



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2785 Brazilian Equestrian National Federation (BENF) v. Federación Dominicana de Deportes Ecuestres (FDDE) & Fédération Equestre Internationale (FEI)

CAS 2012/A/2790 Federación Dominicana de Deportes Ecuestres (FDDE) & Yvonne Losos de Muñiz v. Fédération Equestre Internationale (FEI) & Brazilian Equestrian National Federation (BENF) & Luiza Tavares de Almeida

ARBITRAL AWARD

delivered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Hans Nater, attorney-at-law in Zurich, Switzerland

Arbitrators: Mr Jeffrey G. Benz, attorney-at-law in Los Angeles, CA, USA

Prof Ulrich Haas, Zurich, Switzerland

Ad hoc Clerk: Ms Jennifer Kirby, attorney-at-law in Paris, France

in the arbitrations between

BRAZILIAN EQUESTRIAN NATIONAL FEDERATION (BENF), Rio de Janeiro, Brazil

and

MS LUIZA TAVARES DE ALMEIDA, Brazil

Both represented by Mr Marcelo Franklin, H.B. Cavalcanti e Mazzillo Advogados, Rio de Janeiro, Brazil

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and

FEDERACIÓN DOMINICANA DE DEPORTES ECUESTRES (FDDE), Santo Domingo
Oeste, Dominican Republic

and

MRS YVONNE LOSOS DE MUÑIZ, Wellington, FL, USA

Both represented by Me Alexis Schoeb, Schoeb Avocats, Geneva, Switzerland

and

FÉDÉRATION EQUESTRE INTERNATIONALE (FEI), Lausanne, Switzerland

Represented by Ms Lisa Lazarus, General Counsel for the FEI, and Dr Xavier Favre-Bulle and
Ms Marjolaine Viret, Lenz & Stachelin, Geneva, Switzerland.

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1. THE PARTIES

- 1.1 The Brazilian Equestrian National Federation (BENF) is the national federation for equestrian sports in Brazil and has its registered seat in Rio de Janeiro, Brazil.
- 1.2 Ms Luiza Tavares de Almeida is a dressage rider for Brazil.
- 1.3 The Federación Dominicana de Deportes Ecuestres (FDDE) is the national federation for equestrian sports in the Dominican Republic and has its registered seat in Santo Domingo Oeste, Dominican Republic.
- 1.4 Mrs Yvonne Losos de Muñiz is a dressage rider for the Dominican Republic.
- 1.5 The Fédération Equestre Internationale (FEI) is the international sports federation governing equestrian sport recognized by the International Olympic Committee (IOC). The FEI has its registered seat in Lausanne, Switzerland.

2. FACTUAL BACKGROUND

- 2.1 Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the 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 submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
- 2.2 The two arbitrations at issue here concern the qualification and participation procedure for the dressage competition at the 2012 Olympic Games in London (the "Olympics"). The qualification and participation criteria for the dressage competition at the Olympics are set out in the FEI Olympic Athletes Ranking List Dressage – 2012 Olympic Games, dated 21 December 2010 (the "Dressage Olympic Ranking List"), which establishes a point system used to determine which countries may send riders to the Olympics. Countries are grouped based on seven geographical regions: (A) North Western Europe, (B) South Western Europe, (C) Central and Eastern Europe, (D) North America, (E) Central and South America, (F) Africa and the Middle East, and (G) Southeast Asia, Oceania. Only one country per group qualifies to send a rider to the Olympics – namely, the country of the rider with the most points based on the eight best results per athlete/horse combination during the qualification period, which runs from 1 March 2011 to 1 March 2012. The two countries at issue here – Brazil

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and the Dominican Republic – are both in the Central and South America group, Group E.

- 2.3 The international dressage competitions that are the subject of these arbitrations were held in Brazil on 10-12 and 24-26 February 2012 (the “Competitions”) during the qualification period for the Olympics. The Competitions were “CDI3*” events – a category of event where the results count for purposes of accumulating points to qualify for the Olympics. Five judges, three from Brazil and two “foreign” (i.e., non-Brazilian) judges made up the Ground Jury that judged the Competitions. Mr Salim Nigri, a former *Chef d’Equipe* for Brazil and the current Dressage Director of the BENF, was one of the Brazilian judges. Ms Tavares de Almeida participated in the Competitions. Mrs Losos de Muñiz did not, although she and her horse did participate in various other FEI recognized competitions in the United States to gain qualifying points.
- 2.4 Prior to the Competitions, by emails dated 25 and 26 January 2012, the FDDE contacted the FEI after seeing the draft schedule for the first of the Competitions. The FDDE raised concerns about the fact that the events were to be judged by only two foreign judges and stated that the FEI Rules for Dressage Events (24th ed., effective 1 January 2011, including modifications for 1 January 2012) (the “FEI Dressage Rules”) and the Dressage Olympic Ranking List required that there be at least three foreign judges for the event. The FDDE also stated that it considered that Mr Nigri’s being the former *Chef d’Equipe* for Brazil and the current Dressage Director of the BENF represented a conflict of interest under the Codex for FEI Dressage Judges (the “Codex”), particularly as the events were for Olympic qualification. The Codex sets forth certain standards of conduct for FEI Dressage Judges.
- 2.5 The FEI responded by email the next day that the FEI regularly grants exceptions to the requirement that there be three foreign judges. As to Mr Nigri, the FEI stated that it had contacted him and that he had explained that he did not have a conflict of interest because he was not currently the *Chef d’Equipe* for Brazil and had no responsibility for selecting the team or individual riders from Brazil. Under the circumstances, the FEI stated that it considered this a “non-issue”. The FEI concluded by stating that it “hope[d] the issue has been resolved through this correspondence”.
- 2.6 By email that same day, the FDDE responded in pertinent part as follows:

Thanks for your response and further news from Mr. Nigri. We fully trust both local and foreign FEI judges to complete their work correctly, although in my opinion these exceptions to the rule are not a fair solution for Olympic qualifiers and need to be evaluated.

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We also trust the FEI Dressage Department and its supervision system will keep an eye on all results.

- 2.7 The Competitions were then held as scheduled in mid and late February. Taking the results of the Competitions into account, Ms Tavares de Almeida, and her horse, Samba, finished first in the individual rankings for Central and South America, Group E, with 1353 points from their eight best results. Brazil therefore qualified as the country in Group E to send a rider to the Olympics to compete in dressage. Mrs Losos de Muñiz, and her horse, Liebling II, finished second in the individual rankings from Group E with 1326 points.
- 2.8 On 26 February 2012, the FDDE filed a protest with the Secretary General of the FEI. On its protest, the FDDE contended, among other things, that the results of the Competitions should not count toward qualification for the Olympics because (1) the Dressage Olympic Ranking List required that at least three of the five judges judging the Competitions be foreign (and only two were); (2) Mr Nigri had a conflict of interest under the Codex when judging the Competitions because he is the Dressage Director of the BENF and a former *Chef d'Equipe* for Brazil; and (3) the FEI never should have approved the holding of the Competitions in the first place because the BENF submitted the draft schedules for those events less than 16 weeks before they were to be held and did not invite other national federations to attend.
- 2.9 The FEI and BENF responded that the FDDE's protest was inadmissible. In support of their position, the FEI and BENF relied on article 163.3 of the FEI General Regulations (23rd ed., 1 January 2009, updates effective 1 January 2012) ("FEI GR"), which requires that protests related to the organization or conduct of competitions – such as the FDDE's protest – must be lodged with the Ground Jury during its period of jurisdiction. As the FDDE instead filed its protest with the Secretary General of the FEI, the FEI and BENF contended it was inadmissible and should be dismissed on that basis. The FEI and BENF further asked the FEI Tribunal to bifurcate the proceedings and first decide the issue of admissibility before (if necessary) turning to the merits of the FDDE's protest.
- 2.10 The FEI Tribunal decided to bifurcate the proceedings and, on 27 March 2012, issued a decision finding the FDDE's protest admissible (the "Admissibility Decision"). In reaching its decision, the FEI Tribunal noted that no riders from the Dominican Republic participated in the Competitions, but Dominican riders could have been indirectly affected by the results of the Competitions because they were counted for the rankings and qualifications for the Olympics. Under these circumstances, the FEI Tribunal found that the FDDE was not obliged to travel to the Competitions and file a protest with the Ground Jury under article 163.3. Rather, the FDDE could file its protest with the Secretary General of the FEI pursuant to article 163.4 of the FEI GR,

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which provides that protests regarding matters which have not occurred in connection with an international event, or which were not known until after the end of the event, shall be reported to the Secretary General.

- 2.11 The BENF contends that the Admissibility Decision was wrong and has filed an appeal seeking to have that decision set aside. This is the subject of arbitration in CAS 2012/A/2785.
- 2.12 The FEI Tribunal went on to reject the FDDE's protest on the merits in a decision issued on 3 May 2012 (the "Merits Decision"). Specifically, the FEI Tribunal found that the Dressage Olympic Ranking List allows for exceptions to the three-foreign-judge rule and that FEI granted such an exception with respect to the Competitions. The FEI Tribunal further found that Mr Nigri's being a former *Chef d'Equipe* for Brazil and the current Dressage Director for the BENF did not violate the Codex. And, in any event, the remedies available when a judge breaches the Codex do not include annulling the results of competitions where that judge was on the Ground Jury. The FEI Tribunal further found that, although the draft schedules for the Competitions were submitted late, those events had been noted on the FEI website calendar, which athletes and national federations can access at any time via the internet, long before the draft schedules were submitted. And there was no evidence of any athlete wanting to attend the Competitions but being unable to because they did not have enough advance notice. Finally, as the draft schedules indicated that the Competitions were open to all national federations, this constituted an invitation to all national federations to attend.
- 2.13 The FDDE and Mrs Losos de Muñiz contend that the Merits Decision was wrong and filed an appeal seeking to have that decision set aside. This is the subject of arbitration in CAS 2012/A/2790.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 3.1 On 25 April 2012, pursuant to article R47 of the Code of Sports-Related Arbitration (2010 ed.) (the "Code"), the BENF filed a Statement of Appeal and Appeal Brief at the Court of Arbitration for Sport (the "CAS") against the decision of the FEI Tribunal issued on 27 March 2012 ("Appeal 2785").
- 3.2 In its Statement of Appeal and Appeal Brief, the BENF nominated Mr Jeffrey G. Benz for appointment to the Panel.
- 3.3 By letter dated 2 May 2012, the CAS notified the BENF's Statement of Appeal and Appeal Brief to the FDDE and FEI.

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- 3.4 On 4 May 2012, pursuant to article R47 of the Code, the FDDE and Mrs Losos de Muñiz filed a Statement of Appeal at the CAS against the decision of the FEI Tribunal issued on 3 May 2012 (“Appeal 2790”).
- 3.5 In their Statement of Appeal, the FDDE and Mrs Losos de Muñiz nominated Prof Ulrich Haas for appointment to the Panel.
- 3.6 By letter dated 8 May 2012, the CAS notified the Statement of Appeal of the FDDE and Mrs Losos de Muñiz to the FEI and BENF.
- 3.7 The parties subsequently agreed that the two Appeals should be submitted to the same Panel and confirmed that Mr Benz and Prof Haas would act as arbitrators in both cases.
- 3.8 On 29 and 30 May 2012, the FDDE and FEI, respectively, filed their Answers in Appeal 2785.
- 3.9 On 13 and 14 June 2012, the FEI and BENF, respectively, filed their Answers in Appeal 2790.
- 3.10 The parties further agreed that Ms Tavares de Almeida be permitted to intervene as a Respondent in Appeal 2790.
- 3.11 After consulting the parties, by letter dated 18 June 2012, the CAS informed the parties that the Panel would hold a hearing in this matter on 2 July 2012 at 9H30 at the Hotel de la Paix in Lausanne, Switzerland.
- 3.12 By letter dated 21 June 2012, the CAS informed the parties of the appointment of Ms Jennifer Kirby as *ad hoc* clerk in this matter.
- 3.13 The parties made their cost submissions in July 2012 following the hearing.

4. THE CONSTITUTION OF THE PANEL AND THE HEARING

- 4.1 By letter dated 13 June 2012, the CAS informed the parties that the Panel to hear the appeals had been constituted as follows: Dr Hans Nater, President of the Panel, Mr Benz and Prof Haas, arbitrators. The parties did not raise any objection to the constitution and composition of the Panel.

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- 4.2 By Order of Procedure dated 28 June 2012, signed by the parties, the parties confirmed that the CAS has jurisdiction over this dispute and the date and time of the hearing (2 July 2012 at 9H30).
- 4.3 A hearing was held on 2 July 2012 at the Hotel de la Paix in Lausanne. At the close of the hearing, the parties confirmed that they were satisfied as to how the hearing and the proceedings were conducted.
- 4.4 In addition to the Panel, Ms Louise Reilly, Counsel to the CAS, and Ms Kirby, the following people attended the hearing or some portion of the hearing:
- Mr Jose Manuel Ramos, President of the FDDE
 - Mrs Yvonne Losos de Muñiz, dressage rider and Appellant in Appeal 2790
 - Mr Eduardo Muñiz, husband of Mrs Losos de Muñiz
 - Ms Eva Solomon, Managing Director and *Chef d'Equipe* for the United States Equestrian Federation (by telephone)
 - Mr Michael Stone, President of Equestrian Sport Productions (by telephone)
 - Mr Carl Hester, dressage rider (by telephone)
 - Me Alexis Schoeb, counsel to the FDDE and Mrs Losos de Muñiz
 - Me Marc Baumgartner, counsel to the FDDE and Mrs Losos de Muñiz
 - Mr Salim Nigri, FEI Judge
 - Mr Ghislain Fouarge, FEI Judge General
 - Mr Luiz Rocco, Secretary General of the BENF (by telephone)
 - Ms Luiza Tavares de Almeida, dressage rider and Respondent in Appeal 2790
 - Mr Manuel Almeida, father of Ms Tavares de Almeida
 - Mr Manuel Almeida, brother of Ms Tavares de Almeida
 - Mr Marcelo Franklin, counsel to the BENF and Ms Tavares de Almeida
 - Mr Trond Asmyr, FEI Director of Dressage (by telephone)
 - Ms Anne Gribbons, member of the FEI Dressage Committee (by telephone)
 - Ms Maribel Alonso, FEI Judge
 - Mr Thomas Baur, member of the FEI Dressage Committee
 - Ms Lisa Lazarus, General Counsel of the FEI
 - Ms Carina Mayer, Dressage Assistant of the FEI
 - Dr Xavier Favre-Bulle, counsel to the FEI
 - Ms Marjolaine Viret, counsel to the FEI
 - Mr Cristovao Leitao, interpreter

Although Ms Alonso was available, by agreement of the parties, she was not called to testify.

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5. THE PARTIES' SUBMISSIONS ON THE ADMISSIBILITY DECISION

A. The Submissions of the BENF and FEI

- 5.1 In summary, the FEI and BENF submitted the following with respect to the Admissibility Decision:
- 5.2 Under articles 159.1 and 159.2 of the FEI GR, the Ground Jury has jurisdiction over protests directly related to an event, and its jurisdiction begins one hour prior to the inspection of horses and ends 30 minutes after the final result is rendered. Article 163.3 of the FEI GR requires that protests “for failing to observe the Statutes, GRs or Sport Rules in the organization or conduct of a Competition” – such as the FDDE’s protest – “must be lodged with the Ground Jury during its period of jurisdiction”. As the FDDE instead filed its protest with the Secretary General of the FEI, it was inadmissible and the FEI Tribunal should have dismissed it on that basis.
- 5.3 The only provision in the FEI GR authorizing protests directly to the Secretary General of the FEI is article 163.4. That article provides that “[p]rotests regarding matters which have not occurred during or in direct connection with an international Event or which were not known until after the end of the Event, shall be reported to the Secretary General and dealt with by the FEI Tribunal.” As the FDDE’s protest concerns matters that occurred during or in direct connection with an international Event – namely, the Competitions – and the FDDE knew before the end of the Competitions that there would be three Brazilian judges (including Mr Nigri) judging them, the FDDE’s protest falls outside the scope of article 163.4.
- 5.4 The fact that no Dominican riders participated in the Competitions does not exempt the FDDE from having to comply with article 163.3. That article makes no distinction between riders who participate in the event in question and those who do not. And the FDDE was aware since at least 25 January 2012 that the Competitions would be judged by only two foreign judges. The FDDE therefore had plenty of time to send a representative to the Competitions.
- 5.5 The FDDE’s protest was also untimely. The FDDE asked the FEI Tribunal to “not accept any scores” from the Competitions. Article 163.7.4 of the FEI GR provides that “protests concerning irregularities or incidents during a Competition, or the results of a Competition” must be lodged with the Ground Jury not later than thirty minutes after the announcement of the results. And article 163.6 of the FEI GR requires that protests be filed with the necessary deposit. As the FDDE did not pay the deposit for its protest until 27 February 2012 – well after the thirty-minute time limit to protest the results of the Competitions had expired on 26 February 2012 – its protest is in all events untimely.

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5.6 In its Statement of Appeal and Appeal Brief, the BENF requested that the Panel grant the following relief:

1. Declare Appeal 2785 admissible;
2. Declare the protest filed by the FDDE inadmissible;
3. Alternatively, declare which days of the Competitions (if any) may be challenged by the FDDE;
4. Dismiss any other relief sought by the FDDE;
5. Determine that the FDDE shall bear all costs of the proceedings, including a contribution to the BENF's legal fees.

5.7 In its submissions, the FEI abstained from seeking specific relief, but invited the Panel to "make an Award applying the provisions of Article 163 of the FEI General Regulations on the Protest according to their true and correct interpretation and construction."

B. The Submissions of the FDDE

5.8 In summary, the FDDE submitted the following with respect to the Admissibility Decision:

5.9 The language of article 163.3 makes clear the obligation to file a protest with the Ground Jury only applies where the protestor is present during the event concerned. This is evident, for example, from the fact that protests for the Ground Jury must be "presented personally to the President of the Ground Jury" (FEI GR, art. 163.6) – something that is only possible for protestors present at the event. This is particularly obvious with respect to protests concerning the results of a competition – such as the protest at issue here – which must be personally presented within 30 minutes of the announcement of the results (FEI GR, art. 163.7.4).

5.10 Here, as the FDDE was not present at the Competitions, it was not possible for it to present its protest in person to the Ground Jury within 30 minutes of the announcement of the results. And it would be nonsensical to require non-participants to attend events so as to be in a position to potentially file a protest should something happen that affects their interests. Moreover, the "present dispute does not concern in itself the irregularities which occurred during the [Competitions], but rather, the fact that the FEI Dressage Committee considered – erroneously – that the score obtained during

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[the Competitions] . . . would count for the Olympic Ranking.” FDDE Answer, ¶ 45. It is therefore doubtful that the dispute “considered strictly” concerns a matter that occurred during or in direct connection with an international event. The FEI Tribunal was accordingly correct in deciding that the FDDE could file its protest with the Secretary General pursuant to article 163.4.

5.11 The time limit for filing a protest under article 163.4 of the FEI GR is set out in article 163.5, which provides that “[p]rotests lodged with the Secretary General for referral to the FEI Tribunal should be received by the Secretary General not later than fourteen (14) days after the end of the Event.” As the FDDE filed its protest with the Secretary General of the FEI on 26 February 2012, the protest was timely filed with respect to the results of the Competitions.

5.12 In its Answer, the FDDE asks the Panel to grant the following relief:

1. Confirm the Admissibility Decision;
2. Decide that the BENF shall bear all the costs of this arbitration and shall pay compensation towards the legal fees and other expenses incurred by the FDDE in connection with these proceedings.

5.13 In its cost submissions, the FDDE stated that it did not seek a contribution to its legal fees and expenses and asked that each party be ordered to bear its proportional share of the costs of arbitration determined by the CAS Court Office.

6. THE PARTIES’ SUBMISSIONS ON THE MERITS DECISION

A. The Submissions of the FDDE and Mrs Losos de Muñiz

6.1 In summary, the FDDE and Mrs Losos de Muñiz submitted the following with respect to the Merits Decision:

6.2 The Competitions failed to meet the minimum requirements under the Dressage Olympic Ranking List to be considered as Olympic qualifying events. As a result, the scores from the Competitions should not count towards the rankings for qualifying for the Olympics. There are three reasons for this that should not be analyzed individually, but as a “global violation” that is “part of Brazil’s calculated strategy to ensure that one of the Brazilian riders would take part” in the Olympics. FDDE/Losos de Muñiz Appeal Brief, ¶ 87.

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- 6.3 *First*, of the five judges on the Ground Jury at the Competitions, only two were foreign. Under the Dressage Olympic Ranking List, CDI3* events – such as the Competitions at issue here – must be judged by at least three foreign judges for the results to count towards the rankings for the Olympics. *See also* FEI Dressage Rules, art. 437.8.10 (providing that for CDI3* events “[a]t least three (3) Judges should be foreign”). The Competitions did not meet this requirement.
- 6.4 The Dressage Olympic Ranking List permits the FEI Dressage Committee “to accept reasonable exceptions to these rules” – including the three-foreign-judge rule – “in the interest of the riders and the sport in general”, but no such exception was granted with respect to the Competitions. In this regard, the document entitled “Memo: Ground Juries at CDIs3* and below outside Europe for 2010” (the “Exception Memo”) does not constitute such an exception. While the Exception Memo provides that, upon application to the FEI Dressage Department, CDI3* events outside of Europe – such as the Competitions at issue here – may be organized with only two foreign judges, this exception applied only for events held in 2010. As the Competitions were held in 2012, it therefore does not apply.
- 6.5 *Second*, one of the judges at the Competitions, Mr Nigri, had a conflict of interest under the Codex because he was at the time the Dressage Director for the BENF and a former *Chef d’Equipe* for Brazil. The Codex provides that a judge “must avoid any actual or perceived conflict of interest” and “have a neutral, independent and fair position towards riders”. The Codex specifically states that “[a]cting as Team chef of National teams at international level or being responsible/co-responsible for selecting teams and/or individuals or training riders within the NF” may lead to a conflict of interest. Mr Nigri violated this provision of the Codex because he has been the *Chef d’Equipe* for Brazil on a number of occasions during the past decade and was therefore “*de facto permanently*” the *Chef d’Equipe* for Brazil. FDDE/Losos de Muñiz Appeal Brief, ¶ 154 (emphasis original). Moreover, as the current Dressage Director for the BENF, one of Mr Nigri’s main concerns and objectives is to have a Brazilian rider representing Brazil at the Olympics, thus reinforcing his conflict of interest.
- 6.6 Mr Nigri’s violation of the Codex should have led the FEI Dressage Committee not to include the results of the Competitions in the Olympic rankings further to the “Fairness” provision in the Dressage Olympic Ranking List. Under that provision, the “FEI Dressage Committee may decide not to include the scores obtained at an event in the rankings, should the event not have been organized in accordance with general principle of fairness.”
- 6.7 *Third*, under article 423 of the FEI Dressage Rules, the draft schedules for the Competitions should have been sent to the FEI for approval at least sixteen weeks prior to the events and should have invited at least six other national federations to attend.

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The BENF in fact only sent the draft schedules to the FEI approximately three weeks prior to the Competitions. While the Competitions were on the FEI website calendar before then – approximately five weeks before the events held on 10-12 February 2012 and approximately seven weeks before the events held on 24-26 February 2012 – it was impossible for foreign riders to attend in light of the quarantine regulations for horses. Furthermore, the draft schedules the BENF submitted to the FEI for approval did not invite at least six other national federations to attend the Competitions.

- 6.8 In light of these violations, the results of the Competitions should not count towards qualification for the Olympics. If these results are eliminated, Ms Tavares de Almeida would have only 1284 points and therefore rank behind Mrs Losos de Muñiz (with 1326 points), and the Dominican Republic (instead of Brazil) would qualify to send a rider to the Olympics.
- 6.9 In their Appeal Brief, the FDDE and Mrs Losos de Muñiz asked the Panel to rule as follows:
1. The Merits Decision is set aside;
 2. The Competitions did not meet the minimum requirements to be considered as Olympic qualifying events;
 3. The scores obtained by Ms Tavares de Almeida during the Competitions shall not count for the Olympic rankings;
 4. Mrs Losos de Muñiz places first in the Olympic ranking for Central and South America, Group E;
 5. Mrs Losos de Muñiz is qualified to participate in the Olympics in dressage;
 6. The FEI and BENF shall bear all the costs of this arbitration and shall be ordered to pay compensation towards the legal fees and other expenses incurred by the FDDE and Mrs Losos de Muñiz in connection with these proceedings.
- 6.10 At the hearing, the FDDE and Mrs Losos de Muñiz modified their fifth prayer for relief to instead request that the Panel rule that the Dominican Republic qualifies to send a rider to the Olympics to compete in dressage. The FEI, the BENF and Ms Tavares de Almeida had no objection to this change.
- 6.11 Moreover, in its cost submissions, the FDDE stated that it did not seek a contribution to its legal fees and expenses and asked that each party be ordered to bear its proportional share of the costs of arbitration determined by the CAS Court Office.

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B. The Submissions of the FEI, the BENF and Ms Tavares de Almeida

- 6.12 In summary, the FEI, the BENF and Ms Tavares de Almeida submitted the following with respect to the Merits Decision:
- 6.13 Dressage has traditionally been strong in certain regions, such as Western and Central Europe, but much less so in other parts of the world, such as Central and South America. As a consequence, one of the major goals of the FEI is to promote dressage outside of Europe, in particular by offering riders reasonable opportunities to compete at international level within their own region. For several years, Brazil has contributed to this effort by organizing international dressage competitions. As an example, between 1 January 2010 and 1 June 2012, all twenty dressage events organized in South America took place in Brazil. For a rider based in South or Central America wishing to compete at the highest levels of dressage, Brazil is currently the only reasonable, cost effective alternative to traveling regularly to the United States.
- 6.14 One of the challenges to organizing international dressage events in Central and South America is the cost associated with attracting and making travel arrangements for foreign FEI judges, most of whom reside in Europe. Article 437.8.10 of the FEI Dressage Rules and the Dressage Olympic Ranking List require that at least three out of the five judges on the Ground Jury should be foreign for CDI3* events, such as the Competitions at issue here. The financial challenges associated with complying with this requirement only became more difficult after the onset of the global financial crisis in 2008. In an effort to address this, in 2009, the FEI Dressage Committee decided to create an exception to the three-foreign-judge rule for CDI3* events outside Europe. The FEI confirmed and formalized this decision at its meeting of 18 January 2010, and its terms are reflected in the Exception Memo, which has been available on the FEI website since early 2010 and remains there up to this day.
- 6.15 As part of its daily business to approve international events proposed for the FEI calendar, the FEI Dressage Department implements the exception upon request for events falling within its scope. Throughout 2010, feedback regarding the exception was uniformly positive, and the exception therefore remained in effect and was never repealed. The exception has been requested and granted 25 times since its introduction and has never been denied when requested. Countries that have held events under the exception include Australia, Brazil, Canada, New Zealand and the United States. The availability of the exception has been known to the entire dressage community since 2010. The FEI had received no negative comments before the end of January 2012, when the FDDE contacted the FEI regarding the Competitions.

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- 6.16 During the qualification period for the Olympics, Brazil organized twelve CDI3* events. Ten of those were organized with the benefit of the exception. No challenge or complaint was raised until the present matter.
- 6.17 Turning to the three reasons the FDDE and Mrs Losos de Mufiz contend the results from the Competitions should be set aside, none of them has any merit.
- 6.18 *First*, the Competitions were properly held with only two foreign judges as opposed to three.
- 6.19 Although the Dressage Olympic Ranking List provides that all CDI3* events shall be “judged by five judges of whom at least three are foreign”, it also provides that the “FEI Dressage Committee has the right to accept reasonable exceptions to these rules, in the interest of the riders and the sport in general.” This is what the FEI did in creating an exception to the three-foreign-judge rule for CDI3* events organized outside of Europe, as memorialized in the Exception Memo. The Competitions at issue here were properly organized pursuant to that exception with the approval of the FEI. The exception is “reasonable” and “in the interest of the riders and the sport in general” within the meaning of the Dressage Olympic Ranking List because it promotes equestrianism outside Europe with a view to increasing participation of the sport globally in keeping with Olympic ideals.
- 6.20 *Second*, Mr Nigri had no conflict of interest under the Codex when judging the Competitions.
- 6.21 The Codex mentions that “[a]cting as Team chef of National teams at international level or being responsible/co-responsible for selecting teams and/or individuals or training riders within the NF” while judging a competition may raise a conflict of interest for an FEI judge. Mr Nigri was not *Chef d’Equipe* for Brazil when judging the Competitions. And his current role as Dressage Director does not involve selecting teams or individuals or training riders. Rather, his role is to ensure that the regulations of the BENF are observed. Mr Nigri therefore had no conflict of interest when judging the Competitions.
- 6.22 Moreover, it is common and acceptable for people holding positions in national federations to also serve as FEI judges, and the Codex, which is designed principally to provide guidance to judges, must be interpreted in light of the FEI GR. Specifically, article 158 of the FEI GR provides that while “[c]onflicts must be avoided whenever practicable . . . conflicts may be linked to experience and expertise that is necessary to qualify Officials.” As a consequence, the “specific balance between the conflict and expertise shall be regulated by the relevant Sport Rules.” FEI GR, art. 158. As only

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people with high qualification and experience in dressage can act as FEI judges at international-level events, such individuals often have other activities in dressage.

- 6.23 It is also important to note that scoring in dressage is not based on a comparison between competitors. Each rider is assessed individually for the quality of his or her performance based on a standard established by the FEI. The score evaluates how the rider and her horse were able to execute the dressage tests with reference to this standard. As a consequence, a rider's scores do not depend on the number of other competitors in the event or their relative quality or on the nationality of the judges that make up the Ground Jury.
- 6.24 This is specifically borne out on the facts of this case. A review of the scores Ms Tavares de Almeida obtained with Samba from November 2011 through February 2012 shows that Mr Nigri more often than not rated Ms Tavares de Almeida lower than all or at least some of the foreign judges. In fact, if Mr Nigri's scores were not taken into consideration for the Competitions, Ms Tavares de Almeida would have obtained even higher scores and Brazil would still be qualified to send a rider to the Olympics.
- 6.25 *Third*, the fact that the draft schedules were submitted less than 16 weeks before the Competitions provides no basis to disregard the scores from those events.
- 6.26 The scheduling of events is guided by two concerns: (1) complying with the FEI GR and (2) "taking into account the practical needs of everyday governance of a discipline and striking a balance between the interests of all stakeholders." FEI Answer, ¶ 99. A national federation wishing to organize an event must first enter it into the FEI website calendar, which makes the event publically accessible on the Internet. As a rule, events should be entered into the calendar no later than 1 October of the prior year. FEI GR, art. 112.3. In practice, however, events are frequently announced much later. The FEI may still accept these, but only after consulting other national federations or other organizers to ensure that there is no "clash" with other events that may be taking place nearby in the same time period.
- 6.27 In this case, the BENF sought to add events in January and February 2012 less than 16 weeks before the proposed events were to be held. After assessing the events in light of the existing calendar, the FEI decided to refuse the January events and accept the February events, including the Competitions. The Competitions were added to the FEI website calendar in early January 2012. From this point on, all national federations and riders had notice of the Competitions and no one challenged the decision of the FEI to add them.

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- 6.28 A national federation organizing an event must also submit to the FEI a draft schedule containing all details of the event. FEI GR, art. 110. A national federation is normally required to send the draft schedule to the FEI for approval no later than 16 weeks before the date of the event. It is common, however, that national federations submit draft schedules after this date and that the FEI does not approve them until shortly before the event. This is because the draft schedule cannot be approved until every detail about the event has been sorted out.
- 6.29 A failure to observe the 16-week deadline is not grounds for challenging the results of a competition. It is a matter only between the FEI and the organizer of the event and has no impact on third parties. Neither the FDDE nor Mrs Losos de Muñiz can seriously contest this. The draft schedules for all of the events at which Mrs Losos de Muñiz obtained her Olympic qualifying points were submitted after the 16-week deadline. If this provided a basis for annulling competition results, the results of all of these events would have to be annulled too. Moreover, contrary to what the FDDE and Mrs Losos de Muñiz allege, the draft schedules for the Competitions invited all national federations to attend. And there is no evidence that the late submission of the draft schedules for the Competitions prevented any rider who otherwise wanted to go from participating.
- 6.30 In all events, however, none of the three alleged rule violations could support annulling the results of the Competitions.
- 6.31 There is no provision in the FEI rules providing for such a remedy. The Codex provides as a remedy that the “FEI and the FEI Dressage committee have the right to undertake disciplinary actions against judges who do not follow the Codex and FEI rules”. It says nothing about disregarding results.
- 6.32 The “Fairness” provisions of the Dressage Olympic Ranking List provide that the “FEI Dressage Committee may decide not to include the score obtained at an event in the rankings, should the event not have been organized in accordance with general principle of fairness.” The FEI Dressage Committee therefore has discretion on this issue, but must be guided by the principles of fairness. The Panel accordingly may not automatically conclude from the presence of a breach that the results should be invalidated. Rather, the remedy must be proportionate to the breach. This implies taking into account whether the breach is likely to have influenced the results of the Competitions, as well as fairness and a balance of interests among all stakeholders.
- 6.33 Here, there is no evidence that any of the alleged breaches influenced the results of the Competitions at all, much less in favor of Ms Tavares de Almeida. There is no evidence of nationalistic judging on the part of any of the Brazilian members of the Ground Jury, including Mr Nigri. In fact, Ms Tavares de Almeida would have scored

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even higher if Mr Nigri's scores were eliminated. And there is no evidence that the late submission of the draft schedules for the Competitions prevented any rider who was otherwise interested from competing.

- 6.34 The Exception Memo was posted on the FEI website in January 2010 and has been consistently applied since then. The exception is well known throughout the dressage community and has been used to organize over 25 events outside Europe over the past two years, including during the qualification period for the Olympics. The Competitions were added to the FEI website calendar at the beginning of January 2012. The draft schedules showing the composition of the Ground Jury for the Competitions – including the presence of Mr Nigri – were posted online weeks before the Competitions. The FDDE and Mrs Losos de Muñiz were aware of these facts and did not challenge them before the Competitions, but waited until after the Competitions had taken place and no alternative measures could be taken by the FEI, the BENF or Ms Tavares de Almeida. Under these circumstances, the FDDE and Mrs Losos de Muñiz forfeited their right to complain and their challenge violates the principle of good faith. *See* Swiss Civil Code, arts. 2.1 and 2.2.
- 6.35 It also violates the prohibition of *venire contra factum proprium*, which prevents a party from acting in a manner that is in contradiction to his previous conduct. In its email of 26 February 2012 to the FEI, the FDDE expressly confirmed that it “fully trust[ed] both local and foreign FEI judges to complete their work correctly” and “also trust[ed] the FEI Dressage Department and its supervision system” to “keep an eye on all results.” By doing so, the FDDE induced the FEI to believe that it had no objections against the organization of the Competitions and accepted the exception to the three-foreign-judge rule that had been granted.
- 6.36 In its Answer, the BENF requested that the Panel grant the following relief:
1. Dismiss Appeal 2790;
 2. Dismiss any other relief sought by the FDDE and Mrs Losos de Muñiz;
 3. Determine that the FDDE shall bear all costs of the proceedings, including a contribution to the BENF's legal fees.
- 6.37 In its Answer, the FEI requested that the Panel grant the following relief:
1. Dismiss Appeal 2790 in its entirety;

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2. Order the FDDE and Mrs Losos de Muñiz, jointly and severally, to pay any and all costs of these appeal arbitration proceedings, including a participation towards the legal costs incurred by the FEI;
3. Dismiss any other relief sought by the FDDE and Mrs Losos de Muñiz.

7. JURISDICTION OF THE CAS

7.1 Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

7.2 Article 165 of the FEI GR provides in pertinent part as follows:

1. *An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorized under the Statutes, GRs or Sport Rules . . . :*

[...]

1.3 *With the CAS against Decisions of the FEI Tribunal.*

7.3 The jurisdiction of the CAS over the two Appeals is undisputed and was further confirmed by the parties' signing the Order of Procedure.

8. APPLICABLE LAW

8.1 Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

8.2 Article 37.4 of the FEI Statutes (25th ed., effective 15 November 2011) (the "FEI Statutes") provides as follows:

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The parties concerned acknowledge and agree that the seat of the CAS is in Lausanne, Switzerland, and that proceedings before the CAS are governed by Swiss law.

- 8.3 In their submissions, the parties principally make reference to and rely on provisions of the Dressage Olympic Ranking List, the FEI GR, the FEI Statutes, the FEI Dressage Rules, and the Codex, as well as Swiss law. Accordingly, these regulations and Swiss law are applicable to the merits of the parties' disputes.

9. ADMISSIBILITY

- 9.1 The admissibility of the two Appeals is uncontested.
- 9.2 Article 165.6.1 and 165.6.2 of the FEI GR require that appeals to the CAS must reach the CAS within 30 days of the appellant's receipt of the decision it is appealing.
- 9.3 The FEI Tribunal issued the Admissibility Decision on 27 March 2012. The BENF filed Appeal 2785 on 25 April 2012. The FEI Tribunal issued the Merits Decision on 3 May 2012. The FDDE and Mrs Losos de Muñiz filed Appeal 2790 on 4 May 2012. Both appeals are therefore timely under articles 165.6.1 and 165.6.2 of the FEI GR, as well as article R49 of the Code.

10. MERITS OF APPEAL 2785

- 10.1 For the reasons set forth below, the Panel dismisses Appeal 2785 and confirms the decision of the FEI Tribunal dated 27 March 2012.
- 10.2 Protests are governed by article 163 of the FEI GR.
- 10.3 Article 163.1 provides generally that a protest may be "lodged against any person or body involved in any capacity in an International Event . . . for failure to observe the Statutes, GRs or Sport Rules or violation of the common principles of behaviour, fairness, or accepted standards of sportsmanship, whether occurring during or in connection with an International Event or at any other time."
- 10.4 Articles 163.3 and 163.4 address two distinct sub-categories of protest and specify procedures for them. Specifically, article 163.3 concerns protests related to the "organization or conduct of a competition". These types of protests must be "presented personally" with the necessary deposit to the Ground Jury during the period of its jurisdiction. FEI GR, arts. 159.2, 163.3, 163.6. Such protests include protests concerning the results of a competition, which must be lodged no later than thirty

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minutes after the announcement of the results. FEI GR, art. 163.7.4. By contrast, article 163.4 concerns protests “regarding matters which have not occurred during or in direct connection with an International Event or which were not known until after the end of the Event”. These types of protests must be lodged with the necessary deposit with the Secretary General not later than 14 days after the end of the event at issue and are dealt with by the FEI Tribunal. FEI GR, arts. 163.4-163.6.

- 10.5 According to the BENF and FEI, the FDDE’s protest falls within the scope of article 163.3 because it is a protest concerning the results of a competition and therefore should have been presented with the necessary deposit to the Ground Jury within thirty minutes of the announcement of the results of the Competitions. As it was not, it is inadmissible. The Panel does not agree.
- 10.6 In the Panel’s view, the FDDE’s challenge – which concerns both alleged violations of FEI rules and issues of fairness – falls within the broad wording of article 163.1 and the FDDE therefore could bring it as a protest, which it did. It does not, however, fall within the scope of either of the sub-categories of protest addressed in articles 163.3 and 163.4. Article 163.3 is designed to cover protests by people who are present at the event at issue. Hence its requirement that the protest be “presented personally” with the necessary deposit to the Ground Jury during the period of its jurisdiction, which expires thirty minutes after the announcement of the final results. As a practical matter, only a protestor at the event in question can do this. Article 163.3 does not contemplate protests by non-participants, such as the protest at issue here, and accordingly provides no basis for finding it inadmissible.
- 10.7 Nor does the protest fall within the scope of article 163.4. That article concerns only matters that did not occur in direct connection with an international event or which were only known after the end of the event. As the FDDE’s protest challenges the results of the Competitions based on alleged breaches that were known prior to the Competitions, article 163.4 does not apply.
- 10.8 In short, there are no provisions of the FEI GR specifying that a protest like that brought by the FDDE must be filed with a particular body or person. The FDDE chose to file its protest with the filing fee with the Secretary General of the FEI and did so within 14 days after the Competitions, as required by articles 163.5 and 163.6. The protest is accordingly admissible.

11. MERITS OF APPEAL 2790

- 11.1 For the reasons set forth below, the Panel dismisses Appeal 2790 and confirms the decision of the FEI Tribunal dated 3 May 2012.

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- 11.2 In support of their appeal against the Merits Decision, the FDDE and Mrs Losos de Muñiz contend that (1) the Ground Jury for the Competitions should have had at least three foreign judges, (2) Mr Nigri had a conflict of interest under the Codex, and (3) the draft schedules for the Competitions were submitted late and did not invite at least six other national federations to attend. The Panel addresses each of these in turn below in reverse order.
- 11.3 With respect to draft schedules, these are normally supposed to be submitted to the FEI at least 16 weeks before the start of the events they concern. FEI GR, art. 110. It is undisputed, however, that in practice they are often submitted late, as were the draft schedules for the Competitions at issue here. This is of no practical consequence, however, as the Competitions were entered onto the FEI website calendar in early January 2012, approximately six weeks before the first of the Competitions and approximately eight weeks before the second. All national federations were invited to participate in the Competitions, and there is no evidence that anyone who otherwise wanted to attend could not because of the late submission of the draft schedules. Under these circumstances, the late submission of the draft schedules is only a matter between the FEI and BENF and can provide no basis for challenging the results of the Competitions.
- 11.4 As to Mr Nigri, he did not have a conflict of interest under the Codex when judging the Competitions. The Codex mentions that acting as *Chef d'Equipe*, being responsible for selecting teams or individuals, or training riders within a national federation while judging a competition may raise a conflict of interest for an FEI judge. There is no evidence that Mr Nigri did any of these things. When judging the Competitions Mr Nigri was only the Dressage Director for the BENF, charged with ensuring that the regulations of the BENF are observed. It is the type of position that many FEI judges hold and raises no issue under the Codex, much less an issue that could serve as a basis for challenging the results of the Competitions.
- 11.5 As to the composition of the Ground Jury, the Dressage Olympic Ranking List requires that the Ground Jury for CDI3* events have at least three foreign judges, but gives the FEI Dressage Committee the right to accept reasonable exceptions to this rule in the interest of riders and the sport in general. The FEI claims that this is what the FEI Dressage Committee did in creating the exception to the three-foreign-judge rule for CDI3* events outside of Europe, as memorialized in the Exception Memo in January 2010 and consistently applied since then to the present day. The Panel disagrees.
- 11.6 During the hearing, Ms Anne Gribbons, who has been a member of the FEI Dressage Committee since 2010 when the Exception Memo was issued, explained that the FEI Dressage Committee gave no thought to the Olympics or any issues related to Olympic qualification rankings at that time. In issuing the Exception Memo, there was no

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intention on the part of the FEI Dressage Committee to create an exception to the three-foreign-judge rule under the Dressage Olympic Ranking List. The Dressage Olympic Ranking List did not even exist at that time and was not issued until nearly a year later. Rather, the purpose of the Exception Memo was to create an exception to article 437.8.10 of the FEI Dressage Rules – which likewise provides that for CDI3* events at least three of the judges should be foreign – to ease the financial burdens of organizing international dressage events outside Europe and encourage the development of dressage globally.

- 11.7 The FEI Dressage Committee then delegated the day-to-day administration and application of the Exception Memo to the FEI Dressage Department. Throughout 2010, feedback about the exception was positive and so the FEI Dressage Department simply continued to apply it, though there is no evidence that the FEI Dressage Committee ever decided to extend or renew it. More importantly, there is no evidence that the FEI Dressage Committee ever subsequently considered, much less decided, to create an exception to the three-foreign-judge rule under the Dressage Olympic Ranking List once that List came into existence. Rather, the FEI Dressage Department just kept on applying the Exception Memo – including for the Competitions at issue here – as it had done prior to the Olympic qualification period. In the Panel's view, this practice of the FEI Dressage Department cannot be construed as a decision of the FEI Dressage Committee to create an exception to the three-foreign-judge rule under the Dressage Olympic Ranking List. Rather, it appears that no one on the FEI Dressage Committee (or in the FEI Dressage Department, for that matter) ever considered the issue. The Panel considers the FEI's oversight in this regard more than a little unfortunate, as it lies at the heart of this dispute – a dispute that has caused unnecessary upset and uncertainty for Mrs Losos de Muñiz and Ms Tavares de Almeida, as well as their national federations. It does not, however, provide a basis for deciding not to include the results of the Competitions in the Olympic rankings.
- 11.8 As a preliminary matter, the Panel notes that, in case of a violation of its provisions, the Dressage Olympic Ranking List does not foresee automatic exclusion of the results at issue. Rather, the "Fairness" provision of the List provides that the "FEI Dressage Committee *may* decide not to include the scores obtained at an event in the rankings, should the event not have been organized in accordance with general principle of fairness. The Executive Board should confirm the decision of the Dressage Committee" (emphasis added). No such decision was taken by the FEI Dressage Committee and there is no provision of the Dressage Olympic Ranking List that grants this Panel the power to decide not to include the results of the Competitions in the rankings. Having said this, in light of these provisions, both sides consider that, if the Panel finds a breach, it has the power to decide based on the principles of fairness mentioned in the Dressage Olympic Ranking List whether or not to include the scores from the Competitions in the Olympic rankings. *See, e.g.,* FDDE/Losos de Muñiz

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Appeal Brief, ¶¶ 159-160; FEI Answer, ¶¶ 153-154. Based on such an analysis, the Panel considers that the scores should be included.

- 11.9 The evidence in this case shows that it was well known in the dressage community that the FEI was routinely approving the holding of CDI3* events outside Europe with only two foreign judges during the Olympic qualification period. It was not until January 2012, shortly before the close of the qualification period, that the FDDE raised any concern in this regard with the FEI. When it did so, the FEI explained its practice and the FDDE responded that, although it questioned the fairness of such an exception for Olympic qualifying events and thought it should be evaluated, it trusted both the local and foreign FEI judges to complete their work correctly and the FEI Dressage Department and its supervision system to keep an eye on the results, as set forth verbatim above (¶ 2.6). The majority of the Panel considers that in so doing, the FDDE created the impression with the FEI that, while the FDDE continued to have concerns in general about the three-judge-rule exception for Olympic qualification events, it had no objections against the organization of the Competitions and accepted the exception to the three-foreign-judge rule that had been granted for them. During the hearing, Mrs Losos de Muñiz testified that the FDDE had been acting on her behalf in its communications with the FEI.
- 11.10 Furthermore, the majority of the Panel considers that the FEI's approval of the Competitions and their inclusion on the official calendar, as well as the absence of a challenge before they were held, created a legitimate expectation on the part of the riders who participated that the results would count towards the Olympic rankings. The decisive argument for the Panel, however, is that Riders have no influence on the organization of events and no ability to know whether the organizer has a valid exception to the three-foreign-judge rule under the Dressage Olympic Ranking List. Moreover, in this case, there was no showing that the BENF or Ms Tavares de Almeida violated any applicable rules in the qualifying process. In light of this, the Panel considers that it would be unfair to Ms Tavares de Almeida not to include the results of the Competitions in the Olympic rankings because of a mistake that occurred elsewhere – namely, within the FEI. This is especially so given that neither Mrs Losos de Muñiz nor the FDDE has put on any evidence that having only two foreign judges on the Ground Jury affected the results of the Competitions in any way, much less that it benefitted Ms Tavares de Almeida. Indeed, what evidence there is on this point demonstrates an absence of nationalistic judging on the part of the Brazilian judges, including Mr Nigri.

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CONCLUSION

- 11.11 The Panel accordingly decides that the FDDE's protest was admissible, but that it was rightly rejected on the merits.
- 11.12 The Panel accordingly confirms both the Admissibility Decision and the Merits Decision of the FEI Tribunal.
- 11.13 As a consequence, the scores from the Competitions count towards the Olympic rankings and Brazil qualifies from Group E to send a rider to the Olympics to compete in dressage.

12. COSTS

- 12.1 Article R64 of the Code provides in pertinent part as follows:

R64.1 Upon filing of the request/statement of appeal, the Claimant/Appellant shall pay a Court Office fee of Swiss francs 500.—, without which the CAS shall not proceed. The CAS shall in any event keep this fee. The Panel shall take it into account when assessing the final amount of costs.

R64.2 Upon formation of the Panel, the CAS Court Office shall fix, subject to later changes, the amount and the method of payment of the advance of costs. The filing of a counterclaim, where applicable, or a new claim shall result in the calculation of separate advances.

To determine the amount to be paid in advance, the CAS Court Office shall fix an estimate of the costs of arbitration, which shall be borne by the parties in accordance with Article R64.4. The advance shall be paid in equal shares by the Claimant/Appellant and the Respondent. If a party fails to pay its share, the other may substitute for it; in case of non-payment within the time limit fixed by the CAS, the request/appeal shall be deemed withdrawn and the CAS shall terminate the arbitration; this provision shall also apply to any counterclaim, where applicable.

R64.3 Each party shall advance the cost of its own witnesses, experts and interpreters.

If the Panel appoints an expert or an interpreter or orders the examination of a witness, it shall issue directions with respect to an advance of costs, if appropriate.

R64.4 At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and

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interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties.

R64.5 In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.

- 12.2 In these proceedings, the FEI does not seek any specific relief with respect to costs in Appeal 2785, but asks in Appeal 2790 that the FDDE and Mrs Losos de Muñiz be ordered jointly and severally to pay any and all costs, including a participation towards the legal costs and expenses incurred by the FEI. The FEI has quantified its legal costs and expenses for Appeal 2790 at just over CHF 139 000.
- 12.3 In both Appeal 2785 and 2790, the BENF asks that the FDDE be ordered to bear all costs of the proceedings, including a contribution to its legal fees. In Appeal 2790, Ms Tavares de Almeida has requested that the FDDE be ordered to bear all costs of the proceedings, including a contribution to her legal fees. The BENF and Ms Tavares de Almeida have together quantified their total legal fees and other expenses at over CHF 88 000.
- 12.4 In its cost submissions, the FDDE requests that the costs of arbitration to be calculated by the CAS Court Office be borne equally between the parties in both Appeal 2785 and Appeal 2790. The FDDE does not seek any contribution to its legal costs and has asked that each party be ordered to bear its own legal costs and expenses in both Appeal 2785 and 2890. Similarly, Mrs Losos de Muñiz requests that the costs of arbitration to be calculated by the CAS Court Office be borne equally between the parties in Appeal 2790. Mrs Losos de Muñiz does not seek any contribution to her legal costs and has asked that each party be ordered to bear its own legal costs and expenses in Appeal 2790.
- 12.5 As a general rule, the award shall grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. In these proceedings, however, application of this rule is more complex than is often the case. This is because the FDDE prevailed on Appeal 2785, but lost on Appeal 2790. Conversely, the FEI and BENF prevailed on Appeal 2790, but lost on Appeal 2785.
- 12.6 Mrs Losos de Muñiz and Ms Tavares de Almeida were parties only to Appeal 2790, where Ms Tavares de Almeida's side prevailed and Mrs Losos de Muñiz's side lost. However, neither Ms Tavares de Almeida nor Mrs Losos de Muñiz sought any relief

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for herself in these proceedings. As a practical matter, both simply participated as witnesses and were parties in name only.

- 12.7 Between Appeal 2785 and 2790, the latter was the more substantial. However, the FEI and the BENF only prevailed on that Appeal based on an evaluation of fairness. And the tribunal considers that the FEI bears responsibility for both of these cases having arisen at all because the Competitions were not organized in accordance with the Dressage Olympic Ranking List due to an administrative oversight on the part of the FEI. *See supra* ¶ 11.7.
- 12.8 In light of this, and bearing in mind the financial situation of the parties, the Panel rules that the costs of arbitration to be calculated by the CAS Court Office and communicated separately to the parties shall be borne equally between the BENF, the FDDE and the FEI in Appeal 2785 and Appeal 2790. Furthermore, in both Appeal 2785 and Appeal 2790 each party shall bear its own legal fees and expenses.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

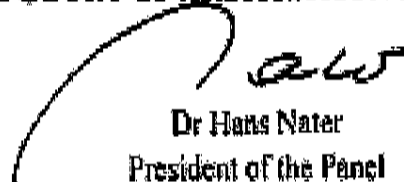
1. The appeal in CAS 2012/A/2785 filed by the Brazilian Equestrian National Federation against the decision of the FEI Tribunal dated 27 March 2012 is dismissed.
2. The decision of the FEI Tribunal dated 27 March 2012 is confirmed.
3. The appeal in CAS 2012/A/2790 filed by the Federación Dominicana de Deportes Ecuestres and Mrs Yvonne Losos de Muñiz against the decision of the FEI Tribunal dated 3 May 2012 is dismissed.
4. The decision of the FEI Tribunal dated 3 May 2012 is confirmed.
5. In both CAS 2012/A/2785 and CAS 2012/A/2790 the costs of arbitration to be calculated by the CAS Court Office and communicated separately to the parties shall be borne equally between the BENF, the FDDE and the FEI.
6. In both CAS 2012/A/2785 and CAS 2012/A/2790 each party shall bear its own legal fees and expenses.
7. All other or further claims are dismissed.

Place of arbitration: Lausanne, Switzerland

Operative part of the award (items 1 – 4) issued on 6 July 2012

Date: 22 October 2012

THE COURT OF ARBITRATION FOR SPORT



Dr Hans Nater
President of the Panel