level – at least in the UK and in Ireland – ponies were assumed to be no longer growing after seven (7) years and received a height certificate for life.
- 5.6 Further, that Pony Measurements took place at various circumstances at different heights. That – according to the FEI itself – there existed no rule under which circumstances "exceptional measurements" were allowed. That those exceptional measurements were therefore at the discretion of the FEI, and thus arbitrary. That the FEI had not provided factors that determined how the FEI applied this discretion.
- 5.7 That the two height limits were confusing and contradictory, that the shoes were not 3 cm, and that the shoes could be measured separately. No scientific evidence for the height differences In-Competition existed, and that ultimately there might be four (4) different categories of ponies competing at an event, namely (i) those which have never been measured and which will never be measured, since – according to the FEI itself – not at every competition Pony Measurements take place; (ii) those which measured 148 cm without shoes; (iii) those which measured 151 cm with shoes, and were definitely taller than 148 cm without shoes; and (iv) those which measured 151 cm without shoes, *i.e.*, referring to the exceptional measurements. That having four (4) different categories of ponies at the same event was against the principle of equality, and that the fairness concept was difficult to understand given the two different heights.
- 5.8 In addition, the Appellants argued that, firstly, if the FEI assumed that the height of a pony may vary also after it has stopped growing, then a pony had to be measured with the same method at every single event, and either admitted or refused to the event depending on the measuring results. In addition, the pony could not be excluded forever from all competitions where it measures over 148 cm without shoes on one occasion only, *i.e.*, as it was the case with the current Pony Measurement Appeal System (Article 1045 of the VRs).

5.9 Secondly, that in the case the FEI accepted that the height of a pony remained stable after it stops growing, then the FEI had to also accept the measurement results after a certain age (age determined as a rule or individually), and that there was no need for further measurements risking contradicting results, as it was the case in the case at hand.

5.10 Thirdly, that if the FEI suspected that the size of an equine has been reduced by illegal or unethical means, the burden of proof was on the FEI and that the FEI had to punish persons responsible accordingly. The case at hand was however no case of animal abuse and no such evidence existed. That the risk of errors of the method of measuring could not be attributed to the persons responsible, unless there was evidence that they contributed to the different results. That under the current FEI rules this risk of measuring was however beyond the control of the persons responsible, and that they had to bear the enormous consequences. That the strict liability principle was applied "through the backdoor", and that this was not compliant with Swiss law.

5.11 The Appellants further argued that the Tribunal had to apply FEI rules and had to respect them based on the freedom of Swiss association law. That this principle was however not absolute and that there was an obligation not to apply those rules which lead to "illegal, absurd, unequal, inconsistent and disproportionate" results. Further, that the FEI as an association under Swiss law could not disregard mandatory Swiss law provisions, such as personality rights, including the right of economic activity and the protection of good faith (Articles 27 and 2 of the Swiss Civil Code). Furthermore, that the Court of Arbitration for Sport ("CAS") had repeatedly ruled that associations had to rule clearly and that the rules had to be applied in a non-contradictory and transparent manner. And that in case of inconsistent and contradicting rules those had to be applied which lead to the legally correct result, a result which was proportionate and guaranteed equal treatment of those subject to the rules.

5.12 The Appellants also argued that the rules might be clear, but the application of the rules was not clear, and this lead to unfair and disproportionate results. That the harsh consequences for one single measurement were not proportionate, especially given there are variations in height. That this was also a matter of legal clarity, which was not the case if such a consequence was put on one single measurement even though the equine has a history. A general exclusion of a pony was based on the vague assumption of future mistreatment, and a life-long ineligibility was disproportionate.

5.13 Regarding the Full Appeal the Appellants therefore requested - if the FEI accepted that the height of ponies can vary - that the Equine could compete again following the principle of equal treatment, as there were still many ponies competing which were taller than 148 cm without shoes. Further, that the Equine should at least be admitted to the next pony competition, and that since the Pony Measurements took place prior to the competition, there was no risk of inequality. Alternatively, that the Equine had to be re-measured at 151 cm with shoes, as

previously granted by the FEI, i.e., referring to the exceptional measurements.

5.14 Regarding the Partial Appeal, and the interpretation request of Article 1045.14 of the VRs, the Appellants argued that Swiss law principles of interpretation were not abundantly different than in other legal systems. That if one interpreted the rules of a large organisation, such as in the case at hand, the interpretation was closer to statutory law than to contracts, since those subject to the rules were obviously not involved in the drafting of the rules. That the rules had to be read as understood by the public. Interpretation started with the wording, and the wording said "*No further measurement will be permitted thereafter*". If then it was still unclear, the reasonable purpose of the rule as understood by the public was to be determined. Since there seemed to be a quality difference between the Measurement In-Competition and on appeal, with the latter being considered to be more accurate, the Appellants questioned why a pony which no longer grew and which was subject to measurements on appeal was still subject to Measurement In-Competition; this might just lead to another measurement on appeal which most likely confirmed the result of the first measurement on appeal. That therefore a reasonable understanding of Article 1045.14 of the VRs – and contrary to the FEI's position - could only mean that a pony that passed the measurement on appeal does not have to be subject to further Measurement In-Competition.

5.15 The FEI once more pointed out that the reasons why the Equine could not be measured under "exceptional measurements" were that the FEI measurement at the Event had been conducted according to FEI rules, as confirmed by the Chief Steward through its report. The FEI further agreed that there was no specific rule in the VRs that allowed for exceptional measurements, as was done in the past, and that it had been the FEI recognising errors of Pony Measurements during certain events and thus exceptionally granting such additional measurements. That however Article 1 of the Statutes foresaw that the FEI had to enable riders to compete in events "under fair and even conditions". The FEI further described the reasons for such exceptional measurements and explained that on one occasion where a pony was exceptionally measured in a clinic, it was for reasons that no other location could be found at that instance.

5.16 Further, that the role of the Tribunal according to the Statutes was any interpretation of the rules; the FEI however believed that the case at hand was not a matter of interpretation. That if the Tribunal found that the Equine was to be measured again, the Tribunal's finding would go against FEI rules; the Pony Measurements at the Event, as well as the Appeal Measurements remained uncontested. In responding the Appellants' arguments, the FEI argued that there was only one specific reason for not allowing ponies to be measured again, namely pony welfare considerations. Further, that the Appeal Measurements had been introduced because of the consequences if a pony cannot compete again in pony competitions; it could however compete in horse competitions.

5.17 The FEI further pointed out that the principle of legal certainty was important, namely to know what the rules were and what the consequences of not complying with the rules were. That the pony measurement rules were however completely clear, and that procedures for pony measurements to be followed were in place. That – contrary to the Appellants' argument – every person competing knew the consequences if they did not meet the pony measurement requirements, *i.e.*, if a pony does not meet the height requirement, it is not eligible to compete. Pony measurements did not take place at every event, but where it took place all ponies were measured, *i.e.*, equal treatment.

5.18 That ultimately there existed a culture of pushing the limits of what was within the rules regarding ponies. That when competing with an equine that was 148 cm at first measurement there was no room for manoeuvre and a risk existed that the equine might grow. That therefore the person responsible and the owner took a risk to compete with a pony that was just within the rules.

5.19 Regarding proportionality the FEI argued that it was completely logical that if a pony was measured out by two (2) FEI Measuring Veterinarians that pony could no longer compete in pony competitions. Furthermore that, even according to the Appellants' own submission, the height allowance of two (2) cm In-Competition was "understandable". The height difference in competition took into account the stress that the pony was going through in competition and/or during transport.

5.20 That, if the Tribunal considered that ponies were to measure 148 cm without shoes at all times, it was for the General Assembly to decide on such a rule change. That no motion for a rule change was brought forward in the past 10 years, *i.e.*, since the existence of the current rules, and that the FEI therefore believed that the current system was working. The FEI believed that the rules were fair, and argued that an interpretation of the rules had to be also made in the context of the spirit of the rules, such as that ponies are subject to measure at any time, horse welfare considerations etc.

6. The Decision

- 6.1 In a first step, the Tribunal has to decide whether the Appeal or parts of it are admissible. Only where the Tribunal has jurisdiction, it can decide on the merits of the Appeal. The Tribunal however finds that it has only jurisdiction to decide certain parts of the Appeal.
- 6.2 The Tribunal finds that the Appeal regarding the conditions of the Pony Measurements at the Event is inadmissible, as the Claimant has not exhausted the administrative remedies available to her at the Event under the GRs and the VRs, *i.e.*, a Protest with the Ground Jury. That this remedy foreseen under the GRs and the VRs had been the adequate remedy, as the matter in question had arisen during the Event. The Tribunal therefore lacks jurisdiction to decide this part of the Appeal. In

this respect the Tribunal has also taken note that the Claimant agreed during the hearing that she should have lodged a Protest with the Ground Jury at the Event, and that she could therefore no longer appeal the conditions of the Pony Measurements during the Event, even though she did not agree with them.

- 6.3 Therefore, the Pony Measurements conditions, as well as the fact that the Equine measured out at the Event can no longer be contested by the Claimant. In addition, the Tribunal has taken note that the Claimant has neither contested the Pony Measurements conditions for the measuring on appeal.
- 6.4 The Tribunal however finds that it has jurisdiction to decide on the remaining claims brought forward in the Appeal. In accordance with Article 38 of the Statutes the Tribunal has jurisdiction to decide "*Any issue of interpretation of the Statutes, General Regulations and Sport Rules*". The Tribunal has therefore jurisdiction to decide on the interpretation of the VRs, including Chapter IV thereof, concerning pony measurements.
- 6.5 The Tribunal therefore finds that the request for an interpretation of Article 1045.14 of the VRs, and more specifically the first sentence "*The lower result of the 2 Measuring Veterinarian's measurements will be taken as definitive, final and binding; no further re-measurement will be permitted thereafter.*" falls within the jurisdiction of the Tribunal.
- 6.6 In a second step the Tribunal will decide on the merits of the case where it has jurisdiction, and thus on the interpretation request of Article 1045.14 of the VRs. The Tribunal has further also taken note that the Persons Responsible have requested that the Ponies – based on Article 1045.14 of the VRs, and since they measured 148 cm without shoes on appeal measurement - should never be subject to any further pony measurements at FEI events in their lifetime.
- 6.7 The Tribunal finds that the quoted rule (Article 1045.14 of the VRs, first sentence) might appear ambiguous when read separately from its context. However, when read in the context of the entire Chapter IV of the VRs regarding Ponies, the sentence quoted above cannot be understood to overrule the general obligation of all ponies competing in FEI events to be subject to Pony Measurements with the risk of not being permitted to compete when measuring out. The Tribunal finds that this interpretation is even more obvious in light of JRs Articles 2, 4 and 13 of Annex XI concerning Rules for Pony Riders.
- 6.8 The Tribunal therefore finds that Article 1045.14 first sentence of the VRs cannot be interpreted as claimed by the Appellants, namely that no further pony measurement had to take place where a pony, such as the Ponies measured in on appeal measurement. Both the VRs and the JRs clearly state that Pony Measurements have to take place for all ponies competing at the CH-EU-P on site before starting the Competition (Article 13.2. Annex XI of the JRs), and that ponies may be subject to Pony Measurements at various Pony Competitions in general (Article

1043.1 Chapter IV of the VRs). The Tribunal therefore cannot disregard those FEI rules, and therefore neither declare the Ponies to not undergo any further Pony Measurements in their lives.

- 6.9 In this respect, the Tribunal has taken note of the Appellants claim, that there was a quality difference between Pony Measurements In-Competition and on appeal, and that measurement on appeal had to be considered as more accurate. However, no such evidence has been provided, and neither did the FEI agree with this argumentation. The Tribunal understands that the only difference between Measurements In-Competition and on appeal is that a height allowance is provided for Measurements In-Competition, taking into account the potential stress on the pony when in a competition environment. It therefore cannot be concluded that measurement on appeal is more accurate; this argument is therefore dismissed.
- 6.10 In addition, the Tribunal also takes note that the Appellants argue that a pony measuring out only once is subject to a life time ban. The Tribunal however understands and wishes to clarify that by the time a pony is measured on appeal, it has according to FEI rules and pony measurements procedures, already been measured at least once In-Competition by two different FEI Measuring Veterinarians, and the lower of the two heights is taken as definitive where they differ (Articles 1043.23 and 1043.24 VRs). Furthermore, the same pony might have been presented for a Second Measurement within 1 hour of the Initial Measurement at the event (Article 1043.32 of the VRs). Thus, the appeal measurement is part of a procedure to be followed when a pony measures out at an event, and is as such the third measurement of a pony, and provides for another and a final opportunity for that pony to measure in, and as a consequence to continue to compete in future competitions, subject to a further pony measurement prior to that competition.
- 6.11 For this reason, and since the FEI rules do not foresee any possibility for a pony which has measured out on appeal to be measured again prior to a competition, the Tribunal cannot grant the Claimant's request to have the Equine re-measured prior to the next competition. The Tribunal finds that the wording of the FEI rule in this respect is clear, namely that "*no further re-measurement will be permitted thereafter*", and as previously found that rule cannot be interpreted differently.
- 6.12 The Tribunal has also taken note of the Claimant's request that the Equine had to be re-measured at 151 cm with shoes out of competition, as such re-measuring had been granted by the FEI in the past, at the FEI's discretion. The Tribunal has further taken note of the FEI's explanations why such re-measurement had been granted in the past, i.e., because of errors with Pony Measurements at past events. The Tribunal holds that it is not up to the Tribunal in the case at hand to rule if those exemptions were justified or not. The Tribunal further finds that the FEI has not presented an explanation on which specific rule it relied on when deviating from the procedures foreseen by the VRs, Chapter IV on Ponies. Nonetheless, the Tribunal finds that a potential or even

obvious error in applying the correct procedure in the past cannot be a justification to not apply the rules in the case at hand. The Claimant's claim of unfairness and inconsistency in this respect is therefore dismissed. As previously outlined the rules are clear; once a pony measures out on appeal, no further re-measurement is permitted thereafter.

- 6.13 In addition, the Tribunal takes note of the Appellants' argument that the rules might be clear, but the application of the rules was not clear, and that this lead to unfair and disproportionate results. The Tribunal however does not agree with this argument. The Tribunal finds that the rules are clear and legal clarity is provided. The pony measurement procedures, for both In-Competition and on appeal, are clearly outlined in the FEI rules, and so are its consequences or further procedures to be followed in the case of a pony measuring out In-Competition. As previously found, the Tribunal does not find an exclusion for life of a pony which measured out on appeal as disproportionate, even more so as it is not a one-off measurement, as claimed by the Appellants.
- 6.14 The Tribunal does not have to decide further on life measurements of ponies at a certain age, as FEI rules in this regard are clear, namely that a pony is subject to Pony Measurements at any event, no matter the age of the pony. It might be the case that national rules differ from FEI rules, however these rules cannot be taken into account for ponies competing in FEI events; for those ponies FEI rules apply, including pony measurements procedures. The Tribunal therefore does not have to decide either whether ponies stop growing at a certain age or not, since this is irrelevant under the current FEI rules.
- 6.15 The Tribunal finds that it is therefore also irrelevant for the case at hand whether the Equine has measured in at a previous FEI event, as the rules do not take into account previous measurements, or as the Appellants call it a history of pony measurement. The Tribunal understands that the height of one and the same pony might differ from one measurement to the next, one of the reasons being that it is accepted that a pony might stand taller in competition, *i.e.*, in a stress situation. The Tribunal does however not have to decide whether this explanation is reasonable; neither would it be in a position to do so. In the view of the Tribunal, what is important is that the FEI rules with regard to pony measurements procedures are clear, which the Tribunal finds to be affirmative.
- 6.16 Finally, the Tribunal has taken note of the Appellants' argument that the two height limits currently in place are confusing and contradictory. The Tribunal has further also taken note that in the 10 years of existence of the current FEI rules, no rules changes have been proposed, nor has anyone within the pony community challenged the two height limits. In addition, the Tribunal has taken note of the reasons for an additional height allowance when measurements take place In-Competition, namely that ponies might stand taller in competition environments. As previously outlined, the Tribunal finds that the FEI rules are clear as to when a pony is allowed to measure higher than 148 cm without shoes,

i.e., namely In-Competition. However, even if the Tribunal would follow the Appellants' argument that the two height limits are confusing and contradictory, it would not be for the Tribunal but for the rule maker to change the FEI rules on pony measurements and to potentially introduce only one height limit without shoes.

6.17 For the above reasons, the Tribunal decides as follows:

- 1) The Appeal concerning the Pony Measurements conditions at the Event is inadmissible.
- 2) The remaining Appeal is admissible, but dismissed on its merits.
- 3) No deposit shall be returned to the Appellants. In addition, the Claimant shall contribute **one thousand five hundred Swiss Francs (1 500 CHF)**, and the Persons Responsible shall each contribute **five hundred Swiss Francs (500 CHF)** towards the costs of the proceedings.

6.18 According to Article 168 of the GRs this Decision is effective from the date of oral or written notification to the affected party or parties.

6.19 According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

V. DECISION TO BE FORWARDED TO:

a. The Parties: Yes

b. Any other: No

FOR THE PANEL



One member panel, Mr. Henrik Arle