



INTERNATIONAL TRIBUNAL / TRIBUNAL INTERNATIONAL

INTERNATIONAL TRIBUNAL (IT)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Case brought by the
Fédération International de l'Automobile (FIA)**

against

Pirelli Tyres S.p.A. (Pirelli)

and

**Mercedes-Benz Grand Prix Limited t/a Mercedes AMG Petronas Formula
One Team (Mercedes)**

Case IT-2013-01

Hearing of Thursday 20 June 2013 in Paris



INTERNATIONAL TRIBUNAL / TRIBUNAL INTERNATIONAL

The FIA INTERNATIONAL TRIBUNAL (“the Tribunal”), comprised Mr Edwin Glasgow QC (United Kingdom), who was designated President, Mr Christy F. Harris (USA), Mr Patrick Raedersdorf (Switzerland) and Mr Tony Scott-Andrews (United Kingdom), met in Paris on Thursday 20 June 2013 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Prior to the oral hearing, the Tribunal received and considered submissions and attachments thereto made by the FIA, Pirelli, Mercedes and observations made by the third parties Red Bull and Ferrari.

The following persons were attending the above hearing:

on behalf of the FIA:

Mr Sébastien Bernard, Legal Director
Mr Michael Bools QC
Ms Delphine Camboulives, Lawyer
Mr Damien Clermont, Chief Administrative Officer
Mr Pierre de Coninck, Secretary General
Mr Mark Howard QC
Mr Pierre Ketterer, Legal Counsel
Mr Jean Pierre Martel, Lawyer
Mr Charlie Whiting, Formula One Race Director

on behalf of Pirelli:

Ms Teresa Julia D’Onofrio, Pirelli Legal Department
Mr Fabrizio Dini, Pirelli Legal Department
Mr Dominique Dumas, Lawyer
Mr Paul Hembery, Pirelli Motorsport Director

on behalf of Mercedes:

Ms Fiona Banks, Legal Counsel
Mr Ross Brawn, Team Principal
Mr Paul Harris QC
Ms Caroline McGrory, Legal Director
Mr Ron Meadows, Sporting Director
Mr Oliver Rumsey, Legal Counsel
Mr Andrew Shovlin, Chief Race Engineer

on behalf of the third party Scuderia Ferrari:

Mr Massimiliano Maestretti, Lawyer
Mr Nigel Tozzi, QC

on behalf of the third party Vodafone Mc Laren Mercedes:

Mr Mark Hubbard, Senior Counsel



on behalf of the third party Infiniti Red Bull Racing:
Mr Christian Horner, Team Principal

Mr Paul Monaghan, Chief Engineer on behalf of the third party Williams F1
Team:
Mr Mark Biddle, General Counsel

Also attending the hearing:
Mr Jean-Christophe Breillat (Secretary General of the FIA
Courts)
Mr Nicolas Cottier (Clerk of the FIA Courts)
Ms Sandrine Gomez (Administrator of the FIA Courts)

SUMMARY OF THE BACKGROUND FACTS

1. Pirelli is the single tyre supplier in the Formula One Competition pursuant to a contract with the FIA signed on 11 January 2011 (the “Contract”). The relevant terms of that Contract are as follows:

“*RECITALS*”

(A) The FIA’s authority in relation to international motor sport has been recognised since 1904 (...).

(B) The FIA is the sole body governing international motor sport and is recognised by its members as the sole authority having the sporting power with the right to organise international FIA championships, including the CHAMPIONSHIP.

(C) The FIA has an absolute obligation conferred on it by its members to safeguard its authority (red.) over all safety, sporting, technical and disciplinary matters relating to the CHAMPIONSHIP, as well as traditional values.

(D) The FIA will continue the publication annually of the GOVERNING RULES.

(E) The FIA has determined that the interests of the CHAMPIONSHIP require that a single supplier of the TYRES should be appointed for a limited term.

(F) It is intended that the FIA and the PROVIDER will enter into this CONTRACT pursuant to which the PROVIDER will be appointed as the sole supplier of TYRES to the CHAMPIONSHIP for the term set out therein.

(...)



2. RELATIONS BETWEEN THE PROVIDER AND THE COMPETITORS

2.1 The PROVIDER shall treat all COMPETITORS in accordance with the PRINCIPLES OF SPORTING EQUALITY.

2.2 The PROVIDER shall supply the TYRES to all COMPETITORS on equivalent terms in accordance with the Supply Agreements.

2.3 All SUPPLY AGREEMENTS shall be fully compliant with the PRINCIPLES OF SPORTING EQUALITY, the CONTRACT and the SPORTING REGULATIONS and TECHNICAL REGULATIONS.

(...)

2.8 In the event of uncertainty regarding whether any action taken or proposed to be taken by the PROVIDER may breach the PRINCIPLES OF SPORTING EQUALITY, the PROVIDER shall request guidance from the FIA, which shall make a determination in this regard. Where such a determination is made by the FIA, the PROVIDER's actions in complying with that determination shall be deemed to be in compliance with the PROVIDER's obligation in GENERAL CONDITION 2.1 to treat all COMPETITORS in accordance with the PRINCIPLES OF SPORTING EQUALITY. (...)

6. GOVERNING RULES

6.1 The GOVERNING RULES constitute the legal, administrative and technical framework of the CHAMPIONSHIP and the conditions set forth therein shall have binding force and prevail among the parties to the CONTRACT.

6.2 The CONTRACT shall in principle be interpreted in a manner that gives effect to the provisions of the GOVERNING RULES, the intention of the parties being to construe the provisions of the CONTRACT in the context of the more general framework of the GOVERNING RULES.

6.3 The PROVIDER acknowledges that the TECHNICAL SPECIFICATIONS and GOVERNING RULES are subject to amendment from time to time. (...).

6.4 The PROVIDER acknowledges that the 2013 GOVERNING RULES may differ substantially from those applicable in 2011 and 2012. The PROVIDER undertakes to take all necessary measures to comply with the 2013 GOVERNING RULES, with no reservation of any kind, and to supply TYRES that comply with any new requirements.

However, Pirelli shall be entitled to terminate this CONTRACT by written notice to the FIA to be sent within 30 days from the date of the publication of the said changes by the FIA, if there is a change to the 2013 GOVERNING RULES



which will materially affect Pirelli's compliance with the obligations set out in this CONTRACT (including material adverse economic effects), such termination to be effective before the Racing Season in which the 2013 GOVERNING RULES will enter into effect.

6.5 The PROVIDER acknowledges that the FIA may take decisions regarding the supply of TYRES through whatever structure it deems appropriate, including through its disciplinary structures.

7. GOVERNING LAW AND LANGUAGE

(...)

7.2 The governing law of the CONTRACT shall be French law.

7,3 "The Tribunal de Grande Instance de Paris, France, shall have sole jurisdiction to settle any dispute that may arise between the FIA and the PROVIDER in connection with the CONTRACT. (...)."

PART 2 – SPECIAL CONDITIONS

(...)

4.2 The PROVIDER may also engage in its own TYRE testing. Each of the COMPETITORS from the previous year's Championship shall be invited to make available up to 1,000 km of TYRE development testing at the PROVIDER's request, subject in each case to the agreement of the FIA.

4.3 The PROVIDER undertakes to treat all COMPETITORS equally with respect to anything which affects the performance of the cars.

(...)

PART 3 – DEFINITIONS

(...)

1.9 GOVERNING RULES means:

(a) the International Sporting Code and the Appendices thereto;

(b) the SPORTING REGULATIONS; and

(c) the TECHNICAL REGULATIONS.

(...)

1.10 TEST means tests as defined in and authorised by article 22 of the SPORTING REGULATIONS.



(...)

1.14 SPORTING REGULATIONS means the Sporting Regulations applicable to the CHAMPIONSHIP as published and amended by the FIA from time to time. The Sporting Regulations are available on the FIA website www.fia.com.

(...)

1.16 TECHNICAL REGULATIONS means the Technical Regulations applicable to the CHAMPIONSHIP as published and amended by the FIA from time to time. The Technical Regulations are available on the FIA website www.fia.com.

(...)”

2. On 2 May 2013, Ron Meadows, Sporting Director of Mercedes, spoke to Charlie Whiting, the Formula One Race Director of the FIA, and asked “*whether Mercedes was permitted to participate in the Pirelli test, using a 2013 car*”. Ross Brawn, Team Principal of Mercedes, made a similar inquiry the same day, although his recollection is that he “*asked Charlie again whether the 2013 car could be used for the Pirelli test.*”
3. Charlie Whiting’s own recollection is that he indicated to Ron Meadows and Ross Brawn that such a test would comply with Article 22 of the 2013 Formula One Sporting Regulations (the “SR”) provided that it was clear that its purpose was for Pirelli to test its tyres but that he would check the position with FIA’s legal department.
4. Following a direction made by the President of the Tribunal, FIA produced an exchange of emails between Charlie Whiting and Sébastien Bernard, FIA Legal Director, in which the former recorded his view that “*it would (or could be argued) that “the test” was being done by Pirelli*” and Mr Bernard confirmed his view as being: “*we could take this position that it is Pirelli’s initiative to carry out such testing sessions, and not an undertaking from the competitors. However I think this is always subject to Pirelli complying strictly with its obligation to treat equally all competitors as per clause 4.2 of the supply agreement. This means that Pirelli shall invite all competitors to participate in such tests, and be able at any time to demonstrate that it has done so.*”
5. Mr Whiting spoke as well to Paul Hembery, Pirelli Motorsport Director, in similar terms and Mr. Hembery confirmed that all the teams would be given a similar opportunity to test and that he would confirm that all of the teams had been informed once that had been done.
6. It was common ground that (i) Mercedes took part in testing which was organised by Pirelli, which took place from 15 May until 17 May 2013 at the Barcelona Circuit in Spain, following the Grand Prix of Barcelona 2013; (ii) no



other team was, on this occasion, informed of the opportunity to carry out similar tests; (iii) no other team was even informed that the Barcelona test was contemplated; and (iv) accordingly, no other competitor participated in or was present at this testing.

7. Two teams, namely Infiniti Red Bull Racing and Scuderia Ferrari Team, lodged protests on May 26, 2013 at the Monaco Grand Prix 2013 in respect of this testing, arguing that such testing could have constituted a breach of the SR and/or the International Sporting Code (the “ISC”).
8. The protests were, effectively in identical terms, as follows:

“The Competitor has breached Art. 22.4h) of the 2013 Formula One Sporting Regulations as the Mercedes AMG Petronas F1 Team has conducted a three days track testing using a 2013 car on 15th, 16th, 17th of May in Barcelona, i.e. between the period which precedes the start of the first Event of the Championship and 31 December of the same year.

In consideration of the importance of the breach committed, [Infiniti Red Bull Racing and Scuderia Ferrari Team reserve] the right to request the prosecuting body as per Article 6. And 7. Of the 2013 Judicial and Disciplinary Rules of the FIA to conduct a disciplinary inquiry into the actions of the Competitor and/or of the Mercedes AMG Petronas F1 Team.”

9. In accordance with article 152 ISC, the Stewards issued a joint report, the most relevant findings of which can be summarised as follows:

“After hearing and collecting information the Stewards present following report to the FIA who may bring the matter before the International Tribunal. (...)

First hearing Red Bull and Ferrari together

The Stewards asked if Red Bull or Ferrari had got any request or invitation from Pirelli for these days after Barcelona. The answers were no. (...)

Second Hearing Mercedes AMG Petronas F1 Team

(...)

The stewards asked the Mercedes representatives if they had been testing tyres during three days in Barcelona, using the 2013 car and drivers Nico Rosberg and Lewis Hamilton. The answer was yes. (...). Ross Brawn continued by saying that in the first 5 races of the year there had been several tyre failures. Mercedes was asked by Pirelli to conduct a tyre test for them, using current car and relevant drivers on the Barcelona track. He also said that he had a verbal contact with Charlie Whiting to ask for FIA’s position on this. He said that Charlie had answered that this was possible if there was an equal opportunity to all competitors. Ross Brawn said that he had informed Paul Hembrey of Pirelli



about this. Brawn said that Paul Hembrey had confirmed that all competitors had an equal opportunity. The stewards asked if Mercedes had any written admittance from FIA and the answer was no. Ross Brawn also added that as it was a Pirelli test, Pirelli had booked the circuit and were paying all expenses. Brawn pointed out that the tyre test was anonymous, so Mercedes had no knowledge of which tyres were tested.(...)

Third hearing, Pirelli

Although Pirelli is not a competitor and not under the FIA jurisdiction the Stewards choosed (sic) to summon them as they are a substantial part as tyre supplyer in Formula one due to the contract between FIA and Pirelli.

(...)

The stewards asked the Pirelli representatives about which teams have been involved in tyre testing. They answered that during 2012 it was only Ferrari and this year Red Bull (sic) and Mercedes. They also told that they this year are worried because [of] some serious deflation (sic) of the tyres which also is a safety matter. They told that they had had a discussion with Charlie Whiting to solve the problem. The Lotus 2010 they have used earlier was not available. They also said if they had followed the 4.2 article in their contract to invite all competitors they would not be able to test until September. It was important to test with a representative car and top drivers. No test was done with tyres for Monaco. The competitor-Mercedes-that performed the test had no knowledge of which tyres they were testing. Some developments will be used for Canada. “

10. Following those protests; the joint report of the Stewards; and the inquiry, the President of the FIA, pursuant to article 7 lit. (ii) b) of the Judicial and Disciplinary Rules of the FIA (the “JDR”) referred the case to this Tribunal.

PRE-HEARING PROCEDURE AND DECISIONS

11. The FIA Prosecuting Body (the “PB”) sent notifications of charges, by email and registered letter, to Pirelli and Mercedes on June 5, 2013. Copies of those notifications of charges were served on the President of the Tribunal, also on June 5, 2013, in accordance with article 11.1 JDR.
12. In the notifications to Pirelli and Mercedes, the PB summarised the factual and legal grounds on which the PB relied and listed the possible sanctions in accordance with article 11.1 JDR, namely:
 - i. Penalties listed in Article 8.2 (ii) of the JDR:
 - a) fines,



- b) bans on taking part or exercising a role, directly or indirectly, in events, meetings or championships organised directly or indirectly on behalf of or by the FIA, or subject to the regulations and decisions of the FIA, and/or
 - c) the sanctions provided for in the FIA International Sporting Code.
- ii. Penalties listed in Article 153 ISC:
- reprimand (blame);
 - fines;
 - obligation to accomplish some work of public interest;
 - time penalty
 - exclusion;
 - suspension.
 - disqualification
 - For the FIA Formula One World Championship and the FIA World Rally Championship, a penalty consisting of the withdrawal of points over the whole of the Championship may be imposed.
- iii. Pursuant to article 13.2 of the JDR, the Tribunal may order the party being prosecuted to pay all the costs incurred by the FIA prosecuting body in the period from the beginning of the investigation until the pronouncement of the decision of the Tribunal, and those pertaining to the procedure before the Tribunal from the commencement of the matter until the pronouncement of the decision of the Tribunal. The Tribunal may decide to set a lump sum for the costs.
13. Applications were made by and granted to the following teams as being directly and significantly affected by this decision, pursuant to article 11.6 (iv) JDR:
- Scuderia Ferrari
 - Marussia F1 Team
 - Vodafone McLaren Mercedes
 - Infiniti Red Bull Racing
 - Williams F1 Team
14. Pirelli, filed its Response to the notification of charges on 12 June 2013 and invited the Tribunal:

“



INTERNATIONAL TRIBUNAL / TRIBUNAL INTERNATIONAL

- *to rule that PIRELLI, in its capacity as third-party with respect to FIA, is not bound by the FIA's regulatory and disciplinary power, in virtue whereof the FIA cannot impose any sanctions on PIRELLI under the provisions of article 7 of the FIA's Judicial and Disciplinary Rules.*
- *To rule that the sanctions procedure engaged against PIRELLI by the FIA's Prosecuting Body on the basis of the provisions of the aforementioned article is entirely inadmissible given that the Contract excludes any and all reference to the FIA's Judicial and Disciplinary Rules, and therefore to its article 7 on which the disciplinary proceedings are based.*
- *To rule that this matter is as outside of its jurisdiction, being this matter, which refers to the execution, by PIRELLI, of its contractual obligations, to be referred to the exclusive jurisdiction of the Tribunal de Grande Instance de Paris in virtue of article 7.3 of the Contract.*

On a subsidiary basis:

- *to rule that the proceedings launched by the FIA Prosecuting Body against PIRELLI are unfounded, both in fact and in law, and consequently reject the claims made.*
- *Consequently, order the FIA to pay all costs in relation to this case.*

15. Mercedes, filed its Response to the notification of charges on 12 June 2013, and invited the Tribunal to “*dismiss all Charges against MAMG*”.
16. The FIA filed its Observations in Response on 14 June 2013.
17. Red Bull, acting as third party, filed its written observations on 14 June 2013 and invited the Tribunal to impose on Mercedes “*an adequate sporting penalty.*”
18. Ferrari, acting as third party, filed its written observations on 15 June 2013.
19. During the proceedings, various requests were filed by the Parties and the President of the Tribunal issued seven decisions dealing with those requests and other procedural matters. No arguments having been raised in respect of any such decision, it would serve no useful purpose to repeat any of them.
20. Prior to the hearing on 20 June 2013, the Tribunal judges read all submissions which had been served on it together with all documents annexed thereto.



JURISDICTION

a) Arguments of the parties

21. *Pirelli claims that “the disciplinary procedure started by the PB before the Tribunal is not admissible, given, first, the third-party status of Pirelli vis-à-vis the FIA, leading that Pirelli is not subject to the FIA’s internal rules, second, the fact that the JDR of the FIA are not opposable to Pirelli and (ii) that the Tribunal is not competent to judge the dispute which takes place within the context of executing and interpreting a contract between Pirelli and the FIA, and Pirelli goes on to argue that any sanction which the FIA might impose would therefore be in any case “illegal”.*
22. *Pirelli bases its arguments on the Contract, notably its articles 6 and 7, and on French law, arguing that the rules of the FIA are only of contractual nature and are not enforceable against third parties.*
23. *In support of these arguments Pirelli refers to a judgment issued by the Tribunal de Grande Instance de Paris and dated 5th January, 2010, (“the Briatore decision”) and to a legal opinion issued on October 15, 2009, by Professor Didier Poracchia from the University Paul Cézanne (Aix-Marseille III), in relation with the same case.*
24. *In summary, Pirelli claims that nothing in the Contract provides for the application of the FIA’s internal rules, and that in accordance with article 7.3 of the Contract, only the Tribunal de Grande Instance has jurisdiction over any dispute arising out of the Contract.*
25. *Notwithstanding these submissions, at the hearing Pirelli helpfully invited the Tribunal to decide all substantive issues which had been raised before it subject only to Pirelli’s reserving its right to raise the issue of jurisdiction before the International Court of Appeal.*
26. *FIA, however, had already advanced its arguments on jurisdiction in its Observations in Response, arguing that Pirelli contractually agreed that:*

“53. (...)
 - (1) The International Sporting Code would be binding upon it: Article 6.1.*
 - (2) The International Sporting Code would “prevail among the parties to the [Pirelli Agreement]”: Article 6.1.*
 - (3) Pirelli was bound to take all necessary measures to comply with the 2013 version of the International Sporting Code, without reservation of any kind: Article 6.4.*



(4) *Pirelli knew about the FIA disciplinary structure and agreed to its being used by the FIA in relation to its decisions regarding the supply of tyres: Article 6.5.*

54. Consequently, Pirelli agreed to be bound by the terms of the International Sporting Code (including, of course, Article 151 (c)). (...)

55. Having therefore agreed that it would be bound by the International Sporting Code, Pirelli also agreed that any alleged infringement of that code may be brought before the International Tribunal, in pursuance of the FIA Judicial and Disciplinary Rules, for determination and sanction. Pirelli is accordingly properly subject to its jurisdiction.”

27. According to the FIA, having agreed to be bound by the ISC, Pirelli also agreed that any alleged infringement of that Code may be brought before the Tribunal. The FIA further contends that this position is unaffected by article 7 of the Contract because that clause is expressly and exclusively concerned with disputes arising between the FIA and Pirelli in relation to the Contract.

28. For these reasons, the FIA submits that Pirelli has no grounds for challenging the Tribunal’s jurisdiction.

29. Mercedes and the third parties did not express any views on the issue of the Tribunal’s jurisdiction, which is therefore only disputed by Pirelli.

b) Conclusions of the Tribunal

30. Notwithstanding its respect for both the authorities relied upon by Pirelli, the Tribunal notes that both have limited application to the facts of this case. The Tribunal needs no persuasion that no domestic tribunal can claim to have jurisdiction over any person or body that has not agreed, by contract or otherwise, to consent to submit to that jurisdiction. The Response of the FIA, in both its written and oral submissions, does not dissent from that principle. It simply relies on its contention that Pirelli, by virtue of Article 6 of the Contract, did indeed agree, expressly, to be bound by “*the Governing Rules*” which in turn incorporated by reference the JDR.

31. To the extent that we are still invited and requested to express a conclusion on the issue of jurisdiction, we are satisfied that FIA’s argument on this ground is correct and would add that in our view this is not merely a technical and legalistic matter but one of fundamental importance to the sport. Pirelli also stressed in the course of argument that it did not wish to be seen to be taking a legalistic point which was without merit. It would in our view be remarkable and regrettable if the exclusive supplier of any product which is of such obvious and basic importance to, among other things, the safety of all concerned in the sport, including the public, were not to be bound by the rules and regulations



which are expressly intended to control the way in which that product is specified and tested.

32. The Tribunal accepts without reservation that its jurisdiction is obviously limited by the scope of the reference to the “GOVERNING RULES” mentioned in the Contract. We confirm that any commercial dispute in relation to the Contract should be referred to the exclusive jurisdiction of the Tribunal de Grande Instance of Paris, as provided under article 7 of the Contract, so that the Tribunal’s jurisdiction is strictly limited to issues related to the violations of the “GOVERNING RULES” and, in particular, to disciplinary consequences of such violations, which both parties to the contract must always have intended would be resolved by this Tribunal, subject to any appeal to the International Court of Appeal and ultimately to review on any matter of law by the Tribunal de Grande Instance.
33. No other issue with respect to the Tribunal’s jurisdiction in this matter having been raised by any party, either in written submission or in argument before us, we are satisfied that the Tribunal is competent in the present case and we accept the invitation of all parties to resolve, to the best of our abilities in the time that is available to us, the substantive issues which they have all argued fully before us.

SUBSTANTIVE ISSUES

a) Arguments of the parties

FIA’s position

34. The principle contention of FIA is that, by organising and taking part in the tyre testing, Pirelli and Mercedes respectively, acted in potential breach of article 22.4 SR and of articles 1 and 151 c) of the ISC. FIA accordingly refers to this Tribunal the question as to whether or not those actions in fact constituted those breaches and invites the Tribunal to consider those issues in the light of inconsistencies in explanations which Pirelli and Mercedes are alleged to have given and which, following directions given by the President in his Decision nr 4, FIA helpfully set out in a detailed schedule.

Pirelli’s position

35. Pirelli’s submissions as set out in its Memorandum in Response submitted on 12 June 2013, as amplified by oral arguments before the Tribunal, can be summarised as follows:
 - (1) It was necessary and in the best interest of the Formula One Championship, both generally and in terms of safety, for testing to be carried out.



- (2) It would not have been feasible to have more than one team testing at one time.
- (3) If different teams had been involved, the test would have served no purpose.
- (4) They did give all teams the opportunity to participate in tyre testing – albeit not in response to the specific requirement which had been made by FIA, and agreed to by it, at the time when FIA purported to grant the qualified approval which it did in this case.
- (5) Pirelli had no responsibility for the specification of the car which Mercedes used in the testing, although it had a real interest in ensuring that the testing was carried out in circumstances which, as far as was feasible and permissible, replicated those in which the problems of delamination, which it accepted were at some of the issues which this testing had been designed to address, had arisen.
- (6) In any event, whether or not it was permissible for it to do so in the manner in which it did, FIA approved the car which it had been expressly informed Mercedes would be using, and did in fact use, during the testing.
- (7) Mercedes derived no sporting advantage from the testing.

Mercedes' position

36. The submissions made by Mercedes in its Response and amplified on its behalf by: (i) oral arguments in the course of the hearing and; (ii) the statements of Andrew Sholvin, Ron Meadows, Jason Button, Lewis Hamilton and by the written statement and oral evidence of Ross Brawn, can be summarised, in essence, as follows:

- (1) Mercedes did not carry out any “track testing” within the meaning of Article 22.4 h) SR. Such testing, as was carried out, was performed by Pirelli.
- (2) FIA had repeatedly accepted that the tyre testing object of the proceedings was undertaken pursuant to article 4.2 of the Contract and not by a competitor pursuant to Article 22.1 SR.
- (3) The track testing was organised by Pirelli and participated in by Mercedes with the express approval of FIA. Pirelli was entirely responsible to meet the conditions set by the FIA to undertake the testing, namely inviting all other teams to participate.



- (4) The FIA expressly permitted the use of a current car and article 4.2 of the Contract makes no reference to the age or specification of the car that can be used.
- (5) Mercedes had not sought any sporting advantage as a result of the testing, on the contrary, its primary intention had been to contribute to safety and to the interests of all competitors in the Formula 1 Championship.
- (6) Insofar as it had obtained any advantages as a result of its participation in the testing, and the retention or transmission of data to it by Pirelli, this had been minimal and restricted to matters of safety and “functionality” of its car(s).
- (7) Mercedes had not acted either fraudulently or in any manner which was “unfairly” prejudicial to the interests of motor sport – having stressed that the word “unfairly” needs to be imported into the English translation of article 151 c) ISC which fails properly to translate the French version, which takes precedence and which includes the word “*déloyale*” (which Mercedes invited us to interpret as meaning “unfair” in this context)
- (8) Ferrari had participated in a similar test, without inviting other competitors and FIA had not regarded this as constituting any breach of the Sporting Regulations.
- (9) In the event that the Tribunal were to find that Mercedes had acted in breach of the Rules, it stressed the Tribunal should take full account of the fact that: (i) it had not done so intentionally – on the contrary it had attempted to act in the interests of safety and of all competitors; (ii) it had an exemplary disciplinary record; and (iii) the testing would not have been carried out at all if FIA had not purported to grant approval which, whether or not conditional, FIA itself now accepted it had no right to grant. While submitting that it would not be right to impose any penalty other than a reprimand, Mercedes accepted that the forthcoming three day young driver training test might provide an opportunity at which any inequality of track testing, at least of cars, might be redressed by all teams other than Mercedes being permitted to participate.

FIA Responses

37. The responses of the FIA to the submissions made by Pirelli and Mercedes can be summarised, in essence, as follows:
 - (1) The wording of Article 22 SR is clear and unambiguous.
 - (2) None of the exceptions provided for by Article 22 SR has any application to the facts of this case.



INTERNATIONAL TRIBUNAL / TRIBUNAL INTERNATIONAL

- (3) By its reference to “track running time” Article 22 SR expressly avoids any argument as to the purpose for which the test was participated in.
 - (4) The fact that a car, which substantially conforms with the current Formula One Technical Regulations, is run on a track during the Championship period, is prohibited by the Article 22 SR (unless one of the exceptions, none of which is alleged to be relevant to this case, applies).
 - (5) Whether or not the testing which Ferrari undoubtedly participated in, both in 2012 and 2013, also constituted a breach of Article 22 SR depends upon whether or not the cars which were driven on those occasions conformed “*substantially with the current Formula One Technical Regulations*”. FIA’s finding at the material time that they did not so conform is not a matter on which the Tribunal has any material evidence or can properly reach any conclusion.
 - (6) It is inconceivable that Mercedes did not obtain a material advantage from three days of testing even if only as a result of the running of its car(s) - wholly irrespective of any matter relating to tyres.
 - (7) Further, Ross Brawn candidly accepted in his evidence that it was inevitable that some advantage had been obtained, although he regarded that advantage as having been minimal.
 - (8) The “track side engineering reports”, specifically at page 10 of the attachments to Pirelli’s email to Mercedes at 17:15 on 17 May 2013, marked as having “high importance” and “confidential sensitivity” irrefutably demonstrated an intention to pass and to receive material data.
38. FIA’s own written summary put the matter in this way: “*by carrying out track running using a 2013 car, two current F1 drivers, during the 2013 Championship, without the knowledge, consent or participation of the other competitors in that Championship, Mercedes may have engaged in conduct which was prejudicial to the interests of the competition. By participating in the tyre test in the knowledge that Mercedes were running a car in breach of Regulation 22 and been offered an equivalent opportunity, Pirelli similarly may have engaged in conduct prejudicial to the Championship (and unfairly prejudicial).*”
39. FIA expressed no view as to the appropriate penalty which the Tribunal should impose in the event that it found that breaches had been committed.
- b) *Findings of the Tribunal*
40. The Tribunal considered carefully all of the written submissions which had been made by the Parties, the evidence contained in the 7 written statements,



and the oral testimony given by Ross Brawn and the oral arguments advanced during the hearing. It would serve no useful purpose to set all those matters out in this decision but the Tribunal has referred above to those which it regards as being the most significant. Having taken all such matters into account, the Tribunal makes the following findings:

- (1) The track testing, which is the subject of these proceedings, was not carried out by Pirelli and/or Mercedes with the intention that Mercedes should obtain any unfair sporting advantage.
- (2) Neither Pirelli nor Mercedes acted in bad faith at any material time.
- (3) Both Pirelli and Mercedes disclosed to FIA at least the essence of what they intended to do in relation to the test and attempted to obtain permission for it; and Mercedes had no reason to believe that approval had not been given .
- (4) The actions taken on behalf of FIA by Charlie Whiting (having taken advice from the legal department of FIA) were taken in good faith and with the intention of assisting the parties and consistent with sporting fairness.

Notwithstanding the above findings:

(i) by running its car(s) in the course of the testing, Mercedes acted in breach of Article 22.4 h) SR;

(ii) insofar as FIA expressed its qualified approval for the testing to be carried out, that approval could not, and did not, vary the express prohibition stipulated by Article 22 SR and neither Mercedes nor Pirelli took adequate steps to ensure that the qualification was satisfied. In this regard the Tribunal takes particular note of the fact that it was, very properly, not submitted on behalf of Pirelli, nor was there any evidence that, the assurance which it was not disputed Mr Paul Hembury, Pirelli Motorsport Director, had given to Charlie Whiting (as set out in paragraph 5 above) had in fact been acted on at any material time;

(iii) the testing would, however, not have been carried out by either Mercedes or Pirelli if that qualified approval had not been expressed by the representatives of the FIA in the way in which it is admitted by FIA it was;

(iv) The Tribunal is unable to express any opinion as to whether or not the testing carried out by Ferrari in 2012 and 2013 was properly authorised but, it would appear to be equally unsatisfactory that this consent was also given by Charlie Whiting, the Tribunal has no



evidence before it which indicates that his opinion in that case had in fact been wrong.

(v) Mercedes did obtain some material advantage (even if only by way of confirmation of what had not gone wrong) as a result of the testing, which, at least potentially, gave it an unfair sporting advantage, to the knowledge and with the intention of Pirelli. In the light of the data which Pirelli did in fact pass to Mercedes by way of the confidential email referred to under paragraph 37.8 above, it is plain beyond sensible argument that Pirelli had intended confidentially to pass some data to Mercedes, which Pirelli expressly regarded as being of high importance even if, as we accept, it was in fact of limited value to Mercedes because it was unaware of the tyre(s) to which the report related.

(vi) No other team was aware of the fact that such advantage might be, or had been, obtained, notwithstanding the assurance which had been given by Paul Hembery to Charlie Whiting, as set out in paragraph 5 above; and the Tribunal notes that, when giving that assurance, Paul Hembery had not indicated to Charlie Whiting that the notification which Pirelli had already given to all teams in 2012 could satisfy the assurance which was being sought.

(vii) Both Mercedes and Pirelli, accordingly, did act in breach of articles 1 and 151 ISC.

SANCTIONS AND COSTS

41. Article 153 ISC provides for a scale of penalties, as set out under paragraph 12 above.

42. Based on all the circumstances of the case and: (i) with the specific objective that, insofar as it is reasonably practicable to do so, the other teams should be placed in a similar position to that in which Mercedes is in as a result of the breach of article 22 SR and articles 1 and 151 ISC and Pirelli of articles 1 and 151 ISC ; (ii) in recognition of the fact that the testing would not have taken place but for the *bona fide*, but misconceived “qualified approval” which was given on behalf of the FIA, the Tribunal decides that the most appropriate sanctions and orders are that :

- Mercedes be reprimanded in the terms of the findings set out above.
- Mercedes be suspended from participating in the forthcoming “three day young driver training test”.



INTERNATIONAL TRIBUNAL / TRIBUNAL INTERNATIONAL

- Mercedes shall pay one third of the costs of the investigation and procedure, as provided for by Article 13.2 JDR, excluding FIA's own legal costs.
- Pirelli be reprimanded in the terms of the findings set out above.
- Pirelli shall pay one third of the costs of the investigation and procedure, as provided for by Article 13.2 JDR, excluding FIA's own legal costs.
- FIA shall bear one third of the costs of the investigation and procedure, as provided for by Article 13.2 JDR, and all of its own legal costs.



ON THESE GROUNDS,

THE FIA INTERNATIONAL TRIBUNAL DECIDES THAT:

- 1. Mercedes be reprimanded.**
- 2. Mercedes be suspended from participating in the forthcoming “three day young driver training test”.**
- 3. Mercedes shall pay one third of the costs of the investigation and procedure, as provided for by Article 13.2 JDR, excluding FIA’s own legal costs.**
- 4. Pirelli be reprimanded.**
- 5. Pirelli shall pay one third of the costs of the investigation and procedure, as provided for by Article 13.2 JDR, excluding FIA’s own legal costs.**
- 6. FIA shall bear one third of the costs of the investigation and procedure, as provided for by Article 13.2 JDR, and all of its own legal costs.**
- 7. Rejects all other and further conclusions.**

Paris, 21 June 2013

The President

Edwin Glasgow QC