Arbitration CAS 2008/A/1745 Stichting Ronde van Nederland v. Union Cycliste Internationale (UCI) and Eneco Holding N.V., award of 29 March 2010

Panel: Mr Lars Halgreen (Denmark) President; Mr Manfred Nan (The Netherlands); Mr Olivier Carrard (Switzerland)

Cycling
Application for an UCI Pro Tour licence
CAS scope of review
Freedom of the parties to choose the law applicable by an arbitral tribunal
Inadmissibility of an appeal against a decision of the UCI Licence Commission granting a licence
Lack of arbitrariness of the UCI Licence Commission declining an application

1. **According to the general rule of Article R57 of the CAS Code, a CAS panel has full power to review the facts and the law of the case. However, such broad scope of review may be limited to the arbitrariness as defined by the applicable regulations. Similarly, the power of the panel to issue a new decision replacing the challenged decision may also be limited by the same.**

2. **Article 187.1 of the Swiss Private International Law Act (PIL) constitutes the entire conflict-of-law system applicable to arbitral tribunals, which have their seat in Switzerland. It recognizes the traditional principle of the freedom of the parties to choose the law that the arbitral tribunal has to apply to the merits of the dispute. Its wording does not limit the parties' choice to the designation of a particular national law. It is agreed that the parties may designate the relevant statutes, rules or regulations of a sporting governing body as the applicable *"rules of law"* for the purposes of Article 187.1 PIL. This far-reaching freedom of the choice of law in favour of the parties, based on Article 187.1 PIL, is confirmed by Article R58 of the CAS Code.**

3. **Regarding the question of the admissibility of an appeal against a decision granting a licence to an applicant, the UCI Regulations (UCIR) clearly provide that an applicant may not appeal against a decision of the UCI Licence Commission regarding another applicant. Such formulation is perfectly clear and does not leave any space for further interpretation. A party has therefore no standing to sue in this respect and any request regarding another party's application must be dismissed.**

4. **As far as the appeal refers to a decision which declined an application, the appeal is admissible but the scope of review of the panel is limited to the arbitrariness as defined by UCIR. In this respect, the reasons given by the Licence Commission for the rejection of an application are not arbitrary if the general criterion of the *"quality of organisation"* listed in the UCIR is not complied with by the applicant. Moreover, the interpretation of the concept of ownership according to which a licence could not be granted to any**

other party than the first owner because the latter has an exclusive right of ownership on a specific tour cannot be followed. Indeed, if such reasoning was followed, it would create against all reasonableness and fairness a situation of monopoly in favour of the first "owner", i.e. organiser, of an event for all the subsequent events and the whole procedure of licence application would be meaningless.

Stichting Ronde van Nederland (the "Foundation" or the "Appellant") is a foundation under Dutch law with registered offices in Heilig Landstichting, The Netherlands.

Union Cycliste Internationale (UCI or the "Respondent") is an association under Swiss law with registered offices in Aigle, Switzerland.

Eneco Holding N.V. ("Eneco" or the "Co-Respondent") is a company under Dutch law with registered offices in Rotterdam, the Netherlands.

During many years until 2004, the Appellant has organised the Tour of Holland (in Dutch "Ronde van Nederland"), a five-day stage cycling race in Holland which was on the European calendar of cycling races.

During the last two years of this event, i.e. in 2003 and 2004, it was called the *"Eneco Tour"* after the name of the main sponsor. From 2005, there has been no Tour of Holland anymore.

In 2004, the UCI decided to reform the layout of professional cycling and introduced the UCI ProTour (the "ProTour") instead of the World Cup at the top of the pyramid of international cycling races.

The ProTour is a circuit of high-level road races operating with a licence system for which teams and organisers willing to participate must apply according to a procedure described in chapter 2.15 of the UCI Regulations ("UCIR").

Such licences are granted by the licence commission (the "Licence Commission") which is independent from the UCI.

Due to the introduction of the ProTour, the cycling calendar had to be readapted.

Like many other cycling events, the Tour of Holland was not considered prestigious enough to qualify as a ProTour event. According to the UCI, only an event covering Belgium, The Netherlands and Luxembourg could be placed on the ProTour calendar. The UCI therefore suggested the creation of a new *"Tour of Benelux"* which did not yet exist in 2004.

No race has ever been organised under the name *"Tour of Benelux"* or *"Benelux Tour"* but the concept of a stage race through the Benelux countries has been implemented with a race called *"Eneco Tour"* that was organised from 2005 to 2008 as a ProTour race.

The Eneco Tour organised from 2005 to 2008 (i.e. the Tour of Benelux, on the ProTour calendar) is a different race than the Eneco Tour organised from 2003 and 2004 (i.e. the Tour of Holland, on the European calendar). This is confirmed by a fax sent on 17 June 2005 by Mr. Van Mulukom, the representative of the Appellant, and Mr. Rob Discart to the UCI which contained a proposal to amend the UCI ProTour draft agreement as follows: *"En cas de résiliation du contrat, le fondateur du "Ronde van Nederland" (Stichting Ronde van Nederland) acquérit [sic] le droit d'organiser le "Ronde van Nederland" dans le calendrier pro-continental Europe (classe HC) à la date du Eneco Tour (cfr. 2004)".*

As stated by Mr. Van Mulukom himself, this amendment proposal was not accepted by the UCI and therefore not reported in the final version of the agreement dated 18 November 2005.

Although Mr. Van Mulukom was not in favour of the cooperation with Belgian partners, in particular with Octagon cis ("Octagon"), in organising the Tour of Benelux, the Appellant finally accepted the suggestion of the UCI to have a joint organisation of Belgian and Dutch partners, as it was the only possibility to be put on the ProTour calendar.

The licence was therefore jointly granted for a period of four years to the Belgian Road Runners Club (BRRC) and to the Appellant as co-owners of the event, i.e. holders of each 50% of the licence.

The material organiser was VOF Eneco Tour Organisation ("VOF"), a joint venture formed with ICSO B.V. ("ICSO") acting on behalf of the Appellant on the Dutch side and with Bora BVBA ("Bora") on the Belgian side.

Eneco was the main sponsor of the event.

In 2006, a serious dispute arose between the licence holders and the sponsor Eneco. The UCI ProTour council ("UPTC") considered that these problems were so grave that they could endanger the successful organisation of the event and on 13 November 2006 filed a request with the Licence Commission to withdraw the licence.

As the parties concerned found an agreement which permitted to organise the 2007 Eneco Tour under acceptable circumstances, the withdrawal request was first suspended and finally withdrawn on 22 January 2008.

Before the licence jointly granted to BRRC and to the Appellant expired on 31 December 2008, new applications for a Tour of Benelux to be organised from 2009 onwards were filed.

On 8 July 2008, the Appellant filed such an application in which he was named as the event owner and ICSO as the event organiser, both represented by Mr. Van Mulukom. In the cover letter, the Appellant indicated that he applied for the 100% licence as he had just been informed that BRRC was

not interested any longer in the licence. Article 3 of the signed application form provided for *"the applicability of Swiss law for everything related to the UCI ProTour, unless stipulated otherwise"*.

On 9 July 2008, Eneco filed another application for a licence for a Tour of Benelux with Eneco as event owner, Golazo Sports N.V. ("Golazo") as event organiser, and WSM Worldwide Sports Management B.V. ("WSM") as other intermediary. In the cover letter, Eneco indicated that it was not the current licence holder of this event and pointed out the reasons for its application, in particular its wishes to set up a new structure in order to guarantee a better and more professional event and a better organisation on a strategic level.

The Appellant's application was examined according to Article 2.15.142 ff UCIR.

On 21 July 2008, the UCI transferred the Appellant's application to the Licence Commission, drawing its attention to the fact that Exhibits 1, 3 and 6 were missing.

On 1 August 2008, the Appellant and ICSO sent letters to Eneco to protest against Eneco's application for the same licence and to request payment by Eneco of a penalty of EUR 200'000.- for alleged violations of an order dated 3 January 2007 made by the President of the District Court of Arnhem in The Netherlands.

On 2 August 2008, the Appellant sent a letter to the Licence Commission to ask for details regarding a meeting to be held in Geneva.

On 18 September 2008, a hearing of the Licence Commission regarding the grant of a UCI ProTour licence to the Appellant was held in Geneva. The UCI underlined that although two different parties applied for the same licence, the UCI had no preconceived ideas on who was best and that it was up to the Licence Commission to decide. It further explained, and the Appellant admitted, that, although the Appellant had made a request to modify Article 9.3 a) of the agreement for UCI Protour competition organiser (2005-2008), *"Contrat pour organisateur d'épreuve UCI ProTour"*, such request had not been accepted by the UCI and the agreement had been signed on 18 November 2005 without the modification.

Mr. Van Mulukom insisted that the UCI could not take away from the Appellant the ownership of the event and that he would, if needed, initiate legal measures.

The Licence Commission asked the Appellant for more information regarding the organisation of the race in Belgium. The UCI further stated that it would be interesting to receive from the Appellant more guarantees from a financial point of view, to have more details on what the sporting aspect of the race would be and to receive more information on the quality of organisation that could be guaranteed by the Appellant. Mr. Van Mulukom disagreed with such request as he did not see why he should provide more information than in the licence application procedure of 2004. He said that he could guarantee having sponsors, but could not indicate their names.

On 2 October 2008, the Licence Commission requested the Appellant to provide further information in accordance with Article 2.15.158 UCIR. In particular, the Licence Commission requested detailed

information concerning the format, the structure and the type of the event for the following four years, the planned routes, especially as to the different regions which would be crossed, the actual organiser as well as the financial resources and the general budget.

On 10 October 2008, the counsel of the Appellant explained to the Licence Commission that for many years until 2004 the Appellant had organised the Tour of Holland and that, as of 2005, at the request of the UCI, the Appellant had put week 34 of the calendar year on which the Tour of Holland would normally have been raced at its *"disposal"* - so to speak - of the organisation of the ProTour cycle race. He alleged that the Appellant was entitled to organise a cycle race annually in week 34 and that a licence could never be granted to another party than the Appellant. He further provided some general information on the regions which would be crossed by the planned Tour of Benelux, on the actual organiser, i.e. ICSO, and on the financial resources and the general budget. In this respect, he indicated that the Appellant expected a budget of EUR 2'000'000.- and was currently in an advanced stage of negotiations with several parties willing to take over the role of Eneco and that the Appellant was convinced that these negotiations would be wound up successfully as soon as the licence would be granted to him.

On 14 October 2008, the Licence Commission forwarded this answer to the UCI and asked it to proceed to a supplementary evaluation of both application files based on the information about the structure and the type of the event for the following four years which is one of the selection criteria of Article 2.15.149 UCIR.

In parallel, the issue of the rights of the Appellant and/or of Eneco to organise the Tour of Benelux and to apply for a licence had been submitted by the Appellant to the Dutch courts. On 21 October 2008, the district court of Arnhem stated among others:

> *"[…] 4.19 In this connection there remains the issue as to whether the foundation has such strong rights to the organisation of the Benelux Tour that it is justified in imposing a ban of the kind which is being called for upon Eneco. According to the provisional ruling of the judge in summary proceedings that is not the case. In these summary proceedings, it has not been shown with sufficient certainty that the rights of the foundation to organise the Benelux Tour are so strong that the UCI cannot lawfully assign the licence for the Benelux Tour to a party other than the foundation. Moreover, the application for a licence to organise a cycle tour does not in itself represent a breach of the (potential) rights of the foundation. It may be taken as our point of departure that the UCI is at liberty to determine, on the basis of its currently valid regulations, to whom it wishes to grant the licence and that the party to whom the licence is so granted is in principle authorised to make use of it. To find a definitive answer on the point, further study would be necessary but there is no space to do so in these summary proceedings. For this purpose, the appropriate route would be full legal proceedings. The primary application made under 1 is therefore to be dismissed.*
>
> *[…]*
>
> *4.27 The above comments lead to the conclusion that for the time being there are no grounds for imposing a ban upon Eneco from undertaking activities designed to apply for and/or exploit a licence to organise a cycling tour in week 34 of any calendar year and for that purpose to approach stakeholders such as local authorities, sponsors and cycle teams. The subsidiary claims made in 4, 5 and 6 must therefore also be dismissed".*

On 29 October 2008, the counsel of the Appellant sent another letter to the Licence Commission in which he stated that in case the licence for the Tour of Benelux would not be granted to the Appellant, the Appellant would wish to hold the Tour of Holland in week 34 which must remain reserved. Failing that, the Appellant would hold the UCI liable for all damages that he would suffer.

On 31 October 2008, the UCI sent to the Licence Commission its supplementary evaluation of the application made by the Appellant in the form of a spreadsheet indicating in green, yellow or red the various points reviewed depending on whether such points satisfied the requisite conditions according to the UCI (green), had weaknesses (yellow) or presented serious obstacles to the granting of the licence (red). In particular, this evaluation sheet indicated in red that:

> *"the applicant did not provide the following elements required in the licence application form:*
>
> - *written acceptance of the joint and several liability of the actual organiser or any other intermediary together with the applicant.*
> - *description of the type of event organised with the aim of supporting the development of the sport of cycling.*
> - *evaluation: some elements required for the application are missing".*

Some other points regarding the material organiser, the budget, the financial guarantees and other issues were indicated in yellow, i.e. reflected reserve or uncertainty.

On 3 November 2008, the Appellant sent to the Licence Commission some comments on the evaluation of his licence application. In particular, regarding the budget (of EUR 2'200'000.-) and the financial guarantees, he stated that it was impossible to have sponsors and cities sign the contract without clarity about the ProTour licence, and that he could finalize these negotiations after the licence would be granted to him.

On 11 November 2008, the UCI sent to the Licence Commission an updated version of its supplementary evaluation of the Appellant's application. Regarding the material organiser, the UCI noted that there was a contradiction between earlier statements of the Appellant that he would cooperate with a well-known organiser in Belgium and his update of 2 November 2008 according to which the material organiser would be ICSO, whose role in the organisation of the Eneco Tour 2005 - 2008 was unclear. The UCI underlined the inconsistencies on the alleged experience of ICSO in Belgium and the fact that no concrete information was available on the identity of the experts who would collaborate in Belgium and Luxembourg.

Regarding the budget, the UCI underlined that the budget of EUR 2'200'000.- was relatively low compared to other UCI ProTour stage races and that the Appellant did not provide information on the costs.

Regarding the financial guarantees, the UCI noted that there seemed to be no firm financial guarantees from sponsors and/or towns at this stage and that compared to 2004, the situation was different as the Licence Commission had to choose between two candidates and needed information to make a choice on objective grounds.

On 12 November 2008, the Appellant sent a fax to the Licence Commission with comments on the updated evaluation. Regarding the issue of the material organiser, the Appellant attached a PowerPoint document showing the overall organisation structure of the Eneco Tour since 2006 and alleged that ICSO was fully responsible for the technical cycling part of the organisation and that in 2006 and 2007 he received from the UCI *"the award of excellence overall"*.

Finally, on 20 November 2008, the Appellant sent a fax to the Licence Commission with two auditors' certificates and their translations.

On 4 December 2008, the Licence Commission issued a decision (the "Decision") holding as follows:

> *"1. The application made by Stichting Ronde van Nederland for the grant of a UCI ProTour licence for the Tour of Benelux is declined.*
>
> *2. This decision is notified to the applicant and to Stichting Ronde van Nederland.*
>
> *3. An appeal against this decision may be made to the TAS within a time limit of 15 (fifteen) days of notification by fax of the contested decision (Article 2.15.230 of the Regulations)".*

The Licence Commission made the Decision on the basis of the above described facts and the following reasoning:

> *"At the end of the procedure, the Commission finds that the obstacles caused by the failure to respect essential conditions for the grant of a licence have now been lifted as the Applicant has finally, although belatedly, provided the information which had been requested.*
>
> *However, it must still be concluded that the Applicant's project comprises several points which remain unsatisfactory within the meaning of Section 2 of Article 2.15.149 of the Regulations.*
>
> *As to the ability of ICSO to assume full responsibility for the organisation of the Tour of Belgium and in Luxembourg, the Applicant merely asserts that to be the case. He provides no information about the purported experts whose cooperation he claims to have secured in these countries. However, in view of the difficulties which have arisen between the Dutch and Belgian licence holders, the risk of a breach and the impossibility of organizing the race in 2007 which ensued, the concern of the UCI to make sure that the planned organization provides for good cooperation and coordination in future as well as harmonious running of the race is legitimate.*
>
> *The explanations given by the Applicant do not enable this risk to be set aside.*
>
> *The Applicant does not offer a sufficient guarantee of sound organization of the event in 2009 and in subsequent years.*
>
> *The Applicant's explanations of the budget and future financial guarantees likewise remain inadequate.*
>
> *Thus, he does not contest the fact that the scheduled budget remains low for a ProTour event. As to future financing, while it is plausible that firm commitments cannot be entered into unless the licence is granted, one had expected the Applicant to provide more specific indications about his sponsorship projects and the progress of discussions on this matter; he has failed to do so, despite the repeated remarks made by UCI on this point.*
>
> *Consequently, there is not even the smallest element of proof as to the existence of these financial guarantees for the future.*

Finally, it has to be pointed out that on several occasions in his comments and replies to the various questions which were put to him, the Applicant adopted an aggressive attitude towards the UCI. In this connection, particular attention is to be called to the statements made by Mr. Van Mulukom during the hearing of 18 September 2008 (minutes page 2, para. 6) and the remarks contained in his fax dated 12 November 2008 to which reference was made above. By doing so, the Applicant has confirmed the fact that his attitude remains insufficiently positive and does not enable full cooperation with the UCI to be anticipated.

For all these reasons, the application for a licence made by Stichting Ronde van Nederland must therefore be rejected".

On the same 4 December 2008, the Licence Commission took another decision according to which a licence for the Tour of Benelux was granted to Eneco.

The Decision declining its application was notified to the Appellant on 8 December 2008.

On 22 December 2008, the Appellant filed a statement of appeal with CAS with 4 exhibits, pursuant to the Code of Sports related arbitration (the "Code") and to paragraph 7 UCIR against both the Decision declining its application and the decision granting the licence to Eneco.

As confirmed in a letter by the CAS Court Office dated 8 January 2009, the statement of appeal had to be considered as the appeal brief and Eneco had to be considered as a Co-Respondent.

The Respondent filed his answer ("written response") to the appeal on 22 January 2009.

The Co-Respondent filed a separate answer ("statement of defence") on 30 January 2009.

Both answers were asking the dismissal of the appeal.

The hearing was held on 2 September 2009 in Lausanne.

On 3 September 2009, the CAS Court Office invited the Respondent, further to a decision of the Panel based on Article R 44.3 of the Code, to submit the entire file regarding the *"application for a licence for the Benelux Tour made by Eneco before the UCI Licence Commission"*. The CAS Court Office also confirmed the decision of the Panel to give all parties the opportunity to file additional written observations, however, strictly limited to the scope of the file concerning the application made by Eneco.

On 9 December 2009, the CAS Court Office informed the parties on behalf of the Panel:

- that the Panel had decided to admit the parties' last submissions filed after the hearing, but that its scope of review would be restricted to the issue of double standard of the UCI with respect to Eneco's application;
- that the Panel had decided to admit the production by Eneco of the judgment rendered by the Court of Appeal of Arnhem on 29 September 2009;
- that the Appellant was invited to briefly comment the remarks made by counsel for Eneco on this judgment and

- that the Appellant was invited to declare whether such decision was final or not.

In his statement of appeal, the Appellant requested the CAS to:

"Principal request:

1. *Annul the decisions of 4 December 2008 taken by the Licence Commission of the International Cycling Union (UCI) in the matter "Application for a UCI ProTour licence for the event Tour of Benelux by Stichting Ronde van Nederland" and in the matter "Application for a UCI ProTour licence for the event Tour of Benelux by Eneco Holding N.V." and make a new decision by granting the UCI ProTour licence for the event Tour of Benelux to Appellant;*

Alternatively, if the CAS should decide not to make a new decision:

2. *Annul the decisions of 4 December 2008 taken by the Licence Commission of the International Cycling Union (UCI) in the matter "Application for a UCI ProTour licence for the event Tour of Benelux by Stichting Ronde van Nederland" and in the matter "Application for a UCI ProTour licence for the event Tour of Benelux by Eneco Holding N.V." and return the case to the Commission".*

The answer dated 22 January 2009 contained the following pleas:

"1. Declare the Appellant's request inadmissible insofar as another decision than the one regarding its own application is concerned;

2. Dismiss the appeal of the Appellant for the rest;

3. Condemn the Appellant to the costs of the proceedings;

4. Condemn the Appellant to a contribution to UCI's legal costs".

The answer dated 30 January 2009 filed by Eneco contained the following pleas:

"(1) Primarily to dismiss the Statement of appeal as far as it concerns the decision of 4 December 2008 taken by the Licence Commission of the International Cycling Union (UCI) in the matter 'application for a UCI ProTour licence for the event Benelux Tour by Eneco Holding N.V.' and to reject the appeal as far as it concerns the decision of 4 December 2008 taken by the Licence Commission of the International Cycling Union (UCI) in the matter 'application for a UCI ProTour licence for the event Benelux Tour by Stichting Ronde van Nederland'; or

(2) Alternatively, in case the CAS would decide to annul the decision of 4 December 2008 taken by the Licence Commission of the International Cycling Union (UCI) in the matter 'application for a UCI ProTour licence for the event Benelux Tour by Stichting Ronde van Nederland' and/or the decision of 4 December 2008 taken by the Licence Commission of the International Cycling Union (UCI) in the matter 'application for a UCI ProTour licence for the event Benelux Tour by Eneco Holding N.V., to return the case to the Licence Commission of the International Cycling Union (UCI)".

LAW

CAS Jurisdiction

1. CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of CAS, which is not disputed by either party, is based *in casu* on Article 47 of the Code and on Articles 2.15.226 to 2.15.242 UCIR.

2. More specifically, the provisions of the UCIR that are relevant to that effect in these proceedings are the following:

   i. Article 2.15.226:

   "Unless otherwise specified, the decisions of the licence commission may be appealed solely to the CAS".

   ii. Article 2.15.227:

   "Either the failed applicant for a licence or the licence holder shall have the right of appeal.

   An applicant or holder of a UCI ProTour licence or a UCI ProTeam may not appeal against a decision of the licence commission regarding another applicant or UCI ProTour licence holder or another UCI ProTeam".

   iii. Article 2.15.229

   "The time limit for appeal is fifteen days from the day following receipt by fax of the decision challenged. The period of the 25 December to the 2 January inclusive is not included in this time limit".

   iv. Article 2.15.231

   "The appellant shall append to this statement of appeal all the documents, witness statements and other evidence which he proposes to invoke, subject to article 2.15.240".

   v. Article 2.15.236

   "The parties are not allowed to present further arguments, nor produce new documents, nor offer further evidence after the submission of their notice of appeal or answer".

   vi. Article 2.15.239

   "The CAS shall examine only whether the contested decision was arbitrary, i.e. whether it was manifestly unsustainable, in clear contradiction with the facts, or made without objective reasons or subsequent upon a serious breach of a clear and unquestioned rule or legal principle. It may only be overturned if its outcome is found to be arbitrary".

   vii. Article 2.15.240

   "The appeal is judged on basis of the licence application documentation as it stands at the moment when the licence commission ***has taken its decision****. There may be no subsequent additions to this documentation. The documents, statements and written evidence which the appellant intends to raise before the CAS can only refer to the same elements as found in the licence commission's file or which the commission took into account in its decision".*

viii. Article 2.15.241

"Should the contested decision be judged to be arbitrary it shall be annulled and the CAS shall make a new decision that shall replace the contested decision. This decision shall settle the case definitively. No further appeal shall be admitted.

However should the annulment of the contested decision open the way to a new allocation of ***the licences or a new award of a*** *licence for which there is more than one candidate, the case shall be returned to the licence commission. After consulting the parties, the commission may, if it considers that it is in possession of adequate information, renounce any further documentary submissions and/or hearings. The case shall then be adjudged on the basis of the licence application documentation as submitted to the commission* ***on the occasion of*** *its initial decision".*

ix. Article 2.15.242

"Unless otherwise specified in the present section, the Code of Sports-related Arbitration shall apply".

Appeal proceedings

3. As these proceedings involve an appeal against a decision in a dispute relating to a contract, issued by a federation, whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a non-disciplinary case, in the meaning and for the purposes of the Code.

Admissibility

4. The statement of appeal was filed by the Appellant within the deadline set down in the Decision. No further recourse against the Decision is available within the structure of the UCI. Accordingly, the appeal is admissible.

Scope of the Panel's review and the admissibility of the documents submitted by the parties

5. According to the general rule of Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision, which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

6. However, in the present case, such broad scope of review is limited to the arbitrariness as defined by Article 2.15.239.

7. Similarly, the power of the Panel to issue a new decision replacing the challenged decision is limited by article 2.15.241 UCIR.

8. Regarding the issue of the admissibility of the new exhibits 1 to 4 submitted by the Appellant on 25 August 2009 and the objection raised by the Respondent, the Panel refers to Article R 56

of the Code according to which: *"Unless the parties agree otherwise or the president of the panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer".*

9. Considering that these documents are new exhibits and that the parties have not agreed otherwise, the Panel decides that they shall not be admissible.

10. As explained in the letter of the CAS Court Office of 9 December 2009 to the parties, the Panel decided to admit the additional written observations of the Appellant dated 5 October 2009 and the written responses to additional written observations from Eneco and the Respondent dated 19 October 2009, but only within the strict limits imposed by the Panel, i.e. only as far as they referred to the application file of Eneco and to the issue of a possible double standard.

Applicable law

11. The question of what law is applicable in the present arbitration is to be decided by the Panel in accordance with the provisions of Chapter 12 of the PIL, the arbitration bodies appointed on the basis of the Code being international arbitral tribunals having their seat in Switzerland within the meaning of Article 176 of the PIL.

12. Pursuant to Article 187.1 of the PIL,

"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the law with which the case is most closely connected".

13. Article 187.1 of the PIL constitutes the entire conflict-of-law system applicable to arbitral tribunals, which have their seat in Switzerland: the other specific conflict-of-laws rules contained in Swiss private international law are not applicable to the determination of the applicable substantive law in Swiss international arbitration proceedings (KAUFMANN-KOHLER/STUCKI, *International Arbitration in Switzerland*, Zurich 2004, p. 116; RIGOZZI A., *L'arbitrage international en matière de sport*, Basle 2005, § 1166 *et seq*).

14. Two points should be underlined with respect to Article 187.1 of the PIL:

- it recognizes the traditional principle of the freedom of the parties to choose the law that the arbitral tribunal has to apply to the merits of the dispute;
- its wording, to the extent it states that the parties may choose the *"rules of law"* to be applied, does not limit the parties' choice to the designation of a particular national law. It is in fact generally agreed that the parties may choose to subject the dispute to a system of rules which is not the law of a State and that such a choice is consistent with Article 187 of the PIL (DUTOIT B., *Droit international privé suisse*, Basle 2005, p. 657; LALIVE/POUDRET/REYMOND, *Le Droit de l'Arbitrage interne et International en Suisse*, Lausanne 1989, p. 392 *et seq*.; KARRER, in HONSELL/VOGT/SCHNYDER (publ.) *Kommentar zum schweizerischen Privatrecht, Internationales Privatrecht*, Basle 1996, Art. 187, § 69 *et seq*.; see

also CAS 2005/A/983 & 984, § 64 *et seq*.). It is in addition agreed that the parties may designate the relevant statutes, rules or regulations of a sporting governing body as the applicable *"rules of law"* for the purposes of Article 187.1 of the PIL (RIGOZZI A., L'arbitrage international en matière de sport, Basle 2005, § 1178 *et seq*).

15. This far-reaching freedom of the choice of law in favour of the parties, based on Article 187.1 of the PIL, is confirmed by Article R58 of the Code. The application of this provision follows from the fact that the parties submitted the case to the CAS. Article R27 of the Code stipulates in fact that the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS.

16. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute

"according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

17. In the present case, Article 3 of the licence application form signed by the Appellant on 8 July 2008 clearly provides for *"the applicability of Swiss law for everything related to the UCI ProTour, unless stipulated otherwise".*

18. In light of the foregoing, the Panel concludes that this dispute has to be determined on the basis of Swiss law and the UCIR.

19. The provisions set in the UCIR which appear to be relevant in this arbitration are the following:

i. Article 2.15.149:

"In addition to meeting the conditions set out in the regulations, the following selection criteria shall be taken into consideration by the licence commission in deciding to refuse a licence, grant it for a reduced duration or to select between events falling in the same class under article 2.15.147:

1. *the sporting level on the basis of the start list of the event on the last four occasions that it was run prior to the application for a licence;*
2. *the format, the structure and the type of the event contributing to the image of the UCI ProTour as an elite competition;*
3. *the quality of organisation, particularly as regards safety;*
4. *the levels of television coverage and audience figures on free channels in at least the 5 previous years preceding the first year for which the licence is being applied for;*
5. *compliance with the UCI cycling regulations and all applicable regulations;*
6. *compliance with contractual and legal obligations;*
7. *the absence of any attempt to breach or bypass such obligations;*
8. *compliance with sporting ethics;*
9. *the absence of any other element liable to damage the image of the UCI ProTour and the sport of cycling in general.*

The criteria above concern any element or fact arising before the application for or grant of a licence".

ii. Article 2.15.178:

"A holder whose licence expires may apply for its renewal following the procedure established for licence applications".

iii. Article 2.15.179

"Unless renewed, the licence expires automatically at the end of the period for which it was awarded".

iv. Article 2.15.189

"The licence is granted solely to the owner of the event".

v. Article 2.15.190

"If the owner of the event is not the actual organiser of the event, the event owner must inform the UCI and indicate in his licence application the exact identity of the actual organiser or of any other intermediary".

Merits

20. The Appellant in this arbitration is challenging under several perspectives the Decision that declined his application for a UCI ProTour licence for the Tour of Benelux and the other decision that granted such licence to Eneco.

21. The Respondents, on the other hand, are asking that the appeal be declared inadmissible regarding the decision that granted the licence to Eneco and that the appeal be dismissed regarding the Decision that declined the Appellant's application.

22. Regarding the question of the admissibility of the appeal against the decision that granted the licence to Eneco, Article 2.15.227 UCIR clearly provides that an applicant may not appeal against a decision of the Licence Commission regarding another applicant.

23. Such formulation is perfectly clear and does not leave any space for further interpretation. Considering that the Appellant has no standing to sue, its request regarding Eneco's application must therefore be dismissed.

24. As far as it refers to the Decision which declined the Appellant's application, the appeal is admissible, but the scope of review of the Panel is limited to the arbitrariness by Article 2.15.239 UCIR.

25. As the distinction between the event owner (or licence holder) and the actual event organiser (or material organiser) is of significant importance in the present dispute, it shall be first clarified.

26. The concept of ownership has to be understood in the context of the UCIR, in particular Articles 2.15.189 ff according to which the licence is granted solely to the owner of the event (Article 2.15.189) and if the owner of the event is not the actual organiser of the event, the event

owner must inform the UCI and indicate in his licence application the exact identity of the actual organiser or of any other intermediary (Article 2.15.190).

27. In other words, the owner of the event has to be considered as opposed to the material organiser of the event and possibly to other intermediaries. The owner is the person or body who takes the initiative and the responsibility of the event and in particular who has the TV rights and the marketing rights. He may either organise the event himself or prefer to delegate the organisation to a material organiser.

28. In the present case, there was no Benelux Tour up to 2004 and therefore no owner. From 2005 to 2008, the Appellant and BRRC were the co-owners of the Eneco Tour which implemented the Benelux Tour concept, each with a 50% share. VOF, the joint venture made by ICSO and Bora, was the material organiser.

29. The Appellant has alleged that the licence could not be granted to any other party because he had an exclusive right of ownership on the Tour of Holland.

30. This allegation has been challenged by the Respondent and by Eneco who stressed that the Tour of Holland was a different competition than the Eneco Tour 2005-2008 implementing the concept of the Benelux Tour, that the Appellant was not the sole owner but only co-owner of the Eneco Tour 2005-2008, and that in any case the ownership of the Eneco Tour for the period from 2005 to 2008 does not determine the right to a licence for an event under a new 2009-2012 licence.

31. The Panel considers that the interpretation made by the Appellant of the concept of ownership cannot be followed for the reasons above. Indeed, if such reasoning was followed, it would create against all reasonableness and fairness a situation of monopoly in favour of the first *"owner"*, i.e. organiser, of an event for all the subsequent events and the whole procedure of licence application would be meaningless.

32. The main argument of the Appellant that Eneco did not have the right to apply for a licence must therefore be rejected.

33. As for the Appellant's alternative argument, i.e. that the Licence Commission did not judge his application on the same objective grounds as it did in 2004 but compared the two applications and that such comparison has not been made on purely objective grounds, the Panel also considers that the Appellant has failed to demonstrate the arbitrariness of the Decision.

34. Except for the mentioned aggressive attitude towards the UCI, the Panel considers that the reasons given by the Licence Commission for the rejection of the Appellant's application were not arbitrary. On the contrary, it considers that the insufficient guarantee of sound organisation and the inadequacy of the explanations on the budget and future financial guarantees may indeed be considered as falling within the general criterion of the *"quality of organisation"* listed at Article 2.15.149 fig. 3 UCIR and could therefore be taken into consideration.

35. With regard to the issue of the alleged double standard of the UCI and upon examination of Eneco's application file and of the comments of the parties thereon, the Panel considers that there is no sign of any arbitrariness in the two decisions of the Licence Commission, which were based on objective grounds.

36. The Appellant has merely alleged that the Decision was arbitrary but has failed to show why it was manifestly unsustainable, in clear contradiction with the facts, or made without objective reasons or subsequent upon a serious breach of a clear and unquestioned rule or legal principle. All the more, the Appellant has failed to evidence that the outcome of the Decision was arbitrary.

37. In summary, the appeal against the Decision of the Licence Commission which declined the Appellant's application has to be dismissed.

Conclusion

38. The Panel holds that the appeal brought by the Appellant is to be declared inadmissible regarding the decision that granted the licence to Eneco and dismissed regarding the Decision that declined the Appellant's application. All other prayers for relief submitted by the parties are to be dismissed.

The Court of Arbitration for Sport rules:

1. The appeal filed by Stichting Ronde van Nederland against the decision issued by the Licence Commission on 4 December 2008 which granted the licence to Eneco Holding N.V. is dismissed.

2. The appeal filed by Stichting Ronde van Nederland against the decision issued by the Licence Commission on 4 December 2008 which declined the application of Stichting Ronde van Nederland is dismissed.

(…)

5. All other prayers for relief are dismissed.