

LEGAL AND VETERINARY JOURNAL

GCL DECISION



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On an earlier stage various media reported on the debacle between the FEI and the organization of the Global Champions League ("GCL"). The debacle has now only been fuelled by the recent decision of the Brussels Court of Appeal of 22 October 2015 by which the preliminary decision of the Belgian Competition Authority ("BCA") was upheld.

THE BCA RULING

To remind you. In the summer of this year the BCA ordered the FEI to suspend its exclusivity clause (the clause preventing riders from events not approved by the FEI) with regards to the GCL, so that riders and horses were free to compete in this – not by the FEI approved – event. The BCA ordered the FEI further to inform riders, national federations and organized of such in writing before 31 August 2015. It is important to note that the exclusivity clause, till the

moment the BCA decision was issued, prevented riders who competed in the events that were not approved by the FEI from taking part in any FEI event for a period of six (6) months.

THE COURT OF APPEAL

The BCA decision was welcomed by a vast majority of riders and horse owners. At the same time it apparently fuelled the FEI's fears about losing its dominant rule in the equestrian world. To a large group of stakeholders in the equestrian community these fears seem to be rather unfounded. In the end the FEI remains the international governing body of Olympic equestrian sports consisting of national federations. Preserving its monopoly goes however way too far when it comes to organizing international equestrian events by formally prohibiting riders to compete in any non-FEI event. Unsatisfied with the outcome of the proceedings the FEI challenged the BCA decision of the Court of Appeals in Brussels, that has only recently upheld that decision.

FIERCE REACTION FEI

The decision was given on 22 October 2015 and led to a fierce reaction of the FEI. For instance, the FEI commented the Court of Appeals' decision in a press release issued on 10 November 2015 with the following statement: "Horse welfare and sporting integrity are the two key principles of the unsanctioned events rule, and these principles can only be protected and promoted by putting in place rules, including anti-doping and veterinary

regulations, and by making acceptance of international events onto the official calendar conditional upon the Organising Committee adopting all of those regulations and making them binding on all participants in those events. Without these rules, we have no way of safeguarding the welfare of horses and athletes participating in such events, or of protecting the integrity of the events. "We are confident that the European Commission will accept that legislation on unsanctioned events is not against the EU anti-trust rules." This reaction of the FEI is not very promising. It might turn the matter into a long-lasting (legal) battle. In this respect the FEI resembles the FIFA, acting for its own interest and according to its own policies and regulations and not in the last place often taking decisions against a common sense and influenced by rather unclear incentives. The FEI pled her cause before the Court of Appeal put with the following arguments.

LEGAL PROCEEDINGS

The FEI believed that the BCA decision caused a serious and immediate prejudice to the FEI and to the common good. The provisional measures established under the BCA decision would further hamper the very function of the FEI in its capacity as the governing body of equestrian sport. Moreover, they would damage the reputation of equestrian sport, the FEI and all National Equestrian Federations that are members of the FEI.

The common good, the welfare of horses, riders and the general public would be compromised by the BCA decision, which would allow equestrian events to be run by GCL (and invites other organisers to do the same) without i.) veterinary controls, ii.) anti-doping tests, iii.) betting controls and iv.) controls of compliance with the rules of the sport (fair play and uniformity of the rules of the sport).

The FEI further argued that: "With the abolition of the rule on the not by the FEI approved events organizers of such not by the FEI approved events would not, in practice, be bound to adhere to any of the rules of the FEI in respect of the protection of the welfare of horses and the integrity of competition, as the FEI has no control whatsoever over the actions of those participating in non-accredited competitions (including GCL)". According to the FEI the BCA Decision would have the effect of undermining the credibility of the governing body and would enable the riders to choose whether or not to comply with the rules of the FEI. It is unable to organise and structure the official schedule of competitions with a view to maintaining a balance between the various interests at stake. The BCA Decision would further prevent the FEI from establishing an official schedule of competitions that enables the national teams to improve their performance with a view to qualifying for regional and world competitions and the Olympic Games and could trigger a chain reaction.

FEI ARGUMENTS DISMISSED

The arguments of the FEI were dismissed by the Court of Appeal. The Court of Appeal considered that the upholding of the BCA decision does not relieve GCL of the obligation to comply with the rules of the FEI relating to the protection of the welfare of horses (the Code of Ethics for the Welfare of Horses, Veterinary Regulations, the Equine Controlled Medication Regulations of the FEI) and the integrity of competition (the Anti-Doping Rules for Human Athletes and the Equine Anti-Doping and Controlled Medication Regulations). Moreover, parties in the proceedings themselves have committed to adhering to the regulations of the FEI relating to horse welfare and the integrity of competition during the Global Champions League and to submit to the controls of the FEI at their own expense. The Court of Appeal also observed that the Statutes and Regulations of the Global Champions League stipulated sanctions (penalties and disqualifications) to anyone found to have violated horse welfare or mistreated a horse (...) is liable to fines and other penalties, including disqualification from the event or exclusion from the League. The Court of Appeal also considered that the FEI failed to demonstrate how the organizing of the GCL would adversely impact "protection of horse welfare and of the integrity of the sport" and or would create "a risk in respect of the showcasing of international competitions". These negative effects on horse welfare and integrity of the sport seem to be from our perspective rather non-existent. If the FEI is really concerned about these issues and would like to mitigate this alleged risks the FEI could propose to carry out controls during the GCL events to ensure compliance of a respective event with the Code of Ethics for the Welfare of Horses, Veterinary Regulations, the Equine Controlled Medication Regulations of the FEI. The Court of Appeal, as an outsider to the equestrian sport correctly, evaluated the FEI arguments. They are namely non-arguments, especially when one realizes who the driving forces are behind the GCL.

GOING FORWARD

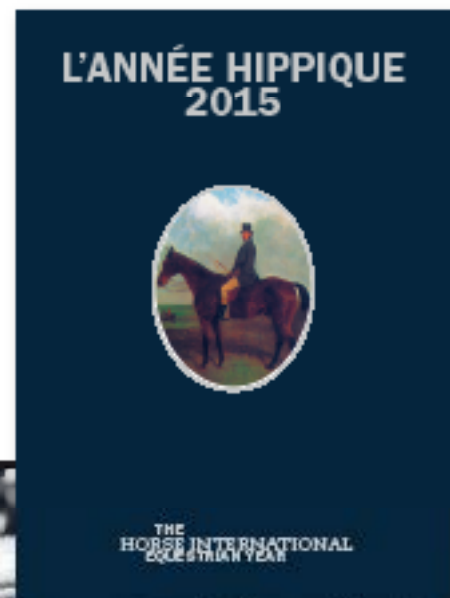
The BCA Decision is not of general application. It concerns only the GCL. Though, it may be a precedent in the equestrian world leading to new leagues and tours being organized outside of the FEI. Evidently, the FEI is currently enjoying a predominate role in the equestrian world fulfilling many roles at the same time. It's a governing body, it is an organizer and a marketer of equestrian events. Facing the BCA decision the FEI probably realises that its own financial interest is at stake. In economics the lack of competition may give a monopolist, like the FEI, less incentive to invest in new ideas. Being a monopolist is in the end rather a comfy position but it stops innovation and a gives rise to an eventual set back. This economic rule seems to work in the FEI vs GCL dispute. Many people devoted to the equestrian sport believe the FEI should have welcomed more competition in the equestrian world and announced cooperation with the GCL. Instead the FEI declares to do everything that is in its power to overrule the BCA decision. The FEI chooses to protect her own privileges rather than focus on promoting and development of the equestrianism in the world. Hopefully, the FEI will accept that the world around her is changing. ■

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If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us by e-mail via info@europeanequinelawyers.com or telephone on +31-(0)135114420.



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