



**Arbitration CAS 2013/A/3254 PT Liga Prima Indonesia Sportindo (LPIS), PT Persibo Football Club, Persebaya Football Club, Persema Football Club, PSM Makassar Football Club, Arema Football Club, Persipasi Football Club, Farid Rahman, Tuty Dau, Widodo Santoso, Sihar Sitorus, Bob Hippy, Mawardy Nurdin and Halim Mahfudz v. Fédération Internationale de Football Association (FIFA), Asian Football Confederation (AFC), Football Association of Indonesia (PSSI) and Johar Arfin Husin, award of 2 May 2014**

Panel: Mr Stuart McInnes (United Kingdom), President; Mrs Sophie Dion (France); Prof. Massimo Coccia (Italy)

*Football*

*Governance of a sports federation*

*Decision appealable to the CAS according to the CAS case law*

*Antitrust and competition rules and admissibility of a belated appeal*

*Nature of the assignment of a procedure as a CAS appeal procedure*

*News published on the FIFA web site is not a FIFA "Decision"*

*Recognition of CAS in the FIFA Statutes and jurisdiction over decisions issued by organizations other than FIFA*

- 1. According to the provisions of the CAS Code, there must exist a decision to appeal and/or an agreement between the parties to submit their dispute to arbitration. In particular, the CAS has appellate jurisdiction only if a decision may be identified, in accordance with the definition developed by CAS jurisprudence: in principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties.**
- 2. Antitrust and competition rules are public policy rules. However, this does not give automatically jurisdiction to an incompetent arbitral tribunal and does not render a belated appeal admissible. Antitrust complaints may always be lodged with a competition authority or a State court if an arbitral tribunal declines jurisdiction.**
- 3. A registered CAS appellate procedure may not be transformed into a CAS ordinary procedure. Indeed, Article S20 of the CAS Code provides that arbitration proceedings submitted to CAS are assigned by the CAS Court Office to the appropriate Division and that such assignment may not be contested by the parties nor be raised by them as a cause of irregularity. Only in the event of a change of circumstances during the proceedings, the CAS Court Office, after consultation with the Panel, may assign the arbitration to another Division.**
- 4. The news published on the FIFA web site informing about the occurrence of a congress is not a decision, as it merely informs the general public and does not contain any ruling intending to affect the legal situation of any party.**

5. **The mere provision that FIFA “recognises” the CAS is not sufficient in itself for a CAS panel to claim jurisdiction over decisions or resolutions issued by individuals or organizations other than FIFA (such as, in particular, resolutions adopted by a national federation’s congress).**

**1. THE PARTIES**

- 1.1 Appellant No. 1, the PT Liga Prima Indonesia Sportindo (“LPIS”), is a commercial company, established under Indonesian law, which has as its main objective the promotion and organisation of professional football competitions in Indonesia.
- 1.2 Appellants No. 2 to 7 are professional football clubs (“Clubs”) which play in the Indonesian professional league and are affiliated to the Third Respondent, the Indonesian Football Association (“PSSI”).
- 1.3 Appellants No. 8 to 13 are individuals (“Members”) who were elected by the Congress of the PSSI, then under the presidency of the Normalization Committee, on 9 July 2011 for a period of 4 years but were subsequently sanctioned on 17 June 2013 by the Ordinary Congress of the PSSI, by being forbidden to participate in all football activities for a period of 10 years.
- 1.4 Appellant No. 14 was elected General Secretary of PSSI on 17 September 2012, but was subsequently dismissed on 17 February 2013.
- 1.5 The Fédération Internationale de Football Association (“First Respondent” or “FIFA”) is an association incorporated under Swiss law (articles 60 *et seq.* of the Swiss Civil Code) which has its registered office in Zurich, Switzerland, and is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental federations, national associations, clubs, officials and players worldwide.
- 1.6 The Asian Football Confederation (“Second Respondent” or “AFC”) is an association incorporated under Malaysian law and has its registered office in Kuala Lumpur, Malaysia. AFC is the governing body of Asian football and one of the six continental Confederations affiliated to FIFA. It consists of 46 member associations and one Associate Member association and is responsible for overseeing football in Asia.
- 1.7 The Football Association of Indonesia (“Third Respondent” or “PSSI”), is a sports association incorporated under Indonesian law and has its registered office in Jakarta, Indonesia. PSSI is the governing body of football in Indonesia and is a member of FIFA and AFC.

1.8 Mr Johar Arfin Husin (“Fourth Respondent”) is the President of PSSI and was elected on 9 July 2011.

## 2. FACTUAL BACKGROUND

2.1 Below is a summary of the main relevant facts, as established by the Panel on the basis of the parties’ written submissions and the evidence produced. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

2.2 During the first half of the century, football in Indonesia was amateur only, with a semi professional league established only in the early 1980s.

2.3 In 1994, the Indonesian Football Association (PSSI) created a new competition system, named Liga Indonesia Premier Division (LPI).

2.4 In 2008, PSSI instituted a new top flight competition level, in order to strengthen the professionalism in Indonesian football, and called it the Indonesian Super League (ISL) resulting in the relegation of the LPI to the second level.

2.5 On 22 December 2010, the director of the LPI wrote to the President of the PSSI suggesting the creation of the Indonesian Premier League Competition.

2.6 In January 2011, the PSSI Executive Committee, under the Presidency of Mr. Nurdin Halid, organised a Congress of the PSSI in Bali.

2.7 During February of the same year, FIFA and the General Secretary of the PSSI exchanged correspondence about the alleged illegal constitution of the Congress and the prohibition of certain candidates for election to the PSSI Executive Committee.

2.8 Following the meetings of the Committee of the Associations of FIFA, on 3 March 2011, the FIFA Executive Committee decided to confirm the date of the General Assembly of the PSSI for 26 March 2011, with the objective to nominate an electoral commission according to FIFA standards and to announce elections before the end of April 2011.

2.9 On 1 April 2011, the Emergency Committee of FIFA decided, pursuant to the FIFA Statutes, to replace the Executive Committee of the PSSI and to designate a Normalization Committee with responsibility to organise the elections, take control of the LPI under the auspices of the PSSI and to manage the activities of the PSSI.

2.10 On 21 April 2011, FIFA passed decisions on the composition of the Electoral Appeal Committee and the adoption by the Normalization Committee of the electoral code.

- 2.11 On 12 May 2011, the Appellants filed a first appeal brief before the Court of Arbitration for Sport demanding the adoption of urgent restraining measures against the internal administration of the PSSI's Congress.
- 2.12 On 19 May 2011, CAS rejected the jurisdiction, declaring itself incompetent.
- 2.13 On 5 October 2011, Mr. Rahman, (Vice-President of PSSI), and Mr. Arifin Husin, (President of PSSI), founded the company PT Liga Prima Indonesia Sportindo (LPIS), a new league under the umbrella of the PSSI.
- 2.14 On 7 June 2012, the PSSI, the ISL and the "Save Indonesia Football Committee" (KPSI) signed a Memorandum of Understanding (the "MoU") with the objective to preserve the integrity of Indonesian football, its existence and its development. FIFA and AFC signed the MoU as "witnesses", declaring that they attested "*that this document has been subscribed on the above mentioned date*".
- 2.15 On 17 March 2013, an Extraordinary Congress of the Indonesian Football Association (PSSI) took place in Surabaya (Indonesia). On 22 March 2013, in correspondence with the PSSI Vice President, FIFA expressed its lack of concern about the organisation of the Extraordinary Congress and confirmed that in its opinion the Congress apparently complied with the guidelines and stipulations of FIFA/AFC.
- 2.16 On 17 June 2013, following the decision taken by the Congress, the PSSI decided to:
- i. assign the management of professional football competitions in Indonesia exclusively to the ISL, excluding LPIS from all football activity;
  - ii. dismiss Mr Halim Mahfudz as General Secretary, following the decision of the Executive Committee of the PSSI of 27 February 2013;
  - iii. enforce the decision of the Executive Committee of PSSI dated 27 february 2013 to reinstate four disqualified members previously sanctioned.
- 2.17 In addition, following a decision of the PSSI Congress, the LPI and the ISL were merged together in a sole league named the Liga Super Indonesia ("Super League").

### **3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

- 3.1 On 8 July 2013, the Appellants filed a statement of appeal with the Court of Arbitration for Sport (the "CAS") demanding urgent restraining measures, directed against FIFA, AFC and PSSI, in respect of the decisions adopted by the Congress of the PSSI in March and June 2013. Furthermore the Appellants requested to consolidate the action with the procedure TAS 2013/A/3161 Persibo, Persebaya, Persema, PSM, Arema, Persipasi c. FIFA.
- 3.2 By letter dated 16 July 2013, the CAS Court Office acknowledged receipt of the statement of appeal filed by the Appellants but rejected the request to consolidate the procedure with CAS

2013/A/3161 as payment of the advance of costs had not been made in that action and it was accordingly terminated pursuant to Article R64.2 of the Code of Sports-related Arbitration (the “CAS Code”).

- 3.3 On 19 July 2013, the First Respondent acknowledged receipt of the statement of appeal and the related request for provisional measures and stated that the demands were inadmissible on the grounds of the lack of CAS jurisdiction.
- 3.4 On the same day, the Third Respondent acknowledged receipt of the statement of appeal and request for provisional measures and indicated in its answer that CAS lacked jurisdiction to determine the claims made by the Appellants.
- 3.5 By letter dated 22 July 2013, the Second Respondent acknowledged receipt of the statement of appeal and request for provisional measures and indicated in its answer that CAS lacked jurisdiction to determine the claims made by the Appellants.
- 3.6 On 30 July 2013, the Deputy Division President of CAS issued an Order declaring that the official language of the procedure shall be English.
- 3.7 By letter of 13 August 2013, the Second Respondent indicated that it did not intend to participate in the proceedings due to the absence of CAS jurisdiction.
- 3.8 On 5 September 2013, the First Respondent filed its answer to the request of provisional measure made by the Appellants.
- 3.9 Notwithstanding the statements made in its letter of 13 August 2013, on 10 September 2013, the Second Respondent filed its answer to the Appellants’ request for provisional measures, denying the existence of any decision against which the Appellants could lodge an appeal and reiterating its view that CAS lacked jurisdiction to determine the Appellants claims.
- 3.10 On 17 October 2013, the CAS Court Office notified the parties of the constitution of the Panel as follows:  
  
President: Mr Stuart C. McInnes MBE, Solicitor, London, England  
Arbitrators: Mrs Sophie Dion, Attorney-at-law, Paris, France  
Mr Massimo Coccia, Professor of Law and Attorney-at-law, Rome, Italy
- 3.11 By letter of 30 October 2013, in accordance with Article R55 of the CAS Code, the Panel invited the Appellants to file a submission addressing the jurisdictional issues raised by the Respondents within ten days upon the receipt of the letter.
- 3.12 On 9 November 2013, the Appellants filed submissions on jurisdiction.
- 3.13 On 21 November 2013, the First Respondent filed its submission on jurisdiction. The following day, a submission in identical form was filed by the Second Respondent.

- 3.14 On 22 November 2013, the Third Respondent filed its submission on jurisdiction.
- 3.15 By letter dated 22 November 2013, but received at the CAS Court Office on 24 November 2014, the club PSM Makassar informed the Panel that it withdrew its appeal and the power of attorney given to its Counsel as well.
- 3.16 By letter dated 20 January 2014, but received at the CAS Court Office on 10 February 2014, the club PT. Persibo Bojonegoro Mandiri advised the Panel that it withdrew its appeal as well as the power of attorney in favour of its Counsel.
- 3.17 By letter of 19 March 2013, the Panel invited the Respondents to inform it whether they agree with such withdrawals.
- 3.18 By letters of 21 March 2014, the First, Second and Third Respondent advised the Panel that they had no objections to the appeals' withdrawal by PSM Makassar and PT. Persibo Bojonegoro Mandiri *"provided that said withdrawal is understood as an abandonment of claim [désistement] and that, consequently, the Panel will issue a partial award dismissing the appeals and claims lodged by PSM Makassar and PT. Persibo Bojonegoro and deciding of the relevant portion of the costs"*.

#### **4. THE POSITIONS OF THE PARTIES**

- 4.1 The following outline of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what follows. The Parties' written submissions were all taken into consideration in deciding on this case.

##### **A. The Appellants' position**

- 4.2 The Appellants submitted the following:
- 4.3 As to the jurisdiction of the CAS, the Appellants allege as follows:
- i. Their request complies with Article R47 of the CAS Code, indicating that the filed appeal fell within the timeframe set forth by Article 67 para. 1 of the FIFA Statutes and Article R49 of the CAS Code.
  - ii. The 21-day time limit set out by Article R49 of the CAS Code and by the FIFA Statutes is not applicable because it is incompatible with public policy provisions (the Indonesian law number 5 of the 1999 on the Protection of Competition), otherwise the antitrust violation would continue without any possible sanctions.

- iii. The CAS has to accept its jurisdiction based on the statutory provisions of the FIFA, AFC and the PSSI that require the Appellants to lodge their appeal exclusively with the Court of Arbitration for Sport;
  - iv. The failure by PSSI to create a federal arbitral body, as established by Article 69 of the PSSI's Statute, justified proceeding before the CAS.
  - v. Pursuant to Article 66 of the FIFA Statutes, the execution of the MoU by the First and Second Respondent conferred jurisdiction on CAS.
  - vi. The following decisions predicated commencement of the Appeal process before CAS:
    - (a) The approval by the FIFA Executive Committee of the decisions taken by the PSSI's Congress of 17 March 2013;
    - (b) The acceptance by the FIFA Executive Committee of the outcome of the PSSI Congress of 17 June 2013;
    - (c) The decisions adopted by the PSSI Congress of 17 June 2013;
    - (d) All FIFA and AFC letters, with particular regard to the ones sent by FIFA on 22 March 2013 and by AFC on 21 September 2012. The decisions adopted by the PSSI Congress of 17 June 2013;
    - (e) The decisions adopted by the PSSI President.
- 4.4 With regard to procedural issues, the Appellants asked the consolidation of this Appeal with procedure CAS 2013/A/3161.
- 4.5 On the merits, the Appellants submitted the following requests for relief:
- i. that the Panel make a finding that two leagues are owned by PSSI and that LPIS forms part of PSSI and is not a rebel league;
  - ii. that LPIS should continue in its activities and the organisation of its competitions and that PSSI should rule in an objective manner on the regulations and the promotions between the two leagues and to assign the participating clubs to international competitions according to the objective criteria entirely in the spirit of the sport only under the control of CAS ;
  - iii. to annul the MoU due to a violation of Indonesian law on the protection of competition;
  - iv. to annul all decisions of FIFA, AFC, PSSI and its President taken directly or indirectly by application of the MoU;
  - v. to annul the decision of the PSSI Congress of 17 June 2013 on the sanction of applicants 8 to 13 and to reintegrate them into the Executive Committee of the PSSI;

- vi. to annul the changes to the PSSI Statutes which increase the number of members of the Executive Committee of the PSSI from 11 to 15;
- vii. to annul the appointment of 4 new members of the Executive Committee by the President alone;
- viii. to annul the decision of Appellant 14 to resign in his role as general Secretary and annul the decision made on 17 June 2013 on the assignment as intervening party 4 in his role as general Secretary ;
- ix. in the event of default to condemn jointly, conjointly and indivisibly all the defending and intervening parties to pay to the claimant LPIS the minimum sum of USD 1.5 billion, susceptible to increment and interest until complete payment;
- x. Stating that in case of difficulty of execution of the coming sentence, the tribunal, acting on the first demand by one of the parties, will deal with the difficulty that comes up (sic).

## **B. The First Respondent's position**

- 4.6 On 5 September and 21 November 2013, the First Respondent filed the following observations in relation with the lack of jurisdiction of the CAS:
- i. The Appellants did not provide any decision issued by FIFA in the present matter.
  - ii. The Appellants bear the burden of proof in relation to their allegations. It therefore belongs to the Appellants to define which particular document(s) shall be considered as the decision(s) passed by FIFA appealed against.
  - iii. According to First Respondent, an informative page on the official FIFA website does not constitute a unilateral act, is not intended to produce any legal effects and may consequently not be considered in any case as a decision taken by FIFA.
  - iv. The FIFA Executive Committee held its last meeting on 28 May 2013 and did not take any decision regarding the situation of the PSSI at this occasion. The First Respondent did not issue any decision – either by its Executive Committee or by any other of its bodies – dated 21 or 22 June 2013 in connection with the present dispute.
  - v. No specific arbitration agreement exists between the Parties to the arbitration by which an ordinary or an appeal CAS arbitration proceeding could be initiated.
  - vi. Finally, with regard to the admissibility of the appeal, the First Respondent emphasised the fact that Indonesian competition law may not affect to any extent the obligation to comply with the procedural rules of the CAS (*i.e.* deadlines to appeal, existence of a decision) when filing an appeal at the CAS.

4.7 The prayers for relief of the First Respondent are the following:

- i. To declare the appeal lodged by the LPIS *et al.* on 8 July 2013 inadmissible.
- ii. To hold that the CAS lacks jurisdiction inasmuch as any claim against FIFA is concerned.
- iii. To reject LPIS *et al.*'s request for assignment of the procedure to another Arbitration Division of the CAS.
- iv. To terminate the present arbitration procedure as far as FIFA is concerned.
- v. To order LPIS *et al.* to bear all costs incurred with the present proceedings.
- vi. To order LPIS *et al.* to cover all legal expenses of FIFA related to the present procedure.

**C. The Second Respondent's position**

4.8 On 10 September 2013, the Second Respondent filed its observations with regard to the CAS jurisdiction issue:

- i. Neither the Executive Committee of the AFC, nor any other of its bodies took a decision in relation to the relevant affaires of the Indonesian Football Association.
- ii. The Appellants did not file or indicate in their statement of appeal or appeal brief any specific decision that should have been taken by the AFC in these matters.
- iii. AFC did not take any decision with regard to the present matter.
- iv. The first condition for the jurisdiction for the CAS over the Second Respondent according to article R47 para. 1 of the CAS Code, i.e. the existence of an appealable decision taken by AFC, is therefore not fulfilled.

4.9 The Prayers for relief of the Second Respondent are the following:

- i. Due to a lack of jurisdiction, the arbitration procedure shall be terminated as far as the Second Respondent is concerned;
- ii. In the alternative, the Appellant's request for a stay shall be rejected;
- iii. The legal costs of the Second Respondent in an amount of CHF 5,000 shall be borne by the Appellants;
- iv. The procedural costs of CAS shall be borne by the Appellants.

#### **D. The Third and Fourth Respondents' position**

- 4.10 The following arguments were submitted objecting to the jurisdiction of the CAS:
- i. That with reference to Article R47 of the CAS Code the appealed decision cannot be considered as such, as it is missing the correct "*animus decidendi*".
  - ii. That Appellant failed to produce with its statement of appeal a copy of the decision appealed against as required by Article R48 of the CAS Code and/or failed to provide a copy of the provision of any statutes and/or regulation and/or the specific agreement providing for appeal to CAS.
  - iii. The Provisions quoted on page 14 of the statement of appeal (article 69 and 71 of the PSSI Statutes) do not contain an arbitration clause providing for the possibility to appeal a decision of the Third Respondent at CAS or to initiate an ordinary proceedings at CAS against the Third Respondent.
  - iv. The Memorandum of Understanding is not a unilateral ruling, but an agreement between several parties. It does not affect the legal situation of any party, as it is – as any Memorandum of Understanding – not self-executing. It merely lists the objectives that shall be achieved.
  - v. The Memorandum of Understanding can therefore not be considered as a decision of the Third Respondent in accordance with article R47 para. 1 of the CAS Code. Therefore, CAS does not have jurisdiction to act as an appeals arbitration body.
- 4.11 It was thus requested that the arbitration procedure be terminated, that the procedural costs of CAS be borne by the Appellants and that the legal costs of in an amount of CHF 5,000 be borne by the Appellants.

### **LAW**

#### **5. JURISDICTION OF THE CAS AND ADMISSIBILITY OF THE APPEAL**

- 5.1 The only issues to be addressed in this preliminary award are whether the CAS has jurisdiction to rule over the present appeal and, to the extent that there is jurisdiction, whether the appeal is admissible.

## 6. JURISDICTION OF CAS TO RULE ON ITS OWN JURISDICTION

6.1 According to Article R28 of the CAS Code, the seat of the CAS and of each Panel is Lausanne, Switzerland. Therefore, these CAS arbitration proceedings are governed by Chapter 12 of the Swiss Act on Private International Law (“PILA”), given that all the Appellants and three Respondents are neither domiciled nor habitually resident in Switzerland (Article 176 para. 1 PILA).

6.2 According to Article 186 paras. 1 and 3 PILA, the arbitral tribunal shall rule on its own jurisdiction, and shall do it “*by means of an interlocutory decision*”.

6.3 Furthermore the relevant provision of Article R55 of the CAS Code clearly states the following:

*“The Panel shall rule on its own jurisdiction. It shall rule on its jurisdiction irrespective of any legal action already pending before a State court or another arbitral tribunal relating to the same object between the same parties, unless substantive grounds require a suspension of the proceedings.*

*When an objection to the CAS jurisdiction is raised, the CAS Court Office or the Panel, if already constituted, shall invite the parties to file written submissions on the CAS jurisdiction. In general, the arbitral tribunal may rule on its jurisdiction either in a preliminary decision or in an award on the merits”.*

6.4 Thus, it is not in issue that the Panel has the power to decide about its own jurisdiction in a preliminary decision.

6.5 Article R27 of the CAS Code, as a general rule for the application of the CAS Code and the initiation of ordinary or appeal proceedings before the CAS provides as follows:

*“These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement (ordinary arbitration proceedings) or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS (appeal arbitration proceedings).*

*Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests brought into play in the practice or the development of sport and, generally speaking, any activity related or connected to sport”.*

6.6 Article R47 para. 1 of the CAS Code provides the following:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.*

- 6.7 According to the provisions of the CAS Code, there must exist a decision to appeal and/or an agreement between the Parties to submit their dispute to arbitration. In particular, the CAS has appellate jurisdiction only if a decision may be identified, in accordance with the definition developed by CAS jurisprudence: *“In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties”* (CAS 2008/A/1705, para. 5.2.1; CAS 2005/A/899, no. 61; CAS 2004/A/748, no. 89; CAS 2004/A/659, no. 36; CAS 2004/A/748, no. 89).
- 6.8 In addition, if there is jurisdiction, the appeal must be filed within 21 days from the decision, pursuant to Article 67 para. 1 of the FIFA Statutes (*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”*); if this 21-day deadline is not fulfilled, the appeal is inadmissible. In the case at hand, the Appellants’ statement of appeal was filed with the CAS on 8 July 2013; accordingly, the Appellant have the onus to identify an appealable decision issued no earlier than 17 June 2013.
- 6.9 Given that the Appellants called as Respondents four (4) different parties, the Panel is of the view that the issues of jurisdiction and, in case, of admissibility of the appeal, must be analysed separately for the various Respondents.
- 6.10 Before analysing the jurisdictional situation, the Panel must preliminarily address (a) the Appellants’ argument that the application of antitrust law would prevail over the CAS jurisdictional rules, and (b) the Appellants’ motion to transform the present appellate procedure into an ordinary arbitration procedure.
- 6.11 With regard to (a), the Panel concurs with the Appellants that antitrust and competition rules are public policy rules. However, this does not give automatically jurisdiction to an incompetent arbitral tribunal and does not render a belated appeal admissible; in fact, no prejudice may occur to the Appellants in this respect, because antitrust complaints may always be lodged with a competition authority or a state court if an arbitral tribunal declines jurisdiction. This Appellants’ submission must thus be dismissed.
- 6.12 With regard to (b), the Panel is of the opinion that the present CAS appellate procedure may not be transformed into a CAS ordinary procedure. Indeed, Article S20 of the CAS Code provides that *“[a]rbitration proceedings submitted to CAS are assigned by the CAS Court Office to the appropriate Division”* and that *“[s]uch assignment may not be contested by the parties nor be raised by them as a cause of irregularity”*. Only *“[i]n the event of a change of circumstances during the proceedings, the CAS Court Office, after consultation with the Panel, may assign the arbitration to another Division”*. As the Appellants did not invoke any change of circumstances occurred during the present proceedings and the Panel fails to see any such change, this Appellants’ motion must also be dismissed.

## 7. JURISDICTION OVER FIFA

7.1 The Appellants claim that CAS jurisdiction arises from the FIFA Statutes, more particularly from Articles 66 and 67 which read as follows:

Article 66: *“Court of Arbitration for Sport (CAS)”*

1. *FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players’ agents.*

2. *The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*

Article 67: *“Jurisdiction of CAS”*

1. *Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*

2. *Recourse may only be made to CAS after all other internal channels have been exhausted”.*

7.2 The Panel has no doubts that the above provision would be sufficient to retain appellate jurisdiction against a decision issued by FIFA.

7.3 However, the Appellants failed to identify a proper decision issued by FIFA. The Appellants made reference to *“the decisions of FIFA [...] to accept the outcome of the ordinary Congress of the PSSI of June 17, 2013, at Surabaya (Indonesia)”*. Yet, FIFA has denied to have taken any decision of this kind and the Appellants have not met their burden of proving the existence of such a decision. The news published on the FIFA web site informing about the occurrence of the PSSI Congress is clearly not a decision, as it merely informs the general public and does not contain any ruling intending to affect the legal situation of the Appellants or of any other parties.

7.4 Then, the reference made by the Appellants to other documents, such as the MoU of 7 June 2012 or the letter sent by FIFA on 22 March 2013 is irrelevant because, even if those documents were to be considered true decisions – of which the Panel has not been persuaded – they were issued way before 17 June 2013 (i.e. way before the 21-day term to appeal), yielding anyway the inadmissibility of the appeal.

7.5 In conclusion, the Panel holds that it does not have jurisdiction over FIFA for lack of an appealable decision and that, in any event, the appeal would be inadmissible because no decision was adopted by FIFA on or after 17 June 2013.

## 8. JURISDICTION OVER AFC

- 8.1 AFC has included in its statutes an arbitration clause granting to the CAS appellate jurisdiction over its own decisions: “*As Appeals Arbitration Body, CAS shall be entitled to hear appeals against final decisions passed by the AFC [...]*” (Article 63.1 of the AFC Statutes). Accordingly, in principle, the CAS has jurisdiction to review an AFC’s decision.
- 8.2 However, the Appellants were not able to identify a proper decision issued by the AFC and intended to affect the rights of the Appellants. In particular, the Appellants were not able to prove their allegation that AFC adopted a decision “*to accept the outcome of the ordinary Congress of the PSSI of June 17, 2013, at Surabaya (Indonesia)*”. No evidence – not even circumstantial evidence – of such alleged decision has been submitted by the Appellants.
- 8.3 The Panel also observes that the AFC signed the MoU of 7 June 2012 only as a “witness”, merely attesting that the MoU had been signed by the parties at a given date (see above at 2.14); it is thus evident that AFC, in signing such document, had no *animus decidendi* and issued no decision. In the Panel’s view, even the AFC’s letter dated 21 September 2012 does not include a ruling affecting the Appellants’ rights and, as a consequence, may not be characterized as a true decision.
- 8.4 In any event, even if the Panel were to find that the MoU of 7 June 2012 or the letter dated 21 September 2012 were actual AFC’s decisions, the Appellants’ appeal would be inadmissible for having been filed long after the 21-day deadline.

## 9. JURISDICTION OVER PSSI AND MR DJOHAR ARIFIN HUSIN

- 9.1 The Appellants have not been able to identify any CAS arbitration clause included within the statutes or regulations of PSSI or included in some document signed by PSSI. The same goes for Mr Djohar Arifin Husin; the Panel could find no evidence on file of an arbitration agreement between him and any of the Appellants.
- 9.2 In particular, the Panel finds that the provisions of the PSSI Statutes invoked by the Appellants (Articles 69 and 71) are of no avail to the Appellants.
- 9.3 The Panel does not accept the Appellant’s argument that Article 69 of the PSSI Statutes, providing that “*PSSI shall create an Arbitral Tribunal, which shall deal with all internal national disputes*”, is sufficient to give jurisdiction to the CAS. This provision merely mandates PSSI to create a national arbitral tribunal to deal with Indonesian football disputes and it certainly does not give jurisdiction to the CAS.
- 9.4 The Panel notes that not even Article 71 of the PSSI Statutes – entitled “Court of Arbitration for Sport” – is sufficient to give jurisdiction to the CAS. Indeed, the first paragraph of this provision only makes reference to the appellate jurisdiction of the CAS “*against a final and binding FIFA decision*” and does not mention that the CAS has jurisdiction to review decisions

adopted by PSSI or its President. The Appellants also may not rely on the second paragraph of Article 71, because such provision merely mentions the duty of the PSSI to ensure full compliance with the decisions adopted by the CAS.

- 9.5 In addition, in accordance with consistent CAS jurisprudence on this issue, the Panel is of the view that the above quoted Article 66 para. 1 of the current FIFA Statutes does not by itself grant jurisdiction to CAS with respect to decisions passed by confederations, members, leagues or individuals (see e.g., CAS 2009/A/1910, CAS 2008/A/1656, CAS 2005/A/952, CAS 2004/A/676, CAS 2002/O/422). Indeed, the mere provision that FIFA “recognises” the CAS is not sufficient in itself for a CAS panel to claim jurisdiction over decisions or resolutions issued by individuals or organizations other than FIFA (such as, in particular, resolutions adopted by a national federation’s congress). By the same token, the CAS arbitration provisions found in the AFC Statutes do not allow the CAS to retain jurisdiction over decisions adopted by individuals or organizations other than AFC.
- 9.6 Accordingly, the arbitration clauses found in the FIFA Statutes and in the AFC Statutes may not be the basis for the jurisdiction of the CAS over decisions issued by PSSI or Mr Djohar Arifin Husin.
- 9.7 Accordingly, the Panel must decline jurisdiction over PSSI and Mr Djohar Arifin Husin for lack of an arbitration clause or agreement giving jurisdiction to the CAS. The fact that the appeal was timely filed on the 21<sup>st</sup> day after the PSSI Congress of 17 June 2013 is thus of no avail to the Appellants.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules:**

1. The Court of Arbitration for Sport has no jurisdiction to decide on the appeal filed on 8 July 2013 by PT Liga Prima Indonesia Sportindo, Persibo Football Club, Persebaya Football Club, Persema Football Club, PSM Football Club, Arema Football Club, Persipasi Football Club, Mr Farid Rahman, Mr Tuty Dau, Mr Widodo Santoso, Mrsihar Sitorus, Mr Bob Hippy, Mr Mawardy Nurdin and Mr Halim Mahfudz, and, to the extent that it has jurisdiction, the appeal is inadmissible.
2. (...).
3. (...).
4. All other or further requests or motions submitted by the parties are dismissed.