



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal brought by the Österreichischer Automobil Motorrad und Touring
Club (ÖAMTC) on behalf of its licence-holder Grasser GmbH
against
the decision dated 20 May 2015 of the National Court of Appeal of the Royal
Automobile Club of Belgium (RACB) taken on appeal against the decision No.
43 dated 12 April 2015 of the Stewards of the competition of Monza (Italy)
counting towards the international Blancpain GT Series 2015.**

Case ICA-2015-03

Hearing of 28 July 2015 in Paris

The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprising Mr Thierry Julliard (Switzerland), who was designated President, Mr Vassilis Koussis (Greece) and Mr Ladislav Vostarek (Czech Republic), met in Paris on Tuesday, 28 July 2015 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Österreichischer Automobil Motorrad und Touring Club (ÖAMTC) on behalf of its licence-holder Grasser GmbH (the “Appellant”) against the decision dated 20 May 2015 of the National Court of Appeal of the Royal Automobile Club of Belgium (RACB) taken on appeal against the decision No. 43 dated 12 April 2015 of the Stewards of the competition of Monza (Italy) (the “Competition”) counting towards the international Blancpain GT Series 2015 by which car No. 19 of the Appellant was excluded from the race of the Competition for breach of Article 257 A of Appendix J – 6.1.4 to the International Sporting Code (the “Code”) and of the “Balance of Performance decision for tracks category A” taken by the SRO GT Bureau on 30 March 2015 (the “BOP”).

The following persons attended the hearing:

On behalf of the Appellant:

Mr Gottfried Gasser (Team Principal)
Ms Maria Francesca Portincasa (Lawyer)
Mr Stefano Brustia (Lawyer)
Mr Leonardo Galante (Witness)
Mr Giorgio Sanna (Witness)

On behalf of the RACB:

Mr Xavier Schene (General Manager)
Mr Robby Wuyts (Sporting & Administration
Manager/Clerk of the RACB Appeal Court)
Mr Claude Surmont (Witness)
Mr Fabrice Giovannini (Witness)

On behalf of the FIA:

Mr Pierre Ketterer (FIA Head of Regulatory, Governance
& Legal Corporate Affairs)

Also attending the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA
Courts)
Mr Nicolas Cottier (Clerk of the FIA Courts)
Mrs Sandrine Gomez (Administrator of the FIA Courts)

The parties filed their written submissions and, at the hearing of 28 July 2015, presented their oral arguments and answered the questions asked by the Court. The Court heard Mr Giorgio Sanna in his capacity as Head of the Motor Sport Department at Automobili Lamborghini S.p.A., Mr Leonardo Galante, Technical Director at Automobili Lamborghini S.p.A, Mr Claude Surmont, Technical Delegate of the Blancpain GT Series and Mr Fabrice Giovannini, Chief Scrutineer at the Blancpain GT Series. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation. No objection to the competence or the composition of the Court, to any element of the fairness of the proceedings or of the hearing or to any element of the simultaneous translation was raised by either party.

REMINDER OF THE FACTS

1. On 10 April 2015, the competitors in the first round of the international Blancpain GT Series 2015 in Monza proceeded with the registration of their refuelling rig. The Appellant declared to Mr Giovannini, Chief Scrutineer at the Blancpain GT Series, that the diameter of its fuel restrictor was 31 mm, as provided under the BOP.
2. At the end of the Competition which took place on 12 April 2015, Mr Michele Bovina, acting upon instructions from Mr Claude Surmont, the Technical Delegate of the Blancpain GT Series, carried out a check at 18.30 on the refuelling system of car No. 19 of the Appellant. Mr Bovina noted in his report, which shows amendments with respect to the car number and the refuelling pipe length, that the system's refuelling pipe length was 2.3 metres and that the fuel restrictor's width was 32.8 mm.
3. Upon receipt of this report, Mr Claude Surmont wrote his note No. 6 to the attention of the Stewards, mentioning that the refuelling pipe of car No. 19 did not respect the minimum length, namely 250 cm, provided for under Article 257 A of Appendix J – 6.1.4 to the Code and that its fuel restrictor did not respect the maximum width (31 mm) determined by the BOP.
4. Upon receipt of Mr Surmont's note, the Stewards summoned the Appellant's representative at 19.40 to report immediately to them, without any indication of the reasons for the summons.
5. At 20.00, the Stewards pronounced the exclusion of car No. 19 from the Competition, in which it had finished in 1st position, for breach of Article 257 A of Appendix J – 6.1.4 to the Code and of the BOP (the "Stewards' Decision").

6. The Appellant brought an appeal, received at 20.56, against the Stewards' Decision before the National Court of Appeal of the RACB, the Belgian ASN, which confirmed such decision on 20 May 2015 (the "RACB Decision").
7. The RACB Decision was notified to the Appellant on 4 June 2015.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

8. On 10 and 11 June 2015, the ÖAMTC, acting on behalf of the Appellant, lodged an appeal against the RACB Decision before the Court (the "Appeal").
9. In its submissions, filed on 26 June 2015, the Appellant contends that the Court should:
 - “- *declare and rule that the appeal is admissible;*
 - *quash the decision of the National Court of Appeal of RACB of 4 June 2015;*
 - *order the sporting authority concerned to rectify the classification of the Race, reinstalling Car No. 19 of Grasser Team in the final results of the race No 1 run [sic] at Monza (Italy), counting for the 2015 Blancpain Endurance Series;*
 - *pronounce any other measure which it deems appropriate.*”
10. The RACB filed its submissions on 13 July 2015 and concluded, without any further comments, that the RACB Decision should be upheld.
11. The FIA, in its grounds in response dated 13 July 2015, invites the Court to assess the facts in the case and give a ruling on the possible breach of the applicable sporting regulations and, if appropriate, on the principle of a sanction.
12. The RACB submitted on the day of the hearing an email from Mr Michele Bovina, dated 22 July 2015 and describing the circumstances under which the inspection took place on 12 April 2015. The Court asked the Appellant if it accepted that this new element provided by the RACB be placed on the file, which the Appellant refused.
13. The Court decided to reject this email on the grounds that this new element was produced after the date set for the filing of the RACB's written submissions and

that that the RACB failed to prove that the information contained in it could not have been obtained before that date.

14. The Appellant claimed that the RACB Decision should be declared null and void considering the alleged situation of conflict of interests between the President of the RACB appeal court, Mr Jean-Pierre Migeal, and the judicial reporter of the case before that court, Mr Gérard Martin, both persons belonging to the same law firm. The Court decided to reject this new submission forthwith as the Appellant failed to prove why this fact and the legal submissions related to it could not have been submitted to the Court within the deadlines set.

ADMISSIBILITY OF THE APPEAL

15. The RACB Decision was issued on 20 May 2015, by the ASN of Belgium, namely the RACB National Court of Appeal, and was notified to the Appellant on 4 June 2015.
16. The ÖAMTC lodged the appeal before the Court on 10 June 2015, namely within the deadline provided under Article 12.3 (i) lit. b of the Judicial and Disciplinary Rules (the “JDR”), applicable to appeals against decisions of a judicial body of an ASN. The ÖAMTC also paid the appeal deposit in due course.
17. Considering the above, the Court finds the appeal admissible, which is undisputed.

ON THE SUBSTANCE

a) Arguments of the parties

18. The Appellant does not contest that the refuelling pipe and the fuel restrictor measured by the technical delegate of the Competition were in breach of the applicable regulations, because no representative of its team took part in the measurement of the items. Yet the Appellant claims that there is no proof that those items belong to its team.
19. The Appellant claims further, and this is its main submission, that article 65 of article 2.2.2 of the 2015 FIA World Endurance Championship and articles 62 to 70 of the Blancpain GT Series Sporting Regulations 2015 (the “GT3 Regulations”) set out strict standards and rules regulating the checking and scrutineering of the cars and equipment.
20. The Appellant alleges further that checks and scrutineering must be carried out only by properly authorised officials, who are not entitled to carry out any type of

post-qualifying and post-race scrutineering checks in the absence of an official representative of the team concerned.

21. According to the Appellant, no modification or removal of the items to be checked can be made by the scrutineering officials (the “Scrutineers”) without the presence of an official representative of the team concerned.
22. As a consequence of the foregoing and referring to the *Jama Investments Luxembourg* case dated 3 November 2004 (ICA 2004-8), the Appellant argues that a competitor representative must be present during any inspection, otherwise the chain of custody of the evidence is not guaranteed.
23. It is the Appellant’s view that the fact that the refuelling tower, where the pipe and the fuel restrictor were installed, is outside the area of *Parc fermé* does not allow the Scrutineers to inspect it in the absence of a competitor representative.
24. The Appellant refers in that context to the communication allegedly made by the organising committee of the Competition during subsequent races, notably the race on the Paul Ricard track, where it was stated that the refuelling towers were under “*Parc fermé conditions*”.
25. The Appellant then stresses that its fuel tower was sealed at the next round of the international Blancpain GT Series in Silverstone, whereas it was not at the Competition.
26. The Appellant puts forward that those pieces of equipment should have been checked before the race and then sealed until the end of the period where their conformity to the applicable regulations is required, and not only after they had been taken away from the refuelling tower for the inspection.
27. In support of its statement, the Appellant refers to Article 2.2 of the 2015 FIA WEC – Sporting Regulations, arguing that this article is proof that in endurance competitions, any piece of equipment being checked must be sealed.
28. As a further submission, the Appellant stresses that note No. 6 of the SRO Technical Delegate mentions that the refuelling pipe had a length of 2.46 metres whereas the pipe shown during the hearing before the RACB National Court of Appeal measured 2.22 metres, which was not even mentioned in the RACB Decision although, in the Appellant’s opinion, this casted serious doubts on the origin of the pipe.
29. The Appellant then argues that Mr Bovina, who inspected the pipe and the fuel restrictor, was neither a Scrutineer nor an official of the Competition.
30. Neither Mr Bovina nor anyone else informed the Appellant of the measurements taken in relation with those items and no information was provided in advance to

the Appellant, the inspection taking place at the same time as the award ceremony which the Appellant's entire team was attending.

31. For all those reasons, the Appellant claims that it did not have a chance to see what happened during the inspection and that there was no valid proof that the items at stake were in fact those of the Appellant.
32. The Appellant also claims that all those irregularities lead to a violation of its rights of defence and that the whole proceedings of first and second instance should thus be declared null and void.
33. As a further submission, the Appellant argues that, should the Court consider that the inspection was valid, it should find that the alleged irregularities did not give any relevant advantage to the Appellant and that the sanction imposed on the Appellant's car No. 19 by the Stewards, which was confirmed by the RACB National Court of Appeal, must thus be considered as disproportionate.
34. The RACB did not develop any new arguments in its written submissions, referring simply to the RACB Decision.
35. At the hearing, the RACB argued that the inspection proceedings which had taken place after the Competition met the requirements laid out under the GT3 Regulations, stressing that due to air-traffic controller strikes in Italy, pre-race checks were postponed and only confirmations of the conformity of the refuelling tower elements were requested from the competitors, who were warned that such elements would be checked after the Competition.
36. The RACB then explained that the difference in the measurements taken on the pipe was probably due to the fact that there had been a misunderstanding as to which part of the element had to be measured.
37. Asked by the RACB, Mr Surmont confirmed at the hearing that he had asked Mr Bovina to proceed with the checks on the Appellant's refuelling tower.
38. The RACB then argued that the inspection had actually taken place after the award ceremony, so that a representative of the Appellant could have attended the inspection.
39. The FIA submits first that checks carried out on a classified car must be made in *Parc fermé* and in the presence of an official representative of the competitor concerned, according to Article 67 of the GT3 Regulations.
40. The FIA submits further that the duties of the Scrutineers, as defined under Article 11.14 of the Code, can be delegated to assistants.
41. In that context, it is the FIA's view that the issue to be addressed in the present case is whether the absence of an official representative of the Appellant during

the inspection leads to the nullity of the whole inspection proceedings, with respect to (1) the GT3 Regulations, (2) the *Jama Investments Luxembourg* ICA precedent of 2004 and (3) any particular circumstance of the present case.

42. Coming then to the Appellant's claim on the alleged violation of its rights of defence by the Stewards, the FIA is of the opinion that the devolutive effect of the appeals before the RACB National Court of Appeal and before the Court cured any violation of those rights which may have occurred before the Stewards.
43. With respect to the sanction imposed on the Appellant's car No. 19, the FIA stresses that according to Article 1.3.3 of the Code, the absence of a performance advantage is not a valid argument of defence and that compliance of a car with technical regulations is of "*the utmost importance*".

b) Conclusions of the Court

44. The Court first analyses the status of Mr Michele Bovina when the latter performed the inspection of the refuelling tower elements on 12 April 2015 and finds that according to Article 11.4 of the Code, the Scrutineers are allowed to delegate their duties to any assistant, who will then operate under their responsibility.
45. Based on the clear statements made by Mr Surmont during the hearing, the Court has no doubt that Mr Bovina had been validly delegated by Mr Surmont, in his capacity as Technical Delegate, to inspect the Appellant's refuelling tower.
46. However, the Court refers to Article 11.14.2 a of the Code which provides that the Scrutineers – or their delegates – shall carry out their checks after an event if "*requested by the clerk of the Course and/or the stewards*", and notes that Mr Surmont was neither Clerk of the Competition nor a steward according to the list of officials of the Competition.
47. Hence, the Court concludes that the checks performed by Mr Bovina were not in line with the conditions set out under the Code, as they were not conducted on the basis of a request from the Clerk of the Course and/or the Stewards.
48. The Court then examines the issue of the absence of any official representative of the Appellant during the inspection which took place on its refuelling tower.
49. The Court notes first that nothing in the two technical reports issued between 18.30 and 19.25 on 12 April 2015, the first one by Mr Bovina and the second one by Mr Surmont, indicates that a representative of the Appellant was present during the inspection of the Appellant's refuelling tower and no other valid evidence was brought by the RACB that would prove the contrary. Nor is there any evidence that the Appellant had received a formal invitation to attend the inspection.



50. The Court then took due note of Article 67 paragraph 3 of the GT3 Regulations which provides that:
- “At the end of the qualifying practice session and after the finish of the races, all classified cars must make their way to the Parc fermé for checking. The presence of an official representative of the competitor is required. (red.)”*
51. Although the question as to whether the refuelling tower must be considered as part of the “car” within the meaning of Article 67 paragraph 3 of the GT3 Regulations or even an “Automobile” within the meaning of Article 11.14.1 of the Code remains open, the Court finds that this article applies in any case to any check performed on a competitor’s car or any item used by the competitor, including the refuelling tower, whether or not this item is considered as part of the “car”. In other words, any check performed on a competitor’s equipment imperatively requires the presence of an official representative of such competitor.
52. This being stated, it is irrelevant whether the refuelling tower and its elements are to be considered in *Parc fermé*.
53. Indeed, if the presence of a competitor representative is required in *Parc fermé*, where no unauthorised third party can access the cars, it is even more necessary to perform inspections in the presence of a representative of a competitor if the inspected items are not located in *Parc fermé* and can therefore be accessed by any unauthorised third party.
54. The competitor’s representative would have the opportunity to take position immediately on the regularity and reliability of the inspection proceedings, notably with respect to the use of the inspected items and the measurements taken. The seals could also be placed in the presence of the competitor’s representative, excluding any dispute on the provenience of those items, notably when discrepancies are found due to subsequent measures.
55. Article 67 paragraph 3 of the GT3 Regulations therefore applied to the inspection performed by Mr Bovina and the Court thus finds that the absence of a representative of the Appellant during such inspection leads, *eo ipso*, to a violation of the essential rights of the Appellant and therefore to the invalidity of the inspection performed, which cannot be subsequently cured in any way despite the devolutive effect of the appeal proceedings.
56. The ICA reached the same conclusion in its precedent *Jama Investments Luxembourg* case dated 3 November 2004 (ICA 2014-8).
57. Based on all the above, the Court declares the appeal well grounded, and the RACB Decision together with the Stewards’ Decision must be set aside.

58. In the present case, it appears that the inspection was performed by an assistant, Mr Bovina who, despite having been validly delegated by a Scrutineer, acted without specific instructions from the Stewards or the Clerk of the Course and most importantly in the absence of a representative of the Appellant. Moreover, Mr Bovina's report contained several questionable corrections, notably on two important elements, namely the car number and the refuelling pipe length. Potentially different measurements were reported in the course of the proceedings, which casts doubt on the reliability of the whole inspection procedure.
59. The Court thus stresses that the regulations applicable to the competitors are very strict and the level of compliance with those rules is high. One should thus expect the Stewards, the Scrutineers or any other official and delegate to meet the same standards when it comes to parts of the regulations which apply to them.

COSTS

60. Considering that the Appeal was admitted and that the RACB Decision was set aside together with the Stewards' Decision, the Court leaves it to the RACB to bear the costs, the Appeal deposit being entirely returned to the Appellant, in accordance with Article 13.2 JDR.

ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal admissible;**
- 2. Sets aside the decision of the National Court of Appeal of the Royal Automobile Club of Belgium (RACB) taken on 20 May 2015 and the decision No. 43 dated 12 April 2015 of the Stewards of the competition of Monza counting towards the international Blancpain GT Series 2015;**
- 3. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 4. Orders the Royal Automobile Club of Belgium (RACB) to pay all the costs, in accordance with Article 13.2 of the Judicial and Disciplinary Rules of the FIA;**
- 5. Orders the reimbursement of the appeal deposit to the Appellant;**
- 6. Rejects all other and further conclusions.**

Paris, 28 July 2015

Thierry Julliard, President