Arbitration CAS 2021/A/8252 Olea Sports Capital LLC v. FC Lokomotiv Moscow & Football Union of Russia (FUR), award of 25 April 2023

Panel: Mr Edward Canty (United Kingdom), Sole Arbitrator

Football
Contractual dispute with regard to the provision of intermediary services
Translation of documents
Form of contracts
Consequences of the failure to follow regulatory requirements on the validity of contracts
Offer and acceptance under Russian law
Costs incurred in relation to the first instance proceedings

1. **Article R29 of the CAS Code specifies that a language for the proceedings, from one of the CAS working languages, is selected and that the proceedings will be conducted in that language, including the requirement for translators and translations to be provided where necessary.**

2. **Contracts can be concluded in different forms, written or oral, and remain legally enforceable. Absent any express rule to the contrary, an agreement between two parties does not have to follow any specific form and may, in fact, simply result, for example, from a verbal agreement. However, parties opting to conclude non-written agreements may obviously face increased challenges in terms of proof.**

3. **A failure to follow regulatory requirements as regards contracts between clubs and agents does not render the contract legally unenforceable. However, it may result in one or both parties being subject to a sanction in accordance with the applicable regulations. It is therefore entirely possible for a contract to not be regulatory compliant yet still be legally enforceable.**

4. **According to Article 438 of the Russian Civil Code, the *"acceptance shall be full and unconditional".* Article 438 goes on to state that *"silence shall not be regarded as the acceptance"*, unless it accords with usual business practices. The mere acknowledgement of receipt of a proposal and silence as regards its substantive terms cannot be construed as being a full and unconditional acceptance of the proposal.**

5. **Costs referrable to first instance proceedings are not recoverable.**

I. PARTIES

1. Olea Sports Capital LLC (the "Appellant" or "Olea") is a football agency with its registered office in Moscow, Russian Federation.

2. FC Lokomotiv Moscow (the "First Respondent" or "Lokomotiv") is a football club with its registered office in Moscow, Russian Federation. Lokomotiv is registered with the Football Union of Russia ("FUR"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA") and is currently participating in the Russian Premier League.

3. Football Union of Russia (the "Second Respondent" or "FUR") is the governing body of football in the Russian Federation with its registered office in Moscow, Russian Federation. The FUR is a member of the Union of European Football Associations ("UEFA") and FIFA.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions and the evidence examined in the course of the present appeals arbitration proceedings[1]. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

A. Background Facts

5. On 31 May 2019, Lokomotiv and SC Cruzeiro ("Cruzeiro") signed a transfer agreement in respect of the transfer of the Brazilian player, B. (the "Player") and on 17 June 2019, Lokomotiv and the Player signed a playing contract (the "Playing Contract").

6. During the 2020 summer transfer window, there were oral and written discussions between Olea and Lokomotiv as to the remuneration to be paid to Olea for its services to Lokomotiv in relation to a potential future transfer of the Player. An agreement detailing the arrangements between Lokomotiv and Olea was produced (the "Commission Agreement") which stated, *inter alia*, as follows:

> *"1.1 Under this Contract the Club engages and the Intermediary undertakes an obligation to provide the Club with the football intermediation services in order to final reimbursable transfer of the professional football player B. (B., date of birth: […], hereinafter – the Player) from the FC "LOKOMOTIV" to another professional football club.*

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for the sake of efficiency and to facilitate the reading of this Award, not all of the misspellings have been identified with a [sic] or otherwise.

1.2 The Intermediary guarantees that the intermediation services are rendered in accordance with the legislation of the Russian Federation and the FUR Regulations on working with intermediaries.

1.3 The Intermediary's services under this Contract are not legal services and shall be governed by the special legal act – the FUR Regulations on working with intermediaries.

[…]

3.1 For services rendered under the present Contract the Club undertakes to pay to the Intermediary a remuneration only in the following cases:

3.1.1 for the final transfer of the Player from the FC "LOKOMOTIV" to another professional football club before 01.09.2020 with the transfer payment to the FC "LOKOMOTIV" not less than 10 320 000 Euros – 10% (ten percent) from the transfer amount received by the FC "LOKOMOTIV";

3.1.2. for the final transfer of the Player from the FC "LOKOMOTIV" to another professional football club before 01.02.2021 with the transfer payment to the FC "LOKOMOTIV" not less than 12 840 000 Euros – 10% (ten percent) from the transfer amount received by the FC "LOKOMOTIV";

3.1.3 for the final transfer of the Player from the FC "LOKOMOTIV" to another professional football club before 01.08.2021 with the transfer payment to the FC "LOKOMOTIV" not less than 15 325 000 Euros – 10% (ten percent) from the transfer amount received by the FC "LOKOMOTIV";

3.1.4 for the final transfer of the Player from the FC "LOKOMOTIV" to another professional football club before 01.02.2022 with the transfer payment to the FC "LOKOMOTIV" not less than 16 760 000 Euros – 10% (ten percent) from the transfer amount received by the FC "LOKOMOTIV";

3.1.5 for the final transfer of the Player from the FC "LOKOMOTIV" to another professional football club before 01.08.2022 with the transfer payment to the FC "LOKOMOTIV" not less than 19 370 000 Euros – 10% (ten percent) from the transfer amount received by the FC "LOKOMOTIV";

3.1.6 for the final transfer of the Player from the FC "LOKOMOTIV" to another professional football club before 01.02.2023 with the transfer payment to the FC "LOKOMOTIV" not less than 20 940 000 Euros – 10% (ten percent) from the transfer amount received by the FC "LOKOMOTIV";

3.1.7 for the final transfer of the Player from the FC "LOKOMOTIV" to another professional football club before 01.08.2023 with the transfer payment to the FC "LOKOMOTIV" not less than 23 695 000 Euros – 10% (ten percent) from the transfer amount received by the FC "LOKOMOTIV";

3.1.8 for the final transfer of the Player from the FC "LOKOMOTIV" to another professional football club before 01.02.2024 with the transfer payment to the FC "LOKOMOTIV" not less than 25 420 000 Euros – 10% (ten percent) from the transfer amount received by the FC "LOKOMOTIV";

3.1.9 for the final transfer of the Player from the FC "LOKOMOTIV" to another professional football club before 01.06.2024 with the transfer payment to the FC "LOKOMOTIV" not less than 27 870 000 Euros – 10% (ten percent) from the transfer amount received by the FC "LOKOMOTIV";

The amount of the Intermediary's remuneration is not fixed and may be changed by the Parties by an additional agreement to the present Contract upon completion of render of services by the Intermediary.

3.2 The remuneration shall be paid by the Club within 30 (thirty) banking days after receipt by the Club of the transfer payment in full.

3.3 The remuneration shall be paid by the Club to the Intermediary in rubles at the official rate of the Russian Central bank (Bank of Russia) at the date of the payment by bank transfer to the Intermediary's bank account (via bank transfer) indicated in this Contract. The Club's obligation on paying the remuneration shall be considered fulfilled on the date when the money is charged from the Club's bank account.

3.4 The remuneration shall not be paid to the Intermediary by any third party (third person). Payment of the remuneration shall be exercised exclusively by the Club.

3.5 The said amount of the remuneration (remunerations) shall be final and complete and shall include all the costs and expenses of the Intermediary and shall not be subject to revision.

While the Parties hereby agreed that the remuneration under this Contract is a market price, fair and proportionate to the cost of the professional intermediation services.

[…]

6.1 This Contract shall be valid from "___" August 2020 till "01" June 2024 inclusively and the Contract with regard to the outstanding (non-fulfilled) financial obligations shall be valid till its full performance.

[…]

6.5 The Parties shall prepare and agree upon Services Acceptance Act within seven calendar days upon completion of the present Contract.

[…]

7.2 In case the Parties could not amicably settle a dispute, any dispute, controversy or claim, arising from or in connection with this Contract, also in regards to its performance and (or) violation, shall be submitted to the FUR Dispute Resolution Chamber as the first instance

All Decisions of the FUR Dispute Resolution Chamber may be appealed to the FUR Committee on the Status of Players.

All Decisions of the FUR Committee on the Status of Players may be appealed to the Court of Arbitration for Sport (CAS, Lausanne, Switzerland). The CAS decision shall be final and is binding for the Parties. In this case the applicable law for a resolution of this dispute (disputes) shall be the legislation of the Russian Federation.

7.3 If after conclusion of this Contract the FUR's jurisdictional bodies would lose their jurisdiction over the disputes between the Clubs and the football Intermediaries (sports agents) or for any other reason would not consider the disputes, in this case the dispute between the Parties shall be submitted to a sole arbitrator as the

fist [sic] *instance.*

[…]*".*

7. However, the positions of Olea and Lokomotiv differ with Olea referring to the fact that whilst it did not sign the Commission Agreement, it maintained that there was a binding agreement reached, based on meetings between representatives of Olea and Lokomotiv and email correspondence wherein Olea clarified the remuneration which it had agreed and was not reflected correctly in the Commission Agreement. Furthermore, it began to perform the services required. Lokomotiv disputed that the Parties came to an agreement as it maintained that the Commission Agreement was merely a draft which was being discussed between Olea and Lokomotiv but was ultimately never agreed and executed.

B. Proceedings before the FUR Dispute Resolution Chamber

8. On 27 May 2021, following the above, Olea lodged a claim against Lokomotiv before the FUR Dispute Resolution Chamber (the "FUR DRC"), requesting a declaration that the Parties had come to a valid and binding agreement in which Olea would receive a sum equal to 10% of the transfer fee received for the sale of the Player and if the transfer fee exceeded EUR 4,600,000 then Olea would also receive a 'success fee' equal to 56% (fifty six percent) of the amount the transfer fee exceeded EUR 4,600,000. In addition, it also claimed the reimbursement of the fee paid to lodge the claim with the FUR DRC and its legal costs which amounted to 100,000 rubles.

9. Lokomotiv disputed Olea's claim and filed a motion to terminate the FUR DRC proceedings, stating that the FUR DRC did not have jurisdiction to determine the dispute given that the Commission Agreement had not been registered with the FUR.

10. On 24 June 2021, the FUR DRC rendered its decision (the "FUR DRC Decision"), with the following conclusion and operative part:

"The Chamber is critical of those Applicant's argument and considers which are based on systematic interpretation of above-mentioned provisions of the FUR Regulations on dispute resolution, the FUR Regulations on the Status and Transfer of Players and the FUR Regulations on working with intermediaries par. 6 art. 11 of the FUR Regulations on working with intermediaries provides mandatory provision stating that contracts with Intermediaries, which are not duly registered, shall not be recognized by the FUR and, therefore, disputes under such contracts shall not be resolved in the FUR jurisdictional bodies.

As a result, the Chamber accepts the Respondent's position and concludes that the Chamber has no competence to examine and resolve this dispute between the Applicant and the Club.

In addition, the Chamber notes that the dispute, arising out of the Applicant's claim on the recognition of the Contract for intermediation services with football club concluded on conditions agreed upon between the parties, is not within the Chamber's jurisdiction in accordance with the article 18 of the FUR Regulations on dispute resolution.

Pursuant to subparagraph "a" paragraph 2 article 49 of Regulations on dispute resolution the Chamber cancels the proceeding on the materials in the event that the case shall not be examined and resolved by the Chamber.

On the basis of the above and following the Chapter 1 "Basic Provisions" of Section I, articles 2, 3, 18, 49, 50, 51, 52 of the FUR Regulations on dispute resolution, article 1 of the FUR Regulations on the Status and Transfer of Players, articles 1, 10, 11 of the FUR Regulations on working with intermediaries the Dispute Resolution Chamber

RULED:

1. To terminate proceedings under the case No. 046-21 on the claim of the OOO "OLEA SPORTS CAPITAL" to the JSC "FC" "Lokomotiv" on the recognition of the intermediation contract concluded on conditions agreed upon between the parties in accordance with subparagraph "a" paragraph 2 article 49 of the FUR Regulations on dispute resolution.

2. This Ruling shall enter into force according to the procedure established by article 55 the FUR Regulations on dispute resolution.

This Ruling may be appealed in accordance with the FUR Regulations on dispute resolution" (emphasis in original).

C. Proceedings before the FUR Committee on the Status of Players

11. On 8 July 2021, following the above, Olea filed an appeal against the FUR DRC Decision with the FUR Committee on the Status of Players (the "FUR PSC") requesting that the FUR DRC Decision be set aside, and the FUR PSC consider the case on its merits and issue a replacement decision.

12. Lokomotiv maintained its position in disputing Olea's claim, on the same jurisdictional grounds.

13. On 16 July 2021, the FUR PSC rendered its decision (the "FUR PSC Decision" or the "Appealed Decision"), with the operative part:

*"**DECIDED:***

1. To reject in satisfaction of the appeal of the OOO "OLEA SPORTS CAPITAL" on the ruling of the FUR Dispute Resolution Chamber No. 046-21 dated June 24, 2021 (on the claim of the OOO "OLEA SPORTS CAPITAL" to the JSC "FC "LOKOMOTIV" Moscow on the recognition of the intermediation contract concluded on conditions agreed upon between the parties).

2. To remain in force the ruling of the FUR Chamber on dispute resolution No. 046-21 dated June 24, 2021, in its entirety (on the claim of the OOO "OLEA SPORTS CAPITAL" to the JSC "FC "LOKOMOTIV" Moscow on the recognition of the intermediation contract concluded on conditions agreed upon between the parties).

3. To oblige the OOO "OLEA SPORTS CAPITAL" to pay the FUR the due fee for consideration of the case by the Committee in the amount of 25 000 (twenty-five thousand) rubles within 30 (thirty) days from the entry in force of this decision in accordance with article 36 of the FUR Regulations on dispute resolution.

This Decision shall enter in force from the moment of its adoption.

In accordance with the par. 2 art. 58 of the FUR Regulations on dispute resolution decisions of the Committee on the Status of Players may be appealed only in the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 (twenty-one) calendar days from the moment of receipt of the final version of the decision by the parties" (emphasis in original).

14. On 4 August 2021, the grounds of the Appealed Decision were issued which stated, inter alia, the FUR PSC's conclusion that:

"We shall notice that violation of the requirement to register contract with intermediary did not grant both parties with the right for consideration of the dispute in the FUR's jurisdiction, but did not deprive of their right for access to natural justice and fair trial in the arbitrational system of the Russian Federation where the question whether the contract for intermediary services concluded would be considered.

[…]

The Committee agrees with the position of the Chamber that based on systematic interpretation of the above-mentioned provisions of the FUR Regulations on dispute resolution, the FUR Regulations on the Status of Players and the FUR Regulations on working with intermediaries, the par. 6 art. 11 of the FUR Regulations on working with intermediaries has the mandatory provision that contracts with intermediaries which are not registered in accordance with the established procedure shall not be recognized by the FUR and, therefore, disputes under such contracts shall not be resolved in the FUR's jurisdictional bodies.

[…]

Therefore, the Committee agrees with the Respondent's position and the Chamber's position that this dispute is not within the competence of the FUR Chamber.

On the basis of the above, the appeal of the Intermediary on the ruling of the Chamber No. 046-21 dated June 24, 2021, shall be left without consideration".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 25 August 2021, the Appellant lodged an appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2020) (the "CAS Code"). A separate appeal was filed by the Appellant against another decision rendered by the FUR PSC, involving the same Parties, but relating to a different transaction (CAS 2021/A/8251).

16. On 6 September 2021, the Appellant stated that the present procedure should not be consolidated with the procedure CAS 2021/A/8251, and also should not be referred to the

same Panel or Sole Arbitrator pursuant to Article R50 of the CAS Code.

17. On 6 September 2021, the First Respondent requested that the matter be referred to a three-person panel rather than a Sole Arbitrator and also objected to submitting the two procedures to the same Panel or Sole Arbitrator.

18. On 16 September 2021, the First Respondent confirmed that it did not intend to pay its share of the costs.

19. On 20 September 2021, after having been granted an extension further to Article R32 of the CAS Code, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.

20. On 21 September 2021, the First Respondent requested that the deadline for it to file its Answer be set aside and a new deadline set once the Appellant had paid the full advance of costs pursuant to Article R55(3) of the CAS Code.

21. On 21 September 2021, the CAS Court Office rejected the First Respondent's request for a new deadline to be set to file its Answer until the Appellant had paid the full advance of costs because Article R55(3) only provides for the deadline to be deferred until such time as the Appellant has paid its share of the advance of costs, not the full amount. Accordingly, the original deadline was set aside and would be reissued once the Appellant had paid its share of the advance of costs. It was also confirmed that the Deputy President of the CAS Appeals Arbitration Division had decided to refer the case to a Sole Arbitrator and also appoint the same Sole Arbitrator to hear both cases relating to the same Parties.

22. On 7 October 2021, the CAS Court Office confirmed that the Appellant had paid its share of the advance of costs and therefore issued a new deadline for the First Respondent to file its Answer. Furthermore, in accordance with Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:

    Sole Arbitrator: Mr Edward Canty, Solicitor in Manchester, United Kingdom.

23. On 13 October 2021, the CAS Court Office confirmed that the Second Respondent had failed to file its Answer within the issued deadline, or any communication from the Second Respondent in relation to the same, and regardless of this that the arbitration would proceed, and an award issued in accordance with Article R55 of the CAS Code.

24. On 27 October 2021, following a request from the First Respondent for an extension of time to file its Answer, the CAS Court Office confirmed such extension based on the Appellant's agreement and lack of response from the Second Respondent.

25. On 12 November 2021, the First Respondent filed its Answer pursuant to Article R55 of the CAS Code.

26. On 15 November 2021, the CAS Court Office invited the Parties to indicate their preference

for a hearing to be held or for the matter to be determined based on the written submissions filed.

27. On 22 November 2021, the Appellant indicated it would prefer to have a hearing.

28. Also on 22 November 2021, the First Respondent indicated that it was content to leave the decision to the Sole Arbitrator as to whether or not to hold a hearing.

29. On 30 November 2021, the CAS Court Office wrote to the Parties to confirm the Sole Arbitrator's decision, pursuant to Articles R44.2 and R57 of the CAS Code, to hold a hearing by video conference.

30. On 6 December 2021, after consulting the Parties, the CAS Court Office fixed the date of the hearing by video conference as 10 February 2022.

31. On 10 January 2022 and 12 January 2022 respectively, the Appellant and the First Respondent returned duly signed copies of the Order of Procedure to the CAS Court Office whilst the Second Respondent failed to return a signed copy of the Order of Procedure despite being granted an extension of time to do so, nor did it indicate any intention to attend the hearing.

32. On 17 January 2022, the Appellant provided details of the interpreter who would attend the hearing and also indicated that it was unable to secure the attendance of some witnesses so would have to prescind their oral testimonies.

33. On 20 January 2022, the First Respondent objected to the selected interpreter on the basis that she was not independent as they believed that she had acted for the First Respondent as legal counsel during the period that the dispute arose and therefore asked for an alternative interpreter to be nominated.

34. On 25 January 2022, the Appellant objected to the allegation that their nominated interpreter was not independent or impartial but agreed to nominate an alternative interpreter in the interests of goodwill.

35. Also on 25 January 2022, the Appellant made a request to amend its Request for Relief, in accordance with Article R44 and Article R56 of the CAS Code, following the Player's recent transfer from the First Respondent to Palmeiras FC (Brazil). Furthermore, the Appellant made an evidentiary request for the First Respondent to be compelled to produce the transfer agreement it had entered into with Palmeiras FC in relation to the transfer of the Player (the "Palmeiras Transfer Agreement").

36. On 4 February 2022, the First Respondent objected to both the Appellant's request to amend its Request for Relief and the Appellant's request that the First Respondent by ordered to produce the Palmeiras Transfer Agreement.

37. On 7 February 2022, the CAS Court Office confirmed the Sole Arbitrator had directed that the First Respondent should disclose the Palmeiras Transfer Agreement and that the Appellant would be allowed to amend its Requests for Relief.

38. On 8 February 2022, the First Respondent produced a copy of the Palmeiras Transfer Agreement.

39. On 9 February 2022, the First Respondent produced a copy of a FIFA Circular and a number of CAS Awards which it wished to rely upon at the hearing.

40. On 10 February 2022, a hearing was held by video conference. At the outset of the hearing, those Parties in attendance confirmed they did not have any objection to the constitution and composition of the arbitral tribunal.

41. In addition to the Sole Arbitrator and Ms Delphine Deschenaux-Rochat, CAS Counsel, the following persons attended the hearing:

    a. For the Appellant:

        1) Mr Luis Cassiano Neves, Counsel

        2) Mr Antonio Rigozzi, Counsel

        3) Mrs Matilde Costa Dias, Counsel

        4) Mr Adilia Emelkhanova, Counsel

        5) Mr Nabil Merabtene, Executive Director of the Appellant

        6) Mr Diogo Cruz, Portuguese representative of the Appellant

        7) Ms Diana Dzhalalova, personal assistant of Mr Merabtene

        8) Mrs Aleksandra Aleksenko, interpreter

    b. For the First Respondent:

        1) Mr Mikhail Prokopets, Counsel

        2) Mr Ilya Chicherov, Counsel

        3) Mr Yury Yakhno, Counsel

    c. For the Second Respondent:

        1) No attendees

42. Mr Merabtene, Mr Cruz and Ms Dzhalalova were heard as witnesses. They gave their testimony after being duly invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The Parties in attendance and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses.

43. At the outset of the hearing, the Parties in attendance confirmed they had no objections to the constitution of the Panel.

44. The Parties in attendance had full opportunity to present their case, submit their arguments and answer the questions posed by the other Party in attendance and the Sole Arbitrator.

45. Before the hearing was concluded, the Parties in attendance expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard and to have been treated equally and fairly in these arbitration proceedings had been respected.

46. On 10 February 2022, following the conclusion of the hearing, the Appellant duly filed its amended Requests for Relief in writing as requested by the Sole Arbitrator.

47. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

48. The following summaries of the submissions of the Parties is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submission or evidence in the following summaries.

A. The Appellant

49. The Appellant's submissions, in essence, may be summarized as follows:

- There was a valid agreement in place between the Appellant and the First Respondent which set out the services performed by the Appellant and the commission due for such performance, however the First Respondent has acted in bad faith and sought to avoid its contractual obligations to the Appellant.

- The Parties reached an agreement in the 2020 summer transfer window for the Appellant to assist the Respondent in the future transfer of the Player to another club and the agreed terms were recorded in the Commission Agreement.

- Although the Commission Agreement was not signed by either Party, the intentions of the Parties to be bound by the terms were confirmed by a number of audio and written records.

- The Appellant's representative, Mr Merabtene, attended a meeting with the General Director of the First Respondent, Mr Kiknadze, on 30 June 2020 in which the latter

confirmed that the Parties had reached an agreement for the Appellant to assist the First Respondent in the future transfer of the Player.

- However, following this meeting, the First Respondent's Finance Director, Mr Vladimirovich, sent an email to the Appellant on 7 August 2020 with a draft of the Commission Agreement which did not reflect the terms agreed with Mr Kiknadze on 30 June 2020. Therefore, the Appellant responded by email on 10 August 2020 to Mr Vladimirovich to set out the terms that were agreed with Mr Kiknadze and should have been reflected in the Commission Agreement. Mr Vladimirovich confirmed receipt of this email on the same day but then there was no further communication between the Parties.

- The First Respondent unreasonably refused to sign the Commission Agreement however the Appellant had immediately started to provide its services in arranging a future transfer of the Player as soon as the terms were agreed with Mr Kiknadze on 30 June 2020 and held a number of meetings, conducted negotiations and effectively received several offers from other clubs interested in signing the Player. Indeed, Mr Kiknadze publicly recognized the role played by the Appellant in relation to the Player in media interviews, which confirms it carried out the services as agreed.

- The Appellant rejects the arguments of the First Respondent that the lack of signature and the failure to register the Commission Agreement with the FUR, means that the Commission Agreement is not valid and there was no agreement reached between the Parties for the provision of services and the payment of commission.

- Firstly, the Parties entered into an oral agreement on 30 June 2020, which was then confirmed in writing with the agreed terms accepted by the First Respondent on 10 August 2020 and the First Respondent publicly recognized the Appellant's role in several media interviews.

- The fact that the Parties agreed the terms verbally, and that the First Respondent prepared the Commission Agreement with the Appellant correcting by email to reflect the agreed terms, means a valid agreement was reached between the Parties, supported by both the Civil Code of the Russian Federation and CAS jurisprudence.

- The lack of signature does not affect the validity of the Commission Agreement as formality should be overlooked in favour of a consideration of the intentions and actions of the parties, a position supported by CAS jurisprudence.

- The doctrines of *estoppel* and *venire contra factum proprium* are relevant and relied upon by the Appellant in support of its position; it arises where one party makes a statement that induces the other party to rely on that statement, the party making the statement is then prevented from changing its position to the detriment of the other party. The party making such statement has created legitimate expectations relied upon by the other party, and it is therefore estopped from changing its position and acting contrary to that original statement.

- In the case at hand, the First Respondent created legitimate expectations in the Appellant by agreeing the essential elements of the services required and commission to be paid, then confirming the same by drafting the Commission Agreement, accepting the corrections put forward by the Appellant and publicly recognizing the role played by the Appellant. Therefore, by refusing to sign the Commission Agreement the First Respondent breached the principle of *venire contra factum proprium* and is therefore estopped from arguing that the Commission Agreement is invalid due to the lack of signature.

- Furthermore, the fact that the Commission Agreement was not registered with the FUR does not affect its validity. As supported by CAS jurisprudence, the registration of a contract is purely an administrative task which does not impact upon the validity of the contract. The validity of a contract cannot be conditional upon a mere formality, such as the registration of a contract with an entity.

- The Appellant notes that the FUR Regulations on working with intermediaries (the "FUR Intermediaries Regulations") (2018 edition) does not establish any direct consequence on the validity of a contractual relationship which does not comply with the requirements of the FUR Intermediaries Regulations. Therefore, a contract which is not registered with the FUR does not annul the contractual relationship. It should also be recalled that the only reason why the Commission Agreement was not registered with the FUR was due to the First Respondent's inaction and dilatory tactics in seeking to avoid signing the Commission Agreement, so the First Respondent should not be able to benefit from its own bad faith.

- Finally, the FUR Intermediaries Regulations left the Appellant in an insurmountable legal conundrum: the Appellant does not hold a signed Commission Agreement, through no fault of its own, which means it is prevented from registering the Commission Agreement with the FUR, the FUR judicial bodies reject the Appellant's claim due to a lack of jurisdiction (based on the lack of registration of the Commission Agreement), but then the Appellant is prevented from taking its complaint to the state courts as it would be in breach of Article 46 of the FUR Charter (preventing any disputes being taken to state courts given the FUR has *"jurisdiction over internal disputes in football sphere on the national level"*.

- This is a 'Catch 22' situation which has been created by the FUR and exploited by the First Respondent for its own benefit and to the detriment of the Appellant. If unchecked, this would create a situation whereby clubs could routinely evade their legal responsibilities by simply refusing to sign agency agreements, as was the case here. This leads to a clear denial of justice and violation of the Constitution of the Russian Federation.

- The suggestion that the Appellant could seek redress in the national courts, as suggested in the decisions of the FUR judicial bodies, runs contrary to the position taken by FIFA which took disciplinary action against the national federations of Greece, Pakistan, Benin and Nigeria (amongst others) for allowing the involvement of national courts in footballing matters.

- The FUR's position on jurisdiction and the consequential refusal to consider the underlying merits of the Appellant's claim leads to a clear denial of justice for the Appellant which should be corrected using the *de novo* powers which the CAS has under Article R57 of the CAS Code to review the facts and the law and issue a new decision on the merits of the Appellant's claim.

50. Accordingly, the Appellant submitted the following requests for relief, amended accordingly at the start of the hearing and confirmed in writing thereafter:

*"**REQUEST FOR RELIEF***

115. In the light of the above, OLEA SPORTS CAPITAL respectfully requests this Honorable Court to:

a) The appeal filed by Olea Sports Capital is admissible.

b) The Decision of the FUR Committee on the Status of Players is to be set aside.

c) A new decision shall be issued by this Honorable Court which shall replace in full the Appealed Decision and shall determine, inter alia, that:

i) Football Club Lokomotiv Moscow and Olea Sports Capital LLC concluded a valid and binding agreement for the intermediation services with regards to the future transfer of B. from the First Respondent to a third club;

ii) Football Club Lokomotiv Moscow shall pay the Appellant for the intermediation services provided by the latter regarding the future transfer of the player B., the amount corresponding to 10% of the gross amount of the transfer fee received by the First Respondent (basic fixed fee), i.e. the amount of 250.000,00 $ USD (Two Hundred and Fifty Thousand Dollars of the United States of America);

iii) Football Club Lokomotiv Moscow shall reimburse the Appellant for all the amounts incurred during the first instance proceedings before the Chamber for Dispute Resolution of RUF and the Committee on the Status of Players of FUR, in the amount of RUB 45.000, as proven by Exhibit 18;

iv) Football Club Lokomotiv Moscow shall reimburse the Appellant for the contribution towards the legal fees and legal expenses incurred on the aforesaid proceedings, totalling RUB 1.171.244 (one million one hundred seventy-one thousand two hundred forty-four Russian Roubles) as proven by Exhibit 19;

v) Football Club Lokomotiv Moscow shall bear the costs of the present arbitration proceedings in its entirety, as well as a contribution towards the Appellant's legal fees in the amount of €5.000, 00 (five thousand euros)" (emphasis in original).

B. The First Respondent

51. The First Respondent's submissions, in essence, may be summarized as follows:

- The scope of the appeal is whether the FUR DRC was correct to decline jurisdiction and not about the validity of an agreement between the Appellant and the First Respondent and the consequences of a party's default under that agreement.

- The exchange of the Commission Agreement was simply part of a negotiation, during summer 2020, whereby the Appellant and the First Respondent were trying to find an agreement on their potential interaction but those involved in the written and oral negotiations of the Commission Agreement were not empowered to make a binding offer or acceptance in this regard. The Parties did not sign the Commission Agreement and therefore it was not registered with the FUR as required by the FUR Intermediaries Regulations.

- On 14 May 2021, the Appellant unexpectedly claimed that the Commission Agreement was valid and binding upon the Parties and when the First Respondent did not accept this, the Appellant then commenced its claim before the FUR DRC on 27 May 2021.

- The Commission Agreement cannot be considered valid because it does not satisfy the essential requirements set out in Article 10, paragraph 2, of the FUR Intermediaries Regulations.

- The Appellant's attempts to argue that the Commission Agreement is valid and binding notwithstanding the lack of signature is misplaced because the CAS jurisprudence it cited relates to other types of contracts, for instance, employment contracts between clubs and players, as opposed to agency arrangements between two legal entities who are *"professionals of an economic turnover"* and therefore have a higher burden to comply with the applicable regulations (which it seeks to support by reference to alternative CAS jurisprudence).

- The fact that the Commission Agreement did not satisfy the requirements set out in the FUR Intermediaries Regulations is sufficient to render it invalid, and the Appellant should be aware of this as a registered intermediary with the FUR; however, this is not the real (and singular) issue. The issue of validity has no bearing on the question whether the FUR DRC did, or did not, have jurisdiction to decide on the dispute between the Appellant and the First Respondent; the only question is whether the Commission Agreement was registered with the FUR which dictates whether the FUR DRC has jurisdiction, or not.

- Whilst the FUR Intermediaries Regulations and the FUR Regulations on Dispute Resolution provide that some disputes may be considered by the FUR jurisdictional bodies, this cannot be interpreted separately to the requirements set out in Article 10, paragraph 2, of the FUR Intermediaries Regulations. In any event, the provisions in the FUR Intermediaries Regulations and the FUR Regulations on Dispute Resolution reference disputes arising out of "contracts concluded" between clubs and agents, and there is no dispute that the Commission Agreement was not concluded, given it must be signed by all parties and lodged with the FUR within 30 days and neither occurred. The

FUR Intermediaries Regulations are clear, at Article 11, paragraph 6, that contracts with agents that are not lodged with the FUR *"… are not recognized by the FUR and, in particular, disputes arising therefrom are not subject to resolution in the procedure set forth in Art. 18 of these Regulations"*. According to the principle of *"lex specialis derogate lex generali"* the specific rule set out in Article 11, paragraph 6 of the FUR Intermediaries Regulations should be applied primarily over more general provisions in the FUR Intermediaries Regulations and the FUR Regulations on Dispute Resolution.

- The Appealed Decision relates to the question of jurisdiction of the FUR DRC and therefore any consideration of whether the Commission Agreement is a valid and binding agreement or not is moot. In any event, the Appellant had the option to ask the FUR to recognize and register the Commission Agreement despite lack of signature, which if it was not successful, could appeal to the FUR Appeals Committee and then the CAS, in accordance with Article 18, paragraph 3 of the FUR Intermediaries Regulations, but it failed to do so.

- Instead, the Appellant remained passive for a year and did not perform, or try to perform, the services set out in the Commission Agreement and yet then tried to argue the First Respondent was liable to pay the sums set out in the Commission Agreement. In this regard, the First Respondent argues that it is actually the Appellant that should be estopped from pursuing its claim in bad faith based on the principle of *venire contra factum proprium*.

- The First Respondent refers to a recent Swiss Federal Tribunal case which it argues can be applied to suggest that the Appellant is prevented from bringing its appeal to the CAS in terms that it has tried to because the underlying first instance claim was unsuccessful on jurisdictional grounds due to the failure to register the Commission Agreement with the FUR.

- Furthermore, there is no denial of justice for the Appellant because, as referenced in the Appealed Decision, the fact that the FUR DRC did not have jurisdiction would not prevent the Appellant taking its claim to the *"arbitrational system of the Russian Federation where the question whether the contract for intermediary services concluded would be considered"*.

- In conclusion, the validity of the Commission Agreement has no relevance to the question of the FUR DRC's jurisdiction, which it correctly declined due to the non-registration of the Commission Agreement with the FUR. The Appellant's actions invoke the principle of *venire contra factum proprium* and its claim should be disregarded. Finally, the principle of *in claris non fit interpretatio* prevents the CAS from establishing the FUR DRC's jurisdiction and, consequently, from addressing the underlying merits of the Appellant's claims.

52. Accordingly, the First Respondent submitted the following requests for relief:

*"**X. REQUESTS FOR RELIEF***

FC Lokomotiv Moscow respectfully requests that the CAS:

1. Dismiss the appeal lodged by OLEA Sports Capital LLC.

2. Confirm the decision passed by the FUR Players' Status Committee on July 16, 2021, No. 046-21.

3. Order the Appellant to bear all costs incurred with the present procedure at CAS.

4. Order the Appellant to pay FC Lokomotiv Moscow a contribution towards its legal and other costs, the amount to be determined at the Sole Arbitrator's discretion".

C. The Second Respondent

53. The Second Respondent failed to file an Answer and accordingly to make any requests for relief.

V. JURISDICTION

54. The jurisdiction of CAS, which is not disputed, derives from Article R47 of the CAS Code which states *"[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".*

55. Article 58(2) of the FUR Regulations on Dispute Resolution provides as follows:

"The decision of the Committee or the Chamber's decision, which was made on the issues specified in subparagraphs "a" – "f" of paragraph 1 of Article 18 of these Rules, may be appealed only to the CAS within 21 (twenty one) days from the receipt by the parties of the decision of the Committee or the Chamber with the full text (in final form)".

56. The Appealed Decision refers to the fact that CAS has jurisdiction to hear an appeal as it provides as follows:

"In accordance with the par. 2 art. 58 of the FUR Regulations on dispute resolution decisions of the Committee on the Status of Players may be appealed only in the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 (twenty-one) calendar days from the moment of receipt of the final version of the decision by the parties".

57. In addition, with reference to Article R47 of the CAS Code, the Commission Agreement provides as follows:

"7.2 In case the Parties could not amicably settle a dispute, any dispute, controversy or claim, arising from or in connection with this Contract, also in regards to its performance and (or) violation, shall be submitted to the

FUR Dispute Resolution Chamber as the first instance

All Decisions of the FUR Dispute Resolution Chamber may be appealed to the FUR Committee on the Status of Players.

All Decisions of the FUR Committee on the Status of Players may be appealed to the Court of Arbitration for Sport (CAS, Lausanne, Switzerland). The CAS decision shall be final and is binding for the Parties. In this case the applicable law for a resolution of this dispute (disputes) shall be the legislation of the Russian Federation.

7.3 If after conclusion of this Contract the FUR's jurisdictional bodies would lose their jurisdiction over the disputes between the Clubs and the football Intermediaries (sports agents) or for any other reason would not consider the disputes, in this case the dispute between the Parties shall be submitted to a sole arbitrator as the fist [sic] *instance".*

58. The Parties do not dispute the jurisdiction of the CAS and those Parties in attendance at the hearing confirmed it by signing the Order of Procedure.

59. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

60. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. […]".

61. According to Article 58(2) of the FUR Regulations on Dispute Resolution, appeals shall be filed with *"the CAS within 21 (twenty one) days from the receipt by the parties of the decision of the Committee or the Chamber with the full text (in final form)".*

62. The appeal was filed within the deadline of 21 days set by Article 58(2) of the FUR Regulations on Dispute Resolution. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

63. It follows that the appeal is admissible.

VII. APPLICABLE LAW

64. Article R58 of the CAS Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

65. The Parties are in agreement that the various regulations of the FUR are to be applied to this dispute with Russian law to be applied subsidiarily in case there is a lacuna in the regulations of the FUR (although the First Respondent claims that there is no such lacuna and therefore Russian law is not to be applied). In addition, the Appellant claims that Swiss law should also be applied.

66. The Sole Arbitrator has considered the Parties' positions in respect of the applicable law and in particular took into account the terms of the Commission Agreement which reads, inter alia, as follows:

"All Decisions of the FUR Committee on the Status of Players may be appealed to the Court of Arbitration for Sport (CAS, Lausanne, Switzerland). The CAS decision shall be final and is binding for the Parties. In this case the applicable law for a resolution of this dispute (disputes) shall be the legislation of the Russian Federation".

67. Based on the fact that there is an agreement between the Parties as to the relevant regulations and the applicability of Russian law, coupled with the above provision in the Commission Agreement, the Sole Arbitrator is satisfied that this position should prevail.

68. It is also noted that the First Respondent maintains that despite the relevance of Russian law, it states that there is no lacuna present in the FUR Regulations which require the application of Russian law. In contrast, the Appellant states that the arbitration law at the seat of the arbitration (*lex arbitri*) is relevant and applicable; since CAS has its seat in Lausanne, Switzerland then Swiss arbitration law applies.

69. It follows, therefore, that the Sole Arbitrator is satisfied that primarily the various regulations of FUR are applicable to the substance of the case, and additionally Russian law, should the need arise to fill a possible gap in the various regulations of FUR. Given that the arbitral tribunal has its seat in Switzerland, Swiss arbitration law governs the arbitral proceedings.

VIII. PRELIMINARY ISSUES

70. The Sole Arbitrator was asked to determine certain preliminary issues at the commencement of the hearing, in particular:

a. the admissibility of certain documents produced by the First Respondent immediately before the hearing, namely certain CAS Awards and a copy of a FIFA Circular (the "New Documents"); and

b. the First Respondent also asked that Exhibits 18 and 19 to the Appeal Brief ("Proof of the fees paid under first instance proceedings at the FUR" and "Proof of the costs incurred under first instance proceedings") should not be considered because the

Appellant had not provided a translation into the language of the proceedings in accordance with the CAS Code, a submission opposed by the Appellant.

71. Beginning with the filing of the New Documents, the Appellant confirmed that it did not oppose the filing of legal authorities as they are publicly available and nor did it oppose the late filing of the FIFA Circular, however this was on the basis that they should only be used to support arguments already put forward by the First Respondent and should not be used to introduce any new arguments. In addition, the Appellant wished to reserve the right to serve rebuttal evidence if deemed necessary.

72. The First Respondent agreed to the Appellant's application to serve rebuttal evidence if necessary and further the Parties agreed that the New Documents would be addressed by the First Respondent in its opening statement to allow the Appellant time to consider the same and serve rebuttal evidence if necessary.

73. The Sole Arbitrator took into account both the submissions made by the Appellant and First Respondent and also the matters upon which they agreed. On that basis, the Sole Arbitrator ruled that the New Documents filed by the First Respondent would be admitted to the case file, whilst noting that the Appellant continued to have the right to produce any rebuttal evidence if it deemed necessary.

74. Finally, the Sole Arbitrator has considered the objection to the inclusion of Exhibit 18 and 19 to the Appeal Brief on the basis of lack of translation and upon review of the same, notes that there is no translation provided for Exhibit 18 and there is a partial translation of certain documents provided in Exhibit 19 but a lack of translation for the majority.

75. The Sole Arbitrator notes the provisions of R29 of the CAS Code which specifies that a language for the proceedings, from one of the CAS working languages, is selected and that the proceedings will be conducted in that language, including the requirement for translators and translations to be provided where necessary.

76. Furthermore, the Sole Arbitrator notes in the letter from the CAS Court Office, dated 1 September 2021, which acknowledged receipt of the Statement of Appeal stated as follows:

"…all written submissions shall be filed in English and all exhibits submitted in any other language should be accompanied by a translation into English".

77. In addition, the Order of Procedure, signed by both the Appellant and First Respondent, stated as follows:

"In accordance with Article R29 of the Code, the language of this arbitration is English. Documents written in any language other than English shall only be submitted accompanied by a translation. If such documents are not translated into English, the Sole Arbitrator may decline to consider them".

78. Although it is noted that the First Respondent's objection could have been made earlier, the Sole Arbitrator refers to the express provision on the Parties to provide translations of any documents it wishes to put forward in evidence in the CAS Rules and the Appellant had (in

the main) failed to do so in respect of the documents contained at Exhibits 18 and 19. Furthermore, the Appellant should have been aware of the requirements of the CAS Code for translations (and for which it did indeed provide many translations of other documents it sought to rely upon).

79. Therefore, the Sole Arbitrator agrees with the objection raised by the First Respondent and the documents filed in Russian language in Exhibits 18 and 19 will be disregarded, apart from those documents contained in Exhibit 19 which were actually produced in dual language (Russian and English).

IX. MERITS

80. The main issues to be determined are:

(i) What is the burden of proof and the standard of proof applicable to the present matter?

(ii) Was the FUR DRC correct to decline jurisdiction?

(iii) Did the Parties conclude a contract?

(iv) What are the consequences that follow?

A. What is the burden of proof and standard of proof applicable to the present matter?

81. Before assessing the main issues of the present dispute, the Sole Arbitrator deems it necessary to first establish the burden of proof and the standard of proof applicable to the present matter.

82. Firstly, the Sole Arbitrator notes that the Parties did not address the question of the applicable burden of proof or standard of proof however these are still matters which are appropriate for the Sole Arbitrator to rule upon absent any express submissions by the Parties.

83. The Sole Arbitrator further notes that neither the Appealed Decision nor the FUR DRC Decision provides any guidance as to the burden of proof or standard of proof it applied when determining the underlying matter.

84. There is, however, some relevant material within the FUR Regulations on Dispute Resolution which is of assistance and is considered further below.

85. The concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence. It was set out in CAS 2007/A/1380 as follows:

"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific

right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code "Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right" (free translation from the French original version – "Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit"). It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party" (see also CAS 2005/A/968 and CAS 2004/A/730).

86. This concept was further explained in CAS 2011/A/2384 & 2386 as follows:

"Under Swiss law, the 'burden of proof' is regulated by Art. 8 of the Swiss Civil Code (the "CC"), which, by stipulating which party carries such burden, determines the consequences of the lack of evidence, i.e., the consequences of a relevant fact remaining unproven … Indeed, Art. 8 CC stipulates that, unless the law provides otherwise, each party must prove the facts upon which it is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce such evidence. Furthermore, the burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court/tribunal. It is the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court/tribunal".

87. In CAS 2003/A/506, it was held:

"[In] CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence".

88. This position is further supported by the provisions of Article 30 of the FUR Regulations on Dispute Resolution which, *inter alia*, states:

"1. Each party shall be obliged to prove the circumstances on which it refers as grounds for its claims and objections.

2. A Chamber or Committee determines which circumstances are relevant to the case, which party has to prove them, brings the circumstances to discussion, even if the parties have not invoked any of them.

[…]

5. The circumstances recognized by the parties as a result of the agreement between them shall be accepted by the Chamber as facts not requiring further proof. The agreement of the parties on the circumstances shall be certified by their written statements and may also be contained in other procedural documents sent by the parties (including a response to the statement, written explanations, etc.). A party's admission of the circumstances on which the other party bases its claims or objections shall release the other party from the need to prove such circumstances. The circumstances relied upon by a party in support of its claims or objections shall be deemed recognized by the other party, unless they are directly challenged by it or the disagreement with such circumstances arises from other evidence justifying the submitted objections to the substance of the claims".

89. It follows therefore that each Party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Sole Arbitrator that the facts it pleads are established.

90. With regard to the standard of proof, whilst this is not expressly addressed in the FUR Regulations on Dispute Resolution, CAS jurisprudence has consistently applied the standard of "comfortable satisfaction". It is a standard that is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt" (see CAS 2010/A/2172; CAS 2009/A/1920).

91. This is supported by and consistent with the Swiss Civil Code as set out in CAS 2014/A/3562:

"The Panel observes that according to Swiss Civil procedure law the standard of proof to be applied is in line with such jurisdiction (see STAEHELIN / STAEHELIN / GROLIMUND, Zivilprozessrecht, § 18, N 38) and fully adheres to the above-mentioned reasoning in CAS 2011/A/2426 and will therefore also give such meaning to the applicable standard of "personal conviction"/ "comfortable satisfaction"".

92. Based on the foregoing, the Sole Arbitrator is content to adopt the standard of comfortable satisfaction, commonly adopted in CAS jurisprudence, as the standard of proof to apply in this case.

93. Finally, in accordance with Article R57 of the CAS Code, *"*[t]*he Panel has full power to review the facts and the law"*, which means that the CAS appellate arbitration procedure provides for a *de novo* review of the merits of the case. Accordingly, as is well-established in CAS jurisprudence, a Panel is not limited to deciding if the Appealed Decision is correct or not but rather its function is to make an independent determination as to the merits.

B. Was the FUR DRC correct to decline jurisdiction?

a. Did the Commission Agreement fulfil the requirements set out in the FUR Intermediaries Regulations?

94. The respective positions of the Parties, set out in summary above, are clear. The Appellant maintains that there is a valid agreement in place between the Appellant and the First Respondent however the First Respondent has exploited its refusal to sign the Commission Agreement by seeking to rely on the lack of jurisdiction of the FUR judicial bodies and further relying on provisions in the FUR regulations which prevent the Appellant from seeking

resolution of the dispute under any other forum. In contrast, the First Respondent maintains that there is no valid agreement between the Appellant and the First Respondent (and therefore the Appellant's claim fails on the merits) and the FUR judicial bodies were correct to decline jurisdiction on this basis.

95. The Sole Arbitrator notes that the Appealed Decision confirms the finding in the FUR DRC Decision that:

"… the mandatory provision that contracts with intermediaries which are not registered in accordance with the established procedure shall not be recognized by the FUR and, therefore, disputes under such contracts shall not be resolved in the FUR's jurisdictional bodies.

[…]

Therefore, the Committee agrees with the Respondent's position and the Chamber's position that this dispute is not within the competence of the FUR Chamber.

On the basis of the above, the appeal of the Intermediary on the ruling of the Chamber No. 046-21 dated June 24, 2021, shall be left without consideration".

96. Article 10.2 of the FUR Intermediaries Regulations[2] states, *inter alia*, as follows:

"The contract with the Intermediary must indicate:

[…]

o) signatures of the Parties".

97. Article 11 of the FUR Intermediaries Regulations states, *inter alia*, as follows:

"1. Within 30 (thirty) calendar days after signing of the respective contract the Intermediary shall register the contract by submitting to the Commission the original of the concluded contract in 3 (three) copies with all annexes and additional agreements to the contract (if any).

[…]

4. Contracts are not accepted for registration in the following cases:

a) failure to comply with the requirements for the contract established by these Regulations, including the requirements for the content and execution of the contract;

[…]

6. The contracts with an Intermediary which are not registered within the deadline set forth in these

[2] The Sole Arbitrator notes that both the Appellant and First Respondent supplied either part or full translations of the FUR Intermediaries Regulations which had minor stylistic differences in language, however the relevant sections were cross-referred to ensure there was no material substantive differences and the meaning remained consistent.

Regulations are not recognized by the FUR and, in particular, disputes arising therefrom are not subject to resolution in the procedure set forth in Art.18 of these Regulations, and the Intermediary may be sanctioned in accordance with these Regulations".

98. Article 18 of the FUR Intermediaries Regulations states, inter alia, as follows:

"1. All disputes, disagreements or claims arising from agreements concluded on the basis of these Regulations between Football Players / Clubs / Coaches, on the one hand, and Intermediaries (as of the date of the conclusion of the relevant agreement), on the other hand, are subject to resolution by the jurisdictional bodies of the FUR (FUR Dispute Resolution Chamber FUR Players' Status Committee) as a mandatory pre-trial dispute resolution procedure according to the procedures provided for by the FUR Regulations on Dispute Resolution.

[…]

3. Any decisions of the Commission, including the refusal to issue an Intermediary Certificate, the suspension or revocation of the Intermediary Certificate, the application of sports sanctions, the refusal to register contracts with the Intermediary, may be appealed to the FUR Appeal Committee within 7 (seven) working days from the date of receipt of the decision. The corresponding decision of the FUR Appeals Committee can be appealed to the Court of Arbitration for Sport (Lausanne) in accordance with the FUR Disciplinary Regulations".

99. It is common ground between the Appellant and the First Respondent that they did not sign the Commission Agreement and nor was it registered with the FUR in accordance with the FUR Intermediaries Regulations.

100. Accordingly, the Sole Arbitrator is satisfied, to his comfortable satisfaction, that the Appealed Decision follows the line of reasoning set out in the referenced sections of the FUR Intermediaries Regulations and that, in principle, this should have led the FUR PSC to conclude that it did not have jurisdiction. In the present case, however, the Appellant argued that the First Respondent did in fact conclude a contract, namely the Commission Agreement, notwithstanding that it was not registered with the FUR. The Sole Arbitrator will now turn to this second argument.

b. Did the Parties conclude a contract?

101. It is important to highlight the distinction that a failure to adhere to a regulatory requirement does not, of itself, render a contract not legally effective.

102. The position of these Parties is clear; the Appellant maintains the Commission Agreement is legally enforceable based on the fact that it records the agreement between the two Parties, it was drafted by and sent by the First Respondent, the Appellant responded by setting out the agreed terms which were not reflected in the Commission Agreement and the First Respondent gave its approval by acknowledging the receipt of the amended terms. It maintains that the First Respondent did everything it could to avoid signing the Commission Agreement to seek to escape its liability to pay the agreed fees for the services and by doing

so, meant that the Appellant was unable to register the Commission Agreement with the FUR. In contrast, the First Respondent maintains that the Commission Agreement was simply a draft which was for discussion and negotiation and the two Parties ultimately never came to an agreement nor concluded a contract and therefore the Commission Agreement was not legally binding.

103. The Sole Arbitrator has carefully considered the two Parties' respective positions, positions that were supplemented at the hearing, in particular through the witnesses called by the Appellant.

104. The evidence put forward at the hearing, by way of oral testimony provided by Mr Diogo Cruz, Portuguese representative of the Appellant, Mr Nabil Merabtene, Executive Director of the Appellant, and Ms Diana Dzhalalova, personal assistant of Mr Merabtene was that, in actual fact, the Appellant's entitlement to a commission fee was set when the Player signed for the First Respondent. In that respect, it was agreed that the First Respondent would pay the Appellant 10% of the transfer fee and the Player's salary when the Player signed for the First Respondent and would pay 10% of the transfer fee when the Player leaves and signs for another club. The witnesses confirmed that this agreement was reached at this time and was not dependent on the Appellant carrying out any services on behalf of the First Respondent in respect of the future transfer of the Player. Indeed, Mr Cruz maintained that the 10% fee on the Player's exit was a *"success fee … part of the reward for bringing the Player in"*.

105. Firstly, it is noted that the essence of the services which the First Respondent required of the Appellant where as follows:

"1.1 Under this Contract the Club engages and the Intermediary undertakes an obligation to provide the Club with the football intermediation services in order to final reimbursable transfer of the professional football player B. (B., date of birth: […], hereinafter – the Player) from the FC "LOKOMOTIV" to another professional football club".

106. It is further noted that the Commission Agreement makes the following specific provision:

"2.2 The Intermediary shall:

2.2.1 ensure signing of the transfer contract between the FC "LOKOMOTIV" and another professional football club on the final reimbursable transfer of the Player;"

107. The Sole Arbitrator notes that the Commission Agreement therefore placed an obligation on the Appellant to carry out some services on behalf of the First Respondent *"in order to final reimbursable transfer"* of the Player and to *"ensure signing of the transfer contract"* between the First Respondent and the club signing the Player.

108. The Commission Agreement also makes reference to the requirement for a "Services Acceptance Act" to be prepared as follows:

"6.5 The Parties shall prepare and agree upon Services Acceptance Act within seven calendar days upon completion of the present Contract".

109. It is noted that the Appellant did not make any mention that the Services Acceptance Act was prepared or agreed and did not file a copy of the same in these proceedings, signed or otherwise.

110. Turning to the email sent on 10 August 2020 (at 13:35) by a representative of the Appellant to the First Respondent's Finance Director, Mr Vladimirovich, which the Appellant claims set out its rejection of the terms within the Commission Agreement which did not accord with the terms it believed it had previously agreed orally with Mr Kiknadze at the meeting with Mr Merabtene on 30 June 2020, it read as follows:

"Good afternoon Svyatoslav,

We confirm receipt of your email.

Unfortunately, we have to notice one more time that it in no way reflects the agreements, which have been reached by Mr. Merabtene, Mr. Kiknadze and Mr. Mesheryakov.

First agreement concerns signing of exclusive contract for intermediary servies in regards to the transfer of B. with the intermediary's remuneration in the amount of 10% from a transfer amount regardless of transfer amount.

Second agreement concerns the "release" condition of the transfer for the above-mentioned player with the transfer amount is 6,6 million euros (2(2,3 transfer + 1 mln euro commission)). This agreement has never included condition on the salary.*

[…]

And finally, we are very sorry that on Friday at 22:09 we received a contract, which is, despite our patience and willingness to cooperate, in our opinion violates professional behaviour and, what is more important, violates respect to the reached agreements.

This is why we would kindly ask you to exercise all agreements, which have been reached with a view to resolving the situation, which is time-consuming and unbeneficial for either party.

Sincerely,

Anastasia".

111. For completeness, given its relevance to the question of the validity of the Commission Agreement on the Appellant's case, the response from Mr Vladimirovich was sent on the same day, 10 August 2020, (at 14:59) and read as follows:

"Good afternoon, Anastasia.

Thank you for provided information.

Do you have any proposals regarding A.?

Sincerely yours".

112. The Sole Arbitrator notes, therefore, that there is no suggestion from the Appellant that it rejected any of the other terms set out in the Commission Agreement, such as the aforementioned obligation to provide services to the First Respondent in which the Appellant would *"ensure signing of the transfer contract"* for the Player's future transfer; the Appellant's only objection was to the financial terms proposed.

113. Mr Merabtene, in his evidence at the hearing, having stated that the Appellant was entitled to the 10% commission fee on the Player's exit without any requirement to provide any services, as it was agreed as part of the deal when the Player joined, stated that this had not been confirmed in writing at this time because the Appellant and the First Respondent had entered into a scouting agreement to formalise the first 10% fee paid on the Player signing for the First Respondent and so it was not possible to formalise the exit payment of a further 10% fee in such an agreement, which had to be in a formal agency agreement such as the Commission Agreement.

114. During the course of the hearing, the Appellant did offer to produce a copy of the scouting agreement if it would assist, an offer which the First Respondent objected to on the basis of late filing of evidence. The Appellant confirmed, as Mr Merabtene had stated, that it did not address the additional 10% fee paid on the Player leaving. The Sole Arbitrator took both the First Respondent's objection and the Appellant's confirmation that it provided no assistance as to the second fee into account and decided that the Appellant would not be permitted to file the scouting agreement.

115. Continuing with Mr Merabtene's evidence at the hearing, despite supporting the position that the 10% fee on the Player's exit was agreed when the Player signed for the First Respondent and was not dependent on the Appellant carrying out any work in relation to that transfer out, he then went on to confirm that the Appellant needed a mandate from the First Respondent to ensure no other agent could claim to act on behalf of the First Respondent and the Appellant would be the sole point of contact for any transfer offers, and confirmed that he had received some offers from other clubs.

116. In this regard, a letter dated 11 August 2020 was filed in evidence alongside the Commission Agreement which was titled *"Authorization mandate"* and was referred to by the Appellant as the agent's mandate to authenticate it as the agent mandated to negotiate the Player's transfer from the First Respondent (the "Mandate"). It set out the following:

"The JSC "FC "LOKOMOTIV" (Moscow, Russia) in the person of the Chief Executive Officer, Mr. ***Vasily KIKNADZE,*** *hereby grants an exclusive exploratory mandate (hereinafter the "Mandate") to* ***OOO "OLEA SPORTS CAPITAL"*** *in the person of the General Director, Mr.* ***Malik YOUYOU,*** *passport of French citizen No13FV21174 (expiring 5th May 2024), who is the duly authorized representative of the Intermediary (accreditation certificate of the Russian Football Union No. 15 dated 29 January 2020) (hereinafter the "Agent"), to assess the possibility of selling the right to the sports performance of the player B. (Brasil), born on date […], belonging to the football club JSC "FC "LOKOMOTIV" (Russia).*

Should the aforementioned transfer be completed, it is agreed that the commission of the Agent is 10% of the total amount of the transaction, which should be paid to the Agent within 5 (five) banking days from the date of receipt of funds by JSC "FC "LOKOMOTIV" (Moscow). Moreover, the parties will sign in good faith the Representation and Intermediation Agreement.

The Agent declare and guarantee to be able to regularly carry out the activities foreseen by this Mandate, which will be carried out by the Agent in compliance with the federal regulations in force on the subject and in compliance with the law FIFA in force for the international transfer of players, thus relieving the JSC "FC "LOKOMOTIV" (Moscow) of any responsibility consequent to his work.

This Mandate is valid from 11 August 2020 until 10 August 2022.

This Mandate is governed by the Swiss law.

Signed on the 11 August 2020, Moscow

Vasily Kiknadze

Chief Executive Officer" (emphasis in original).

117. It is the Appellant's case that this demonstrates that the Parties came to an agreement that the Appellant would be appointed to assist with the future transfer of the Player and would receive a commission fee of 10% of the total amount of the transaction.

118. In contrast, the First Respondent rejected this and stated that this document was never signed by a representative of the First Respondent and had been sent by the Appellant in place of the Commission Agreement which the Appellant had rejected as it did not meet with the terms that the Appellant claimed had been agreed on some earlier date. Indeed, the First Respondent argued that an agent should wait for a signed mandate and a signed Commission Agreement before it considers an agreement has been reached and then proceeds to carry out the services, but the Appellant chose not to wait for the documents to be agreed and signed. It cannot then claim that an agreement was reached. Further, the First Respondent notes that both the Commission Agreement and the Mandate, even though it disputes the validity of both documents, demand that the Appellant actually carry out services with regard to assisting with and securing the transfer of the Player to another club and the First Respondent denies that the Appellant carried out any such services.

119. Firstly, it is noted that whilst a translation of the Mandate was filed by the Appellant, it did not appear that a copy of the original version, in Russian, was filed bearing the signature of Mr Kiknadze, notwithstanding that this was filed in the same exhibit as the Commission Agreement which had both copies of the Russian version and the translation.

120. Secondly, the Mandate does imply, at least, that the Appellant was required to carry out some services on behalf of the First Respondent in respect of the future transfer of the Player, in that it was required to *"assess the possibility of selling the right to the sports performance of the player"*.

121. The Sole Arbitrator notes however that despite the evidence of Mr Merabtene at the hearing

that he did have discussions with some clubs which resulted in him having received two offers from clubs, the Appellant did not file any evidence to support this, nor any other corroborative evidence to demonstrate what actions it undertook to carry out the services.

122. Turning to the other evidence filed by the Appellant to demonstrate that it reached an agreement with the First Respondent for the payment of the commission, it filed a transcript of excerpts from a meeting held on 30 June 2020 between Mr Kiknadze and Mr Merabtene which read as follows:

*"**Transcript:***

***Merabtene N.:** 10 % out B., we don't see it. You tell me I need to wait 15th July for 10% out of B.?*

***Kiknadze V.:** But we have to check once again how you calculated, because our calculation is…*

***Merabtene N.:** No, 10% is mandate exit. 10%. In fact it's what you have done.*

***Kiknadze V.:** Yes, yes, for sure.*

***Merabtene N.:** Yes.*

***Kiknadze V.:** You will have a paper, for sure. No question about this.*

***Merabtene N.:** Yes. Thank you for that.*

***Kiknadze V.:** No, you will have that money. This or that way, you will get all your money for sure.*

[…]

***Kiknadze V.:** …by 15th you will have a deal for 10% out for B.*

***Merabtene N.:** Uh-huh.*

***Kiknadze V.:** And we are looking for some solution, but it's a difficult situation to find a solution with João Mário, we have to find some equation.*

***Merabtene N.:** We sign this agreement, and on side, we sign the agreement of debt to Olea"* (emphasis in original).

123. The Appellant maintains that this is clear proof that the Parties had agreed on the Appellant's entitlement to the 10% commission. The Respondent rejects the evidential value of the transcript because it was unsupported by the corresponding audio file allowing for its accuracy to be tested and was clearly edited to only provide part of a conversation and the remaining audio would need to be considered to see if this altered the context.

124. In addition, the Appellant also filed an extract from an interview Mr Kiknadze gave to the Sport-Express newspaper, dated 23 June 2020, which read as follows:

"The General director of the ***"LOKO" Vasiliy Kiknadze*** *– about the agent* ***Nabil Merabtene.***

- ***Yuri Pavlovich also hurt the agent Nabil Merabtene. Who affects a lot the transfer politics of the "LOKOMOTIV". Who is he? – a question to Kiknadze.***

- Clearly – a famous person in the football world! He is highly proficient in football, including Russian. [He] introduced me to numerous football players and coaches of the first magnitude. [He] knows perfectly well the European market. Maybe Yuri Pavlovich knows something else what allows him to insult people?

- ***Perhaps.***

- But since Yuri Pavlovich does all the same against me – I think that he can state something groundlessly. And Merabtene is an extraordinary man. His fields of activities are very different. Paradoxical intelligence. Loads of information.

- ***Have [you] ever felt like [he] is trying to trick you?***

- One and a half transactions, in which Merabtene was involved, were rehearsed like clockwork. Without him there would not be neither ***A.****, nor* ***B****. (Yuri Golishak)"* (emphasis in original).

125. The Appellant maintains that this confirms *"the professional services rendered by the Appellant in relation to the transfer of the Player B. to another professional club"* as it was publicly recognized by Mr Kiknadze in the media interview. The First Respondent, on the other hand, rejects this conclusion and notes that in actual fact, this comment refers to the acquisition of the Player as opposed to his future transfer and furthermore, in any event, makes no mention of an entitlement to any commission payment in respect of the latter.

126. This appeal therefore turns on whether the Parties came to an agreement on the payment of 10% commission by the First Respondent to the Appellant upon the transfer of the Player to another club. If it is determined that the Parties did come to such agreement, it is then necessary to consider whether such agreement is predicated on the Appellant providing any services to the First Respondent in respect of such transfer or not.

127. It is noted that the Appellant maintains this agreement was evidenced by, amongst others, the transcript of the meeting on 30 June 2020, the email response it made to the draft Commission Agreement and the subsequent response from the First Respondent and the media interview given by Mr Kiknadze referenced above.

128. Firstly, the Sole Arbitrator notes that it is possible for the conclusion of a contract between parties to take various forms.

129. In this regard, support for the concept that contracts can be concluded in different forms can be found in the following extracts from the Russian Civil Code:

*"***Article 432.** *The Basis Provisions on the Conclusion of the Contract*

1. *The contract shall be regarded as concluded, if an agreement has been achieved between the parties on all its*

essential terms, in the form proper for the similar kind of contracts.

An essential shall be recognized the terms, dealing with the object of the contract, the terms, defined as essential or indispensable for the given kind of contracts in the law or in the other legal acts, and also all the terms, about which, by the statement of one of the parties, an accord shall be reached.

2. *The contract shall be concluded by way of forwarding the offer (the proposal to conclude the contract) by one of the parties and of its acceptance (the acceptance of the offer) by the other party.*

Article 433. *The Moment of the Conclusion of the Contract*

1. *The contract shall be recognized as concluded at the moment, when the person, who has forwarded the offer, has obtained its acceptance.*

[…]

Article 434. *The Form of the Contract*

1. *The contract may be concluded in any form, stipulated for making the deals, unless the law stipulates as definite form for the given kind of contracts.*

If the parties have agreed to conclude the contract in a definite form, it shall be regarded as concluded after the agreed form has been rendered to it, even if the law does not require such form for the given kind of contracts.

2. *The contract in written form shall be concluded by compiling one document, signed by the parties, and also by way of exchanging the documents by mail, telegraph, teletype, telephone, by the electronic or any other type of the means of communication, which makes it possible to establish for certain that the document comes from the party by the contract.*

3. *The written form of the contract shall be regarded as observed, if the written offer to conclude the contract had been accepted in conformity with the order, stipulated by Item 3, Article 438 of the present Code"* (emphasis in original).

130. It is well-established CAS jurisprudence that contracts can be concluded in different forms, written or oral, and remain legally enforceable as confirmed in CAS 2013/A/3091, 3092 & 3093, in which the Panel concluded as follows:

"The Panel considers that, absent any express rule to the contrary, an agreement between two parties does not have to follow any specific form and may, in fact, simply result, for example, from a verbal agreement (Article 11 CO). However, parties opting to conclude non-written agreements may obviously face increased challenges in terms of proof".

131. Further, CAS jurisprudence also makes it clear that a failure to follow regulatory requirements as regards contracts between clubs and agents does not render the contract legally unenforceable (although it may result in one or both parties being subject to a sanction in accordance with the applicable regulations), as demonstrated in CAS 2011/A/2660 (and followed in CAS 2013/A/3443) in which the Panel concluded as follows:

"However, the Panel holds that such failures do not invalidate the entire agency agreement. If agents fail to comply with the requirements of Article 12 of the FIFA Regulations, Article 15 of the FIFA Regulations stipulates that "[p]layers' agents who abuse the rights accorded to them or contravene any of the duties stipulated in these regulations are liable to sanctions". But the FIFA Regulations do not state the consequence of a failure regarding the form of an agency agreement or payment details as to be the invalidity of an agency agreement. The same applies to the FIGC Regulations. That said, it has to be stressed that all regulations and jurisprudence the Respondent referred to do not foresee the invalidity of an agency agreement in case of failure to comply with the requirements stipulated by FIFA or FIGC. In fact, they only foresee the chance to impose sanctions. Therefore, the Panel finds that such provisions cannot invalidate an agency agreement and agents, clubs or players not following the FIFA or FIGC Regulations can only be subject to sanctions of the respective associations or federations, i.e. in the present case FIFA and FIGC. Of course, in addition, agents who do not comply with FIFA Regulations will not be able to seek for assistance or protection by FIFA".

132. Accordingly, despite the arguments of the First Respondent that the FUR Regulations should apply entirely (since it claims there is no lacuna in the FUR Regulations), this CAS jurisprudence demonstrates why it is necessary and appropriate to consider the underlying national law in certain circumstances notwithstanding that in accordance with Article R58 of the CAS Code, the applicable regulations are considered pre-eminent.

133. Furthermore, this line of jurisprudence also rebuts the First Respondent's contention that such case law regarding the validity of unsigned or oral contracts relates to player and club relationships as opposed to agent and club relationships given that CAS 2011/A/2660 and CAS 2013/A/3443 relate to agency arrangements.

134. It is therefore entirely possible for a contract to not be regulatory compliant yet still be legally enforceable.

135. Therefore, given that both the form of the 'agreement' and any regulatory deficiencies may not be determinative, the issue remains as to whether the Parties came to an agreement as to the fundamental terms?

136. It is noted that the Russian Civil Code sets out the following regarding the mechanism for offer and acceptance of an agreement between parties, as follows:

*"**Article 435.** The Offer*

***1.** The offer shall be recognized as the proposal, addressed to one or to several concrete persons, which is sufficiently comprehensive and which expresses the intention of the person, who has made the proposal, to regard himself as having concluded the contract with the addressee, who will accept the proposal.*

The offer shall contain the essential terms of the contract.

***2.** The offer shall commit the person, who had forwarded it, from the moment of its receipt by the addressee.*

If the notification about the recall of the offer comes in before, or simultaneously with the offer, the offer shall be regarded as not received.

[…]

Article 438. *The Acceptance*

1. *The acceptance shall be recognized as the response of the person, to whom the offer has been addressed, about its being accepted.*

The acceptance shall be full and unconditional.

2. *The silence shall not be regarded as the acceptance, unless otherwise following from the law, from the custom of the business turnover, or from the former business relations between the parties.*

3. *The performance by the person, who has received an offer, of the actions, involved in complying with the terms of the contract, pointed out in the offer (the dispatch of commodities, the rendering of services, the performance of works, the payment of the corresponding amount of money, etc.), shall be regarded as the acceptance, unless otherwise stipulated by the law or by the other legal acts, or pointed out in the offer"* (emphasis in original).

137. Applying this to the circumstances of this case, if we consider the contractual negotiations, it is clear that the First Respondent made an offer to the Appellant when it sent the Commission Agreement by email on 7 August 2020 and that such offer contained *"the essential terms of the contract"*. One of those *"essential terms"* was the commission structure set out in Article 3 of the Commission Agreement.

138. However, the response of the Appellant was clear and unequivocal. It did not accept the commission structure set out in Article 3 of the Commission Agreement as it stated:

"Unfortunately, we have to notice one more time that ***it in no way reflects the agreements, which have been reached*** *by Mr. Merabtene, Mr. Kiknadze and Mr. Mesheryakov.*

First agreement concerns signing of exclusive contract for intermediary servies in regards to the transfer of B. with the intermediary's remuneration in the amount of ***10% from a transfer amount regardless of transfer amount****"* (emphasis added).

139. The rejection of the offer put forward by the First Respondent could not be clearer, indeed it effectively asks the First Respondent to reissue the offer on the terms the Appellant considered had been already agreed.

140. Turning now to the response of the First Respondent to such counterproposal, which the Appellant maintains was evidence of its acceptance of the terms put forward by the Appellant, the material section reads as follows:

"Thank you for provided information".

141. There is no further communication between the Parties. The First Respondent does not issue a revised version of the Commission Agreement. In fact, the next step is for the Appellant to produce the Mandate, reflecting the terms it claimed were previously agreed, yet this remained, as far as we know, unsigned by the First Respondent.

142. It is clear from Article 438 of the Russian Civil Code that the *"acceptance shall be full and unconditional"* and it is not possible to construe the First Respondent's acknowledgement as being a full and unconditional acceptance. Indeed, Article 438 goes on to state that *"silence shall not be regarded as the acceptance"* (unless it accorded with usual business practices) and, in substantive terms, there was silence from the First Respondent to the counterproposal. Further, for the sake of completeness, the First Respondent did not behave in such a way to comply with the terms of the Commission Agreement such that the Appellant could demonstrate its acceptance of the counterproposal (per Article 438 (3) of the Russian Civil Code).

143. Turning to the excerpts from the meeting on 30 June 2020, the Sole Arbitrator firstly has some reservations as to the weight to attach to this evidence given it was not supported by the audio recordings, provided simply extracts rather than a full transcript and was not corroborated as an accurate record by the other attendee at the meeting, Mr Kiknadze, despite it being intimated that he would originally be called by the Appellant to appear as a witness at the hearing.

144. In any event, it is open to interpret the transcript in a number of ways. On the one hand, it could be seen as confirmation that the 10% commission fee would be paid with no requirements, either in terms of performing services or achieving any particular level of transfer fee. On the other hand, Mr Kiknadze references some disagreement (*"…we have to check once again how you calculated, because our calculation is…"*) and indicates that a 'deal' or an offer would be provided, without specifically agreeing the terms of the deal or how the 10% commission fee would be achieved (*"…You will have a paper, for sure…This or that way, you will get all your money for sure…by 15th you will have a deal for 10% out for B."*). Therefore, it is possible to interpret this as a commitment that the First Respondent will provide a *"deal"* to the Appellant for the 10% commission, and that the Commission Agreement sent on 7 August 2020 was that *"deal"* with the structure in place that the First Respondent was prepared to accept.

145. Finally, the Sole Arbitrator agrees with the First Respondent's position on the media interview; this confirms the Appellant's role and importance in bringing the Player to the First Respondent (which was not a point the Parties disagreed over) but offers nothing of real probative value in determining whether or not the Parties came to an agreement on the payment of 10% commission on the Player's exit.

146. The Sole Arbitrator has carefully considered the submissions and evidence put forward by the two Parties as regards this crucial aspect and finds, to his comfortable satisfaction, that the Appellant has failed to discharge its evidential burden to prove that the two Parties came to an agreement on the fundamental terms of the 10% commission payment on the Player's transfer to another club.

147. It follows, therefore, that the issue as to whether the Appellant was under an obligation to provide any services to the First Respondent in terms of the Player's transfer to another club is moot.

C. What are the consequences that follow from the answer reached at (b) above?

148. It is noted that Article 68 of the FUR Regulations on Dispute Resolution specifically provides that CAS may reverse, modify and replace decisions of the FUR DRC and the FUR PSC:

"If the Committee or CAS reverses the decision of the Chamber (or CAS reverses the decision of the Committee) … If the Committee or CAS modifies the Chamber's decision (or CAS modifies the Committee's decision) …".

149. The Sole Arbitrator notes that it has already been established that the Commission Agreement is not binding on the two Parties and the Sole Arbitrator further notes that he has concluded, to his reasonable satisfaction, for all of the reasons previously set out, that the Appellant and the First Respondent did not come to any other binding agreement which meant the Appellant was entitled to a payment from the First Respondent following the Player's transfer to Palmeiras FC.

150. The Sole Arbitrator notes that Article 18 of the FUR Intermediaries Regulations state, *inter alia*, as follows

"1. All disputes, disagreements or claims arising from ***agreements concluded*** *on the basis of these Regulations between Football Players / Clubs / Coaches, on the one hand, and Intermediaries (as of the date of the conclusion of the relevant agreement), on the other hand, are subject to resolution by the jurisdictional bodies of the FUR (FUR Dispute Resolution Chamber FUR Players' Status Committee) as a mandatory pre-trial dispute resolution procedure according to the procedures provided for by the FUR Regulations on Dispute Resolution"* (emphasis added).

151. Therefore, whilst the FUR PSC concluded that it did not have jurisdiction, this was based on the wrong reason. It simply concluded that the lack of registration of the Commission Agreement meant it should decline jurisdiction however it should have gone past the lack of registration to consider whether a valid and binding agreement had been reached between the Parties. Had they done so, they would have come to the conclusion that there was no agreement between the Parties and would have declined jurisdiction in any event.

152. Accordingly, given the lack of agreement between the Parties, the FUR PSC correctly declined jurisdiction, although not for the correct reason, and it therefore follows that the appeal should be dismissed, and the Appealed Decision confirmed.

153. Finally, and for the sake of completeness, the Appellant also claimed certain costs incurred in relation to the FUR DRC and FUR PSC proceedings, however in accordance with the well-established CAS jurisprudence, the Sole Arbitrator finds that costs referrable to first instance proceedings are not recoverable and therefore does not make any award for such costs.

D. Conclusion

154. Based on the above and having taken into account all the arguments put forward and the evidence supplied, the Sole Arbitrator finds that the Appellant and the First Respondent had

not concluded a contract for agency services in relation to the Player, whether in the form of the Commission Agreement or otherwise, and therefore the FUR PSC was correct in declining jurisdiction, although it should have done so based on the fact that the Parties had not concluded an agreement, rather than the failure to register an agreement with the FUR.

155. Accordingly, the Appellant's appeal against the Appealed Decision is dismissed and the Appealed Decision is confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 25 August 2021 by Olea Sports Capital LLC against the decision issued on 4 August 2021 by the Committee on the Status of Players of the Football Union of Russia is dismissed.

2. The decision issued on 4 August 2021 by the Committee on the Status of Players of the Football Union of Russia is confirmed.

3. (…).

4. (…).

5. (…).

6. All other and further motions or prayers for relief are dismissed.