Arbitration 2013/A/3452 Indonesian Sporthorse Society / Pengurus Pusat Persatuan Olahraga Berkuda Seluruh Indonesia (PORDASI) v. Olympic Committee of Indonesia (KOI), award of 2 June 2015

Panel: Mr Malcolm Holmes QC (Australia), President; Mr Quentin Byrne-Sutton (Switzerland); Mr Vinayak Pradhan (Malaysia)

Equestrian sports
Membership of a national federation to the NOC
Monopolistic structure in each country according to the Bye-Laws to the Olympic Charter
Requirements for a national federation to be recognized as an NOC member

1. **It is a requirement of the Bye-Laws to the Olympic Charter that an NOC can have only one member for a sport and that member be affiliated with the International Federation for that sport. Bye-Law 1.2 to Rules 28-29 relevantly provides that a NOC shall *"not recognize more than one national federation for each sport governed by an International Federation".* By recognising a second national federation for a sport, when another national federation for the same sport is still an existing member in relation to the same sport, a NOC clearly breaches the Bye-Laws of the Olympic Charter.**

2. **Rule 30 of the Olympic Charter provides that *"to be recognized by an NOC and accepted as a member of such NOC, a national federation must exercise a specific, real and on-going sports activity, be affiliated to an IF recognized by the IOC and be governed by and comply in all respects with both the Olympic Charter and the rules of the IF".* If an association is not affiliated with the International Federation, it is not eligible to be a member of the NOC.**

I. PARTIES

1. Indonesian Sport Horse Society / Pengurus Pusat Persatuan Olahraga Berkuda Seluruh Indonesia (the "Appellant" or "PORDASI") is a national federation governing equestrian disciplines covered by the Fédération Equestre Internationale (the "FEI"), horse racing and polo in Indonesia.

2. Olympic Committee of Indonesia (the "Respondent" or "KOI") is the sole and unique legitimate body recognised by the International Olympic Committee ("IOC") to act as the National Olympic Committee of Indonesia ("NOC of Indonesia") and as such is bound by the Olympic Charter.

3. The Appellant is affiliated both to the Respondent in its capacity as NOC and to the National Sports Committee of Indonesia ("KONI").

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, and legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. From about 13 September 1975, the Appellant has been a member of the FEI and has acted as the National Federation ("NF") governing FEI's equestrian disciplines in Indonesia. The Appellant is also the umbrella organisation for horse racing and polo in Indonesia.

6. Equestrian disciplines covered by FEI are dressage, jumping, eventing, driving, endurance, vaulting, reining, para-equestrian and any other forms of equestrian sports approved by the General Assembly of the FEI.

7. In 1998, the Appellant decided to create a "commission" within the Appellant to be in charge of FEI's equestrian disciplines in Indonesia known as the "Equestrian Commission of Indonesia" (the "PORDASI-ECI").

8. The members of the PORDASI-ECI's Board of Management are elected by the Appellant's President. The Appellant is the legal entity of which PORDASI-ECI is a part.

9. In order to properly manage its financial side, including opening a bank account, the Appellant decided to establish in 2001 an entity bearing the name "Equestrian Commission of Indonesia" in the form of a notary deed. This entity was nevertheless fully controlled by its board of directors and those directors were appointed by the Appellant. The existence of such entity, controlled *de facto* by Appellant, did not change anything to the structure of FEI's equestrian disciplines in Indonesia. Clubs and riders continued to be affiliated to the Appellant, through PORDASI-ECI.

10. KONI's structure consists of sub-regional KONI, regional KONI, provincial KONI and national KONI. KONI has a number of roles in sport at the national level under Indonesian Law.

11. KOI is the Indonesian Olympic Committee, recognised by the International Olympic Committee and bound to comply with the Olympic Charter.

12. There appears to have been some confusion in Indonesia between KONI and KOI. Ms Rita Subowo, who is a member of the IOC and the President of KOI, was also the President of KONI. KONI has added to the confusion by using the Olympic Rings in its publications.

13. This resulted in the IOC writing the following letter to the Indonesian Minister of Youth and Sports on 25 February 2013:

"It has come to our attention that an organisation called the "National Sports Committee of Indonesia (KONI)" is currently trying to take over the role of the National Olympic Committee of Indonesia (KOI) which is the sole and unique National Olympic Committee recognised by the International Olympic Committee (IOC) for the territory of Indonesia.

This issue is of great concern to the IOC and the Olympic Council of Asia (OCA) since, if this happens, this would be a clear violation of the Olympic Charter with all the implications that this may have.

With this letter, we would like to recall, once again, that the Komite Olimpiade Indonesia (KOI) is the sole and unique legitimate body recognised by the IOC (and affiliated to the OCA) to act as a National Olympic Committee (NOC) in Indonesia. This means, in particular, that, as per the Olympic Charter, the KOI has the exclusive authority for the representation of Indonesia at the Olympic Games and at the regional, continental or world multi-sports competitions patronised by the IOC, including the Asian Games and South East Asian Games, and for entering Indonesian athletes and leading a delegation at such events.

(…)".

B. Background of the dispute

14. Between 2003 and 2007, Mr Irvan Gading was the President of PORDASI-ECI and was a member of the Appellant's Executive Committee. Mr Irvan Gading was the owner of an Indonesian stable and the husband of the Indonesian rider Ms Larasati Iris Rischka Gading. He was also the Vice-president of KONI.

15. At the 2008 PORDASI Congress, Dr Johanes Gluba Gebze was elected as the new Chairman of the Appellant. As the new Chairman, he did not appoint Mr Irvan Gading as President of PORDASI-ECI or as a member of the Executive Committee of the Appellant.

16. On 20 November 2008, Mr Irvan Gading, with eight (8) other individuals including his wife Ms Larasati Iris Rischka Gading, Mr Insinyur Rafiq Hakim Radinal and Mr David Ardi Hapsoro Hamidjojo, held a meeting at the KONI office and created a new organisation under the name "Equestrian Federation of Indonesia" ("EFI").

17. Since the formation of EFI in 2008, there has been an ongoing dispute between the Appellant and the Respondent as to which body is the legitimate national federation in Indonesia governing equestrian sports and affiliated to the FEI.

18. In 2008, and again on 23 January 2009, the Appellant's Chairman requested KONI to confirm the appointment by the Appellant of its Executive Committee.

19. On 9 February 2009, in order to resolve the situation, the Appellant's Chairman convened a meeting of 28 representatives of equestrian clubs, including Mr Irvan Gading, in order for them to choose the individual who was to be the President of PORDASI-ECI. The meeting then chose Mr David Ardi Hapsoro Hamidjojo, who was appointed by the Appellant's Chairman as President of PORDASI-ECI and a member of Appellant's Executive Committee.

20. PORDASI-ECI advised Ms Rita Subowo, President of both KOI and KONI, by letter dated 9 September 2009 that a working committee had been formed within PORDASI-ECI to consider the formation of an independent federation for equestrian sport in Indonesia.

21. On 13 October 2009, during a meeting between, Mr David Ardi Hapsoro Hamidjojo, PORDASI-ECI's Chairman at that time and Triwatty Marciano, Secretary-General of PORDASI-ECI, with Mr Irvan Gading, Chairman of EFI, and Rafiq Hakim Radinal, Secretary General of EFI, it was agreed that the *"board of management of* [PORDASI-ECI] *has delivered and accepted one bundle of working files for a period of 2007-2011 … to … EFI".*

22. By letter also dated 13 October 2009, the FEI reminded PORDASI-ECI that it would be automatically suspended as a member of FEI if it failed to pay its 2009 annual subscription by 18 November 2009 at the latest.

23. On 16 October 2009, the Appellant issued a decision by which it decided to *"freeze temporarily the Management of"* PORDASI-ECI and to *"appoint Deputy General Chairman of* [PORDASI-ECI] *Mr Eddy Saddak and Deputy Chairman of* [PORDASI-ECI] *Mrs. Lina Arto Hardy"* as Chairman and Secretary General of PORDASI-ECI for a temporary period.

24. Mr Hamidjojo and Mr Triwatty Marciano, who had been suspended by the decision of the Appellant on 16 October 2009 to freeze the management of PORDASI-ECI, signed two documents which were said to be dated 15 October 2009 on behalf of PORDASI-ECI, thus purportedly prior to their suspension, informing Mrs Rita Subowo as *"The Honourable General Chairman of KONI/KOI"* that PORDASI-ECI was no longer related to the Appellant, and that it had *"merged"* with EFI.

25. The Appellant maintains that these documents were signed by Mr Hamidjojo and Mr Triwatty Marciano on 18 October 2009 after they had been suspended and were backdated to 15 October 2009. The Appellant produced a written statement (Exhibit W18) from Mr Hamidjojo signed on 8 November 2013 before a Notary Public in which he testified that he had signed the letter at an informal meeting on 18 October 2009. He said that he was Chairman of ECI at the time and the letter dated 15 October 2009 had been prepared beforehand.

26. The Appellant also maintains that, in any event, any such decision to merge was invalid and ineffective because it was taken without the holding of any formal meeting and without the Appellant's approval. Mr Hamidjojo also said in his statement that the letter was *"invalid and does not have legal power because of inconsistent with decision making procedure as set forth in the deed of*

establishment of ECI". This evidence was not the subject of challenge at the hearing as described below.

27. By a letter dated 22 October 2009, the Appellant informed Mr Hamidjojo and Mr Triwatty Marciano, as the signatories of the PORDASI-ECI's backdated letter of 15 October 2009, that:

"1. (…) every attempt to separate PORDASI's Equestrian Commission (Equestrian Commission of Indonesia) without going through procedures (mechanism) that is regulated violates Statutes and Bye-Laws (AD/ART) of PORDASI. PORDASI is the only horsesport governing bodu (sic) *recognized by KONI/KOI as well as FEI".*

2. With the issuance of PORDASI Chairman's Decree Nr. 36/KU/PP/X/2009 dated 16 October 2009 regarding Suspension of PP PORDASI's Equestrian Commission 2007-2011 Terms we (PORDASI) reassert that Equestrian Commission remains part of PORDASI according to Statutes and Bye-Laws (AD/ART) of PORDASI.

3. Therefore the organization of FEI World Dressage and Jumping Challenge 2009 in Indonesia have to be organized with the approval and under the name of PORDASI-ECI.

Related to that hereby PP PORDASI demands administrative and financial accountability of suspended Executive Board PORDASI Equestrian Commission (ECI) 2007-2011".

28. On 23 October 2009, KOI wrote to the FEI a letter of support for EFI. The KOI supported EFI maintaining contact with the FEI, as it *"is EFI's international federation"*. The letter from KOI stated that:

"Referring to Equestrian Federation of Indonesia/EFI's Letter Nr. 01/EFI/TR/2009 dated on 20 October 2009, Equestrian Commission of Indonesia/ECI's Letter Nr. 47/ECI/X/2009 dated on 15 October 2009 and Nr. 46/ECI/X/2009 dated on 15 October 2009, hereby we inform you that in principle Komite Olimpiade Indonesia (KOI) understands EFI's desire to advance equestrian sports in Indonesia, especially to successfully run event's programs that had been planned in the 2009-2010 event calendar.

In the future for international level events we urge Equestrian Federation of Indonesia (EFI) to maintain communication with Federation Equestre Internationale (FEI) which is EFI's international federation".

29. At the time the Appellant was affiliated with FEI. Nevertheless, the letter of support by KOI was not sent to the Appellant, but was sent to EFI, with copies to Ms Rita Subowo as the Vice-president of KOI and the Secretary General of KONI, as a report, and to the FEI Chief Executive Officer.

30. In November 2009, EFI gave notice to the FEI that it would be sending representatives to the FEI General Assembly scheduled in Copenhagen for late November 2009. The FEI then contacted PORDASI-ECI by email seeking its views. The FEI advised that EFI was proposing to attend the General Assembly. Ultimately, by letter dated 11 November 2009, the

FEI confirmed that PORDASI-ECI as the national federation representing FEI's equestrian disciplines in Indonesia, would be allowed to attend. The FEI relevantly stated:

"(…)

Therefore and until the issue of governance is settled in your country, PORDASI-ECI remains the recognized equestrian body affiliated to the FEI and entitled to attend the FEI General Assembly in Copenhagen, with voting rights".

31. By a letter of 14 November 2009 to KONI, the Appellant requested Ms Subowo as President of KONI/KOI to:

"1. (…) issue a letter that is addressed to Secretary General of FEI stating that PORDASI-ECI (which is part of PORDASI) is the only horsesports governing body (equestrian) that is recognised by KONI/KOI and authorized to be affiliated to equestrian international federation (FEI).

2. We are going to use this letter in PORDASI-ECI's participation at the FEI General Assembly in Copenhagen, Denmark, from 17 until 19 November 2009 (FEI Secretary General's confirmation on PORDASI-ECI Participation is enclosed)".

32. In accordance with the FEI letter dated 11 November 2009, Indonesia was represented at the 2009 FEI General Assembly on 17 November 2009, by Ms Pingkan Ullmer-Runtu, the General Secretary of the Appellant, and not by any representatives of EFI.

33. The dispute continued and, on 4 February 2010, a meeting was held between representatives of KONI, the Appellant and EFI. Subsequently, by letter dated 10 February 2010 sent to the Appellant, the Secretary General of KONI noted that at this meeting the Appellant *"implied in principle* … [that it] *did not object that equestrian be under separate management to the extent that the proposal is aimed at pursuing equestrian development and is approved by members of PORDASI through a national meeting mechanism".*

34. The Appellant, in its reply dated 3 March 2010 to KONI, advised that any possible separation of equestrian sports from PORDASI-ECI *"has to abide with Rules that are regulated in PORDASI Statutes and Bye-Laws …".*

35. There was no action taken, or meeting held by the Appellant or PORDASI-ECI to consider either the Appellant's affiliation with the FEI or any proposal to change PORDASI-ECI's name. Nonetheless, on 12 March 2010, the Respondent wrote a critical letter to the FEI which has been at the core of the dispute ever since. This letter, signed by Mr Arie Ariotedjo, Secretary General of KOI, relevantly stated;

"We hereby confirm and support the change of name from Equestrian Commission of Indonesia (ECI) to Equestrian Federation of Indonesia (EFI), which is in full compliance with all Indonesia Olympic Committee requirements.

The Equestrian Commission of Indonesia (ECI) was transformed into Equestrian Federation of Indonesia (EFI) at October 2009. Previously it was linked to the Indonesian Horse Society (PORDASI). ECI has been running the National and International Equestrian Events in Indonesia for the last 20 years.

Since PORDASI (…) and EFI (…) are separate organisations, the Indonesia Olympic Committee acknowledges the Equestrian Federation of Indonesia (EFI) as the Equestrian Federation in Indonesia.

We hope this will clarify the situation. (…)".

36. On 18 March 2010, the Appellant wrote to KONI and advised that the Appellant would take steps *"so that the issue of Indonesian Equestrian including independency of the equestrian from PORDASI, can be discussed …"*. The proposed steps included considering the issue at the Appellant's national congress (*Rakernas*) on 19 April 2010.

37. On 30 March 2010, the FEI (in response to the letter dated 12 March 2010 from KOI) wrote to Mr Gading as President of EFI in the following terms:

"Dear Mr Gading,

Following the recent communication received from the Indonesian Olympic Committee dated 12 March 2010, the latter, through its Secretary General Mr. Arie Ariotedjo, has confirmed and supported the change of name from Equestrian Commission of Indonesia (ECI) to Equestrian Federation of Indonesia (EFI).

Furthermore, it is also recognised therein that the Indonesia Olympic Committee recognizes the EFI as being in full compliance with all Indonesia Olympic Committee requirements; that the EFI is a separate organization from the Indonesian Horse Society (PORDASI); and acknowledges the EFI as the Equestrian Federation in Indonesia.

In view of the above and according to the FEI Statutes we hereby inform that the FEI recognizes the Equestrian Federation of Indonesia (EFI) as the sole authority (besides the FEI itself) for FEI equestrian disciplines in Indonesia.

We hope that this will help ensuring the correct development of equestrian sport in your country.

(…)".

38. At the national congress of the Appellant (*Rakernas*) on 19 April 2010, the members refused to release of FEI's equestrian disciplines from the Appellant and passed a number of resolutions, including:

"To keep Equestrian Commission remains [sic] part of PORDASI's organisation.

Essential to hold a meeting with KONI, ECI and EFI to resolve it.

If, persuasively, there is no resolution therefore PP PORDASI is authorised to take legal action".

39. On 28 April 2010, the Appellant gained some support at a KONI Members Meeting when it was decided that *"KONI shall facilitate the reinstatement over the status of PORDASI-ECI as National Federation that is affiliated to FEI".*

40. KONI again decided to facilitate PORDASI-ECI "*to be re-acknowledged by FEI*" as the national federation for FEI's equestrian disciplines in Indonesia during its meeting held on 13 February 2011 (Exhibit A46).

41. On 18 April 2011, PORDASI lodged a Request for Arbitration with the Indonesian Sport Arbitration Board ("BAKI") in an attempt to resolve the dispute as to which body is the national federation in Indonesia governing equestrian sports and affiliated to the FEI and to KOI. The BAKI declined to receive the Request and advised that it had *"not been formally opened to receive arbitration case …"* (Exhibit A49).

42. In May 2011, the Appellant approached the Court of Arbitration for Sport (CAS), which advised by letter dated 30 May 2011 that *"it could be possible for both parties to refer their dispute to the CAS in Lausanne if they agree to do so in writing … In the absence of any arbitration agreement between the parties, the CAS would probably not have jurisdiction to settle the dispute, considering that … the primary jurisdiction was given to BAKI"*.

43. At the KOI's annual session of 27 February 2012, the KOI's Plenary Assembly resolved *"to recommend KOI revoking* [EFI] *as official representation of horse (equestrian) sports at Federation Equestre Internationale (FEI) and reinstating PORDASI as the (equestrian) national federation"*.

44. On 13 March 2012, in order to clarify the situation, the Appellant and EFI signed a Memorandum of Understanding ("MoU") by which they agreed that the issue of the separation of FEI's equestrian disciplines from PORDASI shall be submitted to the approval of the PORDASI Congress:

"1. KONI initiates implementation of extraordinary National Congress (MUNASLUB) of PP.PORDASI with main agenda is separation and release of the Equestrian in Organization Development of PP.PORDASI.

2. The implementation of MUNASLUB as referred to in paragraph 1 shall be not later than 2 (two) months after this MoU is signed.

3. In the event of the First Party fails to meet the periods as referred to in Article 1 paragraph (2), then the First Party shall unconditionally agree to release development of the Equestrian organization from PP. PORDASI to EFI.

4. During the transitional period, the Equestrian Committee of Indonesia still becomes a part of PP. PORDASI and may perform competition activity of the Equestrian on behalf of EFI and PORDASI".

45. By a letter circulated on 11 April 2012, the Appellant informed its members that its 2012 National Congress (*Rakernas*) would take place on 11 May 2012 and would be immediately followed by an extraordinary national congress (*MUNASLUB*).

46. On 11 May 2012, during its national congress (*Rakernas*), the Appellant submitted the issue of the release of FEI's equestrian disciplines to its members, who rejected the MoU in the following terms:

"1. All members of PORDASI agree that Equestrian Commission is part of and inseparable from Organizational Structure of PP PORDASI

2. To annul the MOU between Chairman of PORDASI and Secretary General of EFI on 13 March 2012 (copy enclosed) because it is against PORDASI Statutes and bye-Laws.

3. To recommend:

a. PP PORDASI immediately has to write rejection letter against KONI Decree Nr. 32 Year 2012 regarding Validation Executive Board (PP) PORDASI 2011-2015 because it did not include Equestrian Commission.

b. PP PORDASI immediately to request to KONI to issue Validation Decree for Executive Board (PP) PORDASI 2011-2015 according to the Decisions of PORDASI National Congress 2011.

(…)".

47. By a letter dated 11 May 2012, the Appellant informed EFI that:

"1. RAKERNAS PORDASI has annulled the MOU that was signed by Chairman of PP PORDASI and Secretary General of EFI on March 13 2012.

2. PP PORDASI did not hold the National Extraordinary Congress (MUNASLUB) due to request from all Provincial PORDASI Delegates who attended the National Annual Sessions (RAKERNAS) considering that it does not accord to statutes and Bye-Laws of PORDASI.

3. National Annual Session (RAKERNAS) Year 2012 decided that equestrian is inseparable part of PORDASI governance and development structure".

48. On 20 January 2013, eleven individuals, including Mr Irvan Gading, formed a new federation by deed under the name "*Equestrian Federation of Indonesia*" ("New EFI"). In the Preamble to the deed, it is said that the New EFI had been established by the merger of the Equestrian Commission of Indonesia with the Equestrian Federation of Indonesia.

C. Proceedings before BAKI

49. On 30 May 2013, the Appellant lodged a further Request for Arbitration with BAKI and named KOI as Respondent. The Appellant objected to KOI advising the FEI by letter dated 12 March 2010 that PORDASI-ECI had *"changed into EFI …"*.

50. The Appellant requested BAKI (inter alia): (1) to declare that KOI breached several provisions of KOI's By-Laws and of the Olympic Charter (2) to declare the letter of 12 March 2010 null and void; (3) to declare that the mechanism of the acceptance and recognition of EFI as a member of KOI was not in accordance with KOI's By-Laws; (4) to suspend KOI's recognition of EFI and; (5) to recognise the Appellant as the only national federation governing FEI's equestrian disciplines.

51. By a decision issued on 10 December 2013 (the "BAKI Decision"), BAKI dismissed all the requests submitted by the Appellant.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

52. On 30 December 2013, the Appellant submitted its Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the National Olympic Committee of Indonesia with respect to the BAKI Decision.

53. The Appellant, in its Statement of Appeal, submitted that the CAS jurisdiction derives from Article 108.1 of the KOI's By-Laws which reads as follows;

"An appeal against a decision of BAKI can be lodged to CAS only if: (i) such decision is sentenced a party or parties to pay an amount of Rp.500,000,000 (five hundreds million Rupiah) or more, or (ii) the substance of the decision is related to the regulation adopted by IOC and/or IF recognised by IOC".

54. In addition, the Appellant submitted that the core of the dispute was, *inter alia*, whether KOI breached the Olympic Charter. One of the prayers for relief before BAKI was that KOI had breached the Olympic Charter, and accordingly CAS has jurisdiction to review the case *de novo* in accordance with Article 108.1 of KOI's By-Laws and Article R57 of the CAS Code (the "Code").

55. The Appellant nominated Mr Quentin Byrne-Sutton, attorney-at-law in Geneva, as arbitrator.

56. By letters dated 7 January 2014 and 4 February 2014, the Respondent objected to the jurisdiction of the CAS to admit the Appeal. In its letter dated 7 January 2014, the Respondent referred Article 108.1 of its Bye-Laws and said BAKI had *"taken a decision in this matter which was final and binding …".*

57. On 26 February 2014, and in accordance with article R53 of the Code, the President of the CAS Appeals Arbitration Division nominated Mr Vinayak Pradhan, solicitor in Kuala Lumpur, Malaysia, as arbitrator *in lieu* of the Respondent.

58. By application filed with CAS on 4 March 2014, the Appellant sought by way of interim measures, orders against the Respondent that it allow the Appellant to be represented at the KOI's annual session scheduled for 7 March 2014 to be held in Jakarta and to exercise all rights granted to KOI's members and that KOI be restrained from taking any measures against the Appellant pending the final resolution of the case before CAS.

59. The President of the CAS Appeals Division of CAS considered that the CAS had *prima facie* jurisdiction to rule on the matter and on 6 March 2014 dismissed the application for provisional measures. The grounds for such order were notified to the parties on 3 April 2014

60. By letter received by the CAS on 10 March 2014 (but dated 5 March 2014), the Respondent repeated its earlier objections and submitted, inter alia, (par 1.1) that the decision by BAKI *"is final and binding and it must be executed by both parties",* (par 1.5) that the Appellant has *"no legal*

standing in the presence of the Court of Arbitration for Sport", (par 2.2) that the attempts by the Appellant *"to combine the authority of equestrian … together with horse racing and polo,* [is] … *contrary to public policy …"*, (par 5.2) that the KOI *"was aware and understands the action of dissolution and amalgamation of the Equestrian Commission of Indonesia to the Equestrian Federation of Indonesia was carried out in a lawful meeting and in a democratic atmosphere"*, (para 5.3) that the letter of 12 March 2010 *"can thus be regarded as a report (country updates) of the Indonesian Olympic Committee to Federation Equestre Internationale"* and (page 11) that the letter *"should be understood as a moral support given to the equestrian community in Indonesia with the aim to save the equestrian sport of destruction created by PORDASI".*

61. On 9 April 2014, the Division President nominated Mr Malcolm Holmes QC as President of the Panel.

62. By letter dated 6 May 2014, the Panel noted the objection to its jurisdiction and directed the parties to file their respective written submissions strictly limited to jurisdiction of the CAS no later than Friday 16 May 2014. This date was later extended to 23 May 2014.

63. The Respondent, by letter dated 16 May 2014, further submitted: (1) the nature of cases under the jurisdiction of CAS did not extend to a dispute about the *"status of a national federation"* and the present dispute was not a sports dispute or a sports related dispute, (2) the letter dated 10 March 2010 *"is a sort of country report to other higher authorities, in international scope, due to recent development in equestrian sports in Indonesia"*, (3) any CAS award must comply with public policy and CAS *"must reject the arbitration … in order to respect the rule of law (legal sovereignty) of the Republic of Indonesia"*. Further it was submitted that in accordance with R58 of the Code, the Panel *"must apply the laws of Indonesia"* and that it would be *"inappropriate and incorrect to examine certain country's public policy based upon foreign rule of law"* and that the BAKI award *"is final and binding"* and registered for full enforcement.

64. The Appellant, in its submissions dated 20 May 2014, submitted that under R58 of the Code the present dispute should be decided *"according to the relevant KOI's regulations, such as the KOI's Statutes and By-Laws"*. The Appellant recognised that Indonesian law shall apply and that Swiss Private International Law Statute shall apply as the law governing the arbitration and not to be confused with the law applicable to the merits. The Appellant also noted that the BAKI award was registered on 9 January 2014. This was after the appeal had been filed with CAS. Further, it was noted that the award had not been registered within the 30-day deadline provided for by article 59 of the Indonesian Arbitration Law and that it was therefore not enforceable. The Appellant also submitted that the challenged decision fell within the scope of Article 108.1 of the KOI's By-Laws.

65. The Respondent, by letter dated 22 May 2014, made an additional submission that *"the appeal attempt a quo is also not commercial in nature"* and that in relation to the matters in dispute they should be resolved by BAKI within the Indonesian legal system and not by other foreign legal systems.

66. The Respondent, by letter dated 14 June 2014, made by leave, further unsolicited submissions which included *"there is no arbitration agreement concluded between the Appellant and the Respondent …"*

and that the Appellant has attempted to bring a new form of lawsuit which is totally different from the written submissions before BAKI. The Appellant made further submissions by letter dated 26 June 2014.

67. By letter dated 24 July 2014, the Panel advised the parties that it had determined that CAS had jurisdiction to deal with the dispute and it would set out its reasons in its final award. The Panel also granted the Respondent a 20-day time limit to file its answer which should contain:

- A statement of its defence on the merits,
- Any exhibits on which the Respondent intends to rely,
- The names of any witnesses the Respondent intends to call at the hearing including a witness statement from each witness containing the evidence to be given by the witness,
- The names of any experts the Respondent intends to call at the hearing including a witness statement from each such expert stating the expert's area of expertise and containing the evidence to be given by the expert,
- A statement of any other evidentiary measure which the Respondent requests.

68. The Panel also advised the parties that it intended to hold an oral hearing in Lausanne and that selected dates were 13 to 16 October 2014.

69. The Respondent by email dated 13 August 2014 advised it *"was unable to determine nor to inform on dates of hearing or other information as they are on tight schedules for the up coming Asian Games and the Youth Olympic Games …* [and that the Respondent] *would most probably be able to provide a more certain information on mid of Sept … We will keep you updated. Kindly accept these uncertain situations"*.

70. By letter dated 29 August 2014, the Panel advised that since the Asian Games would end on 5 October 2014, there would be an oral hearing in Lausanne on 27 and 29 October 2014.

71. On 8 September 2014, the Panel invited the FEI to produce the following documents;

(a) a copy of the FEI Statutes in force between 2009 and 2013;

(b) a copy of the decision admitting PORDASI as a FEI member in 1975;

(c) copies of any decision taken by the FEI General Assembly about the disaffiliation of PORDASI and the admission of the Equestrian Federation of Indonesia ("EFI") as a new member representing Indonesia.

72. On 11 September 2014, the lawyers representing the Respondent wrote to CAS and asked: *"Would you please send us all of the Appellant's Exhibits as per Appeal Brief? Last time we only received the list, but not the Exhibits"*. By letter dated 11 September 2014, CAS advised that the exhibits had been sent on 12 February 2014 and enclosed DHL Delivery Report and asked the Respondent to check that they had not been mislaid. The Respondent was advised that should they not locate the Exhibits, another copy would be forwarded. The CAS did not receive a

reply to this letter and again wrote on 2 October 2014 asking that the Respondent confirm that it received the Appellant's appeal brief and exhibits and that it did not intend to submit an answer on the merits. By letter dated 2 October 2014, the Appellant drew attention to the fact that in its answer/memorandum of 5 March 2014, the Respondent referred to paragraphs of the appeal brief filed by the Appellant and provided a specific answer in paragraph 1.2.

73. By letter dated 23 September 2014, the FEI advised that they were unable to locate the records relating to the admission of the Appellant in 1975 and concluded that they must have gone astray when they moved premises from Bern to Lausanne. The FEI further advised:

"As per the official information received by the FEI from Komite Olimpiade Indonesia (KOI) on 12th March 2010, the Equestrian Commission of Indonesia (ECI) previously linked to the Indonesian Horse Society (PORDASI) and running the national and international equestrian events in Indonesia for the last 20 years, was transformed in the Equestrian Federation of Indonesia (EFI). The FEI did not consider this as a disaffiliation/affiliation of an existing nor a new member but rather a "transformation" process (change of name). Therefore, there was no need to submit the matter to the FEO General Assembly to disaffiliate PORDASI and to affiliate EFI as a new FEI member representing the equestrian sport in Indonesia".

The Hearing

74. The hearing was held on Monday 27 October 2014 at the Lausanne Palace Hotel, Lausanne, Switzerland.

The following persons attended the hearing on behalf of the Appellant:

- Mr Wijaya Mithuna Noeradi, representative of PORDASI
- Mr Eri Hertiawan, Counsel for PORDASI
- Mr Ahmad Maulana, Counsel for PORDASI
- Mr Claude Ramoni, Counsel for PORDASI
- Ms Catherine Pitre, Counsel for PORDASI

Furthermore, the following witnesses were called up by the Appellant:

- Mr Haryo Yuniarto (in person)
- Ms Pingkan Ullmer-Runtu (in person)
- Mr Bibit Sucipto (via skype conference)
- Mr Herian Matrusdi (via skype conference)
- Prof. Habib Adjie SH MHum (via skype conference)

75. As there was no representative for the Respondent present, the Panel requested Mr Fabien Cagneux, Counsel to the CAS, to contact Ms Larasati before the hearing commenced. A short time later, Mr. Cagneux advised the Panel that he had made a telephone call to the offices of Ms D. Larasati, at Larasati & Manullang, in Jakarta, Indonesia, the lawyers for the Respondent to ascertain whether anyone would be present. Mrs Larasati's secretary advised Mr Cagneux that Mrs Lasarati was in Indonesia but was not available and that no one from the firm would be attending the hearing in Lausanne. The hearing then proceeded in the absence of the Respondent.

IV. SUBMISSIONS OF THE PARTIES

76. **The Appellant's submissions**, may be summarized as follows:

- There is no dispute that the Appellant has from about 13 September 1975 been affiliated with the FEI.

- The FEI has recognized the Appellant from that time as the Indonesian national equestrian federation.

- The disaffiliation of the Appellant from the FEI and the appointment of EFI in lieu of the Appellant would have required a valid decision of the General Assembly and there has been no such decision.

- The involvement of EFI with the FEI was as a result of the letter dated 12 March 2010 sent by the Respondent, which erroneously led the FEI to believe that EFI was a transformation and only a change of name as evidenced by the reply from the FEI to EFI dated 30 March 2010.

- At no time has the Appellant or PORDASI-ECI had a change of name.

- There is no provision in the constitution of the FEI which prevents the Appellant being affiliated with the FEI because the Appellant also governs polo and horse racing disciplines in Indonesia.

- Under the Olympic Charter and its Bye-Laws, the Respondent, as an NOC, cannot recognize more than one National Federation for each sport governed by an International Federation and all members of the NOC must be affiliated with an International Federation.

- There has been no valid decision by the Respondent to recognize the EFI as a member of the Respondent and the EFI is not affiliated with the FEI.

77. **The Respondent's Submissions.** The Respondent did not appear at the hearing and did not comply with the procedural directions in relation to the hearing made by the Panel on 24 July

2014. The Respondent did not comply with the requirements of the Code of Arbitration for Sport with respect to filing an Answer to the Appeal Brief.

78. The Respondent had indicated in its initial correspondence with CAS that it preferred that the matter to be decided on the parties' written submissions. The Panel advised the parties by letter dated 24 April 2014 that there would be an oral hearing in this matter.

79. All submissions and arguments however which had been made, or were referred to, by the Respondent in its correspondence, including, but not limited to, its written submissions and documentation and letters dated 7 January 2014, 4 February 2014, 10 March 2014, 16 May 2014, 22 May 2014 and 14 June 2014, have been considered by the Panel and taken into account.

80. For example, in the Respondent's submissions made in the hearing before BAKI by letter dated 23 July 2013, the Respondent further submitted that the letter dated 12 March 2010 *"which contained recognition of the … EFI as the National Federation of equestrian sport"*, was not misleading and did not contain *"discrepancy facts"*. The Respondent *"explained"* this letter, by stating;

(a) The issuance of Respondent's letter to FEI *"was based on an extra ordinary condition at that time whereas National Olympic Committee (NOC) considered there was status quo by law because of the removal of the Equestrian Commission of Indonesia (ECI) executive board"*. In its decision BAKI noted at pages 36 and 44, that this was a reference to the change in management of the ECI by letter dated 16 October 2009 for the period 2007-2011 referred to above.

(b) The Appellant's *"decision, until the end of the term … 2007-2011, … had submitted several changes of equestrian commission and that submission was never approved with a new Decree"*. This was a reference to the Appellant's letter to KONI dated 18 February 2010

(c) That the ECI *"has decided to dissolve itself and merge with … EFI"*. This was a reference to the ECI letter to KONI dated 15 October 2009

(d) That the status quo and looking at material sources of law became the *"basis of consideration of issuance of* [its] *letter"* dated 12 March 2010 and because of *"sports coaching equestrian remains to be sustainable despite the status quo in the organisation"*.

(e) The letter of 12 March 2010 *"is simply an acknowledgement that is de facto, not de jure, so development equestrian sport remains sustainable"*.

81. The Respondent argued that *"this de facto recognition"* therefore does not violate Bye Laws of KOI, Article 5 of Ordinary Members, Article 15 of Member Application Procedures and Article 16 on the Procedure for Admission and the Olympic Charter Bye-Law to Rules 28-29.

V. ADMISSIBILITY

82. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

In the present case, the decision under appeal was notified to the parties on 10 December 2013 and the Appellant filed its statement of appeal on 30 December 2013.

The appeal is therefore admissible.

VI. JURISDICTION

83. Article R47 of the Code provides as follows:

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.

84. The jurisdiction of the CAS is subject to the rules of the *lex arbitrii*, *i.e.* chap. 12 of the Swiss law of Private International Law ("PILA"), and the related case law of the Swiss Federal Tribunal, together with Article R47 of the CAS Code.

85. On 24 July 2014, the Panel advised the parties that it had determined that the CAS has jurisdiction to rule on the present matter and that it would set out its reasons in its award. The reasons for the Panel's decision are as follows.

86. The New York Convention referred to by the Respondent, is concerned with the recognition and enforcement of arbitration agreements and awards and is not directly applicable to the jurisdiction of the Panel.

87. Under the rules of the *lex arbitrii*, there are no problems of national or international public policy which in this case prevent the Panel accepting jurisdiction, or any issues of arbitrability. In addition, the distinction sought to be made by the Respondent between "private" and "business/commercial" is not relevant to the jurisdiction of the Panel in the present case.

88. Although there is a claim that the BAKI tribunal in question may not have been independent, any appeal before CAS is by way of a rehearing and such complaints are necessarily overcome.

89. Under Article 27.2 of the Respondent's Statutes BAKI is under a duty and an obligation to *"receive, examine and decide any dispute, case, disagreement, claim and others related to sport, appearing and involving KOI and/or its sub-ordinates and the Member and/or its subordinates"*.

90. The provisions of the Statutes and the Bye-Laws of the KOI (English translation at exhibit A.8) which are relevant to the appeal jurisdiction of CAS are Articles 28 and 35 of the Statute and Article 108 of the Bye-Laws. The Statute provides:

Article 28.1 Any dispute, case, claim, disagreement, interpretation of a contract or agreement relating to sport activity appearing and concerning or involving KOI and/or its sub-ordinates, and/or any Member and/or its sub-ordinates, and any dispute relating to sport and/or any activity or interest of sport, within KOI and/or its sub-ordinates, and/or any Member and/or its sub-ordinates, and/or any individual being member of the Member, without exception ("Dispute"), which is unresolved upon mutual consensus and/or upon appliable internal mechanism of the organization, must be and shall be submitted to BAKI to be examined and resolved

Article 28.2 Except as expressly regulated in the Bye-Laws as to the possibility to lodge an appeal against a certain decision of BAKI to CAS, any decision rendered by BAKI is having a final and binding power and effect.

Article 35.1 Bye-Laws are descriptive and constitutes further regulation and auxiliary to the Statutes

The Bye-Laws provide;

Bye-Law 108

Appeal to CAS

108.1 An appeal against a decision of BAKI can be lodged to CAS only if; (i) such decision is sentenced a party or parties to pay an amount of Rp 500,000,000 (five hundreds million Rupiah) or more, or (ii) the substance of the decision is related to the regulation adopted by IOC and/or IF recognised by IOC.

108.2 The appeal under Article 108.1 above, must be lodge with CAS, at the latest 21 (twenty-one) Days after the date of the decision is notified by BAKI to the relevant party or parties.

91. Whether an appeal is possible against the challenged decision of BAKI is determined by a combination of these provisions according to which a decision of BAKI is not final, *i.e.* may be appealed, if the substance of the challenged decision falls within the definition of art. 108 and the appeal is lodged with CAS within the prescribed time.

92. The Respondent referred to the provisions of article 59(1) of the Indonesian Arbitration Law (Law no. 30/1999) under which an award shall be submitted and registered *"at the latest 30 days"* after the decision is pronounced, following which it is regarded as final and binding and may be enforced. The BAKI Decision was not submitted and registered by the time of the lodgment of the appeal to CAS on 30 December 2013. The BAKI Decision was in fact submitted for registration on 10 January 2014 and was accordingly not final and not enforceable at that time. As a result, an appeal having been lodged in accordance with the parties' agreement in the KOI Statutes and Bye-Laws, the appeal is within time.

93. The Appellant submitted a legal opinion that as a matter of Indonesian Law, the BAKI Decision had to be submitted for registration on 9 January 2014 at the latest. The BAKI arbitrator also stated in his letter dated 8 January 2014 that he had not met his obligations as required for registration. The Panel notes that the Respondent by letter dated 7 January 2014 (page 7, Exhibit 83) stated that the BAKI Decision *"has been duly registered in the Indonesian Court for full enforcement"*. It is not necessary to consider this argument, as at the time of lodging the

appeal to CAS, the BAKI Decision had not been submitted for registration and there was no statutory impediment to pursuing the appeal in accordance with the parties' agreement.

94. Second, the Panel's jurisdiction is dependent upon the decision being *"related to the regulation adopted by IOC and/or IF which is recognized by the IOC"* (KOI Bye-Law 108.1).

95. The Appellant claimed before BAKI that the Respondent had breached the Olympic Charter and Article 1.2 of Bye-Law to Rules 28-29 of the Olympic Charter and also breached the rules of the FEI.

96. The Bye-Law to Rules 28-29 relevantly provide that the Respondent as a National Olympic Committee shall *"not recognize more than one national federation for each sport governed by an International Federation"*.

97. Rule 30 of the Olympic Charter also provides *"to be recognized by an NOC and accepted as a member of such NOC, a national federation must exercise a specific, real and on-going sports activity, be affiliated to an IF recognized by the IOC and be governed by and comply in all respects with both the Olympic Charter and the rules of the IF"*.

98. Article 5.1 of FEI's statutes provides *"Membership in the FEI is open to the one national governing body from any country which is effectively in control of or is in a position to effectively control at least the Olympic Equestrian Disciplines and supported by its National Olympic Committee"*.

99. A significant part of the dispute related to the Respondent's apparent recognition of EFI or new EFI in lieu of the Appellant.

100. In the Respondent's submissions on the merits of the dispute made to BAKI in its reply letter dated 23 July 2013, the Respondent argued that its *"de facto recognition"* of EFI did not violate Bye Laws of KOI, Article 5 concerning Ordinary Members, Article 15 concerning Member Application Procedures and Article 16 concerning the Procedure for Admission and the Olympic Charter Bye-Law to Rules 28-29.

101. Each party's argument was referred to by BAKI in its decision. The Appellant's claim at page 31, and the Respondent's argument at page 38.

102. In Part V of the English translation of the BAKI Decision, which is headed (page 119) *"IN THE SUBSTANCE OF THE CASE"*, BAKI expresses a number of conclusions based on the evidence. In this part BAKI concluded that the Respondent had breached Articles 15.1, 15.2 and 16.1 of its Bye-Laws (see pages 123-129, paragraphs 22 to 30 of the decision). BAKI found that the Respondent by sending the letter dated 12 March 2010 *"has obviously caused the* [Respondent to] *breach the Olympic Charter"* (page 131, paragraph 36). BAKI found that it was *"proven that, in fact, there has never been fusion or merger of ECI to EFI"* (page 136, paragraph 44). BAKI ultimately dismissed the Appellant's claims for reasons which it subsequently set out under the heading *"CONCERNING LEGAL CONSIDERATION"* (see pages 162 and following).

103. It is apparent that the BAKI Decision considered and analysed the provisions and regulations made under the Olympic Charter and which related to the FEI.

104. The jurisdiction of CAS in the present case is determined by an analysis of the nature of the decision from which the appeal is brought, as well as by the content of the Parties' submissions in these proceedings, and not by looking at what orders were made or the fact that the claim was dismissed. In the present case, the BAKI Decision which is the subject of the appeal, clearly related, in a material way, to the Olympic Charter and regulations adopted thereunder and to the regulations of FEI.

105. As the substance of the BAKI Decision is related to the provisions adopted by the IOC and the FEI, and the Parties' arguments in these proceedings also relate thereto, the Panel finds that there is a right of appeal from the BAKI Decision under KOI Bye-Law 108.1.

106. Accordingly the CAS has jurisdiction to hear the appeal.

VII. APPLICABLE LAW

107. Article R58 of the Code provides as follows:

The Panel shall 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.

In the present case, KOI's Bye-laws and BAKI's regulations do not contain any guidance in this respect.

Consequently, the Panel shall decide the present dispute according to the relevant sporting regulations, such as the KOI's Statutes and By-laws, the Olympic Charter and the FEI regulations. Finally, as BAKI has its registered offices in Indonesia, Indonesian law shall therefore apply, subsidiarily.

VIII. MERITS

108. It is convenient at the outset to consider whether the letter sent by the Respondent dated 12 March 2010 was misleading or contained any incorrect statements. Following this analysis of the letter, the merits of the dispute are considered in three stages. Firstly, the relationship between the Appellant and the FEI. Second, the relationship between the Appellant and the KOI. Third, the relationship between EFI on the one hand, and each of the FEI, KOI, and KONI on the other.

The Respondent's letter dated 12 March 2010 to the FEI

109. In this letter the KOI *"acknowledge*[d] *the Equestrian Federation of Indonesia (EFI) as the Equestrian Federation in Indonesia"*. Under Article 5.2 of KOI's Bye-Laws, the Respondent may only recognise one organisation that manages equestrian disciplines in Indonesia. By recognising EFI in this letter, at a time when it recognised the Appellant, the Respondent has clearly breached the KOI Bye-Laws.

110. It is a requirement of the Bye-Laws to the Olympic Charter that an NOC can have only one member for a sport and that member be affiliated with the International Federation for that sport. Bye-Law 1.2 to Rules 28-29 relevantly provides that the Respondent as a NOC shall *"not recognize more than one national federation for each sport governed by an International Federation"*.

111. By recognising EFI in this letter, at a time when the Appellant was an existing member of KOI in relation to the same sport, the Respondent has clearly breached the Bye-Laws of the Olympic Charter.

112. In the second paragraph of the letter, the Respondent says that PORDASI-ECI *"was transformed into"* EFI and *"previously it was linked to"* the Appellant. The statement of Mr Hamidjojo (Exhibit W18) however establishes that there was never any action taken or meeting held which would justify such a statement. Mr Hamidjojo as the then Chairman of PORDASI-ECI confirmed that there was never an official meeting of any sort where any such proposal was considered.

113. In the third paragraph of the letter, the Respondent impliedly represents that EFI has been accepted as a member of the Respondent. There is no evidence that at an application for membership had been made or verified by KOI at the time the letter was sent as required by Articles 15 and 16 of KOI's Bye-Laws. This was admitted in the proceedings before BAKI by the Respondent in its Reply dated 23 July 2013, when it stated that *"… hitherto, EFI has not become a member of the"* Respondent.

A. The Appellant and the FEI

114. Since 1975, the Appellant has been the National Federation governing FEI's equestrian disciplines in Indonesia. Throughout this time Appellant has been affiliated with the FEI.

115. In 1998, the Appellant established the PORDASI-ECI as an internal commission in charge of FEI's equestrian disciplines. The Appellant also established internal commissions in charge of its other sections such as polo and horse racing. This was to give each activity more autonomy. The Board of Management of the PORDASI-ECI is appointed by the Appellant's President. The Appellant and the PORDASI-ECI, as an internal commission, form one legal entity.

116. The use of PORDASI-ECI by the Appellant to manage equestrian disciplines has been acknowledged and accepted by the FEI. The FEI, in its letter dated 11 November 2009

(Exhibit A.4), confirmed that the PORDASI-ECI *"remains the recognised equestrian body affiliated to the FEI and entitled to attend the FEI General Assembly in Copenhagen with voting rights"*.

117. The FEI, in its letter dated 23 September 2014, confirmed to the Panel that it did not consider the Respondent's letter dated 12 March 2010 *"as a disaffiliation/affiliation of an existing nor a new member but rather a "transformation" process (change of name)"*. The FEI letter also confirmed that there had been no FEI General Assembly, which had considered any disaffiliation of the Appellant, and affiliation of EFI as a new FEI member representing the equestrian sport in Indonesia.

B. The Appellant and the KOI

118. The KOI is the sole and unique body recognised by the IOC to act as the NOC in Indonesia. No other body in Indonesia can discharge that role. For example, the IOC by letter dated 25 February 2013 noted that KONI was trying to take over the role of KOI and requested KOI to take immediate steps to require KONI to cease using the Olympic rings.

119. There is, and has been, no challenge to, or dispute about, the fact that the Appellant was a member of the KOI up until about 2009. At that time the Respondent noted that there had been a removal of the PORDASI-ECI executive board and appointments made for the term 2007-2011 that had not been approved by *"a new Decree"*.

120. The present dispute has existed since that time. However, at all times the Appellant has remained a member of the KOI. No meeting or other steps have occurred which would have the effect of terminating the Appellant's membership of the KOI.

121. It is a requirement of the Bye-Laws to the Olympic Charter that a NOC can have only one member for a sport and that member be affiliated with the International Federation for that sport. The Bye-Law to Rules 28-29 relevantly provide that the Respondent as a NOC shall *"not recognize more than one national federation for each sport governed by an International Federation"*.

122. As the Appellant continues to be a member of KOI and affiliated with the FEI, no other organisation involved in equestrian sports in Indonesia can be a member of KOI.

C. The EFI and the FEI, KOI, KONI

123. The EFI has become, and remains, a member of KONI.

124. The KOI is an NOC. Rule 30 of the Olympic Charter provides that *"to be recognized by an NOC and accepted as a member of such NOC, a national federation must exercise a specific, real and on-going sports activity, be affiliated to an IF recognized by the IOC and be governed by and comply in all respects with both the Olympic Charter and the rules of the IF"*.

125. As the EFI is not affiliated with the FEI, it is not eligible to be a member of KOI. By letter dated 5 March 2012, KOI confirmed that EFI never met the criteria to be a member of KOI (see Exhibits A6 and A7).

126. The New EFI may be a member of KONI but is not a member of the KOI and is not affiliated with the FEI.

127. The Panel notes that there can be only one national governing body in Indonesia affiliated with the FEI. Article 5.1 of FEI's statutes provides *"Membership in the FEI is open to the one national governing body from any country which is effectively in control of or is in a position to effectively control at least the Olympic Equestrian Disciplines and supported by its National Olympic Committee"*.

128. The Appellant has been the national federation for equestrian sports in Indonesia and affiliated with the FEI. There has been no meeting of, or action taken by, the FEI to change or alter that affiliation. There has been no meeting or other action taken to change the name of the Appellant or PORDASI-ECI.

129. In these circumstances, the Panel concludes that the Appellant remains the recognised national equestrian body for Indonesia affiliated to the FEI.

D. Relief

130. In view of the conclusions reached by the Panel, the BAKI Decision made on 10 December 2013 should be, and is hereby set aside, as requested by the Appellant.

131. The Appellant also seeks relief in relation to the letter dated 12 March 2010 sent by the Respondent to the FEI.

132. In the circumstances where the dispute between these two parties has been inflamed by this letter for almost five years, it is appropriate to record that the letter was misleading and contained a number of statements or representations, which were false. The letter falsely stated that there had been a change of name from ECI to EFI. The letter incorrectly represented that the requirements under the Statutes and Bye-Laws of KOI to bring about a change in the membership of the Appellant to the EFI had been complied with. The letter impliedly and falsely represented that the EFI was a member of KOI.

133. The corresponding prayers for relief by the Appellant shall therefore be admitted.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Indonesian Sporthorse Society/ Pengurus Pusat Persatuan Olahraga Berkuda Seluruh Indonesia on 30 December 2013 against the decision issued by the Indonesian Sport Arbitration Board (BAKI) on 10 December 2013 is upheld.

2. The decision rendered by the Indonesian Sport Arbitration Board (BAKI) on 10 December 2013 is set aside and replaced by the following decision:

3. The Olympic Committee of Indonesia wrongly stated under the letter of 12 March 2010 ref. no 130/KOI/LNG/III/10 to the Federation Equestre Internationale that Equestrian Federation of Indonesia (EFI) was in full compliance with all Indonesia Olympic Committee requirements.

4. The Olympic Committee of Indonesia wrongly submitted under the letter of 12 March 2010 ref. no 130/KOI/LNG/III/10 to the Fédération Equestre Internationale that Indonesian Sporthorse Society/PORDASI was an organization that coordinates horse racing sport only.

5. Equestrian Federation of Indonesia (EFI) has not been validly recognised by the Olympic Committee of Indonesia.

6. The letter sent by the Olympic Committee of Indonesia to the Fédération Equestre Internationale on 12 March 2010 ref. no 130/KOI/LNG/III/10 is null and void.

7. Indonesian Sporthorse Society/PORDASI is the only and unique national federation governing equestrian sports in Indonesia recognised by the Olympic Committee of Indonesia.

8. (…).

9. (…).

10. All other prayers for relief are dismissed.