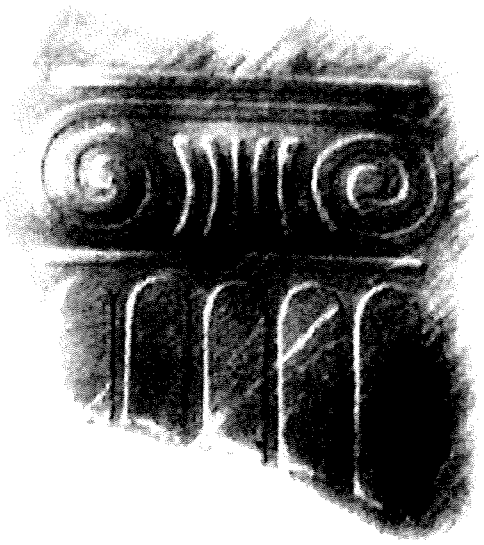
TAS / CAS

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte



ARBITRAL AWARD

Wenzel Schmidt, Austria
Edda M. Schmidt, Austria
Maximilian-Emanuel Schmidt, Austria
Ulrike Prunthaller, Austria

v.

Fédération Equestre Internationale, Switzerland

CAS 2020/A/7110 - Lausanne, May 2021

CAS 2020/A/7110 Mr Wenzel Schmidt, Ms Edda M. Schmidt, Mr Maximilian-Emanuel Schmidt and Ms Ulrike Prunthaller v. Fédération Equestre Internationale

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Ms Jennifer Kirby, Attorney-at-Law, Paris, France

in the arbitration between

Wenzel Schmidt, Austria
Edda M. Schmidt, Austria
Maximilian-Emanuel Schmidt, Austria
Ulrike Prunthaller, Austria
All represented by Mr L.M. Schelstraete and Mr P.M. Wawrzyniak, Attorneys-at-Law with Schelstraete Advocaten in 's-Hertogenbosch, The Netherlands, and Ms Lisa Lazarus and Ms Emma Waters, Attorneys-at-Law with Morgan Sports Law in London, United Kingdom

– Appellants –

and

Fédération Equestre Internationale, Switzerland

Represented by Ms Aine Power, Ms Anna Thorstenson and Ms Ana Kricej, Legal Counsel for the Fédération Equestre Internationale, Lausanne, Switzerland

– Respondent –

I. PARTIES

1. Mr Wenzel Schmidt, his wife Ms Edda M. Schmidt and their son Mr Maximilian-Emanuel Schmidt (together, the "Schmidt Family") are all Austrian nationals.[1] The Schmidt Family owns Bartlgut, a stud farm, with its statutory seat in Neuhofen im Innkreis, Austria ("Schmidt Family Business").

2. Ms Ulrike Prunthaller is an employee of the Schmidt Family Business and one of the top dressage riders in Austria.

3. Together, the Schmidt Family and Ms Prunthaller are referred to as the "Appellants".

4. The Fédération Equestre Internationale ("Respondent" or "FEI") is the international governing body for the equestrian sport disciplines of Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Dressage and Para-Driving. Its registered office is in Lausanne, Switzerland.

II. FACTUAL BACKGROUND

5. This award contains a concise summary of the relevant facts and allegations based on the parties' written submissions, correspondence and the evidence adduced throughout the procedure. Additional facts and allegations found in the parties' written submissions, correspondence and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has carefully considered all the facts, allegations, legal arguments, correspondence and evidence submitted by the parties and treated as admissible in the present procedure, she refers in this award only to the matters necessary to explain her reasoning and conclusions.

6. This case is peculiar. It is peculiar because the person at the centre of it is not a party to these proceedings. That person is Ms Elisabeth Max-Theurer.

7. Ms Max-Theurer is a significant figure in the dressage world in her home country of Austria and internationally. Beginning in the 1970s, Ms Max-Theurer rode competitively and collected numerous victories, including a gold medal at the 1980 Olympic Games in Moscow with her horse Mon Cherie. While she ended her career as a dressage rider in 1994, Ms Max-Theurer has remained involved in the sport. Among other things, she currently serves as the President of the Austrian Equestrian Federation ("Austrian NF") – the national governing body of equestrian sport in Austria – and as a FEI 5* Dressage Judge. She also financially supports equestrian events and promotes the dressage career of her daughter – Ms Victoria Max-Theurer ("Victoria") – who has been riding competitively since 1995 and is herself an Olympian.

8. The Schmidt Family is likewise prominent in the dressage world both in Austria and internationally. The Schmidt Family promotes the dressage career of Ms Prunthaller,

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[1] For avoidance of doubt, references in this award to "Mr Schmidt" are to Mr Wenzel Schmidt, not his son, Mr Maximilian-Emanuel Schmidt ("Maximilian").

who is currently Austria's top-ranked rider. The Schmidt Family also has a history of financially supporting equestrian events.

9. Ms Max-Theurer and the Schmidt Family are not friendly. Though the origins of the difficulties between them remain obscure, the evidence on file shows that they date back more than 13 years and have spawned a variety of complaints and legal actions.

10. Though the question the Sole Arbitrator needs to decide here is a relatively narrow one, the history between Ms Max-Theurer and the Schmidt Family helps to contextualize these proceedings and understand how they came about.

11. As noted above, both the Schmidt Family and Ms Max-Theurer have a history of financially supporting dressage events. In this regard, both have provided financial support to Mr Josef Göllner, who is the Managing Director of Horsedeluxe Event GmbH ("Horsedeluxe") and the Chairman of the Association SRC Lamprechtshausen ("SRCL"). Mr Göllner organises international dressage competitions, including the Salzburg Amadeus Horse Indoors ("Salzburg Event").

12. Before 2012, Mr Schmidt had sponsorship agreements with Mr Göllner. Under these agreements, the Schmidt Family provided financial support for equestrian events Mr Göllner organised in exchange for promoting the Schmidt Family Business at events (e.g., through advertisements on banners at competitions).

13. In 2012, Mr Göllner sought financial support from Ms Max-Theurer. Ms Max-Theurer was aware that the Schmidt Family Business appeared as a sponsor at Mr Göllner's events and was only willing to provide financial support to Mr Göllner if the Schmidt Family was not simultaneously acting as a sponsor.

14. This was ultimately acceptable to Mr Göllner and Ms Max-Theurer agreed to provide him financial support through two donation agreements – one drawn up in 2012 and one drawn up in 2015. There is also evidence in the record suggesting that Ms Max-Theurer loaned Mr Göllner EUR 700 000 in 2017.

15. With regards to the donation agreements, only the 2015 donation agreement ("Donation Agreement") and its related ancillary agreement ("Ancillary Agreement") (together, the "Agreements") are in the record on file in this case as Exhibits A11 and A12, respectively.

16. The Sole Arbitrator pauses here to note that neither of the Agreements is signed or dated and the Respondent has expressed some scepticism as to whether they reflect binding contracts. There does not appear to be any dispute, however, that they were drawn up in May 2015 and that Ms Max-Theurer paid the money to Mr Göllner as foreseen. In these circumstances, the Sole Arbitrator assumes *arguendo* for purposes of this appeal that the Agreements are binding contracts.

17. Under the Donation Agreement, Ms Max-Theurer agreed to donate EUR 600 000 to Mr Göllner (in three tranches of EUR 200 000 over three years in 2015, 2016 and 2017). The Donation Agreement also contained confidentiality provisions that provided as follows:

The Contracting Parties undertake to treat the content of this Agreement, including, but not limited to, the donations agreed upon herein, as confidential vis-à-vis third parties. No contractual agreement whatsoever may be disclosed to third parties except where the prior express written approval from the other Contracting Party was obtained or where a Contracting Party's or both Contracting Parties' interests worth being protected must be protected or where it is required by law. This obligation will remain in effect after the termination or expiration of the Agreement.[2]

18. Under the Ancillary Agreement, Ms Max-Theurer made her donation "on condition that [Mr Göllner] organizes dressage shows (not below CDI****)[3] in Salzburg…per year, and in any event within the framework of the [sic!] at Wiener Stadthalle…at the Salzburger Messe (Salzburg Amadeus Horse Indoors), weekend". Absent an agreement between the parties on another venue, the donations had to "be spent for Salzburg".

19. The Ancillary Agreement further provided that Mr Göllner would "not enter into sponsorship agreements related to said dressage competitions without the prior approval of" Ms Max-Theurer.

20. It also provided with respect to the Schmidt Family that Mr Göllner "and third parties associated with or having close relations to him, including, but not limited to, horsesport deluxe event GmbH and the association SRC Lamprechtshausen, do not enter into any advertising, sponsorship or other agreements with Mister Wenzel Schmidt, his wife Edda Schmidt, their son Max Schmidt, and all third parties associated with or having close relations to them, including, but not limited to, Schmidt Saubere Arbeit. Klare Lösung. GmbH…and the other companies owned by the Schmidt Family, or accept donations or other cash benefits or payments in kind or honorary prizes from the parties named above and give them no voice whatsoever in competitions or other equestrian matters and equestrian events, in any event during the term of the Donation Agreement but at least until 30 June 2018."

21. The Ancillary Agreement foresaw that Mr Thomas Bauer – a professional event manager – would be engaged to manage the production of the events Ms Max-Theurer was funding. In this regard, the Ancillary Agreement provided as follows:

Moreover, [Ms Max-Theurer] *will make the donations on condition that* [Mr Göllner] *invites, in accordance with the international rules of invitation, 15 to 20 internationally successful riders and 5 internationally renowned judges to these dressage competitions, all of them on a proposal from Mister Thomas Bauer or, if he is not available, on a proposal from a third party nominated by* [Ms Max-Theurer], *and that* [Mr Göllner] *provides adequate prize money.* [Mr Göllner] *must invite at least 5 international judges*

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[2] All quotations are set forth "as is". Any grammatical or typographical errors are in the original documents, as is any italicizing, underscoring or bolding, unless otherwise indicated.

[3] International FEI Dressage competitions are referred to as CDIs – Concours de Dressage Internationaux. There are five categories – CDI 1* through CDI 5* – with the CDI 5* being the highest category.

and provide them with adequate board and lodging (hotels) and entitlement to VIP badges and free access to the buffets and a special VIP table. The tenders must be in compliance with the FEI rules as amended from time to time and shall be submitted to Thomas Bauer or, if he is not available, a third party nominated by [Ms Max-Theurer] *for approval. Moreover, Mister Thomas Bauer shall manage the organization of the dressage show at the expense of* [Ms Max-Theurer], *with* [Ms Max-Theurer] *paying for Mister Thomas Bauer's remuneration and* [Mr Göllner] *paying for the hotel and travel costs (if Thomas Bauer is not available, a third party nominated on a proposal from* [Ms Max-Theurer]). [Mr Göllner] *is entitled to award, in consultation with* [Ms Max-Theurer], *3 "wild cards" as special start authorizations for each dressage competition. The wild cards may be awarded solely to internationally successful riders.*

22. The Ancillary Agreement also contained the following confidentiality provisions:

The Contracting Parties undertake to not disclose the content of this Ancillary Agreement to third parties under any circumstances whatsoever and treat it as strictly confidential. This obligation will remain in effect after the termination or expiration of the Agreement. Therefore, this Ancillary Agreement shall not be delivered to the Contracting Parties but deposited with Eckert Fries Prokopp Rechtsanwälte GmbH, 2500 Baden, Erzhezog Rainer-Ring 23, acting as trustee. No copies of this Ancillary Agreement shall be issued. Either of the Contracting Parties may read this agreement in the presence of a lawyer of the Eckert Fries Prokopp Rechtsanwälte GmbH law firm. The trustee is unilaterally irrevocably engaged and instructed by the Contracting Parties to hand this Ancillary Agreement over to the Contracting Parties only if court proceedings between the Contracting Parties relating to the Donation Agreement or this Ancillary Agreement are pending, otherwise to destroy it upon its expiration on 31 December 2018. Any breach of the confidentiality obligation according to § 2 of this Ancillary Agreement by [Mr Göllner] *shall be deemed a breach of condition as defined in this Agreement.*

23. The Sole Arbitrator pauses here to note that the parties differ as to whether Ms Max-Theurer was acting as a "sponsor" or as a "patron" under the terms of the Agreements. It is not clear whether either party considers that anything turns on this issue and the Sole Arbitrator fails to see that it does. What is relevant to this appeal are the terms of the Agreements, which speak for themselves.

24. Not long after the Agreements were drafted, in June 2015, Ms Schmidt informed the Austrian NF that Ms Prunthaller wished to ride in a variety of competitions in 2015, including the CDI Lamprechtshausen, an event organized by Mr Göllner ("2015 CDIL"). The Austrian NF entered Ms Prunthaller for the 2015 CDIL, but the organizer rejected her entry.

25. The same thing happened with respect to the CDI Lamprechtshausen in 2016 ("2016 CDIL").

26. The following year, in August 2017, the Austrian NF again took note that Ms Prunthaller wished to participate in the CDI Lamprechtshausen ("2017 CDIL") and informed Ms Schmidt that it had "no information about how many Austrian riders can start."

27. Ms Schmidt responded in pertinent part as follows:

Since we have been "uninvited" in Lamprechtshausen the last years, we hope that you will make the nomination according to the world ranking list, as usual!

A further rejection, which behind the scenes is based on the fact that Madam President Elisabeth Max-Theurer is the judge at this tournament, is no longer accepted by us!

Furthermore, the reason of the organizer to have too many starts (this was the reason last year) will also be proven by us as WRONG!

We find this approach of the organizer AND the sponsor as extremely unsportsmanlike, since it is written in the sponsor contract that Bartlgut horses are not to be accepted as starters. Or what would you call this!!!

28. The Austrian NF responded that the decision would be made by the "dressage department and the sports director". It also noted that the "organizer may, however, reject the entry for various reasons", which the organizer did.

29. In these proceedings, the Appellants contend that they first learned of the existence of the Agreements six months later, in February 2018, when Mr Göllner disclosed the Agreements to Mr Schmidt at a meeting between the two of them and a lawyer named Dr Sabine Wintersberger.

30. Nearly eight months later, in October 2018, by way of an "exposition of facts", Ms Schmidt and Maximillian raised concerns about the Agreements with the Central Public Prosecutors Office for Commercial Offences and Anti-Corruption ("Public Prosecutor's Office").

31. In November and December 2018, the Schmidt Family also sent their "exposition of facts" to various Austrian news organisations, all of which refrained from reporting on it.

32. In December 2018, the Schmidt Family also sent their "exposition of facts" to nine regional equestrian sports associations in Austria and asked them to review Ms Max-Theurer's alleged criminal conduct. The Schmidt Family also sent their "exposition of facts" to two newspapers – Österreich and Kleine Zeitung – which published articles on the allegations, leading to numerous other articles on the internet.

33. In January 2019, Ms Max-Theurer brought an action in the Ried im Innkreis Regional Court against Ms Schmidt and Maximillian seeking an order that they cease, desist and revoke their allegations. As of the writing of this award, this matter is still pending.

34. In February 2019, the Austrian Ministry of Justice "accepted results of an investigation by the [Public Prosecutor's Office] that found no evidence to support allegations by the Schmidts involving the substantial financial support of international horse shows provided by [Ms Max-Theurer]."

35. In this regard, the Public Prosecutor's Office said the following:

Based on what the plaintiff brought forward and in accordance with the presented contract drafts...it appears to be the fact that the reported Elisabeth MAX-THEURER

is supporting the also reported Josef GÖLLNER or the horsedeluxe and SCRL represented by him with a considerable and, incidentally, earmarked sum through a type of "sports sponsoring" and, as a return service, has stipulated exclusivity ("The choice of sponsors needs to be approved by the donor"...). Similar processes are not unusual in the world of sports and occur rather frequently.

36. Six months later, at the end of August 2019, Ms Max-Theurer brought another action in the Ried im Innkreis Regional Court, this time against Mr Schmidt, seeking an order that he too cease, desist and revoke his allegations that, by virtue of Agreements, Ms Max-Theurer had committed a crime. As of the writing of this award, this matter is also still pending.

37. At the same time, the Appellants sent a letter to the FEI headed "Serious Concerns Regarding the Partiality of Mrs. Elisabeth Max-Theurer".

38. In their letter, the Appellants said that they were concerned about the "multiple conflicting roles" held by Ms Max-Theurer. The Appellants noted that Ms Max-Theurer is not only (1) the President of the Austrian NF, but also (2) a FEI 5* Dressage Judge, (3) the sponsor of various equestrian events in Austria and (4) the mother of Victoria, who is a direct competitor of Ms Prunthaller. The Appellants contended that it was impossible for Ms Max-Theurer "to hold all of the above listed roles without compromising her impartiality."

39. Even aside from the "behaviours" detailed in their letter, the Appellants considered that there was, at a minimum, a "perceived conflict of interest in this situation, which breaches a number of FEI Rules and Regulations." In this regard, the Appellants pointed to paragraph B.4 of the FEI Code of Ethics, which appears as Appendix F to the FEI General Regulations (23rd edition), 1 January 2009, updates effective 1 January 2019 ("2019 FEI GR"), and provides that "[c]onflicts of interest, whether real or perceived, are to be avoided."

40. They also pointed to Article 2 of the Codex for FEI Dressage Judges ("Codex"), which appears as Annex 14 to the FEI Dressage Rules (25th edition), effective 1 January 2014, including updates effective 1 January 2019 ("FEI Dressage Rules") and provides as follows:

A judge must avoid any actual or perceived conflict of interest. A judge must have a neutral, independent and fair position towards Athletes, owners, trainers, OCs [Organising Committees] *and other Officials and integrate well into a team. Financial and/or personal interest must never influence or be perceived to influence his way of judging.*

41. The Appellants also referred to Article 1.3 of the FEI Statutes (24th edition) effective 20 November 2018 – which states that one of the objectives of the FEI is to "enable individual Athletes and teams from different nations to compete in international Events under fair and even conditions" – and to Article 100.1 of the 2019 FEI GR, which provides by way of introduction as follows:

The General Regulations (GRs) are established so that individual Athletes and teams of Athletes from different National Federations (NFs) may compete against each other under fair and equal conditions with the welfare of Horse as paramount.

42. As to the "behaviours" of Ms Max-Theurer, the Appellants pointed to the Agreements and said that several elements in the Ancillary Agreement demonstrated "prejudice against the Schmidt Family (and Schmidt Family Business)" that was "entirely contrary to the spirit of the above-stated Rules and Regulations."

43. Specifically, the Appellants pointed to Section 1(2) of the Ancillary Agreement, which they said gave Ms Max-Theurer the right to propose both riders and judges to Mr Göllner for events he arranged. The Appellants considered that Ms Max-Theurer stood to personally benefit from this aspect of the Ancillary Agreement (both directly and indirectly) in her capacity as a FEI Dressage Judge and in her capacity as the mother of a dressage competitor (namely, Victoria). The Appellants considered this was a "clear breach of the requirement for Mrs. Max-Theurer to: i) avoid any conflict of interest (real or perceived) and; ii) is incompatible with the FEI's obligation to present a level and fair playing field."

44. The Appellants also pointed to Section 1(4) of the Ancillary Agreement, under which they said Mr Göllner entered into a restrictive covenant that prevented him from entering into any advertising, sponsorship or other agreements with the Schmidt Family, the Schmidt Family Business or any third parties associated with them. That same section, they said, also prevented him from accepting any donations or other cash benefits or payments in kind or honorary prizes from the Schmidt Family, the Schmidt Family Business or any third parties associated with them.

45. The Appellants further said that the Ancillary Agreement "clearly states that Mr. Göllner will not allow the Schmidt Family, nor the Schmidt Family Business, nor any third parties associated with them, to be represented in competitions, or equestrian events, or other equine matters, under any circumstances, during the term of the Donation Agreement (and at the earliest, until 30 June 2018)."

46. The Appellants highlighted that, for the duration of the Agreements, Ms Prunthaller was prohibited from participating in the CDI Lamprechtshausen, an event organised by Horsedeluxe and/or SRCL and that Ms Max-Theurer was the Ground Jury President at this event. The Appellants said that they had been surprised by this at the time, given Ms Prunthaller's talent and experience. The Appellants said that it was now apparent "that the organiser could not allow Mrs. Prunthaller to compete, because of the restrictive covenant he had entered into with Mrs. Max-Theurer."

47. In these circumstances, the Appellants said that Ms Prunthaller had concluded that she had been "repeatedly denied the opportunity to compete in fair and equal conditions, in accordance with the FEI General Regulations, because of the openly discriminatory bilateral agreement, entered into between Mrs. Max-Theurer and Mr. Göllner." That Ms Max-Theurer could single out the Appellants for such adverse treatment, while maintaining her position as President of the Austrian NF, struck the Appellants as "unethical and untenable."

48. The Appellants also pointed to the "detailed and rigorous" confidentiality provisions in Section 2 of the Ancillary Agreement, which in their view suggested that "Mrs. Max-Theurer was aware that the content of the Ancillary Agreement would be highly damaging to her multiple positions if made public." They further noted that Section 3 of the Donation Agreement contained confidentiality provisions that remained in effect after the termination or expiration of that agreement, again indicating to the Appellants that Ms Max-Theurer "purposefully sought a confidentiality clause that should survive the duration of the Donation Agreement, given the nature of its content."

49. In light of the above, the Appellants said that this was, first and foremost, "an issue for the FEI to resolve." The Appellants said that they were not seeking any remedy from Ms Max-Theurer personally and merely wanted the "opportunity to be able to compete on a level playing field".

50. The Appellants said that they had every confidence that the FEI would "consider this a serious matter and take all action necessary to inform either the Ethics Panel, or the Equestrian Community Integrity Unit, as it deems appropriate".

51. Shortly thereafter, on 10 September 2019, Ms Prunthaller wrote to the Austrian NF regarding her registration for the CDI-W Budapest-Fót (27-29 September 2019) ("2019 Budapest Event"). Ms Prunthaller noted that she had registered for the event, but had then received a message from the Austrian NF saying that she could not participate. The Austrian NF gave no reason for the cancelation and Ms Prunthaller could not understand it, particularly given that she was the "best rider in Austria" and there was no limit on the number of participants from the invited countries. She requested an explanation and confirmation of her registration for the event.

52. Two days later, the Austrian NF responded that there had been a "misunderstanding" and confirmed that Ms Prunthaller was registered for the 2019 Budapest Event. However, the Austrian NF said that only one of Ms Prunthaller's two horses (Duccio) was registered on time. The registration of her other horse (Quebec) had been made late.

53. Ms Prunthaller responded that she considered the explanation of the Austrian NF insufficient. She also insisted that both Duccio and Quebec had been timely registered and requested confirmation the she and her horses were registered for the event.

54. On 17 September 2019, Ms Prunthaller wrote to the FEI Tribunal to protest and appeal the decision of the Austrian NF with regards to the 2019 Budapest Event. The FEI Tribunal sought comments from the FEI and the Austrian NF and the FEI responded by asking the FEI Tribunal to take a preliminary decision on its jurisdiction. In this regard, the FEI said the following:

It is the FEI's position that the FEI Tribunal is not competent to deal with the above-mentioned Appeal/Protest as article 117 of the [2019 FEI GR] *states the following:*

> Article 117 - Selection of Representative Teams and Individuals
>
> 1. NFs have the final responsibility for the selection of all Athletes and Horses to participate in any International Event or to represent their

countries at CIOs, FEI Championships, FEI Regional, Olympic Games, and Paralympic Games provided that the Athletes and Horses are qualified in all respects under the conditions set forth for each Event and have the sport nationality of the NF for whom they are competing.

2. NFs are responsible for selecting and entering qualified Horses and Athletes. This includes the fitness and capability of the Horses and the Athletes to participate in the Competitions for which they are entered...

The role of the FEI is merely to process the entries made by the NF. The FEI has no decision making power in this regard.

The wording could not be clearer that any selection of Athletes and Horses to participate in any International Event rests with the National Federation. The FEI, respectively the FEI Tribunal, cannot therefore interfere with such selection process.

Further, the decision appealed against is not a decision taken by the FEI, but rather one taken directly by a National Federation, i.e. the [Austrian NF]. *Therefore, the FEI respectfully submits that the FEI Tribunal again has no jurisdiction. The decision of a National Federation, in this case the* [Austrian NF], *should be appealed to the relevant appeals body as laid down in the rules and regulations of the* [Austrian NF]. *As far as the FEI is aware, the FEI Tribunal is not the designated appeal body under the legal system of the* [Austrian NF]. *Any challenge or appeal against the* [Austrian NF], *if any, must therefore be dealt with in accordance with the* [Austrian NF's] *internal/national rules and regulations.*

55. The FEI Tribunal decided that it would take a preliminary decision on its jurisdiction and invited Ms Prunthaller's comments on that issue. But before the FEI Tribunal could take a decision on jurisdiction, the Austrian NF and Ms Prunthaller reached an agreement that allowed her to participate in the 2019 Budapest Event with both of her horses and the matter was accordingly withdrawn.

56. The Sole Arbitrator pauses here to note that, in these proceedings, the Appellants have alleged that, during the dispute regarding the 2019 Budapest Event, the former Sport Director of the Austrian NF, Mr Franz Kager, told Mr Schmidt that Ms Prunthaller could not go to Budapest, even though she was the highest-ranked Austrian dressage rider at the time, "as Ms Max-Theurer decided so." The Appellants consider that this was an "attempt to promote Ms Victoria Max-Theurer in order to let her overtake Ms Prunthaller in the rankings."

57. Mr Kager did not testify in these proceedings, however, and there is no documentary evidence to support that he made the statement attributed to him or that the statement, if made, was true. Indeed, the evidence is to the contrary. Mr Kager's alleged statement is at odds with the fact that Ms Prunthaller was able to compete in the 2019 Budapest Event and that the issues with respect to her registration were resolved quickly after she raised them. In these circumstances, the Sole Arbitrator sees no basis to accept that Mr Kager made the alleged statement at all or that (if he did make it) it was true.

58. On 23 October 2019, the Appellants had a conference call with the FEI to discuss their concerns regarding Ms Max-Theurer.

59. Three weeks later, in mid-November 2019, Ms Prunthaller wrote to the organizing committee for the Salzburg Event and the Austrian NF ("2019 Salzburg Letter"). Ms Prunthaller said that the Austrian NF or the organizing committees of the 2019 Budapest Event and CDI-W Stuttgart (13-17 November 2019) ("2019 Stuttgart Event") had refused to confirm her definitive entry for those events. She insisted that the Salzburg Event Organising Committee and the Austrian NF enter her and her horse Quebec for the Salzburg Event ("2019 Salzburg Event"), failing which she would take legal action.

60. The following day, Ms Prunthaller sent a copy of the 2019 Salzburg Letter to the FEI President, along with another letter addressed to him in which she complained about her exclusion from dressage events.

61. Specifically, Ms Prunthaller said that the conduct of the Austrian NF and the organizing committees was not comprehensible in light of the following:

(1) Ms Prunthaller is the highest-ranked Austrian dressage rider;

(2) The Austrian NF presumably wants the best Austrian dressage rider to qualify for the Olympic Games;

(3) Article 1.3 of the FEI Statutes states that the purpose of the FEI is to "enable individual Athletes and teams from different nations to compete in international Events under fair and even conditions";

(4) In light of the fundamental principles of Olympism and the Olympic Charter that enshrine the right to practice sport as a human right, a "sport governing body like the FEI cannot tolerate that its members apply to athletes any other criteria than sportive merits of the competitors in question"; and

(5) The conduct of the Austrian NF and the organising committees violates Ms Prunthaller's fundamental rights under the Charter of Fundamental Rights of the European Union – namely, the right to equality before the law, the right to be free from discrimination, the right to pursue a freely chosen occupation and the right to engage in work.

62. Ms Prunthaller said that she could not "imagine that the FEI can accept any criteria for selection of riders for the Olympic Games and international events other than the personal merits of the athlete in question."

63. Ms Prunthaller said that, in order to compete on an equal playing field, she needed to engage lawyers and take legal action to obtain definitive entries. She said she believed that "this situation correlates with the complaint [she] and the Schmidt Family filed with the FEI on 30 August 2019", which Ms Prunthaller also enclosed.

64. Ms Prunthaller asked the FEI President "to take immediate action and to ensure that equestrian athletes independent of their background (nationality, religion, ethnicity,

gender, sexual orientation, employment, or sponsor relationship etc.) can compete under the same equal and fair play conditions", failing which Ms Prunthaller said she would feel free to take any further legal action she might deem necessary.

65. The following day, 16 November 2019, the FEI responded that neither the FEI nor the FEI Tribunal were competent to deal with the matters Ms Prunthaller raised in her letter for the reasons articulated in its email of 18 September 2019.

66. The FEI also clarified that "there is no personal quota to be earned for the Olympic Games." Rather, "[a]ny athlete can earn an individual quota for the National Olympic Committee" ("NOC"). It is then up to the NOC to decide which athlete it will select for the Olympic Games. Therefore, "even if Ms Prunthaller would earn a quota for Austria, it is not a quota for her personally, but it is a quota for Austria[n] NF/NOC." The NOC would "need to confirm at a later stage which athlete is selected for the Olympic Games."

67. About two weeks later, on 3 December 2019, the Appellants (as claimants) sent submissions to the FEI Board and the FEI Tribunal naming the Austrian NF and Ms Max-Theurer as respondents. The Appellants said that their submission to the FEI Board was filed to "preserve all remedies and time limits" and that they "agree to have the FEI Tribunal consider the complaints first".

68. In their submissions to the FEI Tribunal ("Appellants' Claim"), the Appellants noted that, as President of the Austrian NF, Ms Max-Theurer represents the Austrian NF at events including the FEI General Assembly. The Appellants said that they had "legitimate concerns that Ms Max-Theurer and, consequently, the [Austrian NF were] in breach of multiple FEI Rules and Regulations, relating to: (i) conflicts of interest (actual or perceived); and (ii) access to fair and equal competition."

69. The Appellants noted that they had already raised their concerns with the FEI by letter and phone but that the FEI had declined to take any action.

70. The Appellants said that they were now asking that the FEI Tribunal review their action under Article 38.1(i) of the FEI Statutes (24th edition), effective 19 November 2019 ("2019 FEI Statutes"), which grants the FEI Tribunal authority to review "[a]ny infringement of the Statutes, General Regulations, Sport Rules, or Procedural Regulations of a General Assembly or of violation of the common principles of behaviour, fairness, and accepted standards of sportsmanship, whether or not arising during an FEI meeting or Event".

71. In this regard, the Appellants pointed to Article 2.8 of the 2019 FEI Statutes, which provides in pertinent part as follows:

It is a condition of membership that National Federations comply with, and are bound by the FEI Rules and Regulations including but not limited to the Statutes, General Regulations, Sport Rules (which include the FEI Human and Equine Anti-Doping Rules) and any Decision issued by the authorised bodies of the FEI in relation to the conduct of international equestrian Events, all of which shall also bind Organising Committees, Officials, Horse Owners, Persons Responsible, Athletes, team officials and other individuals and bodies involved in FEI Events.

72. By virtue of Article 2.8, the Appellants said, the 2019 FEI Statutes expressly require National Federations to comply with the following:

(a) Article 1.3 of the 2019 FEI Statutes;

(b) Article 100.1 of the 2019 FEI GR;

(c) Article 158 of the 2019 FEI GR;

(d) Article 2 of the Codex; and

(e) Paragraph B.4 of the FEI Code of Ethics.

73. The Appellants said that they were concerned by the multiple conflicting roles held by Ms Max-Theurer, which included her being:

(1) President of the Austrian NF;

(2) a FEI 5* Dressage Judge;

(3) Vice-President of the Austrian Olympic Committee;

(4) a former member of the FEI Dressage Committee;

(5) the sponsor of various equestrian events in Austria and overseas;

(6) the mother of Victoria, who is the second-best Austrian dressage rider and a direct competitor of Ms Prunthaller; and

(7) the owner of high-level dressage horses competing nationally and internationally.

74. The Appellants said that, shortly before filing their submissions, Ms Max-Theurer made an announcement with respect to the selection of dressage riders for the 2020 Olympic Games. Specifically, she said that Olympic rankings would no longer be decisive for qualification and that it would instead come down to a decision of a dressage jury and the NOC. The Appellants said that this was a "complete departure" from the process for the 2008, 2012 and 2016 Olympic Games and noted that, prior to those Olympic Games, Victoria had the highest Olympic ranking, whereas Ms Prunthaller currently does. In light of this, the Appellants contended that Ms Max-Theurer would be the "ultimate decision-maker on Olympic qualifiers."

75. They further said that it is impossible for Ms Max-Theurer to hold all of the roles she holds without compromising her impartiality. In their view, there was, "at a minimum, a perceived conflict of interest in this situation, which breaches a number of evident and fundamental FEI Rules and Regulations." They further said that the same applies to the Austrian NF because the executive power of the Austrian NF is vested in its President.

76. In addition, the Appellants said that Ms Max-Theurer had engaged in certain "behaviours" that were "highly concerning" and "demonstrate prejudice against the

Schmidt Family (and Schmidt Family Business)" – namely those detailed in their letter of 30 August 2019 with respect to the Agreements.

77. The Appellants also said that, in recent months, the Austrian NF had "refused to confirm entry of Ms Prunthaller into various national and international competitions, including the CDI World Cup Events." In this regard, the Appellants referred to Ms Prunthaller's protest and appeal regarding the 2019 Budapest Event. They also said that the Austrian NF had refused Ms Prunthaller's entry for the 2019 Stuttgart Event and the upcoming 2019 Salzburg Event and refused to disclose the selection criteria for those events. They also said that the Austrian NF had selected Victoria and "her boyfriend, Stefan Lehfellner (no. 196 of the FEI rankings)" for the 2019 Salzburg Event. The Appellants further said that the 2019 Salzburg Event is "sponsored by funds provided under the Donation Agreement – and therefore Ms Prunthaller is being prevented from participating in accordance with the terms of the Ancillary Agreement."

78. In the Appellants' view, this "action, in and of itself, suggests prejudice" as Ms Prunthaller "is currently the highest-ranked Austrian dressage rider." According to the Appellants, "[i]t should follow, logically, that the [Austrian NF] elects its best qualified athletes to participate at the highest level." The failure of the Austrian NF "to confirm the entry of Ms Prunthaller suggests the federation is operating in accordance with an alternative agenda."

79. The Appellants said that they "merely want the opportunity to be able to compete on a level playing field" and asked that the FEI Tribunal "sanction Ms Max-Theurer and the [Austrian NF], as they damage not only the [Appellants] but Dressage and equestrian sport generally."

80. On 5 December 2019 – and in keeping with its correspondence of 18 September and 16 November 2019 – the FEI responded that the FEI Tribunal had no jurisdiction in the matter in light of Articles 117.1 and 117.2 of the 2019 FEI GR and the fact that the Appellants' Claim concerned decisions of the Austrian NF, not the FEI.

81. The FEI accordingly declined to pursue the Appellants' Claim within the meaning of Article 29.3 of the Internal Regulations of the FEI Tribunal (3rd edition), 2 March 2018 ("FEI Tribunal IR"), which provides as follows:

Where the FEI *declines to pursue a claim referred to it by another party, that other party may not bring the claim in his/its own name, but instead may* Appeal *to the* FEI Tribunal *against the* FEI Decision *not to pursue the claim.*

82. On 15 December 2019, the Appellants appealed the FEI Decision to the FEI Tribunal and asked that it be reviewed and overturned.

83. On 21 January 2020, the FEI filed its answer to the appeal with the FEI Tribunal.

84. In March 2020, the parties filed additional submissions with the FEI Tribunal.

85. On 22 April 2020, the Appellants confirmed to the FEI Tribunal that the "parties are in agreement that so far as the current submissions are limited to '*the Appeal on the denial*

to prosecute a claim, and not the claim itself' (i.e. not the substantive merits at issue), the FEI Tribunal should make its decision without a hearing."

86. By decision dated 4 May 2020, the FEI Tribunal dismissed the Appellants' appeal and confirmed the FEI Decision ("FEI Tribunal Decision").

87. The FEI Tribunal noted that it was to decide the "Appeal against the decision by the FEI not to pursue a claim brought by the Appellants against Ms. Max-Theurer and the [Austrian NF]".

88. The FEI Tribunal considered that "a party wishing for an allegation to be investigated and/or prosecuted, should, at least, do the outmost to provide clear basis for the allegations remitted, to provide means of proof and to be available in case of further investigations" – "it will not suffice for parties to merely provide some allegations, or generic claim that rule violations have been committed."

89. The FEI Tribunal considered that the "convoluted nature" of the Appellants' Claim – which was the "actual basis for the Decision now under appeal" – as well as the "varied relief/demands required might have hindered the actual perception of the allegations therein." The FEI Tribunal understood "that in the FEI's view the Appellants seem to not have reached the minimum threshold when filing the claim."

90. Where the FEI decides not to pursue a claim, the FEI Tribunal considered that its role was "to assure that the necessary checks and balances are provided for, in order to guarantee that the prosecutorial exclusivity granted by the regulations is used with proper discretion." The point is to "avoid possible arbitrary judgements, potential *mala fide* decisions, and in order to guarantee that cases with strong prospect for success on the merits will be further investigated, and ultimately prosecuted by the FEI."

91. The FEI Tribunal then drew "some illustrative comparisons" between "sportive disciplinary proceedings and local [Swiss] procedural criminal legislation" and concluded that, "in order to overturn the decision passed by the FEI, it would be fundamental to be able to evaluate whether the FEI acted arbitrary, in *mala fide*, or where the FEI decided in a grossly erroneous manner."

92. In this regard, the FEI Tribunal said that the burden of proof rests on the Appellants, who "cannot just merely bring a wide array of allegations forward, but should provide evidence in addition, which has not been the case in the present matter." For the sake of completeness, the FEI Tribunal also found that the "elements brought forward by the Appellant in the initial claim, did not provide sufficient grounds to the FEI, for considering the allegations therein as valid enough."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

93. On 22 May 2020, the Appellants filed their Statement of Appeal with the Court of Arbitration for Sport ("CAS") in accordance with Article R47 *et seq* of the Code of Sports-related Arbitration ("CAS Code"). In their Statement of Appeal, the Appellants requested that this procedure be referred to Mr Jeffrey Benz as Sole Arbitrator, or in the

alternative, that Mr Benz be considered the Appellants' nominated arbitrator in the event a three-member Panel were appointed.

94. On 5 June 2020, the Respondent nominated Mr Daniel Ratushny, Attorney-at-Law in Toronto, Canada, as arbitrator.

95. On 16 June 2020, the Appellants filed their Appeal Brief in accordance with Article R51 of the CAS Code.

96. On 21 July 2020, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, and upon the request of the Appellant in an effort to reduce the advance of costs of the procedure and agreement of the Respondent, confirmed the appointment of Ms Jennifer Kirby, Attorney-at-Law, Paris, France, as the Sole Arbitrator.

97. On 13 August 2020, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.

98. On 10 and 11 December 2020, the parties signed an Order of Procedure in anticipation of the hearing that was foreseen for the following week.

99. On 16 December 2020, a video hearing was held. Ms Schmidt, Mr Schmidt, Mr Gerhard Pischlöger (a former official of the Austrian NF) and Dr Wintersberger all testified.

100. At the close of the hearing, all parties confirmed that they had no objections to the way the proceedings had been conducted and agreed that the parties had been treated equally and that their rights to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellants

101. The Appellants' submissions on the merits of this case, in essence, may be summarized as follows:

- The Appellants have raised their concerns to the FEI on multiple occasions with regards to the conduct of Ms Max-Theurer and the Austrian NF relating to conflicts of interest, integrity and access to fair and equal competition. Ms Max-Theurer "concentrates the absolute power within the Austrian equestrian sports" and holds various conflicting positions. She has done so for almost two decades. At a minimum, there is a conflict of interest within the meaning of Article 2 of the Codex. The Appellants resort to the CAS as the FEI and the FEI Tribunal refuse to investigate the situation, which concerns an unparalleled concentration of power within the equestrian sports in Austria and contradicts the principles of good governance.

- The FEI Tribunal Decision was leaked to the media and various articles were published suggesting that the Appellants had lost their final battle against

Ms Max-Theurer and that the FEI did not consider that Ms Max-Theurer had done anything wrong. Ms Max-Theurer maintains close contacts with Mr Mikael Rentsch, the Legal Director of the FEI. In the legal proceedings she initiated against Mr Schmidt in the Ried im Innkreis Regional Court, Ms Max-Theurer called Mr Rentsch to appear as a witness. The closeness of the contacts between Ms Max-Theurer and Mr Rentsch are illustrated by the fact that the Appellants raised various questions and concerns with the FEI following these publications and yet again Mr Rentsch refused to investigate. "The FEI did not even ask the question *qui bono?* and implicitly alleged that the Appellants leaked such verdict to the media themselves."

- Ms Max-Theurer (1) is President of the Austrian NF, (2) is a FEI 5* Dressage Judge, (3) organizes and sponsors equestrian events in Austria and internationally, like the Salzburg Event and CDI events in Lamprechtshausen and Achleiten, and (4) supports her daughter's equestrian career. As set out in the Appellants' Claim, Ms Max-Theurer and the Austrian NF are in breach of multiple FEI rules and regulations regarding conflicts of interest (actual and perceived), integrity and access to fair and equal competition. All of these the Appellants have raised with the FEI, but the FEI has declined to take any further action. By tolerating Ms Max-Theurer's holding multiple roles, Ms Max-Theurer and the Austrian NF have breached the principles contained at Article 2 of the 2019 FEI Statutes and both must be sanctioned.

- Following the FEI Tribunal Decision, the Appellants again approached the FEI with additional information and new evidence and asked the FEI to take immediate action, but the FEI declined to act without explanation. This additional information included Ms Max-Theurer's testimony in the Ried in Innkreis Regional Court, where she acknowledged the existence of the Agreements "as well as the conditions that she put forward in order to enter into those agreements with [Mr Göllner] (exclusion of the Appellants from the events organized by Mr Göllner)."

- It also included evidence of certain security interests in real property that Mr Göllner's wife granted to Ms Max-Theurer. The so-called donations Ms Max-Theurer provided to Mr Göllner have been secured by a collateral on property in Lamprechtshausen. Given the bad financial position of the Göllners and their companies, they seem entirely dependent of Ms Max-Theurer. Mr Bauer's "financial situation is comparable with Mr Göllner's."

- Indeed, "it may be possible that Ms Max-Theurer paid to Mr Göllner more than the amount of 1,2 million euros that she acknowledged during the Court hearing in Ried im Innkreis." This is because the "deed reads the amount of 750.000,- euros which does not match the amount paid to Ms Göllner in accordance with the Donation Agreement (2 x 600.000,- euros)." That the "donation was secured by a collateral proves…that Ms Max-Theurer expected a *quid pro quo* from Mr Göllner and therefore it was not just a donation but a payment under the conditions of Ms Max-Theurer."

- The CAS should "elucidate whether or not holding such various and multiple roles as such is in conformity with the principles of the Olympic movement." The mission of the International Olympic Committee, of which the FEI is part, is to "promote Olympism throughout the world and to lead the Olympic Movement and to encourage and support the promotion of ethics and good governance in sport as well as education of youth through sport and to dedicate its efforts to ensuring that, in sport, the spirit of fair play prevails and violence is banned (see chapter 1 point 2 of the Olympic Charter)." In accordance with the Olympic Charter "belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC." The refusal of the FEI to "open investigations into the matter of Ms Max-Theurer and the Austrian NF clearly contradicts not only the FEI Rules and Regulations but also the provisions of the Olympic Charter."

- The FEI Tribunal Decision is erroneous and "unanticipated and entails elements which have not been invoked by the parties in the proceedings before the FEI." The FEI refused to investigate the matter as it claimed it had no jurisdiction. The question before the FEI Tribunal "was therefore whether or not the FEI should have opened an investigation into the matter and not whether or not to push charges against Ms Max-Theurer and/or the Austrian NF." The FEI both refused to investigate "and at the same time *a priori* decided that – without any investigations – there was no breach of the FEI Rules and Regulations." Why the FEI did not see any breach "given the overwhelming evidence presented by the Appellants was not problematized by the FEI."

- The FEI Tribunal considered that the "Appellants cannot just merely bring a wide array of allegations forward, but should provide evidence in addition, which has not been the case in the present matter." While the Appellants did provide sufficient evidence, the FEI Tribunal's statement is "incomprehensible" and runs counter to previous decisions of the FEI, the FEI Tribunal and CAS in relation to conflicts of interest in dressage. In the case of other FEI 5* Dressage Judges – like Mr Leif Törnblad, Ms Irina Shulga and Ms Maria Dzhumadzuk – the FEI considered "that for such officials to violate the FEI Rules and Regulations it sufficed to have a perceived conflict of interest under Article 2 of the Codex".

- In *Dzhumadzuk, Shulga and Equestrian Federation of Ukraine v FEI*, CAS 2016/A/4921 and 4922, 30 May 2017 ("*Dzhumadzuk*"), the CAS Panel said the following:

  73. …[T]*he term "nationalistic judging" in the Dressage Judges' Codex must be read in context of the FEI Dressage Rules and the Codex as a whole and particularly in the light of the following sentence of paragraph 2 of the Codex:* "A Judge must avoid any actual or perceived conflict of interest. A judge must have a neutral, independent and fair position towards riders, owners, trainers, organizers and other officials and integrate well into a team." …

  74. As to the purpose of the Dressage Judges' Codex, the Panel notes that disciplinary provisions of sport governing bodies in general are drafted to

> *embrace the many different forms of behavior considered unacceptable in the sport in question. In the end and generally speaking, the purpose of disciplinary provisions are,* inter alia, *to ensure a level playing field for the athletes. Therefore, the Panel accepts "true purpose" of the Dressage Judges' Codex (as construed by the* [FEI]*) to ensure a level playing field for all competitors.*

The CAS Panel also ruled that, in considering any breach of the Codex, it was not necessary to establish motive. The FEI Tribunal Decision "departs from this case law and works not only arbitrary towards the Appellants but also towards other FEI Dressage Judges like Mr Törnblad, Ms Shulga and Ms Dzhumadzuk."

- In reaching its decision, the FEI Tribunal cherry picked and applied by analogy certain provisions of Swiss criminal procedure. This is not appropriate, "as the FEI does not exercise any state monopoly in contrast to a public prosecutor who is obliged accountable to the democratically elected government." In the case of the FEI, "there are no checks and balances to ensure that such a process is transparent, and that the FEI needs to provide a motivation of such decision."

- In addition, the criminal procedure provisions cited by the FEI Tribunal "concern the question of *pushing charges* following an investigation of a public prosecutor and not the matter of investigation itself." A public prosecutor is "obliged to investigate a matter when such is reported to him." Thus, if the analogy were to apply, the "FEI must investigate the matter and in order to later decide whether the FEI has a case but refusing to investigate the matter is obviously erroneous." And in all events, the FEI should have investigated in light of the new evidence the Appellants provided to the FEI following the FEI Decision.

- Sports law "may not be an instrument to cover up wrongdoings of those involved into it." While the Appellants consider that the FEI acted in an arbitrary manner, the FEI Tribunal was wrong to consider that, "in order to overturn the decision passed by the FEI, it would be fundamental to be able to evaluate whether the FEI acted arbitrary, in *male fide*, or where the FEI decided in a grossly erroneous manner." This new test introduced by the FEI Tribunal "has not been motivated by the FEI Tribunal" and it is "totally unclear where this test comes from." Under CAS case law, the CAS should "decided the matter at hand in accordance with *ex aequo et bono*." In other words, the CAS should decide whether "given the totality of the evidence presented it was reasonable that the FEI refused investigating the alleged breaches." And in all events, the FEI Tribunal should have given the parties an opportunity to be heard on the "analogical application of the Swiss criminal procedural code to the case at hand before issuing its decision."

- The Appellants ask the Sole Arbitrator to rule and decide:

  (a) to nullify/annul the FEI Tribunal Decision.

  (b) that a concentration and holding of the following multiple roles held by Ms Max-Theurer:

    (a) President of the Austrian NF;

(b) Vice President of the Austrian Olympic Committee;

(c) a FEI 5 Dressage Judge;*

(d) the sponsor of various equestrian events in Austria in which daughter Victoria Max-Theurer;

(e) the mother of and promoter of her own daughter Victoria Max-Theurer (who herself is a direct competitor of Mrs. Prunthaller);

(f) financer of the events organized by Mr Göllner and at the same time holder of a collateral on the property of Ms Göllner (the wife of the organizer) as the security for fulfilment of Mr Göllner's obligations towards Ms Max-Theurer;

is in violation of the FEI Rules and Regulations as well as the principles of the Olympic movement, more in particular the mission of the International Olympic Committee which is to promote Olympism throughout the world and to lead the Olympic Movement and to encourage and support the promotion of ethics and good governance in sport as well as education of youth through sport and to dedicate its efforts to ensuring that, in sport, the spirit of fair play (see chapter 1 point 2 of the Olympic Charter).

(c) to order the FEI to investigate the matters of Ms Max-Theurer and the Austrian NF mentioned in this appeal brief in accordance with the CAS case law (CAS 2016/A/4921 & 4922 Maria Dzhumadzuk, Irina Shulga & Equestrian Federation of Ukraine v. Federation Equestre Internationale (FEI) dated 30 May 2017) in which the CAS Panel ruled that the term "nationalistic judging" in the Dressage Judges' Codex must be read in context of the FEI Dressage Rules and the Codex as a whole and particularly in the light of the following sentence of paragraph 2 of the Codex: "A Judge must avoid any actual or perceived conflict of interest. A judge must have a neutral, independent and fair position towards riders, owners, trainers, organizers and other officials and integrate well into a team." This part of paragraph 2 is followed by different examples of activities that may lead to a "conflict of interest", e.g. "nationalistic judging". Although the FEI Regulations do not contain a strict definition of "nationalistic judging", the Panel finds that it is merely one of more examples of a "conflict of interest".

And more in particular in the light of sub 74 of this case law:

74. As to the purpose of the Dressage Judges' Codex, the Panel notes that disciplinary provisions of sport governing bodies in general are drafted to embrace the many different forms of behavior considered unacceptable in the sport in question. In the end and generally speaking, the purpose of

disciplinary provisions are, inter alia, to ensure a level playing field for the athletes. Therefore, the Panel accepts the "true purpose" of the Dressage Judges' Codex (as construed by the Respondent) to ensure a level playing field for all competitors. (.....)

(d) To suspend Ms Max-Theurer as 5 FEI Dressage Judge due to the existence of the real or perceived conflict of interest.*

- The Appellants also request that the FEI bear the costs of these proceedings.
- At the hearing, the Appellants withdrew their claim for relief in paragraph 9.1(d) of their Appeal Brief, as discussed in more detail below.

B. The Respondent

102. The Respondent's submissions on the merits of this case, in essence, may be summarized as follows:

- The appeal should be dismissed and the FEI Tribunal Decision should be confirmed and upheld.
- The Appellants have alleged that the Austrian NF has not selected Ms Prunthaller for some FEI dressage events and that the FEI should sanction Ms Max-Theurer in light of her alleged conflicts of interest. In fact, however, the Austrian NF has selected Ms Prunthaller 109 times during the period January 2017 until 31 December 2019 – far more than any other Austrian dressage rider. By comparison, the second most selected rider – Ms Astrid Neumayer – has been selected by the Austrian NF for 77 competitions and Victoria has been selected for 53 competitions. In short, the basic premise of the Appellants' argument – that Ms Prunthaller has been somehow disadvantaged by the positions Ms Max-Theurer holds – does not stand up to even the most basic level of scrutiny.
- Under the FEI Dressage Rules, athletes are invited to FEI dressage events through National Federations. In this regard, Article 423.1 of the FEI Dressage Rules provides as follows:

1. Invitations

1.2 Must be extended through the respective NF. For CDI3/CDI4*/CDI5* and CDIO 3*/CDIO4*/CDIO5* at least six (6) countries, including the host NF, plus three (3) reserve countries, with a minimum of one (1) Athlete each must be invited and accepted or twelve (12) countries with a minimum of one (1) Athlete each. For Events/Tours with up to 15 Athletes, the OC may invite minimum four (4) countries, including the host NF.*

1.3 In each case an OC may never invite more home Athletes than foreign Athletes. The NFs concerned will make the final choice of the Athletes sent to an Event.

1.4 The draft Schedule must include a list of NFs invited to the Event plus reserve NFs, number of Athletes invited per NF and must be sent to the FEI at least ten (10) weeks before the date of the Event.

- In addition, Article 423.2 of the FEI Dressage Rules provides as follows:

2. Personal Invitations / Wild Cards

2.1 For all CDIs the OC has a right to personally invite two (2) extra Athletes through their respective NF in addition to what is stated above.

- As reflected in Articles 117.1 and 117.2 of the 2019 FEI GR, it is a fundamental feature of FEI events that National Federations are ultimately responsible for the selection of any athlete competing. There is no invitation system linked to the world rankings. It is up to the organizer of a FEI event to decide which countries will be invited to compete. And then it is up to each National Federation to decide which athletes to send. And the organizer can extend personal invitations. The FEI has no say in the selection process of any athlete/team as the FEI, as the world governing body, needs to remain neutral and independent. To the extent the appeal concerns decisions taken in this regard by the Austrian NF – not the FEI – the FEI Tribunal had no jurisdiction on such matter. Any such decisions should be appealed to the relevant appeals body as laid down in the rules and regulations of the Austrian NF.

- The FEI is aware of the various roles Ms Max-Theurer holds. There has never been any secret about them.

- The FEI Officials' Code of Conduct contains the following non-exhaustive list of activities that lead to a conflict of interest when officiating at a FEI event:

  - *Acting as a Chef d'Equipe or being responsible /co-responsible for selecting teams and/or individuals or training Athletes within a NF present at the Event, if the teams and/or individuals participate in a competition falling within the level and age group of the authority of the Official.*

  - *Being the Owner/part-Owner of a Horse taking part in a competition that I am officiating at.*

  - *Being in a situation of financial dependence or gaining financial profit from participating Owners, Athletes, Trainers or Organisers (excluding any payment(s) permitted under the FEI Rules and Regulations, such as per diems). The same rule applies with regard to National Federations or other organisations involved in the Event, if the dependence exceeds a regular employment. Employees of participating National Federations cannot act as President of the Ground Jury, President of the Appeal Committee, Chief Steward, Veterinary Delegates, or Course Designer at Official International Events, International Championships and Games.*

  - *Having a close personal relationship with an Athlete competing in a competition that I am officiating at.*

- *Having recently treated a Horse competing in a Competition that I am officiating at.*

- None of the activities of Ms Max-Theurer breach any of the above provisions.

- The Appellants are operating under the false assumption that conflicts of interest are prohibited under the FEI rules. This is wrong. As the Officials' Code of Conduct acknowledges:

  Conflicts must be avoided whenever practicable. However, conflicts may be linked to experience and expertise that is necessary to qualify Officials. The specific balance between conflict and expertise is regulated by the General Regulations and the relevant Sport Rules.

- The key question for the FEI, the FEI Tribunal and now the Sole Arbitrator to consider is whether the Appellants have alleged "any specific breach of the conflict of interest at a specific FEI Event?" They have not.

- What the Appellants allege – and what the FEI understands to be the case – is that Ms Max-Theurer paid a contribution to the organizer of the Salzburg Event. She did not officiate at that event and there is no provision in the FEI rules that would prevent her making such a contribution. "In equestrian sports, many events depend on the patronage of wealthy benefactors who are equestrian enthusiasts to run their events."

- The Appellants allege that provisions of the Ancillary Agreement prevented Ms Prunthaller from competing in Salzburg. They did not. The Appellants are reading into the Ancillary Agreement provisions that simply do not exist. And in any event, it is the Austrian NF that selects Austrian athletes for events, not Ms Max-Theurer. Given her various roles, and the fact that her daughter competes in dressage internationally, Ms Max-Theurer is not involved in the selection process within the Austrian NF and the Appellants have provided no evidence to the contrary.

- Under Swiss law, an international federation that is established as an association may organise its dispute resolution system as it sees fit. The FEI has done so. Under that system, the FEI is the sole body that may bring a claim to the FEI Tribunal (with the exception of horse abuse which is not at issue here). Disciplinary actions, if any, for non-compliance with the Codex are under the responsibility of the FEI Legal Department.

- Under this system, the FEI is not obliged to submit complaints to the FEI Tribunal. It screens claims and decides which to submit to the FEI Tribunal. This is an important feature of the system, as the FEI could otherwise be flooded with frivolous claims it would have to pursue.

- The FEI's screening role is subject to the checks and balances afforded by Article 29.3 of the FEI Tribunal IR.

- Here, the FEI made a "reasonable assessment that no violation(s) had occurred given that the Appellants had not submitted any evidence of specific violations and instead made general assertions that were not substantiated by any evidence or facts." It decided that it "was nothing more than a series of unfounded allegations apparently stemming from a long-standing interfamily feud." The FEI Tribunal reviewed that decision and agreed with the assessment of the FEI.

- If the Appellants' appeal were to be upheld, the FEI would effectively be forced to re-examine a matter it has already determined does not merit prosecution. The FEI fails to see how, either based on the original claim or the new information (which does not add anything), there are sufficient grounds to substantiate a disciplinary case against Ms Max-Theurer or the Austrian NF. The FEI should not be expected to argue a case before the FEI Tribunal that it considers unfounded. This would not be a good use of the limited time and resources of the FEI or the FEI Tribunal.

- On the other hand, if CAS dismissed the appeal, the matter would be settled and the FEI's prosecutorial discretion that is key to the FEI's disciplinary system would be confirmed.

- The FEI has autonomy and enjoys a margin of discretion to apply the FEI rules. "CAS should only amend a disciplinary decision (or in this case a decision to uphold the FEI's decision not to pursue disciplinary action) of a FEI judicial body only in cases in which it finds that the relevant FEI body exceeded that margin of discretion; therefore, the respective decisions of the FEI Headquarters and the FEI Tribunal must be considered as evidently and grossly disproportionate in order to be open to correction." There is no aspect of the FEI Tribunal decision that could be regarded as "evidently and/or grossly disproportionate; it should therefore be left undisturbed."

- To the extent there were any procedural flaws in the proceedings before the FEI Tribunal – and the Respondent considers there were none – this is irrelevant because of the *de novo* nature of CAS arbitral proceedings under Article R57 of the CAS Code, which provides that the "Panel has full power to review the facts and the law." *N, J, Y and W v Fédération Internationale de Natation*, CAS 98/208 ("The virtue of an appeal system which allows for a full rehearing before an appellate body is that issues of the fairness or otherwise of the hearing before the tribunal of first instance fade to the periphery"); *Hoch v FIS and IOC*, CAS 2008/A/1513 (explaining that, under Article R57, the CAS Panel "hears the case *de novo*, without being limited by the submissions and evidence that was available" to the tribunal below).

- And the Appellants' "effect de surprise" argument runs contrary to settled Swiss law. *IOC v X*, Swiss Federal Tribunal 4A_382/2018, 15 Jan. 2019, ¶ 3.1.2 ("Generally, according to the adage *jura novit curia*, state or arbitral courts freely assess the legal significance of the facts and they may also rule on the basis of rules of law other than those invoked by the parties").

- The Respondent asks the Sole Arbitrator:

  (i) to reject the Appellants' requests for relief in their entirety and to dismiss the Appeal in its entirety, so that the FEI Tribunal Decision is left undisturbed;

  (ii) in accordance with Article 64.5 of the [CAS Code], *to order the Appellants to pay all of the costs incurred by the CAS and payable by the Parties in these proceedings; and*

  (iii) in accordance with Article 64.5 of the [CAS Code], *to order the Appellants to pay a contribution towards the legal costs that the FEI has incurred in these proceedings.*

V. JURISDICTION

103. Article R47 of the CAS Code provides in pertinent as follows:

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

104. The Appellants have appealed the FEI Tribunal Decision to CAS on the basis of Article 162 of the FEI General Regulations (24th edition), 1 January 2020 ("2020 FEI GR"). That Article provides in pertinent part as follows:

General Principles

162.1 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 Article 162.2 below):

(a) With the FEI Tribunal against Decisions of the Ground Jury or any other person or body.

(b) With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the FEI Legal Department.

Admissibility of Appeals

162.2 An Appeal is not admissible:

(a) Against Decisions by the Ground Jury in cases covered by Article 161.2;

(b) Against Decisions made by the FEI Tribunal on Appeals arising from Decisions made by the Ground Jury.

105. In its Answer, the Respondent says that the "jurisdiction of the CAS over the Appeal is undisputed". It notes, however, that the Appellants have asked CAS to impose sanctions on Ms Max-Theurer. In the Respondent's view, this falls outside the scope of the jurisdiction of CAS, which "is limited to a review of the FEI Tribunal decision that upheld the FEI's decision not to prosecute the Appellants' claim; the merits of the underlying claim are beyond the scope of the present proceedings."

106. The Sole Arbitrator agrees.

107. In the FEI Decision, the FEI decided not to pursue the Appellants' Claim. As noted above, where the FEI decides not to pursue a claim referred to it by another party, Article 29.3 of the FEI Tribunal IR prohibits the other party from bringing the claim in its own name, but allows it to appeal to the FEI Tribunal against the FEI's decision not to pursue the claim, which is what the Appellants have done.

108. The proceedings before the FEI Tribunal did not concern the merits of the Appellants' Claim, but rather whether the FEI Decision not to pursue the claim should be overturned. The FEI Tribunal decided to confirm the FEI Decision not to pursue the claim and the Appellants have now appealed the FEI Tribunal Decision to CAS.

109. On appeal, and further to Article R57 of the CAS Code, the Sole Arbitrator is now to consider and determine *de novo* the same question the FEI Tribunal decided – namely, whether the FEI Decision not to pursue the Appellants' Claim should be overturned. It does not fall within the Sole Arbitrator's appellate jurisdiction to determine questions that were not before the FEI Tribunal – a point the Appellants' acknowledged at the hearing. To the extent the Appellants ask her do so, the Sole Arbitrator does not have jurisdiction over those aspects of the appeal.

110. In paragraphs 9.1(b) and 9.1(d) of their Appeal Brief, the Appellants asked the Sole Arbitrator to rule on the merits of their claim against Ms Max-Theurer and sanction her. At the hearing, the Appellants withdrew their claim for relief in paragraph 9.1(d), but maintained their claim for relief in paragraph 9.1(b). As the FEI Tribunal was not asked to determine the merits of the claim against Ms Max-Theurer – indeed, Ms Max-Theurer was not even a party to those proceedings just as she is not a party here – the Sole Arbitrator dismisses this aspect of the appeal for lack of jurisdiction.

111. The Appellants resist this conclusion on the grounds that "it is not up to the Respondent to determine what the subject of the appeal is" and that their Appeal Brief "determines which remedies the Appellants seek." This is true, but irrelevant. It is the question that was raised before the FEI Tribunal that circumscribes the scope of the Sole Arbitrator's jurisdiction. And while the Appeal Brief sets out the relief the Appellants seek, the Sole Arbitrator cannot grant that relief to the extent it falls outside the scope of her jurisdiction.

112. The Appellants also refer to Article 160 of the 2020 FEI GR, which provides as follows:

Article 160 – Court of Arbitration for Sport (CAS)

160.1 The CAS has the power to impose the same scale of sanctions as the FEI Tribunal.

160.2 The CAS may impose more severe sanctions than those imposed in the first instance, provided they are within the limits of the penalty jurisdiction of the body from which the Appeal to the CAS is brought.

113. The Appellants do not explain the relevance of this provision to the issue of the scope of the Sole Arbitrator's jurisdiction and – as there was no question of sanction before the FEI Tribunal – it does not seem that there is any.

114. The Appellants also contend that the question the Sole Arbitrator must decide is "whether the FEI Tribunal Decision is correct or not". According to the Appellants, the "merits of the case are utterly relevant as both the FEI Tribunal and the FEI adopted the view that evidence submitted by the Appellants did not prove any violation of the FEI Rules and Regulations by Ms Max-Theurer." The question is therefore also "whether this assessment of the FEI was correct."

115. This argument seems to conflate the issues the Sole Arbitrator may need to consider with the determination she has jurisdiction to make.

116. As noted above, the question the Sole Arbitrator must determine *de novo* is whether the FEI Decision not to pursue the Appellants' Claim should be overturned. To the extent the Sole Arbitrator needs to consider the merits of the Appellants' Claim against Ms Max-Theurer to decide that question, she will do so. However, the Sole Arbitrator will not – indeed, cannot – determine the Appellants' Claim against Ms Max-Theurer. Under Article 29.3 of the FEI Tribunal IR, the Appellants could not and did not bring that claim to the FEI Tribunal. Ms Max-Theurer was not a party to those proceedings and is not a party here. In these circumstances, the Sole Arbitrator has no jurisdiction to determine the Appellants' Claim against Ms Max-Theurer.

VI. ADMISSIBILITY

117. Article R49 of the CAS Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.

118. Article 162.7 of the 2020 FEI GR provides that "[a]ppeals to the CAS together with supporting documents must be dispatched to the CAS Secretariat pursuant to the Procedural Rules of the [CAS Code] so as to reach the CAS within twenty-one (21) days of the date on which the notification of the FEI Tribunal Decision was sent to the National Federation of the Person Responsible."

119. The Appellants' appeal was received by the CAS within 21 days of the date of the FEI Tribunal Decision and is therefore admissible.

VII. APPELLANTS' REQUEST FOR A PUBLIC HEARING

120. The Appellants requested a "public hearing in this appeal in accordance with Article 6 of the European Convention on Human Rights." In support of this request, the Appellants contended that, according to established case law of the European Court of Human Rights ("ECHR"), the "public character of proceedings (also before CAS) is fundamental." In this regard, the Appellants relied on *Mutu and Pechstein v Switzerland*, Applications 40575/10 and 67474/10, ECHR, 2 Oct. 2018 ("*Pechstein*"). The Appellants also asked the Sole Arbitrator to consider that the FEI Tribunal Decision "has not been published so far whereas…various media have covered on the merits of this decision in favour of Ms Max-Theurer."

121. For its part, the Respondent contended that, given the limited scope of the appeal, an oral hearing was not necessary and the matter should be decided based on the parties' written submissions.

122. On 18 August 2020, the Sole Arbitrator decided not hold a public hearing in this matter and deferred decision on whether an oral hearing would be held at all. In that decision, the Sole Arbitrator said she would provide her reasons for denying the Appellants' request for a public hearing in this award. Those reasons are set out below.

123. Article R57 of the CAS Code provides in pertinent part as follows:

> *After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise. At the request of a physical person who is party to the proceedings, a public hearing should be held if the matter is of a disciplinary nature. Such request may however be denied in the interest of morals, public order, national security, where the interests of minors or the protection of the private life of the parties so require, where publicity would prejudice the interests of justice, where the proceedings are exclusively related to questions of law or where a hearing held in first instance was already public.*

124. This is not a "matter of a disciplinary nature" within the meaning of Article R57 and the Appellants have not contended that it is. As explained above, the only question the Sole Arbitrator has jurisdiction to decide is whether the FEI Decision not to pursue the Appellants' Claim should be overturned. If the Sole Arbitrator were to rule in the Appellants' favour, that ruling might lead to proceedings of a disciplinary nature against Ms Max-Theurer, but no such proceedings are taking place here where Ms Max-Theurer is not even a party. There is accordingly no need for a public hearing.

125. *Pechstein* does not suggest a different result. In fact, if anything, it weighs in favour of the conclusion the Sole Arbitrator has reached.

126. In February 2009, Ms Claudia Pechstein – a German speed skater – underwent doping controls in connection with her participation in the World Speed Skating

Championships in Hamar, Norway. After reviewing her blood profile, the International Skating Union filed a complaint against her with its Disciplinary Commission. After a hearing in June 2009, the Disciplinary Commission imposed a two-year ban on Ms Pechstein with retroactive effect from 9 February 2009. Ms Pechstein appealed that decision to CAS, which held a hearing on the matter in October 2009. Although Ms Pechstein asked for a public hearing, the hearing was held in camera. In November 2009, the CAS Panel confirmed the two-year ban. In December 2009, Ms Pechstein filed an appeal with the Federal Tribunal seeking the annulment of the CAS award on the grounds that, among other things, CAS had not held a public hearing. The Federal Tribunal dismissed the appeal.

127. In November 2010, Ms Pechstein made an application against Switzerland for, among other things, alleged violations of Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention"), which provides in pertinent part as follows:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

128. Ms Pechstein contended that, among other things, the fact that the proceedings before CAS were not held in public violated Article 6 § 1 of the Convention.

129. The ECHR agreed.

130. In reaching this conclusion, the ECHR reiterated that:

[T]*he public character of proceedings constitutes a fundamental principle enshrined in Article 6 § 1 of the Convention. It protects litigants against the administration of justice in secret with no public scrutiny and is thus one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, it contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society...*

Pechstein ¶ 175.

131. The ECHR noted, however, that Article 6 § 1 does not "prohibit courts from deciding, in light of the special features of the case submitted to them, to derogate from this principle". There may be proceedings in which an oral hearing is not required at all under Article 6, "for example where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written material". Even where a court has jurisdiction to review a case as to both the facts and the law, the ECHR said that it could not "find that Article 6 always requires a right to a public hearing irrespective of

the nature of the issues to be decided." Indeed, the ECHR noted that it had "previously found that proceedings devoted exclusively to legal or highly technical questions may comply with the requirements of Article 6 even if there was not public hearing."

132. The ECHR held that Article 6 § 1 had required a public hearing in Ms Pechstein's case, however. In reaching this conclusion, the ECHR noted that:

> [T]*he questions arising in the impugned proceedings – as to whether it was justified for* [Ms Pechstein] *to have been penalized for doping, and for the resolution of which the CAS heard testimony from numerous experts – rendered it necessary to hold a hearing under public scrutiny. The Court notes that the facts were disputed and the sanction imposed on* [Ms Pechstein] *carried a degree of stigma and was likely to adversely affect her professional honour and reputation...*

133. In considering the relevance of *Pechstein* to the case presented here, the Sole Arbitrator notes as a preliminary matter that Article 6 § 1 of the Convention only applies to the determination of a person's "civil rights and obligations or of any criminal charge against him". Here, the Sole Arbitrator is not determining any criminal charge against the Appellants. It is also not immediately clear on the facts of this case that she is making any determination of the Appellants' "civil rights and obligations" within the meaning of the Convention – an issue the Appellants have not addressed.

134. In all events, as noted above, and in contrast to the CAS proceedings at issue in *Pechstein*, this is not a doping case or any other type of disciplinary matter. This case rather concerns whether the FEI Decision not to pursue the Appellants' Claim should be overturned – i.e., the type of legal question that does not require a public hearing under Article 6 § 1 of the Convention.

135. Moreover, in *Pechstein*, the ECHR was animated by a desire to protect the rights of the accused. Here, the Appellants are not the accused but the accusers. And the accused the Appellants wish sanctioned in a way that would carry a degree of stigma that would be likely to adversely affect her professional honour and reputation – namely, Ms Max-Theurer – is not a party to these proceedings. In these circumstances, the best way to protect the rights of the accused is to hold the hearing in camera, which is what the Sole Arbitrator decided to do. The fact that the press has already reported on certain aspects of the proceedings before the FEI Tribunal only serves to confirm the Sole Arbitrator in her view, as publicity could well "prejudice the interests of justice" within the meaning of the Convention and Article R57 of the CAS Code.

VIII. APPLICABLE LAW

136. Article R58 of the CAS Code provides as follows:

> *The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

137. The Sole Arbitrator shall accordingly decide the dispute according to the applicable FEI regulations and, subsidiarily – as the parties have not chosen any rules of law – according to the law of Switzerland, the country where the FEI is domiciled.

138. To the extent the Appellants have contended that the Sole Arbitrator should decide this case *ex aequo et bono*, the Sole Arbitrator rejects this suggestion as contrary to the express provisions of Article R58 of the CAS Code.

IX. MERITS

139. As noted above, the question the Sole Arbitrator needs to decide is whether the FEI Decision not to pursue the Appellants' Claim should be overturned. Further to Article R57 of the CAS Code, the Sole Arbitrator will determine this question *de novo* without deference to the decision of the FEI Tribunal. To the extent the Respondent contends that the Sole Arbitrator can only rule in the Appellants' favour if the decision of the FEI Tribunal was "evidently and grossly disproportionate", the Sole Arbitrator rejects the Respondent's position as contrary to the express provisions of Article R57 of the CAS Code.

140. Looking at the FEI Decision, the parties disagree as to the circumstances in which it may be overturned – a point on which the applicable FEI regulations are silent. The Appellants contend that the Sole Arbitrator should consider whether, "given the totality of the evidence presented it was reasonable that the FEI refused investigating the alleged breaches." If the Sole Arbitrator concludes it was not, she should overturn the FEI Decision. For its part, the Respondent contends that, as it has a "margin of discretion to apply the FEI Rules", the Sole Arbitrator should only overturn the FEI Decision if it was "evidently and grossly disproportionate".

141. Having examined the parties' positions, the Sole Arbitrator considers that she should overturn the FEI Decision not to pursue the Appellants' Claim if she finds that decision unreasonable under all the relevant facts and circumstances. If the FEI had wanted to grant itself the power to take unreasonable decisions, it should have drafted its regulations to make this clear to third parties. It could have done so by providing that its decision not to pursue a claim could only be overturned if "evidently and grossly" incorrect. It has not done so and the Sole Arbitrator sees no reason to import such a high standard here by arbitral fiat. For avoidance of doubt, this does not mean that the FEI lacks discretion in deciding whether or not to pursue claims. It merely means that it must exercise its discretion reasonably.

142. At the hearing, the Appellants contended that the FEI Decision must be unreasonable because the FEI decided not to pursue the Appellants' Claim based on misguided jurisdictional grounds and did not even look into the allegations the Appellants raised or consider the evidence they had submitted. While it does appear that the FEI misunderstood the nature of the Appellants' Claim at the time it took its decision – mistakenly considering it an athlete-selection matter – this does not necessarily mean that the FEI Decision not pursue the Appellants' Claim was unreasonable. It is not the FEI's reasoning that is at issue on this appeal but its decision. If the Sole Arbitrator considers that the FEI's decision not to pursue the Appellants' Claim was reasonable

under all the relevant facts and circumstances, she should reject the appeal, even if the FEI's reasoning was misguided.

143. The facts and circumstances that are relevant to the Sole Arbitrator's decision are those the FEI knew at the time it issued the FEI Decision. The Sole Arbitrator points this out because the Appellants have suggested that information they provided to the FEI after the FEI took its decision may provide a basis for the Sole Arbitrator to find the FEI Decision unreasonable. The Sole Arbitrator disagrees, as the FEI could only take its decision in light of the information it had at the time. For avoidance of doubt, this does not leave the Appellants without recourse based on new information. To the extent they wish to submit a claim to the FEI based new information, they may do so. And to the extent the FEI declines to pursue that claim, the Appellants may challenge that decision before the FEI Tribunal pursuant to Article 29.3 of the FEI Tribunal IR.

144. Looking at the Appellants' Claim, the Appellants contended that Ms Max-Theurer and the Austrian NF had violated the following FEI regulations:

(A) Article 1.3 of the 2019 FEI Statutes

(B) Article 100.1 of the 2019 FEI GR

(C) Article 158 of the 2019 FEI GR

(D) Article 2 of the Codex

(E) Paragraph B.4 of the FEI Code of Ethics

145. In this regard, the Appellants made the following allegations:

(1) Ms Max-Theurer holds multiple roles giving rise to real and apparent conflicts of interest;

(2) Ms Max-Theurer announced that the selection of dressage riders for the 2020 Olympic Games would no longer be based on Olympic rankings but rather decided by a dressage jury and the NOC, making Ms Max-Theurer the "ultimate decision-maker on Olympic qualifiers";

(3) The Agreements demonstrate Ms Max-Theurer's prejudice against the Schmidt Family and the Schmidt Family Business;

(4) Section 1(2) of the Ancillary Agreement gave Ms Max-Theurer the right to propose both riders and judges to Mr Göllner for events he arranged – an arrangement from which Ms Max-Theurer stood to benefit in her capacity as a FEI Dressage Judge and Victoria's mother;

(5) Ms Prunthaller has been refused entry to certain dressage events further to Section 1(4) of the Ancillary Agreement and otherwise; and

(6) Victoria and her boyfriend were selected to compete in the 2019 Salzburg Event.

146. However, the Appellants' Claim was not always entirely clear as to which of these six allegations violated which of the five FEI regulations the Appellants invoked. In analysing the Appellants' Claim – and considering whether the FEI Decision not to pursue it was reasonable – the Sole Arbitrator has accordingly at times had to make inferences in this regard. This has not always been easy, but the Sole Arbitrator has done her best with a view to reading the Appellants' Claim in the light most favourable to the Appellants. To the extent she has failed to grasp the basis for the Appellants' Claim, this would only support a finding that the FEI Decision not to pursue it was reasonable.

147. The Sole Arbitrator addresses each of the five FEI regulations at issue – and what she understands to be its associated allegations – in turn below.

A. Article 1.3 of the 2019 FEI Statutes

148. Article 1.3 of the 2019 FEI Statutes says that one of the "objectives of the FEI" is "[t]o enable individual Athletes and teams from different nations to compete in International Events under fair and even conditions".

149. The Appellants' Claim contended that the Austrian NF and Ms Max-Theurer had breached Article 1.3 because –

(1) Ms Prunthaller was not allowed to complete in the following six events:

- 2015 CDIL
- 2016 CDIL
- 2017 CDIL
- 2019 Budapest Event
- 2019 Stuttgart Event
- 2019 Salzburg Event

(2) Victoria and her boyfriend were entered in the 2019 Salzburg Event; and

(3) Section 1(2) of the Ancillary Agreement gave Ms Max-Theurer the right to propose both riders and judges to Mr Göllner for events he organised – an arrangement from which Ms Max-Theurer stood to benefit in her capacity as a FEI Dressage Judge and Victoria's mother.

150. There are several problems with this aspect of the Appellants' Claim.

151. Article 1.3 reflects one of the FEI's objectives. It does not appear to impose any obligations on the FEI or (by virtue of Article 2.8 of the 2019 FEI Statutes) anyone else that could be breached.

152. In addition, Article 1.3 concerns the ability of athletes and teams from different nations to compete under fair and even conditions. The Appellants' Claim did not contend that

Ms Prunthaller or other Austrian dressage riders had been placed at a disadvantage relative to athletes and teams from other nations. In light of this, it is not clear that Article 1.3 even speaks to the allegations at issue in the Appellants' Claim.

153. The Appellants' Claim contended that Mr Göllner had refused Ms Prunthaller entry to the 2015, 2016 and 2017 CDIL further to the terms of the Agreements and, in particular, Section 1(4) of the Ancillary Agreement. But there is, in fact, nothing in Section 1(4) of the Ancillary Agreement or any other terms of the Agreements that obliged Mr Göllner to refuse Ms Prunthaller (or any other rider) entry to events he organized. Section 1(4) rather prohibited Mr Göllner and his related entities from allowing the Schmidt Family, the Schmidt Family Business and their related entities any voice in the events Mr Göllner organized until 30 June 2018. It did not speak to Ms Prunthaller or riders at all.

154. About six months after the FEI Decision, the Appellants provided the FEI the following:

(1) A transcript of proceedings before the Ried im Innkreis Regional Court on 4 May 2020, where the Appellants said Ms Max-Theurer had acknowledged the existence of the Agreements and that "one of the (most) essential conditions for her to enter into the agreement with Göllner was to exclude and keep the Schmidts and affiliated persons and businesses excluded out of the events organized by Göllner and sponsored by Max-Theurer"; and

(2) Proof that Ms Max-Theurer "provided in total the amount of EUR 1.200.000,– to Göllner" – namely, the Pledging Agreement dated 21 September 2017 and three extracts from the Austrian Land Register dated 18 May 2020 that may reflect related liens Ms Max-Theurer has against real property owned by the Göllner family.

155. When submitting this new information, the Appellants again asked the FEI to "start investigating the matter". The FEI did not do so and the Appellants have not challenged that decision before the FEI Tribunal pursuant to Article 29.3 of the FEI Tribunal IR. Instead, the Appellants have contended in these proceedings that the FEI did not investigate based on the new information because Mr Rentsch (the Legal Director of the FEI) maintains close contacts with Ms Max-Theurer. The Appellants say that this is shown by the fact that Ms Max-Theurer called Mr Rentsch as a witness in her case against Mr Schmidt in the Ried im Innkreis Regional Court. The Sole Arbitrator notes that it is not clear from the court transcript that this was the case. But assuming *arguendo* that it is true that Ms Max-Theurer called Mr Rentsch as a witness, the Sole Arbitrator fails to see how her doing so would suggest that there is any closeness between the two, much less a closeness that would provide a basis to call into question Mr Rentsch's professional integrity.

156. For the reasons explained above, these documents – which the Appellants gave the FEI after the FEI Decision was made – are not relevant to the Sole Arbitrator's decision as to whether the FEI Decision was reasonable. But assuming *arguendo* that they were relevant, they would not support the Appellants' Claim.

157. In the transcript of her testimony, the Sole Arbitrator can find no place where Ms Max-Theurer even suggests that she ever sought to have Ms Prunthaller excluded from any

of Mr Göllner's events as a condition of entering into the Agreements or otherwise. On the contrary, she testified that she had financially supported a number of events where Ms Prunthaller took part and "never exerted influence of any kind to the effect that Mrs. Ulrike Prunthaller should not receive a starting place in the years 2015, 2016 and 2017." The same transcript reflects that Mr Schmidt testified that Mr Göllner told Mr Schmidt that Ms Max-Theurer had told Mr Göllner that "he must not admit Ulrike Prunthaller to the tournaments in Lamprechtshausen." This is double hearsay, however, and there is no testimony from Mr Göllner either in these proceedings or in the transcript from the Ried im Innkreis Regional Court.

158. To the extent Ms Max-Theurer has provided additional financial support to Mr Göllner beyond the EUR 600 000 provided under the Donation Agreement, the Sole Arbitrator fails to see that there is anything improper about this. Indeed, it appears to be common ground between the parties that dressage depends on the support of wealthy people who are enthusiasts of the sport and both the Schmidt Family and Ms Max-Theurer have provided such support over the years.

159. In the context of this appeal – and about ten months after the FEI Decision was made – the Appellants submitted a transcript of testimony Mr Bauer gave in proceedings before the Ried im Innkreis Regional Court on 27 July 2020. The Appellants represented that, in his testimony, Mr Bauer "acknowledged that Prunthaller was to be refused entry to the Event CDI in Lamprechtshausen."

160. This transcript is likewise irrelevant to the determination of this appeal because the FEI did not have it at the time the FEI Decision was made. But assuming *arguendo* that it were relevant, it too would not support the Appellants' Claim.

161. In the transcript of Mr Bauer's testimony, the Sole Arbitrator has been unable to find an instance where he testifies as the Appellants represented. On the contrary, it appears that the only thing Mr Bauer said with respect to Lamprechtshausen was that he had never been to a tournament there and "cannot say whether [Ms Max-Theurer] has at any time exerted any influence whatsoever in this regard, e.g., also on the admission of the riders."

162. The Sole Arbitrator also notes that Mr Bauer's testimony before the Ried im Innkreis Regional Court likewise casts doubt on the Appellants' unsupported allegation in these proceedings that Mr Bauer's financial position vis-à-vis Ms Max-Theurer is comparable to the dependency Mr Göllner allegedly has.

163. With respect to the 2019 Budapest Event, the Appellants' Claim contended that the Austrian NF had refused Ms Prunthaller entry to this event. It appears from the documentary record, however, that the Austrian NF rather cancelled Ms Prunthaller's registration due to a misunderstanding and confirmed her registration for the event two days after Ms Prunthaller voiced her concern. The issue of whether she would be permitted to take Quebec – as opposed to only Duccio – appears to have arisen from the fact that Ms Schmidt registered Quebec on 5 September 2019 after having previously registered Duccio and Quadrofilius on 2 September 2019. This issue, however, was also resolved in a matter of days and Duccio and Quebec were both accepted for the event.

164. With respect to the 2019 Stuttgart Event, the Appellants' Claim contended that the Austrian NF had refused Ms Prunthaller's entry for this event. There are few documents on file related to this event. It appears, however, that it may have been the organiser (rather than the Austrian NF) that refused her entry. And there are no allegations (much less evidence) that Ms Max-Theurer exerted influence on the organiser of the 2019 Stuttgart Event.

165. With respect to the 2019 Salzburg Event, the Appellants' Claim likewise contended that the Austrian NF had refused Ms Prunthaller's entry for this event. However, it appears from the evidence that it was the organizer – i.e., Mr Göllner – who refused Ms Prunthaller's entry, not the Austrian NF. The Appellants' Claim contended that Mr Göllner took this decision further to the terms of the Ancillary Agreement. As noted above, however, there is nothing in the text of the Ancillary Agreement that obliged Mr Göllner to refuse Ms Prunthaller entry to the 2019 Salzburg Event or any other event.

166. Moreover, the terms of the Ancillary Agreement expired on 30 June 2018 – more than a year before Ms Prunthaller attempted to register for the 2019 Salzburg Event. Recognizing this at the hearing, the Appellants contended that Mr Göllner had in fact denied Ms Prunthaller entry to the 2019 Salzburg Event further to the Pledging Agreement, which the Sole Arbitrator should infer had terms similar to those in the Ancillary Agreement and obliged Mr Göllner to continue to exclude Ms Prunthaller from the Salzburg Event.

167. There are several problems with this.

168. The Appellants' Claim did not contend that Ms Prunthaller had been rejected from the 2019 Salzburg Event further to the terms of the Pledging Agreement, which was submitted to the FEI only after the FEI Decision was made and is therefore not relevant to the determination of this appeal. In all events, the Pledging Agreement does not contain terms like those in the Ancillary Agreement and the Sole Arbitrator sees no basis to infer that it does. And even if the Pledging Agreement did contain terms like those in the Ancillary Agreement, those terms would not oblige Mr Göllner to exclude Ms Prunthaller from the 2019 Salzburg Event or any other event because the terms of the Ancillary Agreement did not impose any such obligation on him.

169. The Sole Arbitrator fails to see how the entry of Victoria and her boyfriend in the 2019 Salzburg Event bears on any alleged breach of Article 1.3. The Appellants' Claim did not even allege (much less provide evidence) that there was any connection between the exclusion of Ms Prunthaller (on the one hand) and the participation of Victoria and her boyfriend (on the other) – e.g., that Ms Prunthaller was excluded to make room for Victoria or her boyfriend to participate. On the contrary, the Appellants' Claim rather contended that Mr Göllner excluded Ms Prunthaller further to the terms of the Agreements – a contention that is unsupported by the texts of the Agreements.

170. At the hearing, the Appellants suggested that Mr Göllner had excluded Ms Prunthaller from the 2019 Salzburg Event at Ms Max-Theurer's urging in order to aid Victoria. This is also a different contention than that put forward in the Appellants' Claim, which was based on the terms of the Agreements, and is therefore likewise irrelevant to the determination of this appeal. It also appears unsupported by any of the evidence

submitted with the Appellants' Claim and the Sole Arbitrator accordingly considers it speculative. For the sake of completeness, however, the Sole Arbitrator notes that Mr Schmidt testified before the Ried im Innkreis Regional Court that Mr Göllner had told Mr Schmidt that Ms Max-Theurer had told Mr Göllner that he must not invite Ms Prunthaller to events in Salzburg. This (again) is double hearsay and is contradicted by Ms Max-Theurer's testimony in the same proceedings ("I know nothing about the fact that Ulrike Prunthaller had not been permitted to start in Salzburg last year" (i.e., 2019)).

171. Turning to Section 1(2) of the Ancillary Agreement, this Section did not give Ms Max-Theurer the right to propose riders and judges for the events Mr Göllner organized. It rather foresaw that Mr Bauer (or, if he were unavailable, another third-party nominated by Ms Max-Theurer) would be engaged to manage the production of the Salzburg Events she was funding and it gave Mr Bauer the power to propose riders and judges for those competitions. Read in context, these provisions appear designed to ensure the quality of those events. The only input Section 1(2) foresaw Ms Max-Theurer having with respect to riders was in connection with three wild cards Mr Göllner had the power to grant "in consultation with" Ms Max-Theurer. And the Appellants' Claim did not allege that Ms Prunthaller was improperly denied a wild card.

172. The Appellants have suggested in these proceedings that Mr Bauer simply acted as a front for Ms Max-Theurer who was the real person proposing riders for the Salzburg Event behind the scenes. In support of this contention, the Appellants rely on a transcript of a telephone call between Ms Ulla Salzgeber (a German Olympic medallist in dressage) and Ms Schmidt on 8 October 2019. The meaning of what is reflected in the telephone transcript is somewhat difficult to understand on its face and Ms Salzgeber did not testify at the hearing. Having said this, the telephone transcript appears to reflect that Ms Salzgeber once approached Mr Bauer about riding in the Salzburg Event and that Mr Bauer "said he would have to ask Sissi" – i.e., Ms Max-Theurer.

173. Assuming *arguendo* that Mr Bauer said this to Ms Salzgeber *and* that he did in fact "ask Sissi", the telephone transcript still does not support an inference that Ms Max-Theurer exerted influence on Mr Bauer's proposals of riders for the Salzburg Event. This is because Ms Salzgeber does not say on what basis she was to ride at the Salzburg Event (if she was to ride at all). Was she to ride further to an invitation issued upon the proposal of Mr Bauer (as the Appellants seem to assume) or was she to ride as a wild card? Indeed, towards the end of the call, Ms Schmidt asked Ms Salzgeber whether Mr Bauer "basically is dependent on [Ms Max-Theurer's] instructions" and Ms Salzgeber responded, "I don't know that." Moreover, the telephone transcript does not address what, if anything, Ms Max-Theurer did in response to Mr Bauer's inquiry.

174. As noted above, the transcript of Mr Bauer's testimony before the Ried im Innkreis Regional Court is not relevant to the determination of this appeal. Assuming *arguendo* that it was relevant, however, it (again) would not support the Appellant's Claim.

175. Mr Bauer testified that, in all the years he has organized the Salzburg Event, he could only recall one instance where he had direct contact with Ms Max-Theurer regarding those tournaments – "namely in connection with a wild card for Mrs. Salzgeber." And he confirmed that this is the instance Ms Salzgeber was referring to in her conversation

with Ms Schmidt. Mr Bauer testified that he asked Ms Max-Theurer to speak with Mr Göllner about the wild card, as Ms Salzgeber wanted to ride at the Salzburg Event and Mr Bauer "already knew that there are always problems with Germany because there are so many top riders here." The wild card "was the only way to get [Ms Salzgeber] here for this tournament." In response, however, Ms Max-Theurer declined to speak with Mr Göllner about the wild card because she "did not want to intervene" and "did not want to have anything to do with it."

176. In closing on the Agreements, the Sole Arbitrator notes that the Appellants' Claim contended that the detailed and rigorous confidentiality provisions in Section 3 of the Donation Agreement and Section 2 of the Ancillary Agreement suggest that Ms Max-Theurer was aware that the contents of the Agreements would be damaging to her if made public. While the Sole Arbitrator considers the confidentiality provisions in the Ancillary Agreement unusually elaborate and strict, she does not see any basis to infer from this that Ms Max-Theurer thought the contents of the Agreements would be damaging to her if publicly known and considers the Appellants' contention in this regard speculative.

177. In light of the above, the Sole Arbitrator considers that it was reasonable for the FEI to decline to pursue this aspect of the Appellants' Claim.

B. Article 100.1 of the 2019 FEI GR

178. Article 100.1 of the 2019 FEI GR provides that the "General Regulations (GRs) are established so that individual Athletes and teams of Athletes from different National Federations (NFs) may compete against each other under fair and equal conditions with the welfare of Horse as paramount."

179. It is thus a statement of objective very similar to Article 1.3 of the 2019 FEI Statutes. Indeed, the Sole Arbitrator does not understand the two provisions – or the basis upon which the Appellants' Claim contended they were breached – to be materially different.

180. The Sole Arbitrator accordingly considers that it was also reasonable for the FEI to decline to pursue this aspect of the Appellants' Claim for the reasons set out above.

C. Article 158 of the 2019 FEI GR

181. Article 158 of the 2019 FEI GR provides as follows:

A substantial appearance of a conflict of interest exists whenever an individual involved in any capacity with the FEI is involved in or perceived to be involved in multiple interests, one of which could possibly influence, or is perceived to influence the motivation for an act in the other.

A conflict of interest is defined as any personal, professional or financial relationship, including relationships of family members that could influence or be perceived to influence objectivity when representing or conducting business or other dealings for or on behalf of the FEI.

Conflicts must be avoided whenever practicable. However, conflicts may be linked to experience and expertise that is necessary to qualify Officials. The specific balance between conflict and expertise shall be regulated by the relevant Sport Rules. All FEI Officials are also bound by and subject to the provisions of the FEI Officials' Code of Conduct, attached to these General Regulations as Appendix H.

182. The Appellants' Claim contended that Ms Max-Theurer and the Austrian NF had breached Article 158 in four ways.

183. First, the Appellants' Claim contended that Ms Max-Theurer's simultaneously holding the following roles creates a "substantial appearance of a conflict of interest" within the meaning of Article 158:

(1) President of the Austrian NF;

(2) a FEI 5* Dressage Judge;

(3) Vice-President of the Austrian Olympic Committee;

(4) a former member of the FEI Dressage Committee;

(5) the sponsor of various equestrian events in Austria and overseas;

(6) the mother of Victoria, who is the second-best Austrian dressage rider and a direct competitor of Ms Prunthaller; and

(7) the owner of high-level dressage horses competing nationally and internationally.

184. Second, the Appellants' Claim pointed to Ms Max-Theurer's announcement that – with respect to the selection of dressage riders for the 2020 Olympic Games – Olympic rankings would no longer be decisive for qualification and that rider selection would instead come down to a decision of a dressage jury and the NOC. The Appellants' Claim contended that this was a departure from the process for the 2008, 2012 and 2016 Olympic Games, when Victoria had the highest Olympic ranking, whereas Ms Prunthaller is currently the highest-ranked Austrian rider. Under the new system, the Appellants' Claim contended that Ms Max-Theurer will be the ultimate decision-maker on Olympic qualifiers – again creating a "substantial appearance of a conflict of interest" within the meaning of Article 158.

185. Third, the Appellants' Claim contended that Ms Max-Theurer used her role as a benefactor of the Salzburg Event to exclude Ms Prunthaller from the 2015, 2016 and 2017 CDIL further to the terms of the Agreements.

186. And fourth, the Appellants' Claim contended that Section 1(2) of the Ancillary Agreement gave Ms Max-Theurer the right to propose both riders and judges to Mr Göllner for events he arranged – an arrangement from which Ms Max-Theurer stood to benefit in her capacity as a FEI Dressage Judge and Victoria's mother.

187. There are several problems with this aspect of the Appellants' Claim.

188. Under Article 158, the definition of "conflict of interest" is quite narrow because it only covers personal, professional or financial relationships, including relationships of family members, that could influence or be perceived to influence objectivity "when representing or conducting business or other dealings for or on behalf of the FEI." Hence the reference in Article 158 to the FEI Officials' Code of Conduct.

189. As far as the Sole Arbitrator is aware, the only time Ms Max-Theurer represents or conducts business or other dealings for or on behalf of the FEI is when she acts as a FEI Dressage Judge at events. The Appellants' Claim did not allege (much less provide evidence) that there had been any situations where Ms Max-Theurer's personal, professional or financial relationships could have influenced or even appeared to influence her objectivity when acting as a FEI Dressage Judge at an event.

190. Moreover, Article 158 does not prohibit conflicts of interest. It rather provides that they must be avoided "whenever practicable" and recognizes that "conflicts may be linked to experience and expertise that is necessary to qualify Officials." And the Appellants' Claim did not even address whether the alleged conflicts may be linked to experience and expertise that is necessary to qualify Ms Max-Theurer as a FEI Dressage Judge.

191. In addition, the Sole Arbitrator does not accept the Appellants' contention that, simply by virtue of her various positions and relationships, Ms Max-Theurer has real or perceived conflicts of interest. The Sole Arbitrator does not understand conflicts of interest (real or perceived) to exist anytime a person wears multiple hats and the Appellants have cited no authority for the proposition that they do. Conflicts of interest rather arise in certain contexts. For example, if Ms Max-Theurer were invited to judge a dressage event where her daughter Victoria was one of the riders, this would give rise to a conflict of interest. But Ms Max-Theurer does not have a conflict of interest at all times by virtue of the fact that she is both a FEI Dressage Judge and Victoria's mother.

192. With respect to the 2020 Olympic Games, there is apparently no dispute that the NOC selected riders based on rankings for the 2008, 2012 and 2016 Olympic Games. There is also apparently no dispute that, for the 2020 Olympic Games, rankings will no longer be decisive and selection decisions will be made by a dressage jury and the NOC. The Sole Arbitrator can understand that the Appellants do not like this change, as it means that Ms Prunthaller is not guaranteed a spot as Austria's top-ranked rider. But this does not mean that the new selection process is in any way improper. The Appellants' Claim – which was, in any event directed at Ms Max-Theurer and the Austrian NF, not the NOC – stopped short of alleging it is or providing any authority for that proposition.

193. The Appellants' contention that, under the new selection process, Ms Max-Theurer would be the ultimate decision-maker with respect rider selection for the 2020 Olympic Games is not explained (much less evidenced). It is also at odds with the Appellants' statement that it is a dressage committee and the NOC that will decide which riders get to go.

194. The Sole Arbitrator notes that, at the hearing, Mr Pischlöger testified that the Austrian NF was a "dictatorship" under Ms Max-Theurer's leadership and that it was not a good idea to have differences of opinion with her. He suggested that he had been sidelined as a result of his disagreements with her. This is not information the FEI had at the time the FEI Decision was made and it is therefore not relevant to the determination of this

appeal for the reasons explained above. In all events, however, Mr Pischlöger's testimony speaks to Ms Max-Theurer's leadership style rather than any alleged conflicts of interest.

195. With respect to the Appellants' contention that Ms Max-Theurer had Ms Prunthaller excluded from the 2016, 2016 and 2017 CDIL further to the terms of the Agreements, the Sole Arbitrator has already found that this contention finds no support in the text of the Agreements.

196. Similarly, with respect to Section 1(2) of the Ancillary Agreement, the Sole Arbitrator has already found that this Section did not give Ms Max-Theurer the right to propose riders and judges for the events Mr Göllner organized.

197. The Sole Arbitrator accordingly considers that it was reasonable for the FEI to decline to pursue this aspect of the Appellants' Claim.

D. Paragraph B.4 of the FEI Code of Ethics

198. In its preamble, the FEI Code of Ethics provides that "all participants in Equestrian Sport, including but not limited to Athletes (and their Support Personnel), Owners, Organisers, Officials, sponsors, and FEI volunteers and staff undertake to respect and be bound at all times by the present Code, and by the IOC Code of Ethics where applicable."

199. Paragraph B.4 of the FEI Code of Ethics provides that "[c]onflicts of interest, whether real or perceived, are to be avoided."

200. The FEI Code of Ethics further provides that the "principles listed above form the FEI Code of Ethics which all FEI constituents must comply with as a condition of representing or participating in FEI activities in any form and under any circumstances."

201. The Appellants' Claim contended that Ms Max-Theurer and the Austrian NF breached paragraph B.4 for all of the reasons they breached Article 158 of the 2019 FEI GR.

202. The Sole Arbitrator disagrees.

203. Paragraph B.4 appears to be broader than Article 158. The term "[c]onflicts of interest" is left undefined. It is not limited to people representing or conducting business on behalf of the FEI and instead extends to "all participants in Equestrian Sport". Moreover, paragraph B.4 purports to prohibit conflicts of interest (real or perceived) full-stop. It does not recognize that conflicts may be linked to experience and expertise or permit conflicts when it is not practicable to avoid them.

204. However, for the reasons explained above, the allegations in the Appellants' Claim are insufficient to suggest a conflict of interest (real or perceived) on the part of Ms Max-Theurer.

205. The Sole Arbitrator accordingly considers that it was reasonable for the FEI to decline to pursue this aspect of the Appellants' Claim.

E. Article 2 of the Codex

206. Article 2 of the Codex provides in pertinent part as follows:

2. A Judge must avoid any actual or perceived conflict of interest. A judge must have a neutral, independent and fair position towards Athletes, owners, trainers, OCs and other Officials and integrate well into a team. Financial and/or personal interest must never influence or be perceived to influence his way of judging.

It is the responsibility of the Judge to be in good health and fit to officiate throughout the duration of the Event.

Activities which will lead to or may lead to a "conflict of interest" when officiating at a CDI, include but are not limited to:

- *Training a participating Horse/Athlete for more than three (3) days in the twelve (12) month period prior to an Event or any training of a Horse/Athlete during a period of nine (9) months before Olympic Games, World Equestrian Games, Continental Championship on Grand Prix level, or World Cup Final, and three (3) months before any other FEI Event.*
- *Nationalistic judging.*

A Judge has the responsibility to notify the FEI in writing of any of the above or other possible conflicts of interest or situations that may be perceived as such.

207. The Appellants' Claim contended that Ms Max-Theurer and the Austrian NF breached Article 2 of the Codex because:

(1) Ms Max-Theurer holds multiple conflicting roles creating an "actual or perceived conflict of interest";

(2) Section 1(2) of the Ancillary Agreement gave Ms Max-Theurer the right to propose judges to Mr Göllner for events he arranged – an arrangement from which she stood to benefit in her capacity as a FEI Dressage Judge and Victoria's mother; and

(3) The Agreements demonstrate that Ms Max-Theurer does not have a "neutral, independent and fair position towards" the Schmidt Family and the Schmidt Family Business.

208. There are several problems with this aspect of the Appellants' Claim.

209. With respect to Ms Max-Theurer's multiple hats, and as explained above, the Sole Arbitrator does not accept the Appellants' contention that, simply by virtue of her various positions and relationships, Ms Max-Theurer has real or perceived conflicts of interest.

210. The Sole Arbitrator has likewise already noted that Section 1(2) of the Ancillary Agreement did not in fact give Ms Max-Theurer the right to propose judges to Mr Göllner for events he organized.

211. With respect to Ms Max-Theurer's position vis-à-vis the Schmidt Family and the Schmidt Family Business, it cannot be gainsaid that the relationship between Ms Max-Theurer and the Schmidt Family is acrimonious. It is also the case that Section 1(4) of the Ancillary Agreement expressly required Mr Göllner to exclude the Schmidt Family and the Schmidt Family Business from having any voice in the events he organized.

212. In addition, after the FEI Decision was made, the Appellants sent the FEI the above-mentioned transcript of Ms Max-Theurer's testimony before the Ried im Innkreis Regional Court. There, she testified that she included Section 1(4) in the Ancillary Agreement because she did not want to have anything to do with Mr Schmidt and did not want to have any possibility of contact with him.

213. As the FEI received this transcript after the FEI Decision was made, it is not relevant to deciding this appeal. Having said this, the Sole Arbitrator accepts for purposes of this appeal that Ms Max-Theurer did not – and does not – want to have anything to do with the Schmidt Family, as this can be reasonably inferred from the text of Section 1(4) of the Ancillary Agreement and the history of their relationship more generally, even in the absence of the transcript.

214. In light of this, the Appellants consider Ms Max-Theurer's situation is similar to that of FEI Dressage Judge Leif Törnblad. In November 2017, the FEI temporarily suspended Mr Törnblad for the remainder of 2017 due to his breach of the first two sentences of Article 2 of the Codex. The breach arose from inappropriate comments Mr Törnblad made to the media about current trainers and athletes that called his neutrality into question. In sanctioning him, the FEI informed Mr Törnblad that it did not question either his integrity or his performance as a FEI Dressage Judge.

215. The Sole Arbitrator considers the Appellants' reliance on the Törnblad decision misplaced.

216. Article 2 of the Codex is designed to ensure the integrity of the judging at FEI events. To that end, it is principally concerned with conflicts of interest that arise in the context of competitions. Hence the express mention of training limitations in advance of competitions and the prohibition of nationalistic judging – neither of which is at issue here. Indeed, there are no allegations in the Appellants' Claim concerning Ms Max-Theurer's performance as a FEI Dressage Judge in competition.

217. The integrity of the judging at FEI events can also, however, be affected by the behaviour of FEI Dressage Judges outside the context of competitions. Mr Törnblad's case provides an example. By making inappropriate comments to the media about certain athletes and trainers, Mr Törnblad failed to maintain a neutral, independent and fair position towards athletes and trainers in a way that called his neutrality into question.

218. The Appellants' Claim did not even allege (much less evidence) that Ms Max-Theurer had ever done likewise. Indeed, it contained no suggestion that she had ever made any comments – much less inappropriate comments – about the Schmidt Family or the Schmidt Family Business to the media. The Appellants rather seem to consider that the acrimony between the Schmidt Family and Ms Max-Theurer is – in and of itself – sufficient to put her in breach of Article 2 of the Codex outside of competition. The

Sole Arbitrator is aware of no authority for this proposition and the Appellants have pointed to none.

219. To the extent the Appellants consider that there is any similarity between Ms Max-Theurer and the judges in *Dzhumadzuk*, the Sole Arbitrator fails to see it. *Dzhumadzuk* concerned allegations of nationalistic judging – allegations that figure nowhere in the Appellants' Claim against Ms Max-Theurer and the Austrian NF.

220. The Sole Arbitrator accordingly considers that it was reasonable for the FEI to decline to pursue this aspect of the Appellants' Claim as well.

221. In light of the above, the Sole Arbitrator dismisses the Appellants' appeal with respect to the FEI Tribunal Decision.

X. COSTS

222. Article R64.4 of the CAS Code provides that:

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,*
- *the fees of the* ad hoc *clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.

223. Article R64.5 of the CAS Code provides that:

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 and without any specific request from the parties, 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 complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.

224. As the Respondent is the prevailing party in this case, the Sole Arbitrator considers that the Appellants should accordingly bear the costs of arbitration as determined by the CAS Court Office.

225. The Sole Arbitrator has decided, however, not to award the Respondent any contribution towards its legal fees or other expenses incurred in connection with the proceedings. In this case, the Respondent did not engage outside counsel but was rather represented by its in-house legal team, the cost of which is a general business expense that is not directly related the Appellants' appeal. In addition, the case ran smoothly, with both sides conducting themselves in a manner designed to ensure the efficiency of the proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Wenzel Schmidt, Ms Edda M. Schmidt, Mr Maximilian-Emanuel Schmidt and Ms Ulrike Prunthaller against the Fédération Equestre Internationale with respect to the decision of the FEI Tribunal dated 4 May 2020 is dismissed.

2. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by Mr Wenzel Schmidt, Ms Edda M. Schmidt, Mr Maximilian-Emanuel Schmidt and Ms Ulrike Prunthaller.

3. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.

4. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 20 May 2021

THE COURT OF ARBITRATION FOR SPORT

Jennifer Kirby
Sole Arbitrator