

**DECISION of the FEI TRIBUNAL  
dated 16 June 2020**

**In the matter of**

**Mr. Andrea Herck ("Mr. Herck") and Ms. Mathilda Karlsson ("Ms. Karlsson") &  
Sri Lanka Equestrian Association ("SRI-NF")**

**together "the Appellants"**

Represented by Schelstraete Advocaten, Amsterdam/Oisterwijk

**vs.**

**FÉDÉRATION EQUESTRE INTERNATIONALE ("FEI")**

**together "the Parties"**

**I. COMPOSITION OF PANEL**

Mr. Cesar Torrente, chair  
Ms. Valérie Horyna, member  
Mr. Martin Gibbs, member

**II. SUMMARY OF THE FACTS**

- 1. Case File:** The Tribunal duly took into consideration all written and oral submissions by the Parties.
- 2. Hearing:** 14 May 2020, via videoconference call.

Present:

- The FEI Tribunal Panel
- Ms. Erika Riedl, FEI Tribunal Clerk

For the Appellants:

- Mr. Andrea Herck, Appellant
- Ms. Philippa Burton, interpreter for Mr. Herck
- Ms. Mathilda Karlsson, Appellant
- Mr. Suranjith Premadasa, President of the SRI-NF
- Mr. Piotr Wawrzyniak, counsel
- Mr. Luc Schelstraete, counsel

For the FEI:

- Ms. Aine Power, FEI Deputy Legal Director
- Mr. Mikael Rentsch, FEI Legal Director

### **III. DESCRIPTION OF THE CASE FROM A LEGAL VIEWPOINT**

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

Statutes 24<sup>th</sup> edition, effective 19 November 2019 ("**Statutes**").

General Regulations, 24<sup>th</sup> edition, 1 January 2020 ("**GRs**").

FEI Jumping Rules, 26<sup>th</sup> edition, effective 1 January 2018, Updates effective 1 January 2019 ("2019 JRs") and 1 January 2020 ("2020 JRs") (together "**JRs**").

Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018 ("**IRs**").

#### **2. The relevant Legal Provisions**

##### **FEI Statutes Article 28 – Secretary General:**

"28.2 The Secretary General is responsible for the following: (...)

vi. The approval of the Calendar of Events and if appropriate the removal of Competition(s) and/or Event(s) from the Calendar

vii. The annulment of ranking points for specific Competitions and/or Events and under specific circumstances;"

##### **GRs Article 162 - Appeals:**

"1. An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see Article 162.2 below):"

##### **GRs Article 100 – General Regulations and Sports Rules:**

"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."

##### **GRs Article 110 – Schedules for Events:**

"2.3 The Schedules approved and published by the FEI shall be binding as if they were incorporated within the relevant Rules and/or Regulations. The FEI will not approve any Schedules when the closing dates for Entries have already passed."

##### **GRs Article 112 – Official Calendar:**

"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 the Event are established."

**GRs Article 115 – Invitations:**

“(…) Invitations for individual Athletes to take part in CIs must be sent to the NFs of the Athletes concerned. Invitations from OCs must be sent to the NFs of the Athletes concerned. Invitations must include copies of the schedule. The percentage of Athletes personally invited by OCs shall be specified in the Sport Rules for the specific Disciplines. However, these invitations from OCs (foreign and/or home Athletes) must be under the same conditions as for other Athletes and must in no way be directly or indirectly in connection with a financial contribution. Pay Cards and appearance fees, even in the form of VIP tables and Event privileges, are strictly prohibited and will be sanctioned.”

**GRs Article 128 - Distribution of Prizes:**

- “1. The total amount of prize money shown for each Competition in the schedule must be distributed.
2. Prize money must be distributed to the Chefs d'Equipe or to the winning Owners, lessees or Athletes within ten (10) days after the last Competition of the Event provided they have met all their financial and other obligations to the OC.”

**JRs Article 251 – Entry Deadlines:**

- “9.1. Entries for FEI Championships and Games must be made following the compulsory two phases outlined under GRs Arts. 116.2.2(i) and 116.2.2(ii):
- Nominated entries must be made at least four weeks before the Event. See GRs Art. 116.2.2(i)
  - Definite entries must be made at the latest four days preceding the beginning of the Event. See GRs Art. 116.2.2(ii)
- 9.2. For all other Events including CSIOs definite entries must be made within the deadlines indicated below; other deadlines for NFs to indicate their intent to participate may be requested by the NF/OC in the Schedule. Definite entries must be made by the date mentioned in the Schedule. This date may not be earlier than four weeks prior to the beginning of the Event and later than four days preceding the beginning of the Event. These represent the final selection of Athletes and Horses that will travel to the Event. The definite entries may not exceed the number listed and represent the final selection of Athletes and Horses that may participate in the Event. Following receipt of the definite entries, substitutions of Horses and/or Athletes may only be made with the express permission of the OC. The OC must print in the Schedule the latest date for substitution of Horse (s) and Athlete(s), which may not be later than the day of the Horse inspection.”

**IRs Article 18.1:**

“In accordance with Article 38 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, Claims (as provided for in Article 30 of these

Internal Regulations of the FEI Tribunal), those matters specified in Article 163 (Protests and Disciplinary cases) and Article 165 (Appeals) of the FEI General Regulations and all disputes and procedures arising under the FEI Anti-Doping Rules for Human Athletes and the FEI Equine Anti-Doping and Controlled Medication Regulations. (...)"

#### **IV. DECISION**

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written and oral submissions. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, the Tribunal only refers to the submissions and evidence it considers necessary to explain its reasoning in this decision.

##### **1. Factual Background**

- 1.1 Mr. Herck is an FEI registered show jumping rider (FEI ID: 10054791), and his administering National Federation is the National Federation of Romania (the "**ROU-NF**").
- 1.2 Ms. Karlsson is an FEI registered show jumping rider (FEI ID: 10046409), and her administering National Federation is the National Federation of Sri Lanka (the "**SRI-NF**").
- 1.3 Mr. Herck and Ms. Karlsson competed at 6 events held between 13 December 2019 to 26 January 2020 in Villeneuve-Loubet, France, namely as follows: Event 1: 13-15 December 2019, Event 2: 20-22 December 2019, Event 3: 27-29 December 2019 (the "**December 2019 Villeneuve-Loubet Events**") and Event 4: 3-5 January 2020, Event 5: 10-12 January 2020, and Event 6: 23-26 January 2020 (the "**January 2020 Villeneuve-Loubet Events**") (**together "the Villeneuve-Loubet Events"**).
- 1.4 The organiser of the Villeneuve-Loubet Events was Mr. Herck's father, Mr. André Herck ("**the Organiser**").
- 1.5 The Villeneuve-Loubet Events were all CSI2\*. Longines Ranking Competitions (Group D) were added to the schedules of the six events after the Definite Entries Deadline. The total prize money of the December 2019 Villeneuve-Loubet Events after the late addition of the new Longines Ranking Competitions was 76,500 Euros, whereas in the version of the Schedule approved prior to the Definite Entries Deadline, the total prize money was 41,400 Euros (the minimum amount to be categorized as a 2\* Event). Whereas with the original prize money, the winner of the Competition would not have received any Longines (or Olympic) Ranking points, following the change the winner stood to receive 50 ranking points (to receive an equivalent number of ranking points in a top category competition such as

AA or A category Event (with respect to Longines Rankings Groups the competitions range from AA being the highest to E), an Athlete would need to finish within the top 10 or top 8 respectively). Furthermore, the Organiser capped the number of invited Athletes at 20, and the actual participants in the Longines Ranking Competitions at the Villeneuve-Loubet Events averaged out at just 7 participants.

- 1.6 Until the week of 3 February 2020, the Invitation Rules did not apply for CSI2\* Events. Therefore, an organizer of a CSI2\*, such as the Organiser of the Villeneuve-Loubet Events, was free to invite participants to his events. The New Online Invitation System, in effect as of the week beginning of 3 February 2020, foresees (also) for 2\* events a quota system for Athletes from the Longines Ranking (30%), Athletes selected by the host NF (30%) and OC Invitations (30%). Under the New Online Invitation System, the higher an Athlete is ranked in the Longines Rankings, the greater the possibility the Athlete has of being invited to a top show because Athletes are invited in descending order of their position in the Longines Rankings.
- 1.7 Under the Qualification System for the Tokyo 2020 Olympic Games – the relevant regulations established by the FEI and the International Olympic Committee (IOC) outlining the qualification pathway for the Tokyo 2020 Olympic Games -, 15 Individual Quota places (2 for South East Asia, Oceania) are available for National Olympic Committees ("**NOCs**") who have not already earned a Team quota place. These quota places are allocated to NOCs based on the Olympic Rankings. Ms. Karlsson was aiming to earn a quota place for the Sri Lanka NOC (the "**SRI-NOC**"). Generally, the same points system that applies in the Longines Ranking system applies for the Olympic Rankings. However, the number of Competitions to count for the Olympic Rankings is limited to the best 15 results per Athlete/Horse combination in the Longines Ranking Competitions within the period from 1 January 2019 to 31 December 2019 (inclusive). In addition, the FEI Olympic Athlete Ranking list takes into account the points obtained in competitions counting for the Longines Rankings based on the number of starters who finish the competition according to a point scale.
- 1.8 Under the FEI system, Athletes are entered by their National Federations (the "**NFs**"). The Definite Entries Deadline is the deadline by which NFs that are invited to Events must submit their entries. The Schedule of an Event sets out all the key information regarding that Event, including information with regard to the Definite Entries deadlines, the NFs which are invited (if the invitations are limited to certain NFs), and the maximum number of entries (if there is a cap). As a general rule, all Schedules must be submitted to the relevant FEI Sports Department for approval. For CIMs (Minor International Events), such as the Villeneuve-Loubet Events, Definite Schedules must reach the FEI two (2) weeks prior to the Events. For CIMs, the role of the National Federation in approving the schedules is greater, and

the NF “takes the lead” in reviewing the Schedules of the CIMs, albeit the final approval rests with the FEI. In the case of the Villeneuve-Loubet Events, the French NF forwarded the amended Schedules to the FEI Jumping Department with the additional Longines Ranking Competitions already included.

- 1.9 In these proceedings it remains undisputed that the FEI approved the amended Schedules with the additional Longines Ranking Competitions. It remains however disputed whether the FEI had the right to do so under the FEI Rules and Regulations, or whether it was normal practice by the FEI to approve such amendments to the Schedule after the Definite Entries Deadlines have passed.

#### ECIU Report

- 1.10 The Equestrian Community Integrity Unit – CSI2\* Villeneuve-Loubet-Report (the “**ECIU Report**”) of 13 February 2020 reads as follows with regard to *Entries*:

*(...) We have learnt from a number of people interviewed during the course of this investigation that the Organiser made it clear to national Athletes that the shows in question were “invitational shows” and that entries, all of which were made after the date for Definite entries stated in the show Schedules, would be made by the Organiser personally as late entries and transmitted to the FFE. The Organiser also informed national competitors that the shows would be used as training shows and this meant that no prize money would be paid. However, Longines Ranking points would be available.*

*The ECIU have noted discrepancies with the integrity of the entries. It is arguable that an ethically unfair environment was created by the Organiser and arguably manipulated so that only entries of the Organiser’s choosing were accepted. It became apparent to us that those national riders entered by the Organiser were all personally known to him. Regarding the foreign NFs invited, the Organiser explained to us that he chose these because of previous bad experiences encountered with more local NFs. He chose these particular foreign NFs to invite because he felt he has a closer relationship with them, and they would be more respectful at the show. (...)*

The ECIU Report further reads as follows with regard to *Approved Schedule & Subsequent Updates*:

*(...) For the three shows in question, he [the Organiser] chose to have a small quota of riders for financial reasons, having previously experienced financial losses holding bigger shows. He was concerned at the Definite Entries deadline when he had no riders entered for these shows as he had already spent money in preparing. He decided to add additional Longines*

*Ranking classes at that point because he believed he could, and this would be a way of attracting riders to enter his show. He did not see a need to do this before the Definite Entries deadline because he never expected he would have no French riders entering his shows. He did this on the 26<sup>th</sup> November 2019 for the 1<sup>st</sup> show, on 27<sup>th</sup> November 2019 for the 2<sup>nd</sup> show and on 5<sup>th</sup> December 2019 for the 3<sup>rd</sup> show.*

*All participating riders were entered as late entries by the Organiser after the Definite Entries deadline. He personally entered all French riders and explained that he chooses to invite the international federations that he did for personal reasons. So in the Organisers opinion he requested amendments to his approved Schedules as allowed by the FEI rules and even noted that the Schedules in question state they were all approved by the FEI (...)."*

The *Conclusion* of the ECIU Report reads as follows:

*"The FEI's interpretation of Article 110.2.3 of the FEI General Regulations forbids any non-minor changes to a schedule after a Definite Entries deadline, including the addition of Longines Ranking classes once it has been approved.*

*Further issues that give the ECIU cause of concern however are the payment, or lack thereof, to FRA NF riders and the integrity surrounding the entry process.*

*The ECIU have received contradictory information from persons interviewed regarding the distribution of prize money. Foreign NF riders received the prize money in cash and the ECIU have no reason to dispute this. However, FRA NF riders initially stated they were paid into their respective FFE account which, at first, was also confirmed by the Organiser. Upon further questioning, the ECIU have established that this was not the case and that prize money was paid into the Organisers FFE account instead.*

*When the Organizer was questioned over distribution of prize money, he explained that some riders have a private agreement but would not share the specific details with the ECIU. Subsequently, prior to submitting this report, the ECIU received the agreements that are attached this document.*

*This still leaves discrepancies over payment to two riders, one who is not in a mutual agreement with the organizer and one who entered within three days of the start of the show."*

## The Decision

- 1.11 On 17 February 2020, the FEI Secretary General informed Mr. Herck via the ROU-NF and Ms. Karlsson via the SRI-NF of the "*FEI decision to remove several competitions from the Longines/Olympic Rankings – FEI Events in Villeneuve-Loubet (FRA)*" (the "**Decision**"). More specifically, the Decision reads as follows:

*"Following questions and concerns raised by stakeholders regarding the FEI Events that took place in Villeneuve-Loubet (FRA) in December 2019, the FEI decided to investigate the matter with the assistance of the Equestrian Community Integrity Unit.*

*Further to such investigations and the alleged irregularities, in accordance with art. 112.3 of the FEI General Regulations the FEI has decided to remove the competitions counting for Longines/Olympic Rankings points that, contrary to the FEI Rules (most notably Article 110.2.3 of the FEI General Regulations) had been added after the respective Definite Entries deadlines. (...)*

*Additionally, the FEI has established that three of the six events at Villeneuve-Loubet in January 2020 (on 3-5 January; 10-12 January and 23-26 January) also had two classes counting for Longines Rankings points added after the Definite Entries deadline, again contrary to the FEI Rules."*

In addition, the letter concerning Mr. Herck reads as follows: "*As a consequence, athletes who competed in those competitions added after the Definite Entries deadline at Villeneuve-Loubet will lose the ranking points earned in those specific competitions given the fact that the relevant competitions have been removed by the FEI. The Longines Rankings will be updated to reflect the removal of those competitions. We would be grateful if you could please inform the following rider who competed there accordingly: - Andrea Herck.*"

In addition, the letter concerning Ms. Karlsson reads as follows: "*Schedules for CSI2\* are under the responsibility of the National Federation, in this case the French National Federation (FRA NF). The updated Schedules for the three FEI Events that took place in December 2019 in Villeneuve-Loubet (where two competitions counting for Longines/Olympic rankings were added after the respective Definite Entries deadlines) were provided to the FEI by the FRA NF. Subsequently these updated Schedules were erroneously approved by the FEI Jumping Department.*

*As a consequence of the removal of the "new" competitions counting for Longines/Olympic rankings please be advised that Ms Mathilda Karlsson*



*(SRI) who competed in Villeneuve-Loubet and who earned many Longines/Olympic ranking points there, has dropped down on the Olympic Rankings within Group G from 2<sup>nd</sup> to 7<sup>th</sup> place, and therefore has not earned an Olympic quota place for her NOC. The other consequences are that the other athletes who competed in the "new" competitions at Villeneuve-Loubet will also lose their ranking points given the fact that the relevant competitions have been removed by the FEI. The Longines Rankings will be updated accordingly."*

## **2. Procedural Background**

- 2.1 On 4 and 6 March 2020, Mr. Herck, Ms. Karlsson and the SRI-NF respectively submitted their Appeals against the Decision.
- 2.2 On 6 March 2020, the FEI Tribunal Chair nominated a three-member panel in the Appeal of Mr. Herck. On 9 March 2020, Mr. Herck objected to the panel chair as he is a Dressage judge and since the case at hand concerned show jumping it required someone with affinity to and knowledge of show jumping. On the same day, the FEI confirmed that it did not object to the constitution of the panel. On 16 March 2020, the FEI Tribunal Chair issued a Preliminary Decision dismissing the objection to the panel chair in the case at hand. The FEI Tribunal Chair clarified that pursuant to Article 19.3 of the IRs objections to nomination of panel members can only concern actual or perceived conflict of interest of that panel member, which was not the case here.
- 2.3 On 16 March 2020, the FEI requested the consolidation of the two proceedings, i.e., the Appeal of Mr. Herck and the Appeal of Ms. Karlsson and the SRI-NF, for reasons as follows: (i) both Appeals seek the annulment of the Decision; (ii) the Appeals are effectively identical; (iii) all Appellants are represented by the same law firm; and (iv) in the interest of efficiency and costs. The Appellants were of the view that joining proceedings should be avoided. In addition, in the case of Ms. Karlsson her Olympic qualification was at stake and therefore this appeal required urgency. Further, the Appellants requested the FEI Tribunal to hold hearings in both matters separately. Ideally, the Appellants stated, that, for the sake of efficiency the hearings could be held on the same day before the same panel but not at the same time. On 23 March 2020, the FEI Tribunal Chair decided to consolidate the proceedings as they fulfil the requirement for consolidation of "*substantially similar or related*" proceedings pursuant to Article 23(c) of the IRs as well as in the interest of efficiency and costs. Further, the FEI Tribunal Chair confirmed that the panel already nominated in the Appeal of Mr. Herck shall remain the panel in charge of the consolidated proceedings.
- 2.4 On 19 March 2020, the FEI requested for an extension of deadline to provide its submission to 3 April 2020, which was granted by the Tribunal.

- 2.5 On 20 March 2020, the FEI disclosed the ECIU Report of 13 February 2020; the redacted Annexes thereof were provided on 23 March 2020.
- 2.6 On 24 March 2020, following several requests by the Appellants for the FEI to disclose the “entire case file”, the Tribunal – in accordance with its jurisprudence - clarified that document disclosure requests need to be “specific”, and simply requesting the “entire case file” is not sufficient. Furthermore, pursuant to the applicable procedural rules - Article 23.1(f) of the IRs - a party seeking an order of production of documents shall first demonstrate that such documents are likely to exist and be relevant for the outcome of the case. The Tribunal, however, also requested the FEI to disclose and submit all “official documents” based on which the Decision was taken. As a result, the Tribunal granted the Appellants with an opportunity to further comment on these official documents and to supplement their Appeals.
- 2.7 On 26 March 2020, the FEI submitted the remaining official documents (as the ECIU Report and Annexes were already previously submitted), including but not limited to (a) the previous versions of the Schedules of the Villeneuve-Loubet Events; (b) Official Complaints received by the FEI from (i) the Hong Kong Equestrian Federation; (ii) the International Jumping Riders Club (the “**IJRC**”); and (c) the results of the 12 Longines Ranking (Group D) competitions held at the Villeneuve Loubet that were added after the Definite Entries deadlines. On 27 March 2020, the Appellants requested the Tribunal “*to order that the FEI may not submit any further evidence in the proceedings other than the official documents submitted*”. On 30 March 2020, the Tribunal informed the Appellants that “*There are no legal grounds for this request and if so happens the panel will decide on the admissibility of such evidence in its Final Decision.*” Furthermore, the Tribunal set a schedule for further submissions by the Parties.
- 2.8 On 30 March 2020, the Appellants submitted free translations of several documents. On 31 March 2020, the FEI noted that the free translations contained several additional comments and stated that legal proceedings required verbatim translations. On 1 April 2020, the Tribunal reminded the Parties that pursuant to Article 20 of the IRs translations are to be made independently and are required to be accurate. The Tribunal requested to receive corrected translations. The FEI provided translated documents on 3 April 2020, and the Appellants on 9 April 2020, with some corrections on 17 April 2020.
- 2.9 On 30 March and 3 April 2020, the Appellants provided their Additional Submissions.
- 2.10 On 23 April 2020, the FEI provided its Answer to the Appeals.

- 2.11 On 1 May 2020, the Tribunal proposed hearing dates to the Parties, confirmed that only one hearing would take place, but that the personal statements of each Appellant be heard without the other Appellant present.
- 2.12 On 5 May 2020, the Appellants provided further unsolicited witness statements and requested for those witnesses be heard during the hearing, to which the FEI objected. The Tribunal rejected these further documents and did not allow for those witnesses to be heard during the hearing. More specifically, the Tribunal decided as follows in this regard:

*The panel wishes to draw the Parties' attention to Articles 45 and 25 of the IRs, and more specifically to Article 25.2(d) which reads as follows: "Only witnesses in respect of whom witness statements have been submitted by the party calling such witness shall be permitted to give evidence at the hearing unless the parties agree otherwise or where ordered by the Hearing Panel."*

*Therefore, and in accordance with the above provision, the Appellants can only list witnesses in respect of whom they had provided witness statements in their Appeal Brief, or Additional submissions as granted in the case at hand. As the Appellants had not previously provided witness statements for the witnesses listed to be heard at the hearing, those witnesses can neither be permitted to give evidence at the hearing, nor does the panel order to do otherwise.*

- 2.13 On 14 May 2020, a hearing via video conference call was held.

*In the following a short summary of the written submissions made by the Parties is provided. The submissions and arguments with regard to Olympic Qualification and points in this regard only apply to Ms. Karlsson and the SRI-NF, and are not applicable to Mr. Herck.*

### **3. Submissions by Appellants**

- 3.1 The Appellants submitted that the Tribunal has jurisdiction to hear their Appeals and submitted that the respective Appeals have been lodged within the deadline foreseen under Article 162.5 of the GRs.

- 3.2 On 30 March 2020, Mr. Herck requested the following prayers for relief:

- (a) the FEI Tribunal shall confirm that the FEI Secretary General Decision annulling the Longines Ranking Points obtained by HERCK at CSI2\* in December 2019 and January 2020 is null and void;*  
*(b) the FEI Tribunal shall annul the FEI Secretary General Decision;*

- (c) the FEI Tribunal shall reinstate the Longines Rankings as they were prior to the FEI Secretary General Decision;*
- (d) the FEI Tribunal shall award the costs of proceedings paid by HERCK to him and sentence the FEI in the costs of the appeal (including the appeal fee and shall indemnify the HERCK for all costs/ disbursements, damages related to this procedure);*
- (e) the FEI Tribunal in these proceedings will not accept any other documentation than the FEI Secretary General Decision from the FEI pursuant to the FEIs refusal to provide the Appellants with the entire file related to the FEI Secretary General Decision.*

3.3 On 3 April 2020, Ms. Karlsson and the SRI-NF requested the following prayers for relief:

- (a) the FEI Tribunal shall confirm that the FEI Secretary General Decision annulling the Olympic/Longines Ranking Points obtained by KARLSSON at CSI2\* in December 2019 and January 2020 is null and void;*
- (b) the FEI Tribunal shall annul the FEI Secretary General Decision;*
- (c) the FEI Tribunal shall reinstate the Olympic/Longines Rankings as they were prior to the FEI Secretary General Decision;*
- (d) the FEI Tribunal shall award the costs of proceedings paid by KARLSSON to him and sentence the FEI in the costs of the appeal (including the appeal fee and shall indemnify KARLSSON for all costs/ disbursements, damages related to this procedure);*
- (e) the FEI Tribunal in these proceedings will not accept any other documentation than the FEI Secretary General Decision from the FEI pursuant to the FEIs refusal to provide the Appellants with the entire file related to the FEI Secretary General Decision.*

3.4 More specifically, the Appellants submitted that the burden of proof had not been met by the FEI, there was no proof that the Appellants committed any infringement of the FEI Rules and Regulations. The Appellants should not be punished for any shortcoming of third parties, such as the FEI, the French National Federation (the "**FRA-NF**"), the FEI Jumping Department or the Organiser. The ECIU Report focused on the Organiser and not on the Appellants. None of the documents provided by the FEI formed any evidence that the Appellants were involved into any irregularities and/or breach of the FEI Rules and Regulations.

3.5 The Appellants registered for the Events and had the legitimate expectation that the approved and accepted schedules were valid as they were approved by the FEI and the FRA-NF and thus the FEI events that took place in Villeneuve-Loubet counted for the Longines rankings. Furthermore, the official FEI reports of the FEI Officials following the events proved that the events were organised in accordance with the FEI Rules

and Regulations. The Appellants alleged that these reports were not taken into account by the ECIU in its report. In this respect the FEI argued that FEI Officials' reports just deal with what happens on-site at an event. Thus, the rule violations that occurred at Villeneuve-Loubet did not involve rules that the FEI Officials are expected to check on-site.

- 3.6 The conclusions of the ECIU Report were rather vague and could not qualify as evidence of any alleged irregularities, neither by the Appellants nor by the Organiser for the following reasons. To start, the Decision was erroneous as the prerequisites of Article 112.3 of the GRs were not fulfilled. In essence, the Appellants argued that pursuant to Article 110.2.3 of the GRs the Schedules approved are binding as if they were incorporated within the relevant Rules and/or Regulations. They could therefore only be revised in accordance with Article 17 of the Statutes, and the FEI Secretary General had no power to do such revisions. Since there was an apparent contradiction between Article 110.2.3 and Article 112.3 of the GRs, the Tribunal had to interpret the Rules and Regulations in accordance with *contra proferentem* and *in dubio contra stipulatorem* rule.
- 3.7 Further, pursuant to Article 112.3 of the GRs, the Secretary General shall have the authority to remove any Competition and/or Event from the Calendar if justified circumstances are established. However, no such justified circumstances have been established, and an investigation of the ECIU as such was not justified circumstance to remove any competition or event from the Calendar. The investigation of the ECIU had apparently not concluded anything but alleged irregularities, which did not satisfy the burden of proof.
- 3.8 The term *closing date for Entries* mentioned in Article 110.2 of the GRs had nothing to do with the term *Definite Entries Dates*. After a Definitive Entries Deadline, an Organiser could still make entries.
- 3.9 If the Tribunal is of the opinion that *Closing Date for Entries* and *Definitive Entries Dates* are interchangeable terms under the FEI Rules and Regulations, then the Appellants put forward that the FEI's conduct with regard to other events held in 2019 and 2018 frequently departed from the second sentence of Article 110.2.3 of the GRs, namely that "*The FEI will not approve any Schedules when the closing dates for Entries have already passed.*" The Appellants argued that in 2019 and 2018 the FEI had carried out modifications to the schedules approved by the FEI and that such modifications and changes were accepted and approved by the FEI after the Definite Entries deadlines for at least 30 events (for which the Appellants provided a list); these events had undergone similar modifications as the events in question. It therefore appeared that the alleged mistake of the FEI in approving the schedules did not exist, but this

was a structural policy of the FEI by which the FEI clearly departed from its own regulations. Any such departure could not be invoked against an athlete who trusted in the FEI's and FRA-NF's accuracy and diligence in the approval process of the events.

- 3.10 In this respect, one of the oldest principles of the CAS jurisprudence concerning selection disputes was the necessity to ensure that the legitimate expectations of the athletes are respected. The Appellants had the legitimate expectation that the approved and accepted schedules were valid as they were approved by the FEI, thus that the FEI events that took place in Villeneuve-Loubet counted for Olympic rankings, and Ms. Karlsson also had the legitimate expectation that she/her NOC obtained an individual quota place for the Olympic Games as she held the second position on the Olympic Rankings within Group G.
- 3.11 The Decision discriminated against the Appellants and other riders who competed during the Events. The Decision benefitted a rider from Hong Kong and Chinese Taipei respectively, whereas those riders competed and gained points in competitions of which the approved schedule was modified after the deadline for the definite entries had lapsed. If the FEI wished to apply Article 110.2.3 of the GRs, then this Article could not be applied in an arbitrary and discriminatory way. In the view of the Appellants results of 28 events had to be cancelled. Furthermore, it could be derived from the CAS jurisprudence that rules shall be invalidated if they appear unreasonable or arbitrary. The Appellants submitted that the refusal of the FEI to provide them with the entire file related to the Decision violated the fair trial principle and that if parties to any legal proceedings do not have the same information and documents at their disposal, there was no equality of arms and no fair trial.
- 3.12 Moreover, the Appellants argued that the Decision was based on a misunderstanding of the facts. The competitions removed from the calendar and rankings concerned were not "added competitions after the Definitive Entries deadlines" but competitions which were approved by the FEI and the FRA-NF from the very beginning. The Appellants were of the view that "there was not any competition added to the Event. There was merely an increase of prize money of the already approved competitions (...)". And this modification has also been approved by the FEI and the FRA-NF. It appeared in addition that the FEI had already invoiced the amounts to which the FEI was entitled following the modification of the prize money. During the hearing Mr. Herck however clarified that the FEI had reimbursed the additional fees for the cancelled competitions in April 2020.

- 3.13 Therefore, the assertion of the ECIU that Longines Ranking classes cannot be added to a schedule after the Definite Entries date was not correct. A note to this effect appeared for the first time in the schedules for competitions held in 2020. The Organiser however inquired with the FEI Jumping Department whether the addition to the schedules meant the current conduct of various organising committees to increase prize money or add classes under the Longines Rankings to the approved schedules would not be possible any longer. According to the Appellants' submission, the FEI had answered to the Organiser when inquiring via phone that it would be possible if this would be for the benefit of the riders. In addition, the Appellants argued that the FEI acknowledged explicitly that the FEI approved all the schedules for the Events in 2019 and 2020.
- 3.14 The Appellants further submitted that the payment of the prize money was made in accordance with the applicable French law. The FEI Rules and Regulations did not contain any provision that would prohibit subrogation of the rights of the rider to prize money and therefore such subrogation was allowed. Subrogation was described by the Appellants as an agreement under French law where somebody gives his rights or his obligations or both to somebody else. The Organiser indeed entered with various riders into such agreements. According to the Appellants, the riders transferred to the Organiser their obligations to pay for instance for entries, trucks, manure, MCP, electricity and parking and transferred their rights to receive their prize money. According to an e-mail, one rider confirmed that the rider subrogated to the Organiser the actions for the Organiser to hire the rider and collect the winnings at the various CSI's held in Villeneuve-Loubet. Option agreements were in place between the Organiser and three riders. According to such an agreement submitted to the Tribunal, the Organiser entered into an agreement, whereby, for a period of two months (from 7 December 2019 to 8 February 2020), the Organiser acquired "an exclusive, final and irrevocable option" to purchase two horses for a defined global amount, and acquired the right to enter those two horses in all competitions and with any rider during that period of time. With regard to entries, the Appellants submitted that they were also made in accordance with French law and the FRA-NF regulations. The Appellants claimed that there was no proof of an ethically unfair environment allegedly created by the Organiser and that there was no proof that the Organiser allegedly made clear to French Athletes that the shows in question were invitational. The ECIU further also disregarded that, in accordance with FEI Rules and Regulations, 40% of the spots during the Event are reserved for the nationals of the hosting nation, i.e., for French riders in the case at hand. Therefore, there was nothing wrong with the Organiser entering French riders after the date of Definite Entries, if those riders for some reason did not approach the FRA-NF prior to this entry deadline. In any case, the ECIU Report confirmed that the foreign riders all got paid their prize money.

Neither the competitors, nor the FRA-NF have lodged a claim towards the Organiser regarding the events.

- 3.15 Finally, the Appellants pointed out that one of the two official complaints received by the FEI was from the Hong Kong National Federation (the "**HKG-NF**") and was filed on behalf of a direct competitor of Ms. Karlsson.
- 3.16 In conclusion, the Appellants claim that no alleged irregularities have been established by the ECIU and the FEI justifying the FEI Secretary General's decision. The only reason for the Decision seems to be that some classes were added to the events in question after the Definite Entries Deadline, which assertion the Appellants had rebutted. In addition, these arguments of the FEI and the ECIU should not be valid, as the sixth competition of the event held between 17 and 19 January 2020 remained and no rankings and results were cancelled.

#### **4. FEI Answer**

- 4.1 To start with, the FEI submitted that the jurisdiction of the Tribunal over the Appeal is undisputed by the Parties. Furthermore, the FEI clarified that French Law was not directly relevant to the case at hand. The Rules applicable to this Appeal and the Decision are the FEI Rules, which are to be interpreted in accordance with Swiss Law.
- 4.2 The FEI had not hidden from the fact that the approval of the Schedules submitted after the Definite Entries Deadline should not have been approved by the FEI. The correct and proper thing for the FEI to do, once the mistake was discovered, was to take appropriate steps to rectify it, which was made with the Decision. One had to distinguish between a minor clarification to a Schedule and a genuine "change", as the ECIU Report found: "*After the date of Definite Entries, only minor changes/clarifications are permitted e.g. replacement of an official, change to the time of a competition, correction of typos etc.*" Of the 29 Events put forward by the Appellants as having "similar modifications", there were only two other examples of a competition being added after the Definite Entries deadline (one of which concerns another event by the Organiser at Villeneuve-Loubet in January 2019). By providing examples, the FEI argued that none of those types of clarifications could be said to have had a material impact on an event; they did not "change" the nature or the status of the event or the competitions concerned in the significant way the changes to the Villeneuve-Loubet Schedules did. The late addition of the Longines Ranking competition, totally transformed the nature of the Villeneuve-Loubet Events by instantly tripling the total number of Longines Ranking/Olympic Ranking points available there; the timing of the change ensured that the Organiser could effectively handpick which Athletes participated (and



which ones could not). The impact of the changes was even greater given the planned overhaul of the Invitation System in February 2020 and the deadline for earning Olympic Ranking points of 31 December 2019.

- 4.3 Further, the terms “Definite Entries Deadline” and “Closing Date for Entries” were interchangeable. The FEI clarified that Annex V of the 2019 JRs and the 2020 JRs did not apply to the events in question, and neither of the two terms is used in the 2016 Invitation Rules, so any reliance by the Appellants on the wording of the Invitation System to support their argument on the interpretation of these phrases was erroneous.
- 4.4 Moreover, the FEI Secretary General was responsible for the FEI Calendar as stipulated in Article 28.2 (vi) of the Statutes and Article 112 of the GRs, as well as for the observance of the Statutes, the GRs and the Sports Rules. Further statutory responsibilities of the FEI Secretary General included pursuant to Article 28.2 of the Statutes (i) the removal of Competition(s) and/or Event(s) from the Calendar, and (ii) the annulment of ranking points for specific Competition(s) and/or Event(s) and under specific circumstances. These provisions were approved by the 2012 FEI General Assembly, with effect from 1 January 2013, primarily as a measure to safeguard the integrity of FEI Events/Competitions. Contrary, to the Appellants’ submission the FEI Sports Forum does not approve any rules changes. That was a matter that was reserved to the FEI General Assembly. Furthermore, pursuant to Article 100.1 of the GRs, the FEI Secretary General had the jurisdiction and statutory responsibility to take appropriate measures when the fair and equal conditions of a competition are not met during an Event under the FEI Rules and Regulations. The terms “justified circumstances” and “specific circumstances” as per Article 28.2(vii) of the Statutes were broad ones but this power was one that has only been exercised rarely and only in circumstances where it would have been contrary to the principles of fair play and the level playing field to retain the results of a Competition/Event. What did and did not constitute “justified circumstances” was left to the FEI Secretary General to determine following a review of the circumstances in the particular case.
- 4.5 The circumstances which gave rise to the FEI Secretary General exercising this power in respect of the Villeneuve-Loubet Events were more than justified. The ECIU Report identified several troubling aspects and rule violations, first and foremost the late addition of Longines Rankings competitions, contrary to FEI Rules. This alone constituted a “justified circumstance” within the meaning of Article 112.3 of the GRs, particularly considering the unfair advantage it gave to just a tiny pool of Athletes favoured by the Organiser. In this regard, the FEI further argued, that contrary to the Appellant’s submission, new competitions had been added. Prior to the changes made to each of the six Villeneuve-Loubet Schedules

after the respective Definite Entries Deadline, each of the six Villeneuve-Loubet Events had one Longines Ranking Competition (the Grand Prix). After the changes, each Villeneuve-Loubet Event had three Longines Ranking Competitions, i.e., two new Longines Ranking Competitions.

4.6 Other factors also amounted to “justified circumstances” independently but certainly when considered in totality. Those factors were as follows:

- a) The Organiser apparently paying prize money owed to riders to himself due his unexplained status as a “lessee” of the horse.
- b) Highly irregular arrangements whereby prize money was forfeited by riders in exchange for a future option to buy a horse.
- c) A rider being asked to forfeit prize money in return for the Organiser agreeing to accept the rider’s late entry. This was confirmed by the Organiser himself and was a clear breach of Article 128.1 of the GRs. The Appellants confirmed the findings of the ECIU and admitted that the practice of the Organiser was to have contracts of subrogation and “option contracts” with French riders. Such practice was contrary to Article 128.1 and Article 115 of the GRs. The requirement for some of the French Athletes to pay their prize money over to the Organiser could only be regarded as financial contribution by the Athletes to the Organiser. Since these arrangements only applied to the French Athletes, the invitations that were extended were not “on the same conditions” for all Athletes invited to the Villeneuve-Loubet Events and thus did not comply with the FEI Rules. Moreover, a contract of subrogation and the so-called “option agreements” to retain prize money of certain Athletes were not compliant with Article 128.1 of the GRs, which states that *“The total amount of prize money shown for each Competition in the schedule must be distributed”*.
- d) The characterization by the Organiser of the Villeneuve-Loubet Events as “invitational shows”, are to be considered as “training shows” without prize money, but with Longines Ranking points, as far as the French riders were concerned.
- e) Evidence that the Organiser got in touch with a participant at the Villeneuve-Loubet Events to advise him how to respond to the ECIU queries.
- f) The “discrepancies with the integrity of the entries”. The ECIU Report notes that “the entries were controlled by the Organiser and arguably manipulated so that only entries of the Organiser’s choosing were accepted ..... those national riders entered by the Organiser were all

personally known to him.” From a review of the entries of the three Villeneuve-Loubet Events that were held in December 2019, one could see a strange pattern of no Athletes being entered by the definite entries deadline (with the only exception being Mr. Herck for the 27 – 29 December 2019 event). All other entries were made after the two additional Longines Ranking competitions per Event were added. The FEI submitted Entry Data in this respect.

- g) The somewhat bizarre selection of foreign NFs invited by the Organiser for reasons that he had a “closer relationship” with the invited foreign NFs, but with no further proof. The FEI listed 9 NFs (Croatia (CRO), Cyprus (CYP), Georgia (GEO), Moldova (MDA), North Macedonia (MKD), which had never had an Athlete participate in Villeneuve-Loubet previously.
- h) The implausibility that the Organiser chose to invite a small quota of riders “for financial reasons”, since on one hand he claimed to have been concerned at the Definite Entries deadline when no riders had entered his show, yet, on the other hand, one of the countries that he invited after the Definite Entries date, was Sri Lanka, who had only 1 registered Jumping athlete, Ms. Karlsson, one of the Appellants. Further, there was no apparent logic, financial or otherwise, in inviting countries such as the Republic of North Macedonia (with 4 registered Jumping athletes), Moldova, Georgia and Malta (each with just 2 registered Jumping athletes), other than to limit the potential participants both in terms of numbers and quality hereby boosting the chances of the other participants to earn ranking points. In addition, when reviewing the Schedules of events held in Villeneuve-Loubet in the proceeding years (2016, 2017, 2018 and March 2019) the number of invited Athletes ranged from 300 to unlimited.

4.7 The importance of the Olympic Rankings (which derived from the Longines Rankings) was self-evident. The role of the FEI as the international governing body was to ensure the integrity of both ranking lists and to ensure that they are not manipulated in order to give certain Athletes an unfair advantage. It was within this context that the Decision was taken. It was in the interest of all Jumping Athletes that the Longines and Olympic Rankings are “protected from manipulation”. The concern of the Jumping Athletes with what happened at the Villeneuve-Loubet Events was evident from the complaint filed with the FEI by the Director of the International Jumping Riders Club, the sole and official representative body for international Jumping Riders.

4.8 The fact that riders suffer adverse consequences from the application of Article 112.3 of the GRs did not and could not amount to sufficient grounds

for not applying it and certainly did not amount to discrimination. Further, the principle of ensuring “fair and equal conditions” for all Athletes outweighed recognising the legitimate expectations of a small group of Athletes who benefitted from the rule violation, even if they had done so unknowingly. The FEI Secretary General had not only the right but a statutory duty to do what was right for the FEI community as a whole and not just to preserve the results of a very small pool of handpicked Athletes. The International Jumping Riders Club had formally endorsed the Decision.

- 4.9 The FEI did not deny the significant impact of the Decision on the Appellants. The reality was however that the Villeneuve-Loubet Events were not typical CSI2\* events and all those participating would have been aware. The Appellants were among a small pool of Athletes that were effectively handpicked by the Organiser to participate in the Villeneuve-Loubet Events and given the “golden ticket” to access the valuable Longines Ranking/Olympic Ranking competitions.
- 4.10 With regard to Ms. Karlsson, the FEI submitted that she earned 56% of her total Olympic Ranking points during the 12 month Olympic Ranking period (1 January 2019 – 31 December 2019) at the 3 December 2019 Villeneuve-Loubet Events. The FEI also noted that following the removal of the Longines Ranking Competitions added after the Definite Entries Deadline, only 10 of Ms. Karlsson’s other 2019 results counted because in all other 238 competitions she competed in 2019, her placing were not high enough to obtain Olympic Ranking/Longines Ranking points.
- 4.11 The FEI further argued, that contrary to the Appellant’s submission, new competitions had been added.
- 4.12 The FEI submitted that due process had been followed. Contrary to the Appellants’ allegations, the FEI requested the ECIU to carry out an investigation prior to issuing the Decision. Further, via these Appeal proceedings, the Appellants had a full opportunity to explore, review and challenge the exercise by the FEI Secretary General of her discretion under Article 112.3 and the rationale behind that decision. There had been no violation of the Appellants’ right to be heard or any violation of the European Convention on Human Rights, as the Appellants argued in their submissions. Moreover, the FEI complied with the instructions of the Tribunal to deliver the Official Documents, having already voluntarily provided the ECIU Report and related Appendices. The FEI also noted that the Appellants had submitted documents that were not even in the possession of the FEI, for example, correspondence between the Organiser and the FRA-NF, and correspondence between witnesses and the ECIU.

- 4.13 Finally, the FEI submitted that it accepts to bear the burden of proof in these Appeal proceedings to demonstrate that the Secretary General's decision was correct and lawful and that there were "justified circumstances" for removing the Competitions that were added after the Definite Entries deadline. The FEI respectfully submitted that it had done so.
- 4.14 The FEI submitted the following prayers for relief:
- (a) *Dismiss the Appeals in their entirety;*
  - (b) *Confirm the FEI Secretary General's Decision;*
  - (c) *Determine that the Appellants shall bear the costs of the Appeal proceedings and make a contribution of CHF4,000 each towards the FEI's legal costs.*

## **5. Hearing**

- 5.1 During the hearing the Parties had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its Decision in the case at hand. The Tribunal carefully heard all evidence and arguments presented by the Parties during the hearing even if they have not been summarised herein and took those into consideration in its discussion and subsequent deliberation.
- 5.2 At the end of the hearing, the Parties confirmed that the Tribunal respected their right to be heard and their procedural rights. The Appellants, however, maintained their objection with regard to the Tribunal's decision to reject the additional witness statements and witnesses to be heard.
- 5.3 At the outset of the hearing, the Appellants provided a written version of the Appellants' opening statement, which contained new and additional arguments not previously submitted in writing. Shortly after Mr. Herck's verbal statement during the hearing, the Appellants provided a written version thereof via e-mail to the Tribunal and the FEI. Mr. Herck confirmed that this had been prepared in collaboration with his counsels as well as transmitted to the interpreter beforehand. The FEI objected to the additional submissions and documents provided. Finally, following the objection by the Appellants, the Tribunal decided not to allow the FEI to submit a new document, which allegedly listed the "selected events" in which riders can obtain a certificate of capability. However, this document was also mentioned later on during the hearing by the Appellants themselves.
- 5.4 During the hearing, and where not mentioned otherwise in the following, both Parties maintained their previous submissions. The Parties, however,

presented additional arguments and emphasised or clarified certain points as outlined in the following.

- 5.5 One of the additional arguments by the Appellants during the hearing was that, since the classes in December (the weekend of 3 December 2019) and in January 2020 (weekend of 17 January 2020) were not cancelled because the Longines Rankings were added before the Definite Entries deadlines, the only reason for the Decision was the modification of the schedule after the Definite Entries deadlines. If the ECIU had established irregularities during the Event, then the FEI would have had to cancel all nine weeks of competitions. In their opinion, the ECIU Report was not finalised, none of the allegations of the ECIU had been proven and the points therein are only “fiction”. The ECIU not only carried out a very superficial investigation, but also failed to provide evidence for its allegations. The ECIU Report uses words such as apparently, arguably, a cause of concern etc. The ECIU Report did not report facts or events, but solely allegations which would need to be verified. Ms. Karlsson, for example, had been interviewed for less than a minute or two and Mr. Herck had not been interviewed at all. In addition, the Appellants questioned whether the ECIU Draft report existed on 17 February 2020, as the digital properties of the electronic version of the ECIU Report revealed the date of 19 March 2020, i.e., the day prior to disclosure of the ECIU Report by the FEI.
- 5.6 Further, the Appellants referred to several FEI events of the past, in which they alleged that the FEI Jumping Department had approved far more significant changes to schedules after the Definite Entries dates, such as changing the schedule after the Definite Entries date allowing participants to obtain the certificate of capability; those were, in the Appellants’ view, not minor changes or clarifications. While explaining the system as to how riders could obtain a certificate of capability for the Tokyo 2020 Olympic Games, the Appellants submitted, that, according to the Qualification System, “(...) *the FEI publishes each year a list of the “selected events” in which riders can obtain a certificate of capability.*” The Appellants further argued that “*Self-evidently, granting a possibility to obtain a certificate of capability after the definite entry date was not a minor change or clarification but a change with far more reaching consequences than a modification of the prize money. As a result of such a change less-skilled riders are able to obtain a certificate of capability in a relatively easy competition.*” The Appellants further submitted that the list of the selected events available on the FEI website was last updated in January 2020, i.e., the document did not prove which events were on the list when first published.
- 5.7 The Appellants argued that they had demonstrated that a number of the

events added changes to the prize money and modified competitions (in some cases upgrading to the status of Longines Rankings). These additions were approved by the NF's and the FEI, and it seemed fair to state that the FEI Jumping Department always approved such requests; the FEI did not provide evidence confirming refusals to approve such additions. Only in the schedules of 2020 there was a disclaimer that no Longines Rankings could be changed after the Definite Entries Deadline. But even then, the FEI Jumping Department ascertained the Organiser that such was possible if the change benefited the riders.

- 5.8 With regard the terms "Definite Entries Deadline" and "Closing Date for Entries", the Appellants further submitted that only the American Heritage Dictionary, the Oxford English Dictionary, and the Merriam Webster Dictionary were relied upon by the US Supreme Court and the Supreme Court in the United Kingdom and quoted in their decisions. Contrary to the FEI which relied on Microsoft Word Thesaurus, none of these dictionaries defined "deadline" as "closing date". "Definite Entries Deadline" and "Closing Date for Entries" therefore did not mean the same thing following both from the semantics and the *in dubio contra stipulatorem rule*. Upon request by the Tribunal to provide the Tribunal with an example of the difference between the Definite Entries Deadline and the Closing Date, the Appellant explained that the Definite Entries Deadline was a certain date as outlined in the Schedule and the Closing Date for Entries was the last moment when one could enter a rider, which was approximately an hour prior to the Horse inspection of an event. According to the Appellants, the Closing Date for Entries was after the dates when the additional Longines ranking competitions were added. Further, according to the Appellants for the Villeneuve-Loubet Events, the FRA-NF entered new riders one hour prior to the Horse inspection; in their view this could also be done under the FEI Rules.
- 5.9 The Appellants further insisted that the arrangements the Organiser and the French riders entered into, were entirely in accordance with French law, which is the relevant law in this case. The same was also possible in several other countries, including Switzerland pursuant to Article 164 of the Code of Obligations. The FEI Rules and Regulations did not forbid the assignment or transfer of the right regarding prize money either. The prize money during the Events had been distributed, the ECIU Report did not provide any evidence to the contrary. Pursuant to the FEI Tribunal Decision dated 15 February 2012, the ECIU indeed needed to satisfy the burden of proof. It was standard practice in the industry that the prize money in many cases was distributed to the breeder, owner, sponsor, team owner etc.; many riders in the top 100 had such provisions in their private agreements with third parties. An investigation into the matter would prove that the entry process through the FRA-NF system was different to the FEI

system, including that the dates were different from the FEI dates. The FRA-NF system was mandatory for all French riders and organisers, and prize money payment related to French CSI events required that at minimum 25-30% of the prize money had to go to the *engageur account* which was not the rider or owner of the horse. Further, the FRA-NF had itself made late entries for two French riders. The Appellants argued that it was not unusual for prize money to be distributed to someone else. In the case at hand the prize money was distributed back to the account of the organiser for those riders who were entered by the Organiser; in France the prize money went to the person who made the entries.

5.10 Furthermore, and according to the Appellants, the FEI disregarded that according to Swiss law the FEI Rules and Regulations were subordinated to Swiss state law. The Swiss Federal Tribunal declared that *lex sportiva* could not be recognized as a system of law under the Swiss Private International Law Act (PILA). The Rules of the (international) Sports association could only find application through a material reference and thus only be accepted as agreement by the parties. French law was relevant for this case because of Article 117b (Absence of a choice of law) of the PILA itself. French law was applicable to the agreement between the Organiser and the French athletes. Further, the laws of the county in which the event takes place was decisive for civil matters. The Draft Schedules stressed the importance of national laws when it came for instance to liability and insurance matters.

5.11 The Appellants argued that they may derive rights from the FEI's conduct. In citing several CAS case law, the Appellants argued that the concept of legitimate expectation had been repeatedly recognised by CAS. Underlying all these decisions lied the notion of "fairness", as was the case in the case at hand also, since as established by the FEI, there was no breach by the Appellants. The Appellants further argued that in the case at hand neither the FRA-NF nor the Organiser were sanctioned by the FEI, but the athletes were the ones getting punished. This proved how inequitable the FEI Secretary General Decision was in its outcome. The sanction was arbitrary and discriminatory against them. Various other riders could retain their points, whereas the same modifications or even more significant modifications to the schedules happened during the other events. The Appellants further argued that the FEI had to face its own mistakes and conduct an internal investigation; the matter was not solved with taking away ranking points. Relevant for a rider like Ms. Karlsson was that when they go to an event they had to be able to rely on the Schedule. If the FEI had been able to react earlier, she could have gone to a different event and tried to earn ranking points there.

5.12 Moreover, the Appellants argued that the proceedings violated Article 6 of



the European Convention of Human Rights (ECHR), Article 182 of PILA and Articles 5 and 9 of the Swiss Constitution. This had been the case as in first instance the FEI refused to disclose the relevant documents to the Appellants related to the Decision. Further, the Appellants had to react to the documents that were produced in March 2020 after the Appeals were initiated without them knowing the position of the FEI. When the Appellants wanted to introduce witnesses, the FEI refused such relying on procedural rules and the Tribunal followed the FEI's refusal. Therefore, in the view of the Appellants they had no other option but to ask Mr. Herck to give a presentation, which was his own summary. In the view of the Appellants they were not "Appellants" but defendants, as two innocent riders had to defend themselves against the Decision which cancelled their ranking points.

- 5.13 Following, Mr. Herck clarified in his statement that, as the affected party, he appealed the Decision and not his father. He claimed that his fundamental rights had been abused, he had never been contacted by the ECIU and his witnesses were not allowed at the hearing at the request of the FEI. As previously submitted, he argued that the FEI Jumping Department had confirmed to his father over the phone that the Organiser was free to invite countries of his choice and that it was always possible to add rankings because this was to the advantage of the riders. He, however, also confirmed that he did not witness this conversation himself. In his view, there had been nothing strange or irregular with the events in question. The number of riders to be invited to events was a free choice to be decided by the Organiser. His father, the Organiser, made exactly the same programs in other events, where only very few riders participated. It was normal to have fewer riders entering in winter shows in comparison to spring competitions. He confirmed that neither he nor his father had known Ms. Karlsson prior to the events in question. Moreover, after some incidents at past events, his father only accepted "polite and well mannered" riders to his shows. He confirmed that the French riders were friends of the Organiser, and that they participated at the events for several years. They came from nearby, and since the events were scheduled during the end of the year holidays, they all waited until the last minute to enter the shows. All requests for entry had been approved.
- 5.14 Mr. Herck continued his statement with listing several events, where the organisers allegedly requested riders to buy VIP tables in return for participation at their events as well as about organisers which had added the possibility for riders to earn certificates of capability only after the Definite Entries Deadlines. In his view, these were a "10,000 times more" important changes to the schedule and opened the door for manipulation of events as important as the Olympic Games or the European Championships. In addition, he alleged that the members of the IJRC only

included certain riders, that it owned the Longines rankings and that the IJRC Director was also an organiser of jumping events being a clear conflict of interest. Further, he pointed out that the ECIU report was partially incomplete and not a final report; in fact, the ECIU had contacted the riders in March 2020 with regard to their contract of subrogation with the Organiser. He alleged a lack of impartiality of the ECIU. In his view this was the case because the ECIU only reproduced a part of Article 128 of the GRs in its report. He argued that Article 128.2 of the GRs (which was not reproduced) was however the important part, which allowed for private agreements, such as private contracts of subrogation, and where the FEI had no right to intervene. Ultimately, prizes had been paid and no complaints had been made.

- 5.15 Mr. Herck argued that the FEI admitted having made a mistake and should simply modify the rules for the future, without retroactively punishing riders. However, he was of the view that this was not a mistake by the FEI, but that such conduct was common practice by the FEI. Further, the FEI only reimbursed the additional fees for the cancelled competitions in April 2020, but not for the 2019 events, where additional Longines rankings competitions had been added after the Definite Entries deadlines. This would mean that the FEI approved adding competitions after the Definite Entries deadlines.
- 5.16 When questioned by the FEI and the Tribunal, Mr. Herck chose not to respond to certain questions, nor, when requested to do so, did he want to state that he was telling the truth. He confirmed to the FEI that he was alone in the room during the virtual hearing, and said that the person he had spoken to, during his deliberations, was his cleaning lady. When asked by the Tribunal how the Decision had impacted him, he responded that it had impacted his reputation, next to losing about 150 ranking points. He also claimed that the number of participants of previous events in Villeneuve-Loubet had been similar.
- 5.17 In her statement, Ms. Karlsson explained that she had tried to enter the events in question prior to the Definite Entries deadlines, but that the SRI-NF had not been invited. As a result, she phoned the Organiser – whom she had not known before – and requested him to put the SRI-NF on the list. The Organiser had told her that if the schedule was approved, she was most welcome to participate in the events. Since the SRI-NF did not get invited to many events, it was normal for her that she had to contact organisers to enter events and she knew some of them from her time competing for Sweden prior to changing her sporting nationality.
- 5.18 She was planning on qualifying for the Olympic Games and chose the Villeneuve-Loubet Events, as it suited her horse which had just recovered from an illness, and since it was close for her, as she lived in Germany and

her horse was already in Paris by that time. She confirmed that she was on the list for other events where she had been accepted but did not want to fly her horse given the previous illness. Further, she stated that up until her horse got sick, she was always ahead of the co-competitors in the rankings to earn an Olympic quota place in Group G. Also, she got her certificate of capability at the end of June 2019, whereas she believed her closest competitor for the Olympic quota place in Group G did not have one.

- 5.19 She confirmed that when she saw the Schedule on the FEI website it included three ranking competitions. She trusted the approved schedules three weeks in a row and should not be sanctioned for the mistakes of others. The events had been her last chance to earn Olympic ranking points. Finally, she confirmed that she received her prize money in cash.
- 5.20 The SRI-NF, in its statement, echoed that Ms. Karlsson should not get punished for someone else's fault. Further, that the SRI-NOC and SRI-NF were very proud of Ms. Karlsson as it was the first time Sri Lanka had the chance to participate in the Olympics in equestrian sports.
- 5.21 In continuation, the FEI argued that in the present case there was only one question to satisfy, namely whether justified circumstances existed for the removal of the Competitions and that the Secretary General did not have to prove fault to issue the Decision. The ECIU Report made it very clear that Competitions with Longines ranking points were added after the Definite Entries Date; this was not in dispute. The case came down to competitions having been removed, because they were not held in accordance with FEI Rules and Regulations. Adding the Competitions with Longines Ranking points after the Definite Entries Date was not allowed, and, on that basis alone, the Decision was justified. The Decision was very targeted as it only cancelled those events where Competitions with Longines Ranking points were added after the Definite Entries Date as this did not comply with FEI Rules.
- 5.22 With regard to the Appellants' allegation that the ECIU Report might not have existed on 17 February 2020 given the digital properties of the report, the FEI argued that the date of the properties of the ECIU Report was the date when it was saved on the FEI server and that the Decision only cancelled those events where Competitions with Longines Ranking points were added after the Definite Entries Date as this did not comply with FEI Rules.
- 5.23 The FEI further argued that the Appellants were mistaken with their interpretation of Definite Entries Date and Closing Date for Entries. When looking at the FEI Rules and Regulations, the deadline of one hour prior to

Horse inspection was the deadline for substitutions and not the Closing Date for Entries. The schedules in question only contained two dates: the Definite Entries Date and the last date for substitutions. The JRs did not contain any provision with regard to Closing Date for Entries. Art. 251.9.2 of the JRs reads as follows: "*Definite entries must be made by the date mentioned in the Schedule. This date may not be earlier than four weeks prior to the beginning of the Event and later than four days preceding the beginning of the Event.*" Therefore, in the FEI's view the Definite Entries Date was the Closing Date for Entries.

- 5.24 In this respect the FEI also clarified that the only applicable law in this Appeal was Swiss law together with the FEI Rules and Regulations. Article 2.8 of the Statutes outline the requirements to become an FEI member, which are also binding to organising committees and athletes. Local domestic law could not be allowed to overrule FEI Rules and Regulations, because this would undermine the whole reason for the existence of an International Federation such as the FEI. The assessment in this Appeal, was whether FEI Rules and Regulations were respected.
- 5.25 Further, the FEI argued that the Decision was well-founded and legally sound. It was necessary to protect the integrity of the rankings and the principle of fair and equal conditions. In the case at hand, ranking points were earned at competitions where FEI Rules were not respected. Therefore, these ranking points were cancelled for all riders participating in those competitions; however, only the Appellants decided to appeal the Decision. The FEI had a duty towards all the athletes to ensure their trust in the rankings, both the Longines and the Olympic rankings and all athletes had to compete and gain ranking points under equal rules. The Appellants' arguments of legitimate expectations of the riders were not well founded and could not be allowed. If one accepted that line, the FEI Secretary General's power to remove ranking points could never be exercised. If the Appeal were to be allowed, this would concern a validation of rules breaking. The FEI stressed that the Appellants were not at fault or wrongdoing, but that the points were not validly earned. The Decision was not arbitrary, but rather necessary to assure fair and equal conditions for all riders in the world and was taken under justified circumstances.
- 5.26 The FEI also stated that in all the Events no rider, except for Mr. Herck, registered on time. Therefore, many other riders interested in the Longines and Olympic ranking points, might have wanted to send their entries, but since at the time the entries were already closed, the Organiser had total control to keep the event "under the radar" so that only very few riders could earn those very important ranking points. Adding those competitions with Longines ranking points after the Definite Entries deadlines, impacted those riders who no longer could enter the Events via their NFs, i.e., the

"invisible athletes". Only those athletes which were handpicked by the Organiser were able to earn the ranking points. The FEI also argued that it was unlikely for athletes to go back and check the Schedules after the Definite Entries Deadline as they were aware of these provisions and since their NFs could no longer enter them at that point in time. The events were kept below the radar, but at the same time the Organiser invited some athletes, sometimes under the condition that athletes had to give up their prize money. Moreover, the Organiser had a lot of discretion to set the Definite Entries Date. In this case this date was consistently set early, i.e., on six occasions, and the Longines ranking competitions were added only thereafter, which in the FEI's view showed a clear pattern.

- 5.27 The FEI argued that the complaint of the IJRC illustrated the reactions of the other athletes. The IJRC has also endorsed the Decision in responding as follows: "*contaminated or manipulated ranking list would cause serious damage both to individual athletes and to the credibility of the sport*". In this regard the FEI clarified that the IJRC was a formal body representing Jumping riders, which had signed a Memorandum of Understanding with the FEI. The FEI received a complaint by the IJRC and requested the ECIU to investigate. The FEI also confirmed that the IJRC created and had copyrights of the ranking formula.
- 5.28 Upon request by the Tribunal, the FEI explained that insignificant changes, such as starting times of competitions were requested quite frequently after the Definite Entries Date. The FEI did not submit any non-approvals of requests to add ranking competitions after the Definite Entries Deadline as it was not usual to receive such requests. Further, following from the statistics previously submitted it cannot be said that this was an FEI practice. More specifically, the FEI argued that after reviewing every single schedule submitted by the Appellants only 6.9% could be regarded as "similar modifications", and the Appellants had only succeeded in showing that 0.1% of all FEI Jumping Events and 0.29% of the CSI2\* Events held between March 2018 and November 2019 (the period covered by the Schedules submitted by the Appellants) had a competition added after the Definite Entries Deadline, which confirmed that those changes were not common practice within the FEI.
- 5.29 Moreover, the FEI argued that while it can be accepted that prize money goes to a sponsor, or owner, it was a different matter if prize money went to the Organiser. In fact, this was a retention not a distribution of prize money. Some of these contracts, even if they were permitted under French law, were incompatible with the FEI Rules, because prize money was retained by the Organiser.
- 5.30 The FEI in answering to the Appellants' allegations explained that the list

of the “selected events” had been published – as required – and the events the Appellants made reference to had been included in this list, but the information regarding the certificate of capability had not been included in the schedules, and therefore added after the Definite Entries deadlines.

- 5.31 In relation to Mr. Herck’s statement during the hearing, the FEI submitted that this was an abuse of process, as the statement had been prepared, directly translated and already shared in advance with the interpreter, as admitted by Mr. Herck when asked by the FEI during the hearing. Its content was basically similar to the statement of the Organiser, which the Tribunal already decided not to admit. The FEI pointed out that the Organiser was not a party to these proceedings. Further, the FEI contended that Mr. Herck’s presentation was almost entirely hearsay as, for example, he was not present during the phone conversation between the Organiser and the FEI Jumping Department and since he had put forward numerous allegations based on information which he had no direct experience of. The FEI requested the Tribunal to put zero weight on this evidence. In addition, the FEI submitted that the counsels for the Appellants by referring to submissions of the FEI in different proceedings, at the time not yet finalised nor a decision issued, breached the confidentiality of those proceedings.
- 5.32 Finally, the FEI confirmed that – thus far – no proceedings against the Organiser or the FRA-NF had been opened. Given the impending deadline with regard to the Olympic Qualification, the Decision only focused on the Longines and Olympic ranking points.

## **6. Jurisdiction**

- 6.1 The Tribunal finds that, pursuant to Article 38 of the Statutes and Article 18.1 of the IRs, it has jurisdiction to decide this matter. Furthermore, neither party disputes the jurisdiction of the Tribunal.

## **7. Admissibility of the Appeal**

- 7.1 Having accepted that the Tribunal has jurisdiction to hear the Appeal, the Tribunal also finds the Appeal admissible, as the Appeal arises from a Decision taken by the FEI Secretary General, and since the Appellants have lodged their respective Appeals within the deadline foreseen under Article 162.5 of the GRs.

## **8. Legal Discussion**

- 8.1 To start with, the Tribunal wishes to address the various procedural issues submitted by the Parties. The Tribunal wishes to confirm its preliminary ruling of 24 March 2020 with regard to documents disclosure. In fact, the

FEI was ordered by the Tribunal to disclose all official documents with regard to the Decision, and by 26 March 2020 the FEI disclosed these documents.

- 8.2 For the avoidance of doubt, the Tribunal wishes to clarify the nature of the proceedings in the present case. In fact, contrary to the Appellants' submission, the case does not concern disciplinary proceedings opened by the FEI against the Appellants; but rather an appeal brought by the Appellants against the Decision. For sake of completeness, the Organiser is neither a party to these proceedings, nor has he lodged an Appeal against the Decision. Specific procedural rules with regard to Appeals are outlined in Article 40 ff. of the IRs, which are applicable to these proceedings. These procedural rules foresee one round of written submissions by each party with the Appellants – who wish to lodge appeals against decisions previously taken – going first. Given the documents disclosure request by the Appellants, the Tribunal granted the Appellants with the opportunity to complement their written submissions after receiving these documents.
- 8.3 On 30 March and 3 April 2020, the Appellants provided additional submissions, however, did not include any witness statements with their submissions, even though they referred to the matters for which they later on wished to provide unsolicited witness statements. The Tribunal wishes to confirm its previous preliminary ruling dated 6 May 2020, not to allow further witness statements after the written submissions were completed, due to the fact that the procedural rules clearly do not provide for the Appellants right to a rebuttal submission in response to the FEI's Answer; neither did the Parties agree on a second round of submission, or did the Tribunal find that such was necessary for "good cause shown". These are the rules applicable to this case and the Tribunal has to follow them.<sup>1</sup> *De facto* however, in the present case the Appellants had this opportunity orally during the hearing. Therefore, the Tribunal finds that the Appellants' right to be heard has not been violated, and the Appellants' arguments in this regard are dismissed.
- 8.4 Further, the Tribunal notes the FEI's argument that the Appellants' counsels breached the confidentiality of different proceedings in front of the FEI Tribunal. Pursuant to Article 17 of the IRs, proceedings in front of the Tribunal are confidential. Therefore, unless decisions are published on the FEI website containing the arguments put forward in those decisions,

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<sup>1</sup> See Article 44.2 of the IRs: "*Unless the parties agree otherwise or the Hearing Panel Chair orders otherwise for good cause shown, the parties shall not be permitted to supplement their written arguments or evidence with further written submissions after submission of the Notice of Appeal and accompanying documents (in the case of the Appellant) or the answer and accompanying documents (in the case of the FEI) (...)*"

which was not the case here, the Tribunal indeed finds that the Appellants' counsels breached the confidentiality of those proceedings.

- 8.5 In a further step the Tribunal wishes to clarify the applicability of FEI Rules and Regulations. Pursuant to Article 2.8 of the Statutes,<sup>2</sup> National Federations (NFs), such as the SRI-NF and the ROU-NF, when becoming members of the FEI, are accepting to be bound by the FEI Rules and Regulations. Mr. Herck and Ms. Karlsson are considered as members of FEI members as well as FEI registered athletes. Furthermore, by virtue of accreditation at the Villeneuve-Loubet Events they agreed to be bound by FEI Rules and Regulations. It is undisputed that the Villeneuve-Loubet Events concerned FEI sanctioned events, held in accordance with FEI Rules and Regulations. In addition, the Tribunal notes that the schedules of the events itself contain the applicable FEI Rules and Regulations in the "II. General Conditions" sections, including the Statutes, GRs and JRs. The Tribunal is therefore satisfied that the FEI Rules and Regulations also applied to the Villeneuve-Loubet Events. Furthermore, Article 28.3 of the Statutes and Article 167.2 of the GRs mandate for disputes to be settled in accordance with Swiss law. Therefore, the Appellants cannot now choose the applicable law as by way of FEI membership and registration they agreed to Swiss law.
- 8.6 A distinction has to be drawn, however, with regard to any potential private agreements the Appellants might or might not have entered with third parties, such as the Organiser for example. It is not up to the Tribunal, in this case, to decide whether such agreements, for example, subrogation or option contracts, were valid or not under French law. Neither is this question relevant to the Appeal and thus no further deliberation has to be made by the Tribunal in this respect. The parties are free to enter into agreements, define the law of those agreements, and to decide whether they want to use ordinary courts or any alternative dispute resolution mechanisms to settle any potential disputes arising out of such agreements. That said, for the purpose of this case the Tribunal has to decide whether or not FEI Rules and Regulations have been violated, and as previously established being compliant with those regulations is not optional but mandatory for the Appellants, as well as for organisers when

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<sup>2</sup> *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. In addition, by virtue of accepting an accreditation to an FEI Event, such person agrees to be bound by the FEI Rules and Regulations. National Federations are granted an exclusive license to use, modify, print and distribute as appropriate the documents referred to in this Article, which are FEI property, for the purpose of regulating Equestrian Sport within their national territory.*



organising FEI sanctioned events. The Tribunal however also believes that if agreements have been entered into with the aim to avoid FEI Rules and Regulations, the FEI should open disciplinary proceedings where appropriate.

- 8.7 Finally, the Tribunal wishes to clarify that the Swiss Civil Code (Articles 60 to 79), only impose few mandatory provisions to organisations established under Swiss law, such as the FEI in the case at hand. Apart from these mandatory provisions, and taking into account certain limitations, associations may organise themselves as they see fit, including putting rules and regulations in place.<sup>3</sup>
- 8.8 In deciding on the merits of the case, the Tribunal has taken note of the numerous arguments by the Parties. The Tribunal finds that it has first and foremost to decide whether or not to allow or to dismiss the Appeal, and in doing so to decide whether the Decision was taken in accordance with FEI Rules and Regulations.
- 8.9 Contrary to the Appellants' submission, for the Tribunal it is clear that the Secretary General has pursuant to Article 28.2(vii) of the Statutes and Article 112.3 of the GRs the authority to (i) remove any Competition from the Calendar; and to (ii) annul ranking points for specific Competitions for "justified circumstances" or under "specific circumstances". The general authority of the Secretary General to decide as issued in the Decision has therefore been established. As the Decision itself outlines this power has been exercised pursuant to Article 112.3 of the GRs.
- 8.10 In a further step, the Tribunal has to decide whether "justified circumstances" existed for the Secretary General to make the Decision. The Decision itself reads as follows in this regard:
- "(...) in accordance with art. 112.3 of the FEI General Regulations the FEI has decided to remove the competitions counting for Longines/Olympic Rankings points that, contrary to the FEI Rules (most notably Article 110.2.3 of the FEI General Regulations) had been added after the respective Definite Entries deadlines."*
- 8.11 Resulting from that, the Tribunal has to decide two points, first, have competitions counting for Longines and Olympic Ranking points contrary to FEI Rules been added after the respective Definite Entries deadlines, and second did "justified circumstances" exist for the Secretary General to exercise her authority to remove those competitions.

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<sup>3</sup> See for example Baddeley, M. (1994). *L'association sportive face au droit: Les limites de son autonomie*. Bâle et Francfort-sur-le-Main: Collection Genevoise, Helbing & Lichtenhahn.

- 8.12 Pursuant to Article 110.2.3 of the GRs *"The Schedules approved and published by the FEI shall be binding as if they were incorporated within the relevant Rules and/or Regulations. The FEI will not approve any Schedules when the closing dates for Entries have already passed."* The Tribunal has taken note of the Appellants' submissions with regard to the terms "Definite Entries Deadline" and "Closing Date for Entries". During the hearing, and upon request by the Tribunal to further explain the difference, the Appellants explained that the Definite Entries Deadline was a certain date as outline in the Schedule and the Closing Date for Entries was the last moment when one could enter a rider, which was one hour prior to the Horse Inspection of an event. However, the Tribunal finds that the Appellants err in their explanations. The Closing Date for Entries cannot be one hour prior to the Horse inspection. This is because when reading Articles 116 of the GRs and 251.9.2 of the JR, it is clear that definite entries and substitutions are on different dates, and that the latter is the later date and can be one hour before the Horse Inspection. The Tribunal further finds that the Closing Date for Entries has to be sometime between the Nominated entries, i.e., at least four (4) weeks before the Event, and the Definite Entries which must be made at least four (4) days preceding the beginning of the Event. Given that the Schedules only mention two "Deadlines for Entries", i.e., the "Definite Entries" and the "Last date for substitutions" this would point in the direction that the Definite Entries Deadline and the Closing Date for Entries are in fact the same deadline. Furthermore, the schedules themselves state that *"NB: No modifications to the approved Schedule will be accepted less than two weeks prior to the event."* It remains undisputed that that the FEI approved the Schedules which added additional Longines ranking competitions contrary to FEI Rules and Regulations, more specifically Article 110.2.3 of the GRs.
- 8.13 The Tribunal wishes to emphasise once more that the FEI Rules and Regulations are also binding for the FEI itself. The Tribunal has found similarly in a previous case (Appeal UAE-NF v. FEI, Decision dated 27 February 2019). Therefore and unless an overriding rule would allow for it, which is not the case at hand, the FEI should not have approved the Schedules which contained additional Longines ranking competitions. The FEI recognised and confirmed that this was their mistake.
- 8.14 In this context, the Tribunal also wishes to clarify that Article 110.2.3 of the GRs does not distinguish between minor or other changes to the Schedules. In fact, the Tribunal finds that – unless *force majeure* or extraordinary circumstances exist – pursuant to this provision, the FEI is not to approve any changes to the Schedules after the Closing Date for Entries have already passed. While the Tribunal understands that there might be a need to change start times or names of Officials after the Closing Date for Entries, which have been defined by the FEI as minor

changes, the rules currently do not reflect the possibility for the FEI to do so.

- 8.15 Finally, the Tribunal agrees with the FEI, that the late addition - contrary to the rules - of the Longines ranking competitions in question accepted by the FEI Jumping Department, completely transformed the nature of the Villeneuve-Loubet Events by instantly tripling the total number of Longines Ranking and Olympic Ranking points available there. This can certainly not be considered as a minor change, but a change that impacted the nature and the status of those respective events.
- 8.16 Further, the Tribunal wishes to clarify that the Tribunal has only to decide with regard to the Villeneuve-Loubet Events, and the case at hand does not concern any other events, or allegations made with regard to other events. The Tribunal takes note of two other competitions with Longines rankings being added after the Closing Date for Entries have been identified and the FEI explained that these were attributable to mistakes on the part of the respective NFs (France and Germany) and the FEI. The Tribunal finds it noteworthy that one of those competitions concerns an event at Villeneuve-Loubet in January 2019. Given these statistics, the Tribunal is satisfied that there were very few events where the FEI accepted Longines rankings competitions to be added after the Closing Date for Entries. As a result, the Tribunal is satisfied that this was not an FEI policy, or common practice, but rather rare incidents where the FEI made such mistakes.
- 8.17 Finally, the Tribunal also notes the Appellants' allegations that the possibility for riders to earn certificates of capability had been added and accepted by the FEI for certain events only after the Closing Date for Entries, and that these concerned more important changes to the schedules compared to the case at hand. While it is not the Tribunal's task to decide on these allegations in the present case, the Tribunal however wishes to point out that no evidence has been provided to support these allegations. The Appellants themselves refer to the Tokyo 2020 Olympic Games Qualification System which requires that "(...) *the FEI publishes each year a list of the "selected events" in which riders can obtain a certificate of capability.*" Ultimately, no evidence has been provided that the events in question have not been listed on the "selected events" list. The Tribunal does however agree that it would be desirable that the information to earn certificates of capability is included in the schedules prior to the Closing Date for Entries in order to have schedules with complete information, so that all interested riders can have equal access.
- 8.18 Having established that the relevant competitions counting for Longines and Olympic ranking points at the Villeneuve-Loubet Events have been added contrary to FEI Rules and Regulations, the Tribunal has in a next

step to decide whether “justified circumstances” existed for the Secretary General to remove those competitions and thus cancel those ranking points.

- 8.19 To start with, the Tribunal notes that the rules do not contain any definition of “justified circumstances”. The Tribunal finds that these have to be evaluated on a case by case basis. The Tribunal finds that where the integrity of the sport has been put into jeopardy this could certainly count as justified circumstances.
- 8.20 In the case at hand, the Tribunal finds that this was indeed the case. Article 1.3 of the Statutes and Article 100 of the GRs mandate the FEI to ensure that athletes and teams from different nations can compete in international events under “fair and even” or “fair and equal” conditions. While the conditions were the same for Mr. Herck and Ms. Karlsson, as well as for the other small number of athletes who competed at the Villeneuve-Loubet Events, this was not the case for those athletes who would have wished to participate in the respective events once the additional Longines rankings competitions had been added. In fact, they could no longer enter these events, unless they were accepted or invited by the Organiser. The Tribunal agrees with the FEI that, the “invisible athletes” to use the FEI’s term, were disadvantaged by adding the Longines ranking competitions after the Closing Date for Entries, as they could no longer enter via their NFs or earn ranking points; at that point in time they were at the mercy of the Organiser’s good will. In the case at hand the ranking points were earned at competitions where FEI Rules were not followed. Further, the Tribunal agrees with the concerns of the IJRC who endorsed the Decision. Therefore, the Tribunal finds that there existed justified circumstances to cancel those Longines/Olympic ranking points for those events where Longines ranking competitions were added after the Closing Date for Entries, as the Secretary General did, and as described in the Decision.
- 8.21 In a next step, the Tribunal has to decide whether the Appellants’ argument of legitimate expectation provides grounds for Mr. Herck and Ms. Karlsson’s to keep the ranking points earned in those events. The Tribunal wishes to point out that a decision which was contrary to the regulations, such as the FEI accepting modifications of the respective Schedules at a time when they were no longer allowed, cannot create any legitimate expectations of riders, or any other persons, including the Organiser. Even if this was not the case, the Tribunal had to balance the interests of the sport and all athletes with the interests of the Appellants. The Tribunal finds that the integrity of the sport and the rankings supersedes the interests of two individual riders to keep their ranking points.

- 8.22 Therefore the Decision was justified, and not arbitrary as alleged by the Appellants.
- 8.23 For the avoidance of any doubt, the Tribunal also wishes to clarify that it does not matter who brings the complaints forward to the FEI. In fact, the FEI should encourage the equestrian community to report any cases where they believe FEI Rules and Regulations have been violated in any way. The fact that one complaint in the case at hand was received by a direct competitor of Ms. Karlsson for an Olympic quota place, does not change anything in this regard. Obviously, this person and/or his NF might have had a greater interest in reporting such rule violation. Related to this the Tribunal also notes that Mr. Herck has made serious allegations regarding organisers that in his opinion have broken the FEI Rules by requesting athletes to buy VIP tables for their invitations to events, among others. In this regard the Tribunal encourages Mr. Herck, or any other person with such knowledge and evidence to report such incidents to the FEI. The Tribunal however also finds that taking into consideration that the FEI itself breached some rules, the FEI should also investigate wrongdoings internally, and put procedures in place to ensure that rules and regulations are followed by the FEI itself. It remains undisputed that the riders bore no fault for these violations and did not violate the rules themselves. The Tribunal finds that the case is somewhat comparable with a previous case (Case 2018/04 FEI v. Ilvira Jogina, Final Tribunal Decision dated 26 April 2018), where the actions of an FEI Official led to the cancellation of results, and where a rider missed out on qualifying for the 2016 Buenos Aires Youth Olympic Games as a consequence.
- 8.24 Given the foregoing the Tribunal finds that the FEI does not have the burden to prove “alleged irregularities” of the Villeneuve-Loubet Events in order to succeed with the Appeal. In fact, the Decision was rightfully taken. The Appellants decided to lodge an Appeal against such Decision. However, since the Decision mentions that it was taken “*Further to such investigations and the alleged irregularities*” the Tribunal wishes to analyse some of those points and arguments.
- 8.25 To start with, the Tribunal agrees with the FEI that the fact that FEI Officials reports did not include any irregularities does not mean that there have not been any. In fact, FEI Officials’ jurisdiction only covers the Period of the Event, i.e., starting one hour prior to the first Horse Inspection and terminating 30 minutes after the announcement of the final results. However, the matters at hand concern alleged irregularities prior to this period with regard to invitation of riders, schedules, etc. and after this period, with regard to distribution of prize money. Therefore, the FEI Officials would not have any authority to take decisions on the matters in dispute.

- 8.26 Moreover, the Tribunal notes that the ECIU was requested to conduct an investigation and produced a report. It remains undisputed that the investigation was at least partially conducted prior to 13 February 2020, and the Tribunal notes that the non-redacted Appendices of the ECIU Report all show them being created and modified on 11 February 2020, *i.e.*, prior to the date of the ECIU Report. The Tribunal is therefore satisfied that the ECIU Report was drafted prior to the Decision. However, the Tribunal agrees with the Appellants that the ECIU Report has to be considered as incomplete. The ECIU Report itself states that it contains outstanding matters which require further inquiries. Nonetheless, the Tribunal finds that the ECIU Report provided ample grounds to query and examine the integrity of the Villeneuve-Loubet Events.
- 8.27 Similar to a previous case (AZE-NF vs. FEI, Final Tribunal Decision of 15 February 2012) the Tribunal finds that the ECIU Report lacks substantiated proof. The Tribunal finds that the ECIU Report is not conclusive with regard to the allegation related to the payment of prize money. That said, the Tribunal agrees with the FEI that the word “distributed” in Article 128 of the GRs is unambiguous. Prize money which is retained is clearly not distributed. In addition, it is questionable whether Article 128.2 of the GRs can really include organisers themselves. This is not for the Tribunal to decide in this case. The Tribunal however encourages the FEI to further investigate this practice. As a final remark, the Tribunal wishes to clarify that it finds the fact that the ECIU Report does not contain the entire wording of Article 128.2 of the GRs, as alleged by the Appellants, does not establish the ECIU is biased, and no evidence which would prove that the ECIU was biased in submitting its report was presented to the Tribunal.
- 8.28 Finally, the Tribunal notes that the FEI has requested that the Appellants shall each bear costs of 4,000 CHF of these Appeals proceedings, and the reasons for it. While the Tribunal agrees that there was no need to provide separate Additional Submissions for Mr. Herck and for Ms. Karlsson and the SRI-NF after the proceedings have been consolidated, the Tribunal also takes into consideration that it was the FEI in the first place which allowed for the rule violation to happen when approving the Schedules with the additional Longines ranking competitions. Therefore, the Tribunal finds that each party shall pay their own costs in these proceedings.

## **9. Decision**

- 9.1 As a result, the Tribunal therefore decides as follows:

- 1) The Appeals are admissible.**
- 2) The Appeals are dismissed.**
- 3) The FEI Decision stands.**

**4) All other requests are dismissed.**

**5) No deposits shall be returned to the Appellants. Each party shall pay their own costs in these proceedings.**

9.2 According to Article 165 of the GRs, this decision is effective from the date of oral or written notification to the affected party or parties.

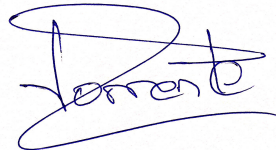
9.3 According to Article 162.7 of the GRs, this decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

**V. DECISION TO BE FORWARDED TO:**

**a. The Parties: Yes**

**b. Any other: No**

**FOR THE PANEL**



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**Mr. Cesar Torrente**  
**FEI Tribunal panel chair**