



DECISION of the FEI TRIBUNAL

on Appeal by Mr. Rob Jansen

dated 24 May 2016

In the matter of

Mr. Rob Jansen ("Mr. Jansen" or "the Appellant")

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE ("FEI" or "the Respondent")

I. COMPOSITION OF PANEL

Mr. Erik Elstad, one member panel

II. SUMMARY OF THE FACTS

- 1. Case File:** The FEI Tribunal duly took into consideration the Parties' written submissions and communications received to date.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

- 1. Articles of the Statutes/Regulations which are applicable or have been infringed:**

Statutes 23rd edition, effective 29 April 2014 ("**Statutes**").

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2016 ("**GRs**").

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

FEI Jumping Rules 25th edition, effective 1 January 2014, updates effective 1 January 2016 ("JRs").

FEI Code of Conduct for the Welfare of the Horse

2. The relevant Legal Provisions

GRs Article 102.1: "An International Event (CI) must be organised under the FEI Statutes, GRs and Sport Rules, including any specific invitation rules that may be established by the relevant Technical Committee and may be open to Athletes of all NFs."

GRs Article 105: "FEI-Named Events, FEI-named Series and Series

1. FEI-named Events are the FEI Championships, FEI World Cup™ Series, FEI Nations Cup Series and other Events, FEI-named Series or Competitions which have been established and/or approved by the Bureau.

2. FEI-named Events shall always contain the letters "FEI".

3. FEI-named Series and any other Series must be approved by the Bureau.

4. The number of Series per Discipline and per category should be limited in order to have a well-structured Calendar and to avoid Horse welfare issues."

GRs Article 113.4: "An Athlete and/or Horse, even if registered with the FEI, is not eligible to participate in an International Event or National Event (and so may not be invited by an OC to such Event or entered by an NF in such Event) if that Athlete and/or Horse has participated, in the six (6) months prior to the first day of the International Event or National Event in question, in an Unsanctioned Event."

GRs Article 113.5: "For purposes of Article 113.4, an 'Unsanctioned Event' is an event and/or a competition that is neither published in the official Calendar nor authorised by an NF and/or a National Event authorised or organised by a NF that is suspended by the FEI."

GRs Article 113.6: "An Athlete, Chef d'Equipe, Owner, or NF may challenge the application of Article 113.4, or seek a waiver thereof in exceptional circumstances, by application to the Secretary General. A denial of that application may be appealed to the FEI Tribunal, such appeal to be heard on the papers without a live hearing unless the FEI Tribunal orders otherwise."

GRs Article 156.4: "All Officials acting at or in relation to an International Event are acting on behalf of the FEI and therefore are not liable financially or otherwise for any acts, omissions or Decisions undertaken in good faith in connection with their duties."

GRs Article 156.9: "An Official is not eligible to participate in an International Event or National Event (and so may not be invited or nominated to participate in such event) if he has participated, in the six (6) months prior to the first day of the International Event or National Event in question, in an Unsanctioned Event. An Official or his National Federation may challenge the application of this Article 156.9, or seek a waiver thereof in exceptional circumstances, by application to the Secretary General. A denial of that application may be appealed to the FEI Tribunal, such appeal to be heard on the papers without a live hearing unless the FEI Tribunal orders otherwise."

GRs Article 165: " 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):

(...)

1.2 With the FEI Tribunal against Decisions of the Appeal Committee or any other person or body.

(...)

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."

IRs Art. 17.1: "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."

IV. DECISION

The below presents a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. 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 Tribunal has fully 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 Global Champions League (the "**GCL**") is an equestrian jumping competition established by Global Champions League Sprl and Tops Trading Belgium Sprl (collectively the "**GCL Organisers**") whereby up to fifteen (15) teams, each containing a maximum of five (5) athletes, compete against each other over the course of fifteen (15) competitions during a season that runs from April to November. The GCL is based on a franchise model; in order to participate each team must sign a franchise agreement with GCL and pay an annual franchise fee.
- 1.2 The Global Champions Tour (the "**GCT**") is an equestrian jumping competition which takes place at different venues across the world. It is organised by Global Champions Tour BV. GCT events are sanctioned by the FEI.
- 1.3 On 5 June 2015, prior to a decision by the FEI regarding the approval/non-approval of the GCL, the GCL Organisers lodged a formal complaint with the Belgian Competition Authority ("**BCA**") claiming, inter alia, that Article 113.4 of the GRs was an unlawful "exclusivity clause" and breached Belgian competition law (the "**GCL Complaint**").
- 1.4 On 27 July 2015, the BCA granted the GCL Organisers the request for provisional measures suspending the application of Article 113.4 – 113.6 (inclusive) of the GRs, pending the final determination of the GCL Complaint by the BCA.
- 1.5 On 27 November 2015, the FEI published a press release as follows:

"Pursuant to the decision of the Belgian Competition Authority of 27 July 2015, the articles 113(4)-(6) of the FEI General Regulations are suspended with regard to the participation of athletes and horses in the Global Champions League. No athlete or horse can be suspended or sanctioned because of their participation in a competition organised by the Global Champions League.

This suspension shall apply until the first of the following decisions:

- (1) a decision of the Belgium Competition Authority closing the case by a decision not to proceed with the case, by a settlement decision or by a decision of the Competition College;*
- (2) a decision of the Competition College terminating the suspension by application of the review procedure organised in point (5) of dictum of the decision of 27 July 2015, or*

(3) *the annulment of that decision of 27 July 2015 by a decision of the Court of Appeal of Brussels.*"

- 1.6 On 8 December 2015, the FEI Secretary General informed all FEI Officials in the discipline of Jumping that the GCL Events are not sanctioned/approved by the FEI and, as a result, FEI Officials are not authorised to officiate in any capacity at any GCL Event(s). That as a result, if FEI Officials were to officiate at Unsanctioned Events (i.e. outside the jurisdiction of the FEI), such as the GCL, the FEI Rules did not apply and the FEI was unable to protect FEI Officials in the event of, for instance, a legal action arising from any decision that an FEI Official may take. That additionally, there is also no FEI insurance coverage for FEI Officials at Unsanctioned Events. Further, that the FEI's Unsanctioned Events rule specifically states that it is applicable to Officials; so if an FEI Official participates in an Unsanctioned Event then such FEI Official will be ineligible to participate in an International or National Event for the next six (6) months. The BCA decision specifically does not order the suspension of Art. 156.8 of the GRs with regard to FEI Officials and therefore the FEI is entitled to apply the Unsanctioned Event rule against FEI Officials. Finally, that for the avoidance of any doubt, FEI Officials are allowed to officiate at the GCT, which is an FEI sanctioned event, and other events if the Schedule has been approved by the FEI, but not the GCL competition.
- 1.7 Mr. Jansen is an FEI Official (FEI ID 10049065), has Dutch nationality and – according to the FEI Database - his administering National Federation is the Royal Dutch Equestrian Federation (the "**NED-NF**"). Mr. Jansen performs several roles as an FEI Official, namely (i) Course Designer – Jumping, (ii) Technical Delegate – Jumping, and (iii) Course Director – Course Designer – Jumping.
- 1.8 On 24 February 2015, Mr. Jansen was notified of the decision of the FEI Secretary General (the "**SG Decision**" or the "**Waiver Denial Decision**") to deny his request for a waiver from the application of Article 156.9 of the GRs. The SG Decision stated that a waiver may only be granted if "exceptional circumstances" exist; that the arguments (as outlined below) put forward by Mr. Jansen did however not justify such waiver in relation to GCL for the following reasons:
- *"Contrary to what you have stated, the Global Champions League is not in fact organised by the same organisers as the Global Champions Tour; the latter being organised by Global Champions Tour BV while the former is organised by Global Champions League Sprl. and Tops Trading Belgium Sprl.*
 - *It is the FEI's position that the circumstances of the GCL and the GCT are not, as you contend, "identical"; the GCL is not approved by the FEI, the GCT is. Also, based on the information the FEI has seen so far, there are other significant differences between the GCL and the GCT, notable, in terms of competition formats and entry conditions. In addition, contrary to your allegations, the participation of FEI Officials will not level the playing field between*

two events with such significant differences as the GCT and the GCL.

- *Although, it is correct that the Belgium Competition Authority has made a preliminary ruling that riders and horses can compete without sanction in the GCL and the FEI must observe that ruling, such ruling specifically states that the ruling does not apply to FEI Officials. Therefore, the FEI would be well within its rights to apply Article 156.9 of the FEI General Regulations to any FEI Official who may choose to participate in GCL events.”*

2. Procedural Background

- 2.1 On 21 March 2016, the Case File containing Mr. Jansen’s Appeal against the SG Decision, together with the FEI’s Response to the Appeal, was submitted to the Tribunal. At the same time the Tribunal also received a Case File for another Appeal by an FEI Official (Case 2016/04 – Mr. van Iersel v FEI). Both Appeals, *i.e.*, the Appeal in the case at hand and the Appeal by Mr. van Iersel, are more or less identical. The Tribunal decides them separately.
- 2.2 On 22 March 2016, the Tribunal provided Mr. Jansen with the opportunity to comment on the FEI Answer to the Appeal.
- 2.3 On 5 April 2016, Mr. Jansen provided his Comments to the FEI Answer to the Appeal.
- 2.4 On 5 April 2016, the Tribunal granted the FEI with the opportunity to Answer to the additional submissions in the Appellant’s Comments. The Tribunal further informed the Parties that thereafter it will proceed to render a decision in the matter.
- 2.5 On 19 April 2016, the FEI submitted its Answer to the Appellant’s Comments of 5 April 2016.

3. Submission(s) in writing by the Appellant

- 3.1 In essence, Mr. Jansen requested the Tribunal to overrule the SG Decision, and to grant him a waiver pursuant to Article 156.9 of the GRs.
- 3.2 More specifically, Mr. Jansen argued that exceptional circumstances in the meaning of Article 156.9 of the GRs are present in the case at hand for the following reasons:
 - a) That even though the (non-FEI-approved) GCL and the (FEI-approved) GCT are organised by different organisers, the characteristics of the GCL are such that, from a horse welfare perspective, there existed a level of playing field between the GCT and the GCL. The GCL Constitution & Rules stated that horse welfare is the GCL’s highest priority and will be prioritized over any business

objectives of the GCL at all times. That almost all FEI Rules and Regulations - not limited to the rules on horse welfare and the integrity of sport, but also FEI technical rules such as the JRs - applied to GCL events.

- b) That GCL events and GCT events take place during the same weekend at the same venue under identical circumstances, and that it was to the benefit of everyone involved, if the same officials were to officiate at the GCL and the GCT, especially with regards to horse welfare, as well as creating a level playing field. That in this regard it was irrelevant that competition formats and entry conditions are different. That to the contrary that would be even more reason for the FEI to accept the repeated invitations of the GCL to have FEI Officials present at GCL events. That it was exceptional for an independent organizer to reach out to the FEI with such an invitation and constituted proof of that particular organizer's genuine concern to ensuring horse welfare. The FEI however was deliberately creating circumstances in which the issues of safeguarding were obviously left to third parties; this gave rise to justified questions regarding the FEI's credibility. That having some of the most experienced show jumping officials in course-designing, judging and stewarding involved in order to safeguard these values, also during the GCL was diminishing the risks of horse welfare and creating a level of playing field – two key principles of the unsanctioned event rule, as per an FEI press release of 10 November 2015. Finally, Mr. Jansen argued that the GCL competition format as such showed no deviation from or contradiction to the current FEI Jumping Rules. Moreover that the GCL format had been successfully applied – with the approval of the FEI – during a 2015 team competition, the CSI 5* in Valkenswaard, in the Netherlands.
- c) That the argument of the SG Decision that the interim measures by the BCA did not apply to FEI Officials was irrelevant and of theoretical nature only, since it all came down to the credibility of the FEI, as the equestrian governing body, with respect to preserving its self-declared main values of horse welfare and sporting integrity. That because the GCL was a series of events taking place between April and November 2016, without a waiver, his involvement in the entire GCL season, *i.e.*, 2016 season, automatically resulted in his permanent ineligibility as FEI Official until early May 2017 by which stage the next season of the GCL already commenced; thus closing the circle of ineligibility. That therefore the FEI's approach regarding the application of Article 156.9 of the GRs was strictly speaking theoretical, as this had the effect that he would be permanently excluded from officiating at any International or National Event.

4. Answer by the FEI

- 4.1 The FEI submitted that the Appeal, whereas admissible, was not successful on the merits, and that it should therefore be dismissed by the Tribunal. Further, that the Tribunal confirmed the validity of the Waiver Denial

Decision, and determined that the Appellant shall bear the costs of the Appeal proceedings and the FEI's legal costs.

4.2 In essence the FEI submitted that:

a) It was a pre-requisite to the granting of the waiver to the application of Article 156.9 of the GRs that exceptional circumstances exist. The Appellant however failed to demonstrate that such exceptional circumstances are present in relation to the GCL competitions. The GCL was set up as a commercial enterprise and was intended that it will run for many years; there was nothing exceptional about the competition. The fact that GCL required officials to run the GCL competitions, and that the GCL asked the FEI to provide FEI Officials for this purpose was not unique or exceptional; it was simply to be expected given that the GCL had not invested any of its own resources into training or administering officials. Further, the FEI argued that the serious concerns regarding the exposure of officials to legal claims in relation to the apparent lack of jurisdiction to apply FEI rules at non FEI-approved events was a justifiable ground for the FEI's denial of the waiver application. More specifically, the FEI argued the following:

- i) The GCL and the GCT are separate entities from a legal perspective; indeed that it would seem that those behind the establishment of GCL considered it sufficiently important that GCT and GCL be legally separate that they went through the process of setting up a new corporate entity in Belgium to act as one of the GCL organisers. With regards to the Appellant's reference to the GCL Constitution, the FEI argued that the GCL Constitution did not seem to be publically available, and that there seemed to be very little information available regarding the GCL in general. That therefore officiating at a GCL event would appear to be somewhat a step into the unknown. That contrary to the Appellant's argument, the fact that both GCT and GCL competitions were specifically scheduled to take place over the same fifteen (15) weekends at the same venues demonstrated that this was more in the nature of a routine, co-ordinated and planned occurrence rather than something exceptional as argued by the Appellant.
- ii) In the circumstances where the GCL, unlike the FEI, did not have its own system of training, educating and recruiting officials it was not exceptional for them to ask FEI Officials to participate at GCL events. That the attempt by GCL to avail of the services and expertise of the FEI officials was merely a convenient and cost effective solution to the issues arising from GCL's lack of their own officials. Regarding the Appellant's apparent link of the participation of FEI Officials at GCL events to horse welfare concerns, the FEI pointed out that a GCL event, like any equestrian event, could simply not be run without officials and the real motivation in having FEI Officials present at GCL events was not solely linked to horse welfare concerns but also to ensuring that the commercial enterprise – the GCL – can

be operated.

- iii) Finally, that it was the FEI's position that a true exceptional circumstance was a request by an official for a waiver to participate at a one-off event that, although not approved by the FEI, was run, for example, in aid of a charitable/special cause. The GCL events were of a completely different nature entirely, and, while the GCL might emphasise horse welfare, GCL was fundamentally a commercial enterprise. The GCL was clearly not a one-off event; rather it comprised fifteen (15) events and offered a large amount of prize money (EUR 7,500,000). Furthermore, it was a Series that did not seek to be approved by the FEI.
- b) The one-off event in Valkenswaard in 2015 was distinguishable from the proposed GCL format and should not be regarded as setting any kind of precedent for the participation of FEI Officials in GCL competitions or setting any precedent in this regard. For example such differences were that participants in the one-off event in Valkenswaard were not required to be signed up members of a franchised team, no franchise fee was payable, signature of a franchise agreement was not a pre-requisite to competing and the JRs applied in full.
- c) Given serious jurisdictional concerns (as outlined below) in relation to the application of rules at the GCL competitions, it was a reasonable approach for the FEI not to grant the requested waiver from the application of Article 156.9 of the GRs. That the net effect of the GCL's attempted reliance on FEI rules at non FEI-approved events effectively meant that the officials were left to operate and perform their duties in a jurisdictional grey area/lacuna and were thereby exposed to the threat of claims being made against them in a personal capacity. More specifically, the FEI argued the following:
 - i) One of the key concerns of the FEI regarding the GCL related to the GCL's rules and lack of transparency around the process by which such rules were adopted and amended. The GCL Constitution and Rules were not publically available, and it therefore appeared to the FEI that the GCL Constitution can be changed without notice to the participants and without going through any formal (or even informal) consultation process; the FEI on the other hand had a very transparent process in relation to making amendments to its rules. The last version of the GCL Constitution seen by the FEI included that the JRs applied with the exception of several Articles, including Article 259 (officials), and that the GCL Constitution allowed for "any other exceptions that may be provided in the GCL Constitution and Rules". Further, that no information in relation to what training on the GCL rules is provided to the officials had been provided. The FEI submitted that in such circumstances its concerns regarding the participation of the FEI Officials at GCL events were reasonable and justified.

- ii) In the FEI`s view it was crucial that the applicable rule(s) had a solid legal basis, were clear and that such officials had a solid understanding of the rules. Further, that there was a reputational risk to the FEI arising from the participation of FEI Officials in GCL events. That if an FEI Official was to make a mistake at a GCL event due to an incorrect interpretation of a rule and such mistake had a major impact on the competition, such mistake was likely to be widely reported; that from a public`s perspective and the perspective of the equestrian community, that mistake was seen as having been made by an FEI Official regardless of the fact that such official was not acting on behalf of the FEI at that time. Moreover, that pursuant to Article 156 of the GRs, officials acting on behalf of the FEI are not liable financially or otherwise for any acts, omissions or Decisions undertaken in good faith in connection with their duties. That however, given the status of the GCL competitions as "Unsanctioned Events", FEI Officials are not protected while officiating at GCL competitions. Furthermore, that by virtue of the FEI granting the requested waiver in accordance with Article 156.9 of the GRs, and thereby "authorising" the officials` participation in GCL competitions, such officials might have grounds to claim that the benefit of the insurance policy in place for FEI Officials were to be extend to cover their participation in such GCL competitions. It was therefore reasonable for the FEI to take steps to avoid any such interpretation of its insurance policy by refusing to grant the requested waiver.
 - iii) Furthermore, that it was justified in not granting a waiver to Article 156.9 of the GRs in circumstances where officials at GCL events were required to make decisions in the absence of a tired and trusted legal system such as the legal system that operated as part of the FEI`s judicial structure, i.e. Ground Jury, Appeal Committee, FEI Tribunal, Court of Arbitration for Sport ("**CAS**"). That there was no clarity as to the process of any appeal/protest against an official`s decision at the GCL event. That it was most unlikely that the FEI Tribunal had any jurisdiction over such an appeal given that the GCL events were "Unsanctioned Events" and the GCL contained no direct or indirect reference to the FEI Tribunal. Similarly, that the GCL Constitution did not recognise the jurisdiction of CAS and opted instead for the International Court of Arbitration (the "**ICC**") in London.
 - iv) Finally, the FEI submitted examples, and argued that the GCL`s apparent "copy, paste" approach in relation to the FEI rules was inadequate and left serious gaps in terms of the jurisdiction of officials to take actions based on the purported adoption of such rules by GCL. The FEI did not want FEI Officials to be placed in a situation where they could be exposed to potential litigation by an athlete or owner who asserted that penalties/sanctions had been incorrectly and unlawfully imposed.
- d) The BCA Preliminary Decision did not restrict the FEI in any way from

applying Article 156.9 of the GRs and the FEI was entirely within its rights to do so. That the FEI had complied with the BCA Preliminary Decision; because the BCA had ordered it do so, the FEI was not applying Articles 113.4 – 113.6 of the GRs to athletes and horses pending the outcome of the decision on the merits of the GCL complaint. The FEI further argued that it was unfair to characterise the FEI's act of applying a rule that had been discussed, commented on voted on and approved by its National Federations at the FEI General Assembly, as a "black mark" on the FEI's credibility in relation to horse welfare and sporting integrity. That indeed, one of the reasons behind the Waiver Denial Decision was the FEI's concerns regarding the lack of transparency/good governance principles in relation to the GCL Constitution and its structures if they were to participate at GCL competitions.

- e) Furthermore, that the Appellant's argument that the application of Article 156.9 of the GRs would render him permanently ineligible as an FEI Official was not accurate; it was up to the Appellant to choose which events (FEI-approved/non FEI-approved) he officiated at and to accept the consequences of his decision as determined by the GRs. The effect of the Waiver Denial Request was merely to confirm the FEI's position that, in the absence of a waiver, acting as an official in an Unsanctioned Event comes with the consequences that the official in question cannot officiate at an International or National Event for the following six (6) months. The Appellant was not "permanently ineligible", as claimed by him. As the international governing body for equestrian sport, the FEI invested significant time and resources (both in terms of staff and finances) to the education of officials, and that in light of such investment, it reasonable for the FEI to adopt that FEI Officials should officiate at FEI-approved events rather than (non FEI-approved) Unsanctioned Events. There existed hundreds of top level FEI-approved jumping events each year, and that ensuring that adequately qualified officials are available to officiate at such events was a constant challenge for organisers and the FEI. It was not clear to the FEI why the Appellant was so particularly anxious to participate as an official in GCL events when there was no shortage of other top jumping level events where he could act as an official.

5. Supplemental submission by the Appellant

- 5.1 On 5 April 2016, the Appellant further submitted that, should the Tribunal find that the arguments made by the Appellant do not constitute exceptional circumstances, he requested the Tribunal to consider the Appeal as a challenge of the application of Article 156.9 of the GRs.
- 5.2 To start with the Appellant argued that the so-called "FEI Exclusivity Rule", *i.e.*, Article 156.9 of the GRs, was introduced by the FEI about three years ago (in 2012-2013), and that before that, for almost a century, an official had been able to choose freely which sanctioned or unsanctioned events or series to officiate in. That he saw no reason for this sudden change in the rules, besides protectionism from the side of the FEI. That the BCA has

ruled that the "FEI Exclusivity Rule" is *prima facie* restrictive of competition and in violation of the prohibition on restrictive agreements and on the abuse of dominant position. That the FEI Exclusivity Rule is disproportionate to the objectives of protecting horse welfare or promoting the sport (prima facie infringement of Article 101 TFEU), and the FEI Exclusivity Rules produced an abuse exclusionary effect for newcomers (prima facie infringement of Article 102 TFEU). Whereas, the BCA suspended the FEI Exclusivity Rule, *i.e.*, Articles 113.4 – 113.6 of the GRs with regards to the participation of riders and horses in the GCL, it did not do so with regards to officials, essentially because it had considered that the conditions for interim measures were not fulfilled. In Belgium, to obtain interim relief before the BCA, there has to be proof of irreparable harm, which the BCA considered not to be present for officials. That however whilst the interim measures analysis might be different, the substantive competition law of the FEI Exclusivity Rule was the same for riders, horses and officials, namely that there were more proportionate provisions to achieve the objectives of protecting horse welfare than their suspension from national and international events approved by the FEI and its members. That this reasoning applied *a fortiori* to officials, who could contribute to the achievement of the FEI's main objectives of protecting horse welfare and the integrity of competition by supervising Unsanctioned Events, and that the FEI Exclusivity Rule was contrary to protecting those objectives. That the Prosecutor-General of the BCA had noted that the FEI Exclusivity Rule was also aimed at officials; "However, judging in competitions not approved by the FEI would actually increase the protection of horse welfare and ensure the application of equestrian rules. Sanctioning officials is therefore contrary, according to the Prosecutor, to the objectives pursued by this rule." Further, that similar clauses had been struck down or revised as a consequence of competition law investigations, including in the equestrian sector. Finally, that the interim measures granted by the BCA against the FEI Exclusivity Rule, as well as various other precedents at the EU and national level against comparable exclusivity clauses, were important factual elements for the FEI Tribunal. That they "casted very clear doubts on the legality of the FEI Exclusivity Rule", and that they had to be considered representing exceptional circumstances that supported the granting of a waiver from the FEI Exclusivity Rule or the successful challenge of the application of Article 156.9 of the GRs.

5.3 Regarding the existence of exceptional circumstances in the meaning of Article 156.9 of the GRs in the instant case, the Appellant further argued that:

a) Firstly, exceptional circumstances existed, because there are serious doubts regarding the legality of the FEI Exclusivity Rule. FEI Officials were in reality service providers to the FEI, and not FEI employees, and that an official offering his services to the FEI and participating in an Unsanctioned Event was now *de facto* prohibited from exercising his profession during the period of suspension, save for the Unsanctioned Event itself. No objective justification existed as to why an experienced official, such as the Appellant, was prohibited from offering his services to an independent organizer. The Appellant further argued that it was a

conscious choice of the FEI, since a couple of years, to shield itself from potential competition, including by way of suspending officials for offering their services to any other party than the FEI, knowing very well that this was economically not viable for the official and detrimental to the attainment of the FEI's main objective of horse welfare and the integrity of competition. The Appellant was of the view that he should be able to freely decide which events he wishes to officiate at, and not to be forced to offer his services to the FEI only, which was the case when applying the GRs, *i.e.*, Article 156.9 of the GRs.

- b) Secondly, because of the characteristics of the GCL, as he has already previously submitted. The Appellant further explained that he did not agree with the FEI's argument that the FEI significantly invested in the education of its officials. That, according to the FEI Annual Report, education only represented 1 % of the expenditure of the FEI, and that he had trained many FEI Officials worldwide on a voluntary basis; in doing so, the Appellant had invested in the FEI, rather than the contrary. Moreover, that the organisers of the GCL had offered the FEI to reimburse any reasonable costs of the officials, being already present at the venue for the GCT. Finally, that the BCA had confirmed that the combatting of "free riding" referred to by the FEI in respect of training did not appear to justify an exclusivity rule such as the FEI Exclusivity Rule.
- c) Thirdly, because the arguments of the FEI with respect to the absence of exceptional circumstances had to be rejected. That the wording of Article 156.9 of the GRs did not say that exceptional meant a "one off" or "non-commercial", as argued by the FEI, and that the Article further provided for the possibility to challenge the application of the Article as such. That nothing prevented the Tribunal from considering that there existed exceptional circumstances, or that the application of Article 156.9 of the GRs had been successfully challenged, in a case – such as the case at hand – where an official requested to be treated in the same way as a competition authority, *i.e.*, the BCA, had treated riders and horses. From a perspective of horse welfare and integrity of competition, it was irrelevant whether the organizers of the GCT and the GCL are different. That, as stated by the Prosecutor-General of the BCA, it was exactly because the GCL was a series of Unsanctioned Events, that it would be of benefit of the two main objectives of the FEI, *i.e.* horse welfare and integrity of competition, that officials offering their services to events sanctioned by the FEI, could do so for Unsanctioned Events as well. In the view of the Appellant, the FEI – in its Answer – was however sidestepping this matter. The Appellant argued that the concerns of the FEI were biased, which was proven by the fact that so far they were not shared by the independent third parties that had had to judge on the dispute between the FEI and the GCL. That any concerns voiced by the FEI in respect of the GCL were formal concerns, not substantive ones regarding horse welfare and the integrity of competition. That finally, the Appellant – as an experienced official – was perfectly well capable of addressing any of those alleged concerns himself, *i.e.* with regards to potential consequences regarding certain differences of rules between the GCT and the GCL, or about insurance coverage, or regarding his

decisions possibly being subject to protest from participants, if he was to officiate in the GCL.

6. Supplemental Answer by the FEI

6.1 On 19 April 2016, the FEI submitted its Answer to the Comments of the Appellant to the FEI's Answer to the Appeal. The FEI argued that the Appellant's Comments did not introduce any new information/grounds as to why it should be accepted that "exceptional circumstances" exist; that it maintained all the arguments set out in its Answer and restated that no exceptional circumstances exist that would warrant the granting of a waiver from the application of Article 156.9 of the GRs. In essence, the FEI requested the Tribunal to:

"(a) Confirm that the Appellant's attempted challenge against the application of Article 156.9 is time barred and, therefore, inadmissible;

(b) Dismiss the remainder of the Appeal on its merits;

(c) Confirm the validity of the Waiver Denial Decision; and

(d) Determine that the Appellant shall bear the costs of the Appeal proceedings and the FEI's legal costs."

6.2 More specifically, the FEI submitted that the Appellant – prior to his submission of 5 April 2016 – had only sought a waiver of Article 156.9 of the GRs, and not challenged the application of Article 156.9 of the GRs. That the wording of the Article made it that there are those two alternative options open to Officials who seek to avoid the application of Article 156.9 of the GRs. The Appellant did however not challenge the application of Article 156.9 of the GRs, and had chosen the option to seek a waiver, in his letter to the FEI Secretary General of 29 January 2016, and thereafter in his subsequent Appeal, where he requested the Tribunal to overrule the FEI Secretary General's decision of 24 February 2016. The FEI argued, that the Appellant cannot now attempt to supplement his Appeal by seeking, in addition to appealing the Waiver Denial Decision, to also challenge the application of Article 156.9 of the GRs before the Tribunal.

6.3 Furthermore, the FEI argued that the Tribunal does not have the requisite jurisdiction to now consider a challenge against *"the application of Article 156.9"*, as an appeal may only be lodged against "any Decision", and since the term "Decision" is defined in the FEI Statutes as *"an authoritative determination reached or pronounced after consideration of facts and/or law"*. That the "Decision" of the FEI confirming that Article 156.9 of the GRs applies to the GCL was taken by the FEI Bureau, and that such decision was communicated to all FEI Officials by the FEI Secretary General pursuant to her letter of 8 December 2015. Thus the deadline for the Appellant to file an appeal against the application of Article 156.9 of the GRs expired on 7 January 2016; the Appellant however sought to appeal against the application of Article 156.9 of the FEI GRs almost two (2) months after the expiration of the applicable deadline, *i.e.*, on 5 April 2016

with the Appellant's Comments. As a result, the Appellant's appeal against the application of Article 156.9 of the GRs must be considered as being time barred and, therefore, inadmissible.

- 6.4 The FEI pointed out that several statements by the Appellant with regards to the "FEI Exclusivity Rule" were incorrect. In this respect the FEI argued that the Appellant used the term "FEI Exclusivity Rule" interchangeably on several occasions to describe both Article 156.9 of the GRs, as well as Article 113.4 of the GRs. That there was however a significant difference between those two articles; the FEI objected to the use of such terminology, *i.e.*, FEI Exclusivity Rule, to describe Article 156.9 of the GRs. In this respect, the FEI emphasised that the BCA has suspended the application of Article 113.4 of the GRs only, and has specifically decided not to suspend the application of Article 156.9 of the GRs; the FEI argued that this distinction was crucial.
- 6.5 The FEI argued that FEI Officials are not "professionals"; an Official is defined in the GRs as "A *person appointed by the FEI or by an Organising Committee and/or National Federation to perform a specifically defined officiating duty at an FEI Event.*" That no legal contracts existed between the FEI and FEI Officials, which was the case when the FEI engaged independent service providers; FEI Officials were volunteers.
- 6.6 The FEI further argued that the ongoing proceedings before the BCA and the Brussels Court of Appeal regarding Article 113.4 of the GRs were separate from the present Appeal. The Appellant cannot seek to have provisions of Belgian Competition Law relating to Article 113.4 of the GRs applied in proceedings before the Tribunal relating to Article 156.9 of the GRs, especially in circumstances where the BCA has specifically chosen not to restrict the FEI's application of Article 156.9 of the GRs. The Tribunal should not overturn the Waiver Denial Decision on the basis of alleged, but unproven, breaches of Belgian competition law; this does not constitute an "exceptional circumstance." That the FEI relied on Article 38 of the Statutes which confirms that the applicable law to be applied by the Tribunal in determining disputes is Swiss law; the present Appeal must, therefore, be decided according to Swiss law and not the laws of any other jurisdiction. That Article 156.9 of the GRs has never been held incompatible with Swiss law, and that Article 156.9 of the GRs has never been challenged before a Swiss court, not even by the Appellant.
- 6.7 The FEI further submitted that it was perfectly entitled to rely on a rule that was approved by the FEI's National Federations at the FEI General Assembly in 2012, and that the rationale for such rule had nothing to do with "protectionism from the side of the FEI", as alleged by the Appellant. That an explanatory memorandum was sent by the FEI to all National Federations regarding the rationale of the introduction of Article 156.9 of the GRs (the "**Explanatory Memorandum**"), of which an excerpt reads as follows:

"The FEI recognises the need to be proportionate in its regulation of the sport, and in particular to intervene no further than is necessary to protect the sporting imperatives identified above. Therefore:

5.1 The new regulation does not prevent Athletes or Officials participating in unsanctioned events, or Owners entering their Horses in unsanctioned events, if they so choose. Instead, reflecting the principle that those who benefit from the collective efforts of the FEI and its stakeholders should not at the same time participate in activities that undermine those efforts, it prevents simultaneous participation in both sanctioned and unsanctioned events, by making any Athlete, Horse or Official that participates in an unsanctioned event ineligible to participate for a specified period in sanctioned events.

5.2 It limits the period of ineligibility to six months, in the hope that this will be sufficient to protect against the risks identified above. It also allows for a waiver of that period of ineligibility in exceptional circumstances. If this limited period of ineligibility proves to be insufficient, it will be reviewed and (if necessary) lengthened.

5.3 It is not triggered by participation in unsanctioned events that, if sanctioned, would be classified as National Events rather than International Events. Again, however, if this is abused, it may be necessary to revisit and tighten the regulation."

- 6.8 The Explanatory Memorandum therefore confirmed the FEI's argument – as also previously set out – that Article 156.9 of the GRs is not designed to make an official "permanently ineligible", as alleged by the Appellant; rather it sought to prevent "simultaneous participation in both sanctioned and unsanctioned events". In this respect, the FEI submitted a document containing proposed Rule Changes ahead of the 2012 FEI General Assembly, outlining various deadlines with respect to the Rule Changes, and allowing for National Federation feedback; the document included the "Rationale for new Articles 113.4 and 156.9 of the GRs in its Appendix I, including the aforementioned excerpt.
- 6.9 Furthermore, that the FEI did not suspend officials for offering their services to "any other party than the FEI". That by way of example, FEI Officials officiate at GCT events on a regular basis; they officiated also at Rolex Grand Slam events; FEI Officials are not suspended or sanctioned in any way in relation to their participation in such events.
- 6.10 Finally, the FEI argued that the Appellant despite (i) the fact that the FEI Secretary General denied the Appellant's request for a waiver from the application of Article 156.9 of the GRs; and (ii) the fact that the current appeal proceedings, initiated by the Appellant himself, are still ongoing, the Appellant nevertheless participated as a Course Designer at the first GCL event in Miami, on 10 April 2016. That the Appellant's participation at the Miami GCL event contradicted his own statement that "the Appellant is forced to offer his services only to the FEI." The FEI pointed out that the Appellant did not apply to the Tribunal for interim relief from the application of Article 156.9 of the GRs. On 13 April 2016, the FEI wrote to the Appellant to inform him that, in accordance with Article 156.9 of the GRs, due to his participation in the Miami GCL event in the absence of a waiver from the FEI Secretary General to do so, he is ineligible to participate in an International Event or National Event until 9 October 2016 (*i.e.*, six (6)

months after his participation in the Miami GCL event). The FEI further informed the Appellant that his ineligibility to act as an FEI Official during such period was subject to the outcome of the proceedings in the instant case. The FEI submitted its letter to the Appellant informing him of his ineligibility to participate in an International Event or National Event until 9 October 2016.

7. Further proceedings

- 7.1 On 9 May 2016, - upon prior request by the Tribunal - the FEI provided the Tribunal with the Decision of the BCA (Provisional Measures) of 27 July 2015. Furthermore, the FEI informed the Tribunal that the decision existed only in French and all the proceedings before the BCA have been in French; an English language version of the decision is not available. The FEI further highlighted that the decision only applies to athletes and horses and not to officials; that was the reason that such decision has not previously been submitted by the FEI in the course of the proceedings.
- 7.2 On 10 May 2016, the Appellant informed the Tribunal that he could provide the Tribunal, if so requested, with an (un)official translation in English of the operative part – the part which contains the competition law analysis of the BCA - of the decision of the BCA. In addition, the Appellant submitted additional arguments, including regarding the judgement of the Brussels Court of Appeal dated 28 April 2016, which allegedly rejected the FEI's request for annulment of the interim measures. Details of these additional arguments by the Appellant are not outlined in this decision, since the Tribunal decides (as outlined further below) not to take them into consideration in the present decision.
- 7.3 On 11 May 2016, the FEI objected to the submission of the additional arguments by the Appellant of 10 May 2016. The FEI argued that the deadline for exchange of submissions by the parties had already passed, and therefore the additional unsolicited submission by the Appellant should not be considered by the Panel.

8. Jurisdiction

The Tribunal has jurisdiction over the matter pursuant to the Statutes, GRs and IRs, and its jurisdiction has not been challenged by the parties.

9. Admissibility of the Appeal

- 9.1 In accordance with Article 38.1 of the Statutes, Articles 156.9 and 165 of the GRs and Article 17 of the IRs, the Appeal is admissible as it arises from a Decision taken by the FEI Secretary General, *i.e.*, Waiver Denial Decision, and is not excluded under Article 165.2 of the GRs.
- 9.2 The Tribunal takes note that the Appellant in his Comments of 5 April 2016 requested the Tribunal to alternatively decide on the successful challenge of

the application of Article 156.9 of the GRs. Furthermore, the Tribunal takes note that the FEI argued that the Appellant cannot supplement – at a later stage - his Appeal by seeking, in addition to appealing the Waiver Denial Decision, to also challenge the application of Article 156.9 before the Tribunal. Further, that the deadline for the Appellant to file an appeal against the application of Article 156.9 of the GRs expired on 7 January 2016, as the “Decision” of the FEI to confirm that Article 156.9 of the GRs is applied to the GCL was taken by the FEI Bureau and such decision was communicated to all FEI Officials by the FEI Secretary General pursuant to her letter of 8 December 2015; therefore the Appellant’s appeal against the application of Article 156.9 of the GRs had to be considered as being time barred and, therefore, inadmissible.

- 9.3 The Tribunal finds that the wording of Article 156.9 of the GRs is not very clear. Article 156.9 of the GRs reads as follows: “... a denial of that application may be appealed to the FEI Tribunal”. In the opinion of the Tribunal this leaves room for interpretation, as to whether an Official, such as the Appellant, who chose to seek a waiver, which was denied, could then (only) appeal the denial of a waiver, or still has the right to challenge the application of Article 156.9 of the GRs following receipt of a denial. In the view of the Tribunal it seems rather formalistic that the only way to challenge the application of Article 156.9 of the GRs is to appeal the decision of the FEI Bureau, communicated to the officials through the Secretary General’s letter of 8 December 2015. If a waiver had been granted, there would be no reason to appeal the application of the Rule in the first place. The Tribunal however finds that it does not have to decide on this question, as - even when allowing the Appellant’s Appeal also with regards to his challenge to the application of Article 156.9 of the GRs, the Tribunal decides to dismiss the Appeal – including the application of Article 156.9 of the GRs on the merits for reasons outlined further below.

10. Decision

- 10.1 As outlined above, the Parties have presented various arguments, documents and evidence in support of their respective claims and defences. The Tribunal has carefully considered, examined and assessed all such arguments, facts and evidence presented. Some are cited or noted in this decision, while other may not be expressly mentioned but this should not be construed, however, as if they have been ignored or not taken into account. The Tribunal wants to make clear that it has read, duly considered and taken into account all the material submitted – with the exception of the additional arguments submitted by the Appellant of 10 May 2016 for reasons outlined below - in this appeal, even if not every point or piece of evidence has been replicated herein. The Tribunal decides not to take into account the additional arguments submitted by the Appellant of 10 May 2016. The Tribunal has taken note of the FEI objection in this regard. The Tribunal agrees with the FEI that the exchange of submissions by the parties had already passed at that time. In addition, the Tribunal finds that the Appellant has been granted ample opportunities to provide his arguments. Furthermore, the Tribunal finds that, even if it took those additional arguments into consideration, the

outcome of the present decision would be the same.

- 10.2 To start with the Tribunal takes note that the GCL is a series of events which have not been approved by the FEI, and that the GCL therefore constitutes a(n) unsanctioned event(s) in the meaning of Article 113.5 of the GRs. In this respect the Tribunal wishes to clarify that it is for the FEI Bureau – and not for the Tribunal –, as the policy making body, to decide which events shall be approved by the FEI, and to establish the criteria for such approval.
- 10.3 As a result, and pursuant to Article 156.9 of the GRs, an official who has participated or is planning to participate in an Unsanctioned Event, such as the GCL in the case at hand, is not eligible to participate in an International Event or National Event for six (6) months to follow. An Official may however challenge the application of Article 156.9 of the GRs, or seek a waiver thereof in exceptional circumstances, by application to the Secretary General. In the case at hand, the Appellant has applied for a waiver to the application of Article 156.9 of the GRs arguing that exceptional circumstances existed in the case at hand. The FEI Secretary General has however decided to deny such waiver request.
- 10.4 In deciding the Appeal, the Tribunal has to decide whether or not exceptional circumstances pursuant to Article 156.9 of the GRs exist in the case at hand.
- 10.5 Article 156.9 of the GRs does not specify what shall be considered as “exceptional circumstances”. The Tribunal therefore has to decide on a case by case basis considering the facts and circumstances in each case. The Tribunal however finds that no exceptional circumstances in the meaning of Article 156.9 of the GRs exist in the case at hand. The Tribunal comes to this conclusion for the reasons as follows.
- 10.6 To start with the Tribunal will address the Appellant’s (initial) arguments regarding exceptional circumstances submitted in his Appeal. At a later stage the Tribunal will address the additional arguments by the Appellant with regards to the so-called FEI Exclusivity Rule and potential competition law infringements, which in the opinion of the Appellant have also to be considered as exceptional circumstances.
- 10.7 The Tribunal finds that the intention of the rule maker in Article 156.9 of the GRs is unambiguous, namely to sanction those officials officiating in Unsanctioned Events, such as the GCL events, for a defined period of time, *i.e.*, six (6) months. In this respect the Tribunal further holds that the length of the existence of such a rule is not relevant, as any rule, and as such also Article 156.9 of the GRs, applies from the date it comes into effect. The Tribunal is further of the opinion that the FEI has demonstrated that the rule has been put in place in accordance with the procedures established for FEI rules changes; the rule has been approved by the FEI General Assembly in 2012. The Appellant has not disputed that any potential errors occurred when putting this rule in place; nor has the Appellant provided any evidence that would allow the Tribunal to come to a different conclusion.

- 10.8 The Tribunal further understands that most the arguments in the FEI's Answer to the Appeal – and as such answers to the Appellant's arguments - are arguments that have already been taken into consideration by the FEI Bureau prior to deciding whether to approve the GCL as an FEI Event. As outlined in Article 10.2 above, it is not for the Tribunal to decide whether or not those are valid arguments for the approval of an event or a series of events. Such decision lies within the competence of the FEI Bureau. However, what is important for the Tribunal and the instant case, is, that the same arguments cannot - at this point in time - be considered as valid arguments for exceptional circumstances; hence for the Tribunal to decide differently. The Tribunal therefore finds that it does not need to discuss each of these arguments separately or in detail.
- 10.9 In the view of the Tribunal, exceptional circumstances have to be different circumstances, circumstances that would fall outside the meaning of the rule, and ultimately would make the application of the rule unacceptable or unfair to an FEI Official, such as the Appellant in the case at hand. This is however not the case in the case at hand. As a result, the Tribunal finds that there is nothing exceptional when an official makes a general waiver request, even if only for one series of Unsanctioned events, such as it is the case in the case at hand.
- 10.10 The Tribunal takes note that the Appellant argued that the Interim Measures granted by the BCA "casted very clear doubts on the legality of the FEI Exclusivity Rule". The Tribunal further understands that the Appellant requests the Tribunal to take the foregoing into account when considering both, exceptional circumstances, and the application of Article 156.9 of the GRs. The Tribunal takes also note of the FEI's arguments in this respect.
- 10.11 To start with, the Tribunal understands that the BCA in its Preliminary Decision of 27 July 2015 has ordered the FEI not to apply Articles 113.4 – 113.6 of the GRs concerning athletes and horses pending the outcome of the decision on the merits of the GCL complaint. The Tribunal further understands that on 28 April 2016, the Brussels Court of Appeal has denied the FEI appeal on the Interim Measures imposed by the BCA. The Tribunal understands that proceedings in this respect are ongoing. Furthermore, that Tribunal understands that the BCA has not decided on any Interim Measures with regards to Article 156.9 of the GRs, *i.e.*, concerning FEI Officials. This remains undisputed between the Parties. The Tribunal takes note that the Parties however do not agree as to why no such decision, *i.e.*, Interim Measures, with regards to officials has been taken by the BCA. The Tribunal has been presented with the French version of the BCA Preliminary Decision, and an (un)official English version of the operative part of aforementioned decision has been offered to the Tribunal. The Tribunal however finds that for the present decision it does not need to take into account either of them, since – to date - no decision has been taken with regards to FEI Officials, or the non-application of Article 156.9 of the GRs. As a matter of fact, proceedings are ongoing, and at this point in time no decision on a potential breach of Belgian competition law has been taken. The fact that the BCA decided on Interim Measures suspending the application of Articles 113.4 – 113.6 of the GRs concerning horses and

riders, and not on Article 156.9 of the GRs concerning officials, makes it difficult for the Tribunal to consider any arguments regarding a potential breach of Belgium competition law or EU Competition Law. To the Tribunal this would be speculative at this point in time.

- 10.12 In more general terms the Tribunal is of the view that, if there are very clear doubts with regards to the application of Article 156.9 of the GRs breaching (EU) competition law, this might be a valid argument in deciding whether exceptional circumstances for a waiver in accordance with Article 156.9 of the GRs exist, or even on the application of Article 156.9 of the GRs. The Tribunal finds that, since no Interim Decision has been taken by the BCA, and since the BCA has not seen any urgency in taking such a decision with regards to officials, whereas doubts certainly exist, they cannot be considered as "very clear", as argued by the Appellant.
- 10.13 The Tribunal takes note that the FEI has decided to implement the Preliminary Decision of the BCA with regards to athletes and horses. The Tribunal also takes note of the FEI's view that the applicable law to be applied by the Tribunal in determining disputes is Swiss law. For the Tribunal the instant case is however not a question of applying Swiss Law. The doubts raised by the Appellant are concerning the application of an FEI Rule, *i.e.*, Article 156.9 of the GRs in Belgium or in any other EU country with similar competition law. The Tribunal is not deciding on the application of EU competition law (or Belgian competition law respectively), but whether there are very clear doubts about the legality of Article 156.9 of the GRs, *i.e.*, whether Article 156.9 of the GRs is in contradiction to such competition laws, which would allow for exceptional circumstances with regards to a waiver in accordance with Article 156.9 of the GRs.
- 10.14 As previously decided, the Tribunal however does not find that there are "very clear" doubts, thus no exceptional circumstances exist in the instant case. Furthermore, the Tribunal finds that there are clear differences between athletes/horses and officials when applying an "Exclusivity Rule" in the context of (EU) competition law. For organisers wanting to organise competitions in equestrian sport, it is essential to have competitors, *i.e.*, athletes and horses, at their disposal. The Tribunal finds the case of officials is different. Organisers can run competitions with their own officials or request FEI Officials to officiate if they want to, despite the existence of Article 156.9 of the GRs.
- 10.15 The Tribunal understands that, where a sports organisation forces athletes and horses to compete in certain competitions only, or only in competitions that are organised/sanctioned by that sports organisation, it might raise questions with regards to EU competition law regarding whether unlawful restrictions of competition or abuse of a dominant position or obstacle to the exercise of the fundamental freedoms conferred to by the EC Treaty might arise. The Tribunal however is not in the position to decide on these questions in the present case.
- 10.16 In conclusion, since the BCA has already decided not to rule on Article 156.9 of the GRs, and the situation is a different one for athletes/horses

and officials, the Tribunal does not find that the question regarding the application of EU competition law (or Belgian competition law respectively) constitutes exceptional circumstances.

10.17 Regarding the application of Article 156.9 of the GRs, the Tribunal finds that an FEI rule, such as Article 156.9 of the GRs – as long as it has been put in place correctly, which seems to have been the case as previously established – shall be applied, unless a body with the necessary authority decides that this rule infringes prevailing rules or laws, such as potentially could be the case with competition law(s). However, unless and until such a decision is taken and such breach/infringement is proven, the rule shall be applied. As a result Article 156.9 of the GRs shall be applied in the instant case.

11. Decision

11.1 Based on the foregoing, the Tribunal thus decides as follows:

- 1. The Appeal of Mr. Jansen is rejected.**
- 2. Mr. Jansen shall contribute four thousand Swiss Francs (CHF 4,000) towards the costs of this procedure.**

11.2 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.

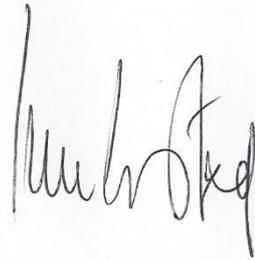
11.3 According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

V. DECISION TO BE FORWARDED TO:

a. The Parties: Yes

b. Any other: No

FOR THE PANEL

A handwritten signature in black ink, appearing to read "Erik Elstad", is centered on the page. The signature is written in a cursive style with a large initial 'E'.

One member panel, Mr. Erik Elstad