



DECISION of the FEI TRIBUNAL

on Appeal by Mr. Gonalo Miguel Carvalho Conchinhas

dated 18 May 2016

In the matter of

Mr. Gonalo Miguel Carvalho Conchinhas (“Mr. Carvalho” or “the Appellant”)

vs.

F  D  RATION EQUESTRE INTERNATIONALE (“FEI” or “the Respondent”)

I. COMPOSITION OF PANEL

Mr. Laurent Niddam, single member panel

II. SUMMARY OF THE FACTS

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

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Relevant Statutes/Regulations:

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

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

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

FEI Dressage Rules 25th edition, effective 1 January 2014, updates effective 1 January 2016 ("**DRs**").

FEI Regulations for Equestrian Events at the Olympic Games 24th Edition, Effective for the 2016 Rio (BRA) Olympic Games ("**FEI Regulations for Rio 2016**").

IOC/FEI QUALIFICATION SYSTEM – GAMES OF THE XXXI OLYMPIAD – RIO 2016 - FÉDÉRATION EQUESTRE INTERNATIONALE – Dressage, English version, March 2016 (the "**Qualification System Document**").

RIO 2016 OLYMPIC GAMES EQUESTRIAN FEDERATION EQUESTRE INTERNATIONALE, FEI Olympic Ranking – Dressage, December 18, 2014 (the "**Olympic Ranking Document**").

IOC Olympic Charter, in force as of 2 August 2015 ("**Olympic Charter**").

2. The relevant Legal Provisions

GRs Article 112.3: "The Secretary General shall have the authority to remove any Competition and/or Event from the Calendar if justified circumstances relating to a Competition or Event are established."

GRs Article 113: "1. All Athletes and Horses must be registered with the FEI, and their own NF, or where appropriate with their host NF, before they can be entered and permitted to take part in an International Event, unless otherwise specified by the Sport Rules (...).

(...)

3. Any Athlete and/or any Horse not registered with the FEI and/or not fulfilling an eligibility requirement shall be automatically disqualified, unless compelling circumstances warrant otherwise."

GRs Article 139: "4. Horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 15th January of the year of the Games (see Olympic Regulations).

5. Athletes may take part in all Events except Olympic Games with Horses belonging to Owners of a different nationality (see also Article 118 Person Responsible)."

GRs Article 157.4: "Competitions must be fair for all Athletes. (....) "

GRs Article 158: "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."

FEI Regulations for Rio 2016 Article 606.1.1: "To be eligible for participation in the Equestrian Events at the Olympic Games, Athletes and Horses must comply with all current FEI Regulations as well as Rules 40 & 41 of the Olympic Charter and its Bye-Laws pertaining to the IOC Eligibility Code and Nationality (see **Annex A**)."

FEI Regulations for Rio 2016 Article 606

"2. Horses

(...)

2.2 Ownership

2.2.1. Horses entered for the Equestrian Events at the Olympic Games must have been registered with FEI as property of owners of the same nationality as the Athlete, by **15 January 2016**.

2.2.2. Horses, with multinational ownership, must be registered with FEI by **15 January 2016** (as per above paragraph), under the name of the nation for which the Horse will compete during the Olympic Games.

2.2.3. National Federations (NFs) are responsible to ensure that Horses which do not meet ownership requirements as laid down by FEI, are not entered for the Equestrian Events at the Olympic Games.

FEI Regulations for Rio 2016 Article 620.3: "Horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 31st December of the year preceding the Games.

For the 2016 Olympic Games the relevant date is 15 January 2016."

FEI Regulations for Rio 2016 Article 629: "To be eligible to participate in the Rio 2016 Olympic Games, all Athletes/Horses must achieve the following minimum eligibility requirement as a combination: (i) A minimum of sixty four percent (64 %) must be attributed twice to the Athlete/Horse combination by both a 5* judge and as an average from all judges in the Competition, and the score must be achieved in a Grand Prix test at two (2) different CDI3*/CDI4*/CDI5*/CDI-W/CDIO Events. The two (2) 5* judges must be of a nationality other than of the Athlete. Scores achieved in Preliminary or Consolidation Grand Prix classes judged by three (3) Judges do not count towards the minimum eligibility

requirement at Events which take place from 1 January 2015 until 19 June 2016 included."

FEI Olympic Ranking Document:

"(...)

The ranking list is calculated over a period of one year, from 9 March 2015 to 6 March 2016.

At the end of each month the points earned during that month are added to the list. The FEI Olympic Ranking List is a ranking list of Horse/Rider Combination.

The ranking list takes into consideration the best results/percent scores of the Horse/Rider Combination.

(...)

All CDI 3*/4*/5* and CDI-W events, judged by min. five judges of whom at least three are foreign, the results may count (GP, GP Special, GP Freestyle). At Continental Championship on GP-level three results per rider/horse may count (GP, GP Special, GP Freestyle)

(...)"

FEI Olympic Ranking Document:

"(...)

The FEI has the right to accept reasonable exceptions to these rules, in the interest of the riders and the sport in general.

The FEI Dressage Committee may decide not to include the scores obtained at an event in the rankings, should the event not have been organized in accordance with general principle of fairness. The Executive Board should confirm the decision of the Dressage Committee." (the **"Fairness Principle"**).

GRs Article 163.4: "Protests in the following matters can only be lodged with the Ground Jury:

4.1 Protests concerning the eligibility of an Athlete or Horse for a specific Event or concerning the conditions of the arena. Such Protests must be filed no later than thirty (30) minutes before the start of the relevant Competition;"

GRs Article 165: " 1. An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see paragraph 2 below):

(...)

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

IRs Article 17.1: “In accordance with Article 36 of the FEI Statutes, the FEI Tribunal has the competence to hear and determine any matter properly submitted to it, including, but not limited to, those matters specified in Article 163 (Protests) and Article 165 (Appeals) of the FEI General Regulations and all disputes and procedures arising under the Equine Anti-Doping and Controlled Medication Regulations.”

IV. DECISION

The below presents a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 Sixty (60) athletes will compete in the Dressage event at the 2016 Rio Olympic Games (“**Rio 2016**”): forty (40) athletes will compete as members of teams (10 x 4 member teams) and the remaining twenty (20) athletes will compete as individuals.
- 1.2 The Qualification System Document sets out the process whereby individual athletes earn quota places for their National Olympic Committees (the “**NOCs**”) for the Dressage event at Rio 2016; twenty (20) individual quota places are allocated to NOCs according to the final rankings of individual athletes in the FEI Olympic Athletes Ranking Dressage. This ranking is calculated according to the Olympic Ranking Document. Fourteen (14) quota places are allocated through the FEI Olympic Group system. The remaining six (6) quota places are allocated to the NOCs of the best ranked athletes in the FEI Olympic Ranking Athletes – Dressage (the “**Overall Ranking Allocation**”).
- 1.3 Mr. Carvalho is a Dressage rider (FEI ID 10028400), who competed in a number of international dressage events (CDIs) with the aim of earning a quota place for Rio 2016 for the Portuguese NOC. His final ranking, however, was not high enough for him to earn such a quota place, i.e. the six (6) best ranked Athletes according to the Overall Ranking Allocation.

2. Procedural Background

- 2.1 On 18 March 2016, Mr. Carvalho - pursuant to Article 165 of the GRs and Article 17 of the IRs - lodged an Appeal with the FEI Tribunal. The Appeal consists of two separate limbs **(i)** an appeal against the eligibility of the Athlete Valentina Truppa and the horse Quixote Eremo del Castegno (the "**Horse**") to participate at Rio 2016 ("**Appeal A**"); and **(ii)** an appeal against the results of the CDI 3* Event held in Lier, Belgium on 1 - 2 March 2016 (the "**Lier Event**") ("**Appeal B**").
- 2.2 On 7 April 2016, the FEI provided its Answer to the Appeal, *i.e.*, Appeal A and B. Together with its Answer the FEI provided, among others, a FEI Dressage Committee Decision, extracts of the minutes of a FEI Executive Board meeting, and a FEI press release with regards to the Lier Event.

3. Factual background with regards to Appeal A

- 3.1 Since 4 January 2016, ownership of the Horse - previously owned by an Italian owner - has been registered with Dr. Jorge Ferreira da Rocha, a Brazilian national (the "**Owner**").
- 3.2 The Italian athlete, Ms. Valentina Truppa (FEI ID 10010349), competing with the Horse and has earned a quota place for the Italian NOC by finishing first on the Overall Ranking Allocation. The Italian NOC within the respective deadline, *i.e.*, 31 March 2016, has confirmed that it will use the allocated quota spot.
- 3.3 The Rio 2016 Sports Entries Deadline, *i.e.*, the date by which all Athletes and Horses must be entered for participation in Rio 2016, is 18 July 2016.

4. Written submissions by the Appellant with regards to Appeal A

- 4.1 In essence, Mr. Carvalho requested the Tribunal to grant Appeal A and to:

"a) Rule on the automatic disqualification of the horse, Quixote Eremo del Castegno for the Rio de Janeiro Olympic Games;

or

b) To rule on the disqualification of both the horse Quixote Eremo del Castegno and its rider, Valentina Truppa, from the Rio de Janeiro Olympic Games;"
- 4.2 More specifically, Mr. Carvalho argued that, as the Owner of the Horse was Brazilian, since the nationality of the Horse was Italian, and since the last day for the registration of the Horse with regards to its participation in Rio 2016 was 15 January 2016, this horse/owner combination was violating various rules, namely (i) Articles 606.1.1, 606.2.2.1, 620 and

624.2 of the FEI Regulations for Rio 2016; (ii) Article 113 of the GRs; and (iii) Rules 40 and 44 of the Olympic Charter (read in conjunction with the Rules 27 and 41 thereof). That those provisions set out the preconditions that had to be complied with in order for a rider/horse unit to be able to take part in equestrian events, including Rio 2016. That violating those provisions had the consequences outlined above, *i.e.*, a) and b).

- 4.3 Mr. Carvalho further argued that any other opinion, *i.e.*, that Ms. Truppa may qualify for Rio 2016 riding another horse via the Italian NOC, would totally distort and defeat the practical effect of the provisions referred to above. That indeed there would be no point in setting a deadline for the registration of the horse, if there was no connection between the horse and the registration, *i.e.*, for Rio 2016, and the rider, who competed with that horse. Mr. Carvalho considers that such an interpretation would be contrary to the ethics of sport, *i.e.*, by validating the qualification of a given rider, which had been obtained with the help of a certain horse, and then, permitting that rider to compete with another horse in the competition for which he/she had qualified. Mr. Carvalho therefore considered the sporting activity of one and the other, *i.e.* the rider and the horse, inseparable, and that it was for that reason that the terms "unit" or "pair" were used.
- 4.4 Finally, Mr. Carvalho made reference to a previous case decided by the Court of Arbitration for Sport ("**CAS**") (CAS/2012/A/2845 Alexander Peternell v. South African Sport Confederation and Olympic Committee, Award of 23 July 2012). Following that decision, Mr. Carvalho argued that an athlete could not be eligible, *i.e.*, capable of being selected by a NOC, if he/she did not comply with the general eligibility criteria established by the FEI.

5. Answer by the FEI with regards to Appeal A

- 5.1 The FEI requested the Tribunal to:
- "(a) *Confirm that Appeal A is inadmissible; or alternatively*
 - (b) Dismiss Appeal A on its merits;*
 - (c) Determine that the Appellant shall bear the costs of Appeal A proceedings and make a contribution towards the FEI's legal costs."*
- 5.2 Regarding the admissibility of Appeal A, the FEI argued that it was not admissible, as matters concerning the eligibility of an athlete and a horse, *i.e.*, Ms. Truppa and the Horse in the case at hand, clearly relates to a protest in accordance with Article 163.4 of the GRs. To the FEI's knowledge however, no such protest had been filed at any event during the Rio 2016 qualification period (*i.e.*, 9 March 2015 to 6 March 2016) (the "**Qualification Period**").
- 5.3 Further, Appeal A could neither be considered as an appeal against Ms. Truppa's and/or the Horse's participation in Rio 2016 as such an appeal was also inadmissible by virtue of the fact that neither Ms. Truppa nor the Horse had been entered for Rio 2016 yet since the Sports Entry Deadline was only

on 18 July 2016, and since there was no guarantee at this stage that either Ms. Truppa or the Horse will be selected to compete at Rio 2016. That in this respect the Italian NOC was free to select any Italian Athlete and Horse combination to participate at Rio 2016, provided that they meet the eligibility requirements of Article 629 of the FEI Regulations for Rio 2016.

- 5.4 While the FEI agreed that Ms. Truppa could not compete with the Horse at Rio 2016, the FEI argued that - pursuant to Article 139.2 of the GRs - if selected by the Italian NOC, she could compete at the 2016 Rio Olympic Games with another horse, provided that she and such horse complied with Article 629 of the FEI Regulations for Rio 2016. As a matter of fact, Ms. Truppa has achieved such minimum eligibility requirements with two other horses, both of which were owned by Italian owners.
- 5.5 Regarding the merits of Appeal A, the FEI argued that the most relevant provision for the purpose of the Appeal A was Article 139.5 of the GRs, which foresaw that "*Athletes may take part in all Events except Olympic Games with Horses belonging to Owners of a different nationality...*". That the Appellant has however made no attempt to address the existence of this provision, and has not submitted any arguments as to why it should not apply to the circumstances in the case at hand. Further, and contrary to the Appellant's claim, there existed no rule in either the FEI's or IOC's rulebook - which would be in contradiction with Article 139.5 of the GRs - that quota places awarded to NOCs have to be earned by Athletes competing on horses of the same nationality. For the FEI, rules in relation to the eligibility requirements referred to in the Appellant's submission were eligibility requirements which applied in relation to participation in the Olympic Games and not in relation to the qualification system for the Olympic Games; this was a crucial distinction.
- 5.6 Ms. Truppa and the owner of the Horse have complied with FEI rules, i.e., Article 139.5 of the GRs, and that no more could be expected from them than complying with the rules. That therefore there existed no reason that Ms. Truppa has to be disqualified from competing in Rio 2016 (if selected by her NOC) simply because the horse she has earned the quota place for the Italian NOC with, is, since 4 January 2016, owned by a Brazilian owner. Moreover, the last time that Ms. Truppa competed on the Horse was on 6 December 2015, and that therefore Ms. Truppa and the Horse have earned all their Olympic ranking points during a time period when the Horse was owned by an Italian owner.
- 5.7 In addition, the FEI argued that, if it was the case that quota places allocated to NOCs were to be earned by Athletes competing on horses of the same nationality, such a rule needed to be clearly stated so that National Federations, NOCs, Athletes and Owners were able to plan accordingly. Finally, that for an Athlete to compete in the Olympic Games on a horse other than the horse on which the Athlete earned a quota place did in no way run "counter to the ethics of sport", but it was rather sometimes a matter of sporting reality that an Athlete needed to change horses prior to competing in Olympic Games, i.e. due to injury. That, if one accepted the Appellant's argument, this Athlete would be prevented from competing on another horse in such a situation. That it would be unfair and

a gross misconstruction of the rules if such an interpretation was to be accepted, and it would also contradict Article 609 of the FEI Regulations for Rio 2016, which allows for the substitution of an Athlete and/or Horse in Dressage at the Olympic Games in the event of an accident or illness of an Athlete and/or Horse.

- 5.8 Moreover, the FEI submitted that what the Appellant was seeking, required the Tribunal to **(i)** interpret the various rules cited by the Appellant in such a way that such interpretation would directly contradict/prevail over the provision of Article 139.5 of the FEI GRs; and **(ii)** decide the case on the basis of such interpretation, *i.e.*, as though a rule preventing Athletes from earning a Rio 2016 quota place for their NOC on a horse owned by an owner of a different nationality had applied during the period when Olympic quota places could be earned, from 9 March 2015 to 6 March 2016. That the Appellant was requesting the Tribunal to retrospectively apply a rule that clearly did not exist during the Qualification Period. That this would violate the principle of procedural fairness and the prohibition against *venire contra factum proprium* (no one may set himself in contradiction to his own previous conduct) recognised under Swiss law. That the applications of this principle in a sporting context has been consistently confirmed by CAS jurisprudence (CAS 2008/O/1455 Boxing Australia v/AIBA, award of 16 April 2008; CAS OG 02/006 New Zealand Olympic Committee (NZOC)/The Salt Lake Organizing Committee for the Olympic Winter Games of 2002 (SLOC), award of 20 February 2002).
- 5.9 The FEI further argued that in the case at hand Ms. Truppa has a legitimate expectation, based on the clear and unambiguous wording of the FEI Rules, and in particular Article 139.5 of the GRs, that she was perfectly entitled to earn a quota place for the Italian NOC on a horse of any nationality and that doing so would not affect her eligibility to compete in Rio 2016. Furthermore, that the Owner of the Horse has also a legitimate expectation that the Horse was eligible to compete in Rio 2016 with a Brazilian athlete if that Brazilian athlete was selected by the Brazilian NOC (and provided the minimum eligibility criteria have been met) and was not prevented from competing in Rio 2016 merely due to the fact that an athlete of another nationality has competed on the Horse during the Qualification Period. That to hold otherwise violated the principle of procedural fairness and the prohibition against *venire contra factum proprium*.

6. Factual background with regards to Appeal B

- 6.1 A CDI 3* Event was held in Lier (BEL) on 1 - 2 March 2016 (the "**Lier Event**"). The Lier Event consisted of four (4) separate Grand Prix Competitions.
- 6.2 The Appellant did not compete at the Lier Event. After the Lier Event the Appellant's ranking dropped to 8th position in the Overall Ranking Allocation list.
- 6.3 On 17 March 2016, the FEI Dressage Committee met to consider complaints/requests to look into the Lier Event received from the Polish

National Federation and from the Appellant prior to the submission of the Appeal, in order to determine whether or not the event and the competitions were conducted in a fair manner. At this meeting, the FEI Dressage Committee took the following decision (the "**FEI Dressage Committee Decision**"):

"(....)

Regarding the CDI3 Lier held on 1-2 March 2016, the Dressage Committee noted that such event comprised of 4 separate competitions. The Dressage Committee agreed that **nationalistic judging** in favour of the UKR Athlete, Inna Logutenkova, by two Ukrainian judges occurred during the Grand Prix Special test of the CDI3* Lier on 2 March 2016.*

As a consequence, the majority of the Dressage Committee (5 members in favour, 1 member against) decided that the "Fairness Principle" as outlined in the FEI Olympic & World Ranking Rules for Dressage shall be applied, meaning that the results of the Grand Prix Special at the CDI3 Lier (2 March 2016) shall NOT count towards the Olympic & World Rankings for Dressage.*

For the information of the Executive Board, the Dressage Committee was satisfied that there are no grounds for applying the fairness principle in relation to the CDI 4 Lier held on 4 – 6 March 2016 and that, therefore, the results from such events should count towards the Olympic & World Rankings for Dressage."*

- 6.4 On 21 March 2016, the FEI Executive Board confirmed the FEI Dressage Committee Decision. The extract of the minutes of the FEI Executive Board meeting reads as follows:

"The FEI Executive Board discussed and reviewed the Annex provided to by the FEI Dressage Committee regarding the CDI 3 Lier (BEL), March 2016.*

The FEI Executive Board confirmed the FEI Dressage Committee's decision to apply the "Fairness principle" as outlined in the FEI Olympic & World Ranking Rules for Dressage in connection with the CDI3 Lier held on 1-2 March 2016. This means that the results of the Grand Prix Special at the CDI3* Lier (2 March 2016) shall NOT count towards the Olympic & World Rankings for Dressage.*

Once the FEI Executive Board has confirmed the decision in writing, the Olympic and World Rankings will be update accordingly and all the relevant parties will be informed. After this process has been completed, a press release on the decision will be sent out and the finalised Olympic Rankings will be published.

(...)"

- 6.5 On 22 March 2016, the FEI issued a press release informing of the FEI Dressage Committee Decision, supported by the FEI Executive Board, and

confirming completion of the final allocation of quota places for the 2016 Rio Olympic Games.

7. Written submission by the Appellant with regards to Appeal B

- 7.1 In essence, Mr. Carvalho requested the Tribunal to grant his Appeal B and:

"c) To notify the Secretary General to remove the competition 2016 OC CDI3 Lier from the Calendar in what concerns the FEI Olympic Athletes Ranking;*

Or, at least

d) To rule on the non-consideration of the scores obtained by the horse rider Inna Logutenkova at 2016 OC CDI3 Lier for the purpose, of the FEI Olympic Athletes Ranking."*

- 7.2 On 1 April 2016, following email communications with the FEI, the Appellant further explained that *"it shall be considered admissible and consequently appreciated by the FEI Tribunal, in the exact terms requested," i.e.,* an Appeal pursuant to Article 165 of the GRs, as filed on 18 March 2016. That the reason for that was exactly that a protest permitted by Article 163 of the GRs had been already out of time.
- 7.3 In his Appeal B, the Appellant more specifically argued that the Lier Event violated the most basic principle of fairness, a fundamental principle outlined in Article 157.4 of the GRs, and that a notorious conflict of interest existed at the Lier Event. That Ms. Logutenkova won the two 3* Grand Prix classes at the Lier Event, and that she exceeded her own scores ever obtained in a CDI. That with those scores Ms. Logutenkova ranked in 6th in the Overall Ranking Allocation. That the violation of the Fairness Principle and the conflict of interest were based on the fact that the Lier Event was sponsored by the Ukrainian VIAN Group, which also supported Ms. Logutenkova, and since that company was also responsible for inviting the judges at the Lier Event, three of which had been Ukrainian judges, providing Ms. Logutenkova with those high scores. That, even though pursuant to Article 158 of the GRs, one had to balance between conflict and expertise, the conflict of interest in the case at hand resulted *"in a tampering and manipulation of true sports,"* which damaged several athletes, such as the Appellant, and put into question the fairness and loyalty of such an ancient and noble sport.
- 7.4 For these reasons therefore, the Appellant considers that the conditions are met for the Secretary General to remove the Lier Event from the Calendar, in accordance with Article 112.3 of the GRs. Further, in order to re-establish the fairness and justice of the sport, the Lier Event, or, at least the scores obtained by Ms. Logutenkova shall not be taken into account for the Olympic ranking determination.

- 7.5 On 1 April 2016, and having received a copy of the FEI Dressage Committee Decision and the extract of the minutes of the FEI Executive Board meeting by the FEI, the Appellant further argued that, whereas he appealed all CDI3* competitions at the Lier Event, the Dressage Committee and the FEI Executive Board only decided on the Grand Prix Special CDI3*. That the Grand Prix CDI3* results were also to be removed, as (i) the same two judges with Ukrainian nationality judged at this competition; those judges gave Ms. Logutenkova "over rated scores", compared to other judges and the usual scores achieved by Ms. Logutenkova; and (iii) the same company, i.e., the Ukrainian VIAN Group, was sponsor for both, Ms. Logutenkova, as well as the Lier Event, which manifested a conflict of interest.

8. Answer by the FEI with regards to Appeal B

- 8.1 The FEI requested the Tribunal to:

- "(a) *Confirm that Appeal B is inadmissible; or alternatively*
- (b) Dismiss Appeal B on its merits;*
- (c) Determine that the Appellant shall bear the costs of Appeal B proceedings and make a contribution towards the FEI's legal costs."*

- 8.2 Regarding the admissibility of Appeal B, the FEI argued that it was not admissible, as an Appeal in accordance with Article 165 of the GRs could only be lodged against "any Decision," and since "Decision" was defined in the Statutes as "*an authoritative determination reached or pronounced after consideration of facts and/or law.*" That therefore prior to the FEI Dressage Committee Decision (taken on 17 March 2016) as confirmed by the FEI Executive Board Decision (on 21 March 2016) and as publicly communicated on 22 March 2016, no "Decision," within the meaning of Article 165.1 of the GRs, was taken in relation to the Lier Event. Since the Appeal submitted by the Appellant had been filed prior to the publication of both the FEI Dressage Committee Decision and the FEI Executive Board Decision, such document could not be considered as an "Appeal" against a "Decision" of the FEI within the meaning of Article 165.1 of the GRs. The Appellant confirmed however that he did not wish to amend his original appeal and confirmed that it had been made under Article 165.1 of the GRs.

- 8.3 The FEI therefore requested the Tribunal to rule that the Appeal B was inadmissible and to further rule that the Tribunal does not have jurisdiction to hear such Appeal B on the basis that: **(i)** the Appellant has acknowledged that a Protest against the results of the Lier Event would not be admissible due to the application of Article 163.4.4 of the GRs; **(ii)** the Appellant has failed to file an appeal with the FEI Tribunal against any "Decision" of the FEI within the meaning of Article 165.1; **(iii)** the Appellant has chosen not to amend or supplement his original appeal document to file an appeal with the Tribunal against the FEI Dressage Committee Decision or the FEI Executive Board Decision; and **(iv)** the Appellant has specifically requested that the original appeal be maintained "*in the exact terms requested.*"

- 8.4 Together with its Answer, the FEI also submitted a statement by Mr. Frank Kemperman, Chair of the FEI Dressage Committee. In his statement, Mr. Kemperman confirmed that the FEI Dressage Committee reviewed in detail and discussed the scoring and judging in all four (4) Grand Prix Competitions in order to decide whether or not it would be appropriate to apply the Fairness Principle contained the FEI Olympic & World Ranking Rules for Dressage to (i) any; or (ii) some; or (iii) all of the four (4) Grand Prix Competitions which were held as part of the Lier Event. That the FEI Dressage Committee has, in fact, considered the results and scoring of the Grand Prix Competition held on 1 March 2016 in which Ms. Logutenkova competed, that however the FEI Dressage Committee decided that it was not appropriate to apply the Fairness Principle to such Grand Prix Competition; that the Fairness Principle has however been applied to the Grand Prix Special Competition held on 2 March 2016.
- 8.5 On the merits, the FEI argued that contrary to the Appellant's claim that the FEI Dressage Committee only decided about the Grand Prix Special CDI 3*, the FEI Dressage Committee did consider the Lier Event as a whole, which was also confirmed by Mr. Kemperman. Having done so, the FEI Dressage Committee considered it appropriate to apply the Fairness Principle to only the Grand Prix Special Competition held on 2 March 2016. Further, that the FEI issued a press release confirming the final allocation of quota places for the Rio 2016 Olympic Games, a step that the FEI could only have taken if and when the FEI was satisfied that all aspects of the complaints regarding the Lier Event have been addressed.
- 8.6 The FEI further argued that it was neither for the FEI Legal Department nor for the Tribunal to contradict the expert opinions of the members of the FEI Dressage Committee, and that there was no suggestion that the FEI Dressage Committee has acted inappropriately, misapplied the rules or has not followed fair procedures. That therefore there were no grounds for overturning the FEI Dressage Committee Decision. Furthermore, that the application of the Fairness Principle to the other three (3) Grand Prix Competitions would significantly boost the Appellant's chance of earning a quota place for the POR NOC, and that therefore the opinion of the Appellant that the scores given by the Ukrainian judges to Ms. Logutenkova have been "over rated" could not be regarded as independent or objective, unlike the opinion of the FEI Dressage Committee as formalised in the FEI Dressage Committee Decision.
- 8.7 Regarding the Appellant's conflict of interest claims, the FEI argued that no conflict of interest arose merely because an Athlete competed in an equestrian event that was sponsored by his or her personal sponsor. That, if that was the case, many athletes would simply not be able to attract sponsors. That for example the current Olympic Jumping champion, Mr. Steve Guerdat, was sponsored by Rolex, a watch company, and that he won a Grand Prix Competition in December 2015, sponsored by the very same watch company. The FEI further explained that it was the Organising Committee that invited the judges, and that in the Lier Event, the official Organiser was Azelhof Horse Events BVBA, a club authorised by the Belgian National Federation; the schedule just stated that the Lier Event was

organised "in cooperation with" World Dressage Management (VIAN Group).

- 8.8 Regarding the Appellant's request for removal of the Lier Event from the FEI Calendar, the FEI argued that it would be beyond the jurisdiction of the Tribunal to make such an order or notification, since the wording of Article 112.3 of the GRs made it clear that the authority to remove an Event or Competition from the FEI Calendar was personal to the FEI Secretary General and could only be exercised by the person holding such role.
- 8.9 Regarding the Appellant's request for the Tribunal to rule on the non-consideration of the scores obtained by Mr. Logutenkova at the Lier Event, the FEI argued that the removal of just an individual athlete's scores from the rankings, was not foreseen or permitted under the Fairness Principle, which provided only for the removal of all scores obtained in the relevant event/competition. Such action would, therefore, be beyond the jurisdiction of the FEI Tribunal. The Fairness Principle could only be applied "should the event not have been organized in accordance with general principle of fairness." That however the FEI Dressage Committee, having considered the Lier Event, had decided that the only Competition that warranted the application of the Fairness Principle was the Grand Prix Special Competition.
- 8.10 To conclude, the FEI submitted that the FEI's only motivation throughout the entire process related to the Lier Event had been to ensure that the principle of fair play for all athletes had been respected. That the FEI Dressage Committee had followed due process in examining the complaints of the Polish National Federation and the initial complaint submitted by the Appellant. That the FEI Dressage Committee had taken all relevant facts into consideration before reaching a decision, which was firmly grounded in the rules, namely upon the Fairness Principle.

9. Jurisdiction

The Tribunal has jurisdiction over the matter pursuant to the Statutes, GRs and IRs.

10. Admissibility of Appeal A

- 10.1 As with any Protest or Appeal under the GRs, as a first step the Tribunal needs to decide the admissibility of the remedy chosen by the Appellant. Provided the Tribunal accepts the admissibility of the Protest or Appeal, in a second step the Tribunal has to decide on the merits of the case, *i.e.*, whether the claims of the Appellant have been duly established supported by evidence.
- 10.2 The Tribunal notes that the Appellant has chosen to lodge an Appeal under Article 165 of the GRs. The Tribunal however finds that the Appeal is inadmissible, for the reasons outlined below.

11. Decision of Appeal A

- 11.1 The Tribunal takes note that the matter of Appeal A concerns the eligibility of an athlete and a horse for an event. Article 163.4 of the GRs specifically requires the remedy of a "Protest" in cases concerning eligibility. The Tribunal therefore finds that the correct remedy in the case at hand with regards to Appeal A would have been a Protest pursuant to Article 163.4 of the GRs. Furthermore, the Tribunal understands that the case at hand concerns the eligibility of an athlete and a horse, Ms. Truppa and the Horse, to participate in Rio 2016, a future event, for which neither the athlete nor the horse has been entered yet, since the entry deadline is only 18 July 2016. As a result, the Tribunal finds that a Protest could not be lodged at this point in time since Ms. Truppa and/or the Horse are not entered for the event to which the Protest relates to.
- 11.2 As a result, the Tribunal does not have to decide on the merits of Appeal A. The Tribunal however finds that even if Appeal A would have been admissible, which is not the case, Appeal A would have to be dismissed on the merits. The Tribunal comes to this conclusion for the following reasons.
- 11.3 The parties are in agreement that Ms. Truppa cannot compete with the Horse at Rio 2016, as a horse has to be registered of the same nationality as the rider, which is not the case here. Furthermore, it is not disputed that both, athletes and horses, need to comply with certain eligibility criteria established by the FEI, in order to be able to be selected for the Olympic Games, and for Rio 2016 in the instant case.
- 11.4 The Tribunal takes note of the Appellant's claim that an Athlete could only compete during the Olympic Games with a horse he or she had qualified a quota place for his or her NOC, and that this was not the case here since Ms. Truppa could no longer compete with the Horse during Rio 2016, as the nationality requirements were not fulfilled. The Tribunal however finds that nothing prevented Ms. Truppa or the Horse to compete in Rio 2016, albeit under different nationalities and therefore not as a combination, if selected by their respective NOCs and under the condition that they met the selection criteria pursuant to Article 629 of the FEI Regulations for Rio 2016, which seems to be the case in the case at hand.
- 11.5 The Tribunal finds that there are no FEI Rules or Regulations requiring Athletes to qualify for Rio 2016 with the same horse as they might be entered or might end up competing with during the Olympic Games. Moreover, the Appellant did not invoke nor point out to any such rule or regulation.
- 11.6 In any event, Tribunal considers that any argument regarding future potential violations of applicable rules are at this point highly speculative, especially since the Appellant did not provide any evidence of any such potential violation. The Tribunal wishes to make clear that it can only decide those cases before it based on facts, evidence and arguments existing at the time of its decision, and not based on allegations of hypothetical and speculative violations.

- 11.7 In the case at hand, the Tribunal agrees with the FEI that to date no violation of FEI Rules and Regulations by either Ms. Truppa or the owner of the Horse has occurred and thus Appeal A is rejected.

12. Admissibility of Appeal B

- 12.1 In this Appeal B, the Appellant requested that certain scores obtained by Ms. Logutenkova shall not be considered for the purpose of the FEI Olympic Athletes Ranking. However, the Tribunal finds that the correct remedy in the case of Appeal B should have been a Protest and not an Appeal since Article 163.4.4 of the GRs specifically foresees the remedy of "Protest" concerning "the results of a Competition."
- 12.2 The Tribunal further finds - as the Appellant correctly pointed out - that the time limit to choose this appropriate remedy has already expired by the time he lodged the Appeal. However, the expiration of a deadline for invoking correct remedy is not a legitimate justification for choosing a different remedy, such as an Appeal as confirmed by the Appellant in the instant case.
- 12.3 If the route of an Appeal is chosen, then the conditions for such Appeal shall be met, which is not the case here because, as correctly pointed out by the FEI, an Appeal could only be lodged against a "Decision" under Article 165 of the GRs and that a decision is, under the Statutes, "an authoritative determination reached or pronounced after consideration of facts and/or law." Since the Decision of the FEI Dressage Committee as confirmed by the FEI Executive Board regarding the Lier Event were made after the Appellant's Appeal, this Appeal cannot be considered as an Appeal.
- 12.4 The Appellant also requested the Secretary General to remove the Lier Event from the Calendar in what concerns the FEI Olympic Athletes Ranking. The Appellant chose - and maintained - the remedy of Appeal, prior to any Decision being taken on a potential removal of the Lier Event, *i.e.*, prior to the FEI Dressage Committee Decision and FEI Executive Board Decision, both of which were communicated on 22 March 2016, only.
- 12.5 The Tribunal finds that the wording of Article 165.1.2 of the GRs is very clear in this respect. An Appeal with the Tribunal can only be lodged against "Decisions" of the Appeal Committee or any other person or body. An Appeal lodged prior to such a decision, as it is the case in the case at hand, is inadmissible.

13. Decision of Appeal B

- 13.1 As Appeal B is not admissible, the Tribunal does not have to decide it on the merits. The Tribunal considers however that because so much is at stake for athletes who trained hard and competed for an Olympic qualification, such athlete should not be left with the feeling that his potential non-participation to the Olympic Games is only the consequence

of a procedural issue. The athlete deserves more and the issues raised by the Appellant in respect of Appeal B are sufficiently important to be addressed by this Tribunal, even though such appeal is not admissible under applicable rules. So the Tribunal examined the case on the merits and came to the conclusion that even if Appeal B would have been admissible, which is not the case, Appeal B would have to be dismissed on the merits. The Tribunal came to this conclusion for the following reasons.

- 13.2 A central issue in this case is whether the FEI Dressage Committee reviewed and took a decision with regards to all four (4) Grand Prix Competitions. The Tribunal is satisfied with the affidavit of Mr. Kemperman that the FEI Dressage Committee did review all four Grand Prix Competitions, particularly since the Appellant did not provide any evidence to the contrary. The FEI Dressage Committee considered it appropriate to apply the Fairness Principle to only one (1) of such four competitions, namely the Grand Prix Special Competition held on 2 March 2016. Therefore, only this particular competition from the Lier Event does not count towards the Olympic and World Rankings for Dressage.
- 13.3 Regarding the allegation of conflict of interest, the Tribunal wishes at the outset to clarify that the issue at hand is not one of conflicts of interest but potentially one of whether there has been a display of actual bias. Conflicts of interest relate to the duty of judges to be impartial and independent when discharging their duty; that there shall be no facts or circumstances that would influence judges when reaching their decision. There shall be no indication that judges may be or may have been influenced by factors other than the performance of the athlete.
- 13.4 More specifically under FEI rules, Article 158 of the GRs considers that there would be a substantial appearance of a conflict of interest if the Ukrainian judges were involved in or perceived to be involved in multiple interests that could be perceived to influence their motivation in judging competitors, such as for example by downgrading some competitors or upgrading other. For the purpose of the FEI Rules, 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, including therefore judging at a competition. The FEI definition of what constitutes a conflict of interest situation is not idiosyncratic and is in line with generally accepted approaches in that respect.¹

¹ See, e.g., the Guidelines on Conflicts of Interest in International Arbitration published by the International Bar Association, or the *Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement* illustrating what, under EU law, is considered a conflicts of interest.

The relevant provision of this Directive reads as follows:

Article 24

Conflicts of interest

Member States shall ensure that contracting authorities take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of

- 13.5 Under FEI Rules however, the specificity of the equestrian discipline and the fact that the pool of experienced officials is limited, may require that while conflicts must be avoided whenever practicable, there could be unavoidable situation of perceived conflict because of the experience and expertise necessary to qualify Officials. The third paragraph of Article 158 of the GRs anticipates such situation.
- 13.6 In the instant case, the Tribunal does not consider that the Appellant demonstrated the existence of a conflicts of interest situation under FEI or other understandings of what constitutes a conflict of interest. More specifically, there is no evidence on the record that the Ukrainian judges had personal, familial, professional or financial interests in upgrading the score of Ms. Logutenkova or downgrading that of other riders. The mere fact that the judges are of the same nationality as that of a competitor or that the sponsor of the Lier Event is also the sponsor of Ms. Logutenkova does not create such situation or the appearance thereof. Should that be the case, then it would be close to impossible to field judges in international competitions if all judges of any of the competing nationalities athletes are to be excluded from judging at such competition. And such exclusion would not be only limited to a judge judging athletes of the same nationality, because a conflict of interest could express itself not only through the upgrading of the score of a particular rider but also by the downgrading of the score of the other riders. In other words, a conflicted judge could also improve the ranking of a particular competitor by downgrading the score of other competitors.
- 13.7 Based on the foregoing, the Tribunal considers that no conflict of interest situation was satisfactorily demonstrated in the Lier Event under applicable FEI Rules. What the Appellant is actually complaining about is potential bias but not conflicts of interest.
- 13.8 In that respect, regarding the Appellant's opinion that scores given by judges of the same nationality as Ms. Logutenkova were excessive, the Tribunal notes again that evidence on the record shows that the FEI Dressage Committee comprehensively reviewed the Lier Event and considered it appropriate to apply the Fairness Principle to only one of the four Competitions. As set out above, according to the affidavit of Mr. Kemperman, the FEI Dressage Committee members did review in detail and discussed the scoring and the judging in all four Grand Prix Competitions. The Tribunal has no reason to disregard or discount this affidavit, which constitutes convincing *prima facie* evidence that only one of the four Competitions deserved such treatment and not the others, as complained by the Appellant. This *prima facie* evidence is of course subject

competition and to ensure equal treatment of all economic operators.

The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

to evidence to the contrary, but no such evidence was suggested or proposed by the Appellant.

- 13.9 The Tribunal considers that the Dressage Committee, in finding nationalistic judging in favour of Ms. Logutenkova by two Ukrainian judges during the Grand Prix Special test of the CDI3* Lier on 2 March 2016, did address such bias situation and applied accordingly the Fairness Principle. Regarding the other competitions for which the Dressage Committee did not find such nationalistic judging and the Appellant did not suggest or propose any evidence to help demonstrate that notwithstanding the finding of the FEI Dressage Committee, nationalistic judging took place.
- 13.10 The mere fact that an Athlete scores better in a competition than he or she ever did in previous competitions does not establish that there was a situation that would justify this Tribunal to overrule the determination of the FEI Dressage Committee based on scant or speculative evidence. In the view of the Tribunal, outstanding performances of Athletes belong to sporting competition. Moreover, the Appellant did not submit any evidence, and there is no such evidence on the record, that the FEI Dressage Committee failed to take into account all relevant parameters in respect of the other three competitions, or that it otherwise erred in deciding the way it did.
- 13.11 More specifically, the Tribunal considers that merely pointing out to the nationality of certain judges and to the identity of the sponsor does not reasonably establish that the judges were biased in favour of Ms. Logutenkova in the three competitions not sanctioned by the FEI Dressage Committee. For the Tribunal to entertain such a claim, the Appellant would have been expected to bring forward relevant evidence demonstrating that bias was more likely than not, and that the FEI Dressage Committee erred in not applying the Fairness Principle to all four competitions. The Appellant, in the opinion of the Tribunal, did not discharge his burden of proof in this respect and did not establish by a preponderance of the evidence the likelihood of his contentions.

14. Decision

- 14.1 Based on the foregoing, the Tribunal thus decides as follows:

- 1. The Appeals of Mr. Gonalo Miguel Carvalho Conchinhas are inadmissible and in any event unsubstantiated on the merits, and thus all rejected.**
- 2. Mr. Gonalo Miguel Carvalho Conchinhas shall contribute five hundred Swiss Francs (CHF 500) towards the costs of this procedure.**

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

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

V. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes**
- b. Any other: No**

FOR THE PANEL



One member panel, Mr. Laurent Niddam