

## 2018 ABU DHABI GRAND PRIX

22 - 25 November

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| <b>From</b> | The Stewards             | <b>Document</b> | 20               |
| <b>To</b>   | All Teams, All Officials | <b>Date</b>     | 24 November 2018 |
|             |                          | <b>Time</b>     | 13:22            |

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**Title** Haas Protest Decision  
**Description** Haas Protest Decision  
**Enclosed** UAE DOC 20 - Haas protest decision.pdf

**Garry Connelly**

**Dennis Dean**

**Felipe Giaffone**

**Mahir Al Badri**

**The Stewards**

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### Haas F1 Team Protest – Decisions

1. The Stewards received two protests from Haas F1 Team (“Haas”), one against Car 31 (Driver Esteban Ocon) and one against Car 11 (Driver Sergio Perez) of the Racing Point Force India F1 Team.
2. The identical protests alleged that “Force India Mercedes” (“FIM”) (Racing Point Force India F1 Team or “RPF1”) is not a “constructor” within the meaning of such terms as set out in Article 6.3 and Appendix 6 of the 2018 Formula One Sporting Regulations and accordingly asserted that FIM is not eligible to enter such cars in the 2018 FIA Formula One World Championship.
3. Haas and FIM representatives were summoned to a hearing of the Stewards which commenced at 1100 hrs (UAE time) Friday November 23. The FIA was also invited to be represented.
4. Haas and FIM representatives included their respective legal counsel. Due to the significance of the matters to be discussed, the stewards gave their advance approval for such representation and extended the same courtesy to the FIA, which accepted the offer to also be represented by counsel.
5. Present at the hearing were
  - Mr Peter Crolla (Team Manager Haas F1 Team)
  - Mr Gunther Steiner (Team Principal Haas F1 Team)
  - Mr Jeremy Courtenay-Stamp (Legal Representative Haas F1 Team) - via teleconference
  - Ms Leslie Ross (General Counsel FIM)
  - Mr Andy Stevenson (Sporting Director FIM)
  - Mr Mark Gay (Legal Representative FIM)
  - Mr Charlie Whiting (FIA Formula One Director)
  - Mr Pierre Ketterer (FIA Head of Governance, Integrity and Regulatory Affairs) – via teleconference
6. The Stewards declared that the protests had been lodged within the applicable time limit as specified in the International Sporting Code (“the Code”), accompanied by the required fee, and hence decided to proceed to hear the two protests concurrently.
7. The parties were advised that the Stewards wished to make an audio recording of the proceedings and were asked if there were any objections. No objections were raised.

8. In advance of the hearing, and during it, the parties submitted numerous documents. These are listed in Appendix A to this Decision.

## **Background**

9. On July 28, 2018, Sahara Force India Formula One Team went into Administration.
10. On August 16, 2018, Racing Point UK Limited entered into a sale agreement with Force India Formula One Limited (in Administration) and Geoff Rowley and Jason Baker as administrators of Force India, for the acquisition by Racing Point of the business and assets of Force India. (This was evidenced by reference to the Deed of Novation and Amendment and was not disputed by any of the represented parties).
11. On August 21, 2018 Mr Otmar Szafnauer signed an entry form on behalf of Racing Point UK Limited for RPF1 to enter two cars with a "Force India" chassis in the 2018 FIA Formula One World Championship.
12. On August 23, 2018 the FIA issued a Super License for Racing Point Force India F1 Team
13. During the period prior to August 23, numerous agreements were entered into and these are included in the documents listed in Appendix A.
14. The "new" team RPF1 competed at its first Formula One Grand Prix in Spa, Belgium, commencing with scrutineering on August 23.

## **The Hearing**

15. The hearing commenced at 1100hrs (UAE time) and was suspended at 1204hrs to allow Haas and the FIA representatives time to examine documents that were tabled during the hearing. The hearing reconvened at 1545hrs and concluded at 1651hrs.
16. Mr Courtenay-Stamp (for Haas) submitted that the Championship is only for eligible "constructors" and that the cars presented by RPF1 do not comply with the definition of "constructor" in Article 6.3 and Appendix 6 of the 2018 F1 Sporting Regulations.
17. Art 1 of Appendix 6 of the 2018 F1 Sporting Regulations states that a competitor "shall in respect of the Listed Parts to be used in its cars in Formula One, only use Listed Parts which are designed by it.
18. He noted also that Art 2 of Appendix 6 allowed for the "outsourcing" of the "design and/or manufacture" of any Listed Part to a "third party".
19. However, such outsourcing has several provisos including (b) which states that the third party shall not be a "competitor".
20. Mr Courtenay-Stamp argued that RPF1 did not design the Listed Parts and alternatively did not outsource them.
21. The protest also asserted that the definition of "competitor" should be construed to include previous, existing or excluded competitors.

22. Mr Courtenay-Stamp asserted that the FIA cannot exercise its sole discretion to accept an entry in the championship (under Art 8.5 of the 2018 F1 Sporting Regulations) if that party is not a “constructor” in accordance with the definition in Art 6.3 and Appendix 6 of those regulations.
23. Mr Gay (for RPF) summarised the chronology of events from the date when Sahara Force India went into Administration. He explained that normally in these situations a new potential owner of an F1 team would purchase the shares in the company from the Administrators; however, in this case because of the situation of the two major shareholders this was not possible.
24. Mr Gay noted that the Bilateral Settlement Agreement of August 23 acknowledged that the sale of assets of the Sahara Force India team in Administration, was effective August 16, 2018.
25. He also noted Clause 2.5 of the Bilateral Settlement Agreement which acknowledged that the (new) Force India team was a constructor and that Clause 2.8 prescribed a significant penalty if the team ceased to be a constructor during the Term of the agreement.
26. Mr Gay questioned under what provision Haas had any right to protest. He argued that the FIA had “absolute discretion” (as noted under 22 above) to accept RPF as a constructor. He suggested that the matter should in any case not be heard by the Stewards but by the International Court (sic).
27. Mr Gay also questioned the validity of the protest on a “timely” basis, stating that there had been eight events conducted since RPF obtained its Super Licence and that any protest should have been lodged before the first event in which RPF participated.
28. He further argued that the so-called “Budapest Agreement” to which Haas is a party, was, in effect, a waiver to any right to object to or protest the new arrangement.
29. In response, Mr Courtenay-Stamp submitted that it had taken a long time for all the information to be available to Haas; indeed some was only made available on November 1 and more was made available during the hearing, so Haas did not have a full understanding of the arrangements in place until the time of this hearing.
30. He further argued Haas had the right to protest against decisions and, in particular, if it believed the regulations had not been complied with, including by the FIA, in taking the decision to admit a team to the Championship.
31. In response Mr Gay argued that Article 1.2.3 of the Code gave the FIA the right to determine what was “safe, fair or orderly” and that this was not the responsibility of the Stewards.
32. The Stewards Chairman referred Mr Gay to Articles 11.9.1 and 11.9.2a of the Code which the Stewards believed gave them the right and responsibility to hear the protest and make a determination on the matter.
33. For the FIA, Mr Ketterer firstly declared the FIA had no objection to the disclosure of the documents referred to herein, for the purposes of this hearing only.
34. He stated the FIA was concerned with regulatory matters and not commercial ones in relation to this matter.

35. He noted that the Sahara Force India F1 Team had been excluded from the championship and that the FIA's position was that RPF1 is a new and different Team. He noted it held a new Super Licence dated 23 August 2018.
36. He further noted that the FIA is not a party to the Budapest Agreement and therefore it is not relevant from a regulatory perspective.
37. In particular he referred to the definition of Outsourcing in paragraph 9 of Appendix 6 of the 2018 F1 Sporting Regulations.
38. He noted that RPF1 made a contract on August 16 2018 and in doing so obtained the rights to use all the parts previously owned by Sahara Force India F1 Team, and that as of that date, all assets were disposed of. Therefore, the former team had, as of that, date forfeited its rights.
39. Mr Ketterer then noted that at no time did either the former team or RPF1 design Listed Parts for any other competitor.
40. He strongly argued that using Listed Parts from a former team does not breach any FIA regulation and therefore the use, by RPF1 of parts from the former team complied with the definition of Outsourcing.
41. In response, Mr Courtenay-Stamp (for Haas) repeated that the Championship is only open to a competitor who is a constructor, that RPF1 sourced Listed Parts from a past competitor, and that it did not design the Listed Parts.
42. Mr Gay in summary argued that the FIA had acted properly and that this was an argument of "form over substance".
43. It was noted that neither Haas nor RPF1 responded to the invitation from the Chairman of the Stewards to make a submission or comment on the definition of "Competitor" as it appears in the Code.

## **Decisions**

### **Decision 1**

In relation to the Racing Point Force India F1 Team submission that the Haas Formula One Team has no jurisdiction to challenge the decision of the FIA to accept its entry in the Championship under Article 8.5 of the 2018 Formula One Sporting Regulations, the Stewards decide that the Haas Formula One Team does in fact have the right under Article 13.2.1 of the Code to protest this action by the FIA. This article states a competitor has the right to protest against “the Entry of a Competitor or Driver”.

### **Decision 2**

The Racing Point Force India F1 Team argued the protest was not timely. The Stewards decide that the protest is timely because a significant amount of information was only available to the Haas Formula One Team in very recent times and further, Article 13.3 of the Code allows a protest to be lodged against the entry of a Competitor or Driver at an event, within 2 hours of the closing time for Official Scrutineering and Haas complied with this requirement.

### **Decision 3**

In relation to the “Budapest Agreement” the Stewards decide that the assertion that this document waives the right of the Haas Formula One Team to object to an entry is not consistent with the wording of that Agreement but in any case, as submitted by the FIA, because the FIA was not a party to the Agreement, it has no relevance in regulatory matters.

### **Decision 4**

In relation to the submission by the Racing Point Force India F1 Team that it is not a new team, the Stewards decide that the Racing Point Force India F1 Team is indeed a new team. It is a separate and different legal entity to the Sahara Force India F1 Team and it holds a different ASN Competition License issued by the MSA of Great Britain and a different FIA Super License. Therefore, it cannot be considered as the “same team” as the former Force India.

### **Decision 5**

In relation to the Racing Point Force India F1 Team procuring Listed Parts from the Sahara Force India F1 Team (in Administration) the Stewards decide that the former team was not a “competitor” within the meaning of Appendix 6 Article 2 b) of the 2018 F1 Sporting Regulations. The former team was no longer a competitor in the 2018 Formula One World Championship as it had as of August 16, forfeited all its rights and ability to field two cars at any further Grand Prix in 2018. The Force India Formula One Team ceased to meet the FIA definition of both a Competitor and a Constructor on 16 August 2018 when all of its assets were sold. At that point it no longer possessed the resources to meet its obligations as either a competitor or constructor.

### **Decision 6**

The Stewards decide in relation to the definition of “Outsourcing” that there is no regulatory support for the argument that Outsourcing of Listed Parts cannot come from a former or excluded team and therefore the procurement, by the Racing Point Force India F1 Team of Listed Parts from the Administrator, was permitted under the wording of Appendix 6 of the 2018 F1 Sporting Regulations.

### **Decision 7**

The Stewards therefore decide that the Racing Point Force India F1 Team satisfied, from August 23, 2018, the definition of a “Constructor” under the 2018 FIA Formula One Sporting Regulations. The reasons for this are;

1. Racing Point Force India F1 Team became a Competitor on 23 Aug 2018 when its Super License was signed and issued by the FIA.
2. The Racing Point Force India F1 Team was recognized by the FIA as an F1 Constructor on 23 Aug 2018 when its F1 Entry Form was accepted, resulting in the issuance of its Super License, and when on the same day it signed the Bilateral Settlement Agreement with the FIA.

#### **Decision 8**

The Stewards decide that the entry of Racing Point Force India Formula One Team is a valid entry in the 2018 Formula One World Championship because the FIA, under Article 8.5 of the Formula One Sporting Regulations has absolute discretion to accept or reject an application to compete in the Championship and under Article 8.1 has the right to accept a late entry if a place is available.

#### **Decision 9**

The Stewards decide to dismiss the protests lodged by Haas Formula One Team against Car number 11 and car number 31.

The Steward note their belief that the protests were lodged in good faith considering that there was significant material that only came to the attention of the protesting party, in recent times.

Competitors are reminded that they have the right to appeal the decisions of the Stewards (with the exception of those referred to in Article 12.2.4 of the FIA International Sporting Code), in accordance with Article 15 of the FIA International Sporting Code and Article 9.1.1 of the FIA Judicial and Disciplinary Rules, within the applicable time limits.

**Garry Connelly**

**Dennis Dean**

**Felipe Giaffone**

**Mahir Al Badri**

**The Stewards**

## Appendix A

| <b>Date</b>      | <b>Document</b>   |
|------------------|---|
| 15 March 2012    | Team Agreement between Force India and FOWC and SLEC Holdings Ltd.  |
| July 2018        | Budapest Agreement  |
| August 2018      | FIA Draft Deed of Release and Wavier  |
| 21 August 2018   | Racing Point Force India FIA Entry Form and Associated Documentation  |
| 23 August 2018   | Letter from Jean Todt to Force India Formula One Team Ltd.  |
| 23 August 2018   | Bilateral Settlement Agreement  |
| 27 August 2018   | Email from Charlie Whiting to Andrew Green  |
| 1 November 2018  | Deed of Novation and Amendment between FOWC, SLEC Holdings Ltd., Force India Formula One Team Ltd (in administration), the Administrators, Racing Point Ltd. and Racing Point UK Ltd. |
| 8 November 2018  | Letter from Ebury Partnership to FIA and FOWC   |
| 12 November 2018 | Letter from Bird & Bird on behalf of the FIA to Ebury Partnership   |
| 15 November 2018 | Letter from Ebury Partnership to Bird & Bird  |
| 21 November 2018 | Letter from Bird & Bird to Ebury Partnership  |
| 22 November 2018 | Email from Pierre Ketterer to Garry Connelly  |
| 22 November 2018 | Haas F1 Team Protest of Car No. 11  |
| 22 November 2018 | Haas F1 Team Protest of Car No. 31  |
| 23 November 2018 | Skeleton Argument of Racing Point UK Ltd  |