



**Arbitration CAS 2012/A/2824 Besiktas JK v. Union des Associations Européennes de Football (UEFA), award of 31 October 2012**

Panel: Mr Mark Hovell (United Kingdom), President; Mr Michael Gerlinger (Germany); Mr Rui Botica Santos (Portugal)

*Football*

*Disciplinary sanction due to violation of the UEFA Club Licensing and Financial Fair Play Regulations*

*Interpretation of a rule (Annex VIII UEFA CL & FFP Regulations)*

*UEFA right to challenge the issuance of licences in case of breach of the UEFA CL & FFP Regulations*

*Fair and equal treatment*

1. According to Annex VIII of the UEFA CL & FFP Regulations, paragraph (1)(d), to dispute a claim brought by a creditor, the party facing the claim has to “contest” it and needs to demonstrate that it is “manifestly unfounded”. The provision is perfectly clear and lawful.
2. UEFA cannot be deemed to accept every single federation’s or association’s decision to issue their clubs with license. It must maintain the right to challenge these decisions against both the license holder (club) and license grantor (federation) at a later stage should it become aware of any breaches of the UEFA CL & FFP Regulations. However, there is nothing in the UEFA CL & FFP Regulations that obliges UEFA to take action against the license grantor in order to sanction the license holder when the case is solely related to the license holder.
3. By gaining a license to compete in the Europa League that it should not have received due to the concealment of overdue payables labeled as “disputed”, by continuing to breach the regulations during the monitoring process by continually labeling many and large overdue payables as “disputed”, whilst not contesting these in any way, and by systematically ignoring its debts until forced by FIFA or CAS to pay, a party commits numerous breaches of the UEFA club licensing and financial regulation. These breaches are such that a competition ban and a fine are fair and proportionate.

**I. THE PARTIES**

1. Beşiktaş Jimnastik Kulübü (hereinafter referred to as “Beşiktaş” or the “Appellant” or “the Club”) is a Turkish professional football club with its registered office in Istanbul, Turkey.

2. The Union des Associations Européennes de Football (hereinafter referred to as “UEFA” or the “Respondent”) is an association under Articles 60 *et seq.* of the Swiss Civil Code, with headquarters in Nyon, Switzerland. UEFA is a confederation recognised by the Fédération Internationale de Football Association (hereinafter referred to as “FIFA”) and promotes and governs football in Europe.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced in the present proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 22 May 2008, [the club X.] (hereinafter referred to as “[Club X.]”) entered into a contract with the Appellant for the transfer of the player [T.] to the Appellant from [Club X.] for the net transfer fee of €4,500,000 payable: €1,500,000 by 1 July 2008, €1,500,000 by 30 June 2009 and €1,500,000 by 30 June 2010 (hereinafter referred to as “the T-Contract”).
5. On 28 May 2008, [Club X.] entered into a further contract with the Appellant for the transfer of the player [S.] by way of a loan from 1 July 2008 to 30 June 2009 and on a permanent basis from 1 July 2009 (hereinafter referred to as “the S-Contract”). Under the S-Contract the Appellant was to pay €300,000 net by 1 July 2008 in respect of the loan period and a further €4,400,000 in respect of the definitive transfer by way of the following instalments: €1,450,000 by 30 June 2009, €1,450,000 by 30 June 2010 and €1,500,000 by 30 June 2011.
6. On 29 March 2010, [Club X.], at the Appellant’s request, and the Appellant agreed that the remaining monies due and owing under the T-Contract and the S-Contract would be paid as follows: €2,950,000 by 30 June 2010 and €1,500,000 by 30 June 2011 (hereinafter referred to as “the Payment Agreement”). The Payment Agreement provided that, in case of default in the payment of any of the amounts due under the agreement, the whole of the remaining payments would become immediately due. Further, the Appellant agreed to pay [Club X.] €350,000 in default interest due under the Payment Agreement.
7. On 9 August 2010, [Club X.] filed a request for arbitration with the Court of Arbitration for Sport (hereinafter referred to as “the CAS”) seeking to enforce payment under the Payment Agreement.
8. On 14 December 2010, the Appellant made a payment of €1,450,000 to [Club X.].
9. On 31 March 2011, which was the last date upon which overdue payables could be settled as per the UEFA Club Licensing and Financial Fair Play Regulations (Edition 2010) (hereinafter referred to as “UEFA CL & FFP Regulations”), in order to be awarded a licence to compete

in the 2011/12 Season UEFA Europa League, the Appellant had overdue payables due to [Club X.] (€1,500,000 in relation to the Payment Agreement) and additional overdue payables to [Club R.] (€750,000 in relation to the last instalment of a transfer fee for the player, [F.]).

10. On 31 May 2011, the Turkish Football Federation (hereinafter referred to as “TFF”) sent the UEFA administration the list of clubs to which it had granted licences for 2011. This list included Beşiktaş, which had qualified for the 2011/12 UEFA Europa League on sporting merit.
11. On 30 June 2011, the Appellant’s transfer payables table provided that the Appellant owed €1,608,000 in relation to [S.] and €1,669,000 in relation to [T.], but stated that both amounts were “in dispute”. Further, the Appellant stated that €365,000 was owed in relation to solidarity contributions for the player [R.]; €225,000 in solidarity contributions for the player [M.]; and €750,000 in relation to a transfer instalment for the player [F.]; all of which were reported as “disputed”.
12. On 15 July 2011 the TFF submitted to the UEFA Club Financial Control Panel (“UEFA CFCP”) information based on the figures provided by Beşiktaş as part of the monitoring procedure, including the overdue payables position of Beşiktaş as at 30 June 2011, in accordance with the UEFA CL & FFP Regulations. Subsequently the UEFA CFCP asked the TFF for additional monitoring information in order to establish Beşiktaş situation as at 30 September 2011.
13. On 18 July 2011, the CAS upheld [Club X.] request for arbitration and awarded [Club X.] the net amount of €3,350,000 plus interest pursuant to the breached Payment Agreement.
14. On 30 September 2011 the Appellant’s transfer payables table provided that the Appellant owed €1,608,000 in relation to [S.] and €1,669,000 in relation to [T.] but stated that both amounts were “in dispute”. Further, the Appellant stated that €364,000 was owed in relation to solidarity contributions for the player [R.]; €103,000 in solidarity contributions for the player [M.]; and €750,000 in relation to a transfer instalment for the player [F.]; all of which were reported as “disputed”.
15. On 17 October 2011, the TFF forwarded to the UEFA CFCP the information provided by Beşiktaş in relation to its overdue payables position as at 30 September 2011.
16. On 20 October 2011, the Appellant paid €3,000,000 to [Club X.].
17. On 25 November 2011, the UEFA CFCP decided to commission a compliance audit to verify the information provided by Beşiktaş.
18. On 19 and 20 December 2011, Pricewaterhouse Coopers (hereinafter referred to as “PWC”) conducted the audit at the TFF headquarters under the supervision of the UEFA administration.

19. On 23 January 2012, PWC submitted its report confirming the existence of overdue payables and also indicated that some figures provided by the Club were incorrect, having discussed its draft report with and having it approved by the TFF and Beşiktaş. On the same day, the UEFA administration submitted its compliance report and the PWC report to the UEFA CFCP.
20. On 30 March 2012, the Appellant entered into a further agreement with [Club X.] in respect of the outstanding amounts from the CAS award. The parties acknowledged that €748,747.42 remained due and the parties agreed that the Appellant would make the following payments: €400,000 by 2 May 2012 and €348,747.42 by 3 May 2012.
21. On 19 April 2012, the UEFA disciplinary inspector submitted his report, in which he concluded that Beşiktaş had violated the UEFA CL & FFP Regulations.
22. On 1 May 2012, Beşiktaş submitted its petition in response of the allegations of the UEFA disciplinary inspector.
23. On 1 May 2012, the UEFA Control & Disciplinary Body rendered its decision finding the Club guilty of violating not only Articles 65 and 66 of the UEFA CL & FFP Regulations but also the principles of good faith and transparency (hereinafter referred to as the “First Decision”) and held:
  1. *Beşiktaş JK is suspended from the next two UEFA Club competitions for which it qualifies in the next five seasons. This sentence is suspended for a probationary period of five years.*
  2. *Beşiktaş JK is fined €600,000.*
  3. *This decision has no impact whatsoever on the 2012/13 club licensing procedure or the associated requirements and deadlines.*
  4. *The above fine must be paid into the bank account indicated below within 30 days of the communication of this decision”.*
24. On 16 May 2012, UEFA, through its disciplinary inspector, submitted a statement of appeal against the First Decision.
25. On 24 May 2012, UEFA filed appeal pleadings against the First Decision.
26. On 29 May 2012, Beşiktaş submitted its petition in response to the disciplinary inspector’s statement of appeal and, in doing so, lodged a cross-appeal.
27. On 30 May 2012, the UEFA Appeals Body rendered a decision (hereinafter referred to as the “Appealed Decision”) and held:

- “1. *The appeal lodged by UEFA is admitted. Therefore, Beşiktaş JK is excluded from the next two UEFA club competitions for which it qualifies in the next five seasons. The exclusion for the second competition is suspended for a probationary period of five years.*
  2. *Beşiktaş JK is fined €200,000, of which €100,000 is suspended for a probationary period of five years.*
  3. *The cross appeal of Beşiktaş is partially admitted as explained in the full written decision.*
  4. *The costs of the procedure, amounting to €6,000, are charged as follows €4,000 to Beşiktaş JK and the rest to UEFA.*
  5. *This decision is final (in accordance with Article 66 DR)”.*
28. On 8 June 2012, the Appealed Decision was notified to the parties.

### **III. THE ARBITRAL PROCEEDINGS BEFORE THE CAS**

29. On 15 June 2012, Beşiktaş filed a Statement of Appeal with the CAS against UEFA with the following request for relief:
- “... Beşiktaş requests the Panel to decide that UEFA have adopted unlawful decision and the Club respectfully seeks an award:*
- ordering UEFA to grant Beşiktaş the requested provisional measures and make the Club enable to participate in the 2012/13 Europa League competition of which it has qualified on sporting merits;*
- ordering UEFA to pay all costs and legal fees incurred by the Club in these arbitration proceedings on a full indemnity basis;*
- awarding any such other relief as the Panel may deem necessary or appropriate”.*
30. Further, Beşiktaş requested the stay of the Appealed Decision.
31. On 21 June 2012, the Appellant filed its Appeal Brief with the CAS, repeating its request for relief.
32. On 22 June 2012, the Respondent filed its response to the Appellant’s request for provisional measures.
33. On 29 June 2012, UEFA submitted its Answer, together with various exhibits, seeking the following requests for relief:

*“UEFA respectfully requests CAS to dismiss the Appeal and to order payment by the Appellant of all costs of the arbitration as well as legal costs suffered by UEFA”.*

34. On 2 July 2012, the CAS Panel rejected the request for provisional measures in a written order delivered to the parties.

#### **IV. THE CONSTITUTION OF THE PANEL AND THE HEARING**

35. By letter dated 25 June 2012, the CAS Court Office informed the parties that the panel to consider the appeal had been constituted as follows: Mr. Mark Hovell, President of the Panel, Dr. Michael Gerlinger and Mr. Rui Botica Santos, Arbitrators.
36. A hearing was held on 5 July 2012 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the appointment or arbitration of the Panel. In addition, Mr. William Sternheimer, Counsel to the CAS, was in attendance.
37. The attorneys for the parties attended the hearing. In addition, Mr. Pablo Rodriguez, UEFA Compliance Officer, was also in attendance.
38. There were no experts providing opinions at the hearing, but Mr. Usta, the Club’s Sports Director, and Mr. Orman, the President of the Club, both spoke on its behalf via the telephone conferencing facility in order to explain to the Panel the new steps they had taken since the change of management at the Club and were examined by the Panel and the Respondent. In addition, Mr. Rodriguez spoke and was examined by the Panel and the Appellant. He assisted the Panel by explaining UEFA’s position on the UEFA CL & FFP Regulations.
39. The parties were given the opportunity to present their case, submit their arguments and to answer the questions posed by the Panel. A summary of the submissions is detailed below. After the parties’ final, closing submissions, the hearing was closed and the Panel reserved its detailed decision to its written award. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and to have been treated equally in these arbitration proceedings. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties both in their written submissions and at the hearing, even if they have not been summarised in the present award.

#### **V. SUMMARY OF THE PARTIES’ SUBMISSIONS**

##### **A. Appellant’s Submissions**

40. In summary, Appellant submits the following in support of its appeal:

41. The UEFA Appeals Body did not follow the principles of proportionality and equal treatment whilst sanctioning the Appellant. Furthermore, it did not follow its own regulations on procedure and previous precedents when considering Beşiktaş' case and therefore the Appealed Decision is "ill grounded". More specifically, the Appellant raised the following arguments:

*Misunderstandings*

42. The monitoring requirements had been implemented in a fairly new system in June 2011 and even the national federations were in the process of learning this new system.
43. During the filing process of the licence application Beşiktaş did not receive the necessary support from the TFF and it is now obvious that there were some misinterpretations of the rules. If the Club had received enough guidance and support from the TFF and from UEFA, then this disciplinary process would not have been commenced.
44. There were some personal errors and information deficiencies when preparing the tables for the first time online last year. Although the deficiencies and mistakes were discussed with the TFF, and several corrections and updates were performed in the UEFA tables of 30 June 2011 and 30 September 2011, it seems that the UEFA Disciplinary Body and the Financial Control Panel and Appeals Body of UEFA did not take such corrections and explanations into consideration.

*No proceedings against the TFF and its decision*

45. Beşiktaş met the necessary licensing conditions. Therefore the TFF granted Beşiktaş a UEFA licence. There were no questions raised by TFF on the fact that the licence for the Club was correctly awarded and there was a final and binding decision of the licensor (the TFF) that the Club had fulfilled its obligations as defined in the UEFA CL & FFP Regulations. If a licence for the Club was not correctly awarded by the TFF, UEFA should have launched its own proceedings not only against the Club but also against the TFF at that time.
46. UEFA did not commence disciplinary action against the TFF. The only logical reason why UEFA did not commence such action is because they believed that the licensing process was correctly executed by the TFF. Therefore, UEFA cannot take legal action against its own (confirmed) decision. Because of such procedural fault, the Appealed Decision must be considered null and void.
47. The Appellant noted, in the CAS jurisprudence that the UEFA disciplinary inspector referred to (namely CAS 2012/A/2702 Györi ETO v UEFA – hereinafter referred to as the "Györi Award") it was not only the Hungarian Club, but also the Hungarian Football Federation that was fined by UEFA.

### *Unequal Treatment*

48. The Appellant submitted that it has received unequal treatment according to the relevant UEFA jurisprudence in this area. For example in the PAOK FC case, that club had overdue payables towards other football clubs totaling €155,000; and overdue payables towards employees and social/tax authorities totaling €7,585,000 on 30 June 2011. As a result, the UEFA Control and Disciplinary Panel only fined that club €250,000, of which €200,000 was suspended for a probationary period of 3 years. Therefore, comparing this matter to the PAOK FC case, there are many similarities but the outcome is completely different and negative for the Appellant. This demonstrates double standards being applied by UEFA and an abuse of a dominant position by UEFA.
49. At the hearing the Appellant highlighted its particular concern with the PAOK FC case and its own. It appeared that UEFA were prepared to suspend PAOK's fine on the basis that it had an "action plan" to repay its debts. UEFA gave it a second chance – if it reoffended, then the penalty would be activated. The Appellant believed it deserved that second chance and it invited UEFA to reaudit its new management as often as it deemed necessary. Here the Appellant has a "concrete" action plan that it has activated. It should get the second chance like PAOK did.

### *Procedural Wrongoings*

50. The Respondent acted in violation of UEFA Regulations and committed a number of procedural wrongoings. The Respondent failed to provide the Appellant with a written or voice record of the hearing of the UEFA Control and Disciplinary Body that took place on 1 May 2012 nor was it provided with a list of attendees. The Appellant was not provided with the same timeframe as the UEFA disciplinary inspector for submitting documents to the UEFA Appeals Body. Further, the Respondent either failed to reply to the Appellant's disclosure requests/correspondence or did not deal with the same in a timely manner. Therefore the Appellant was not granted a reasonable opportunity to review the grounds for appeal of the UEFA disciplinary inspector and file its answer and to also consider a potential cross appeal.

### *New Management*

51. The Appellant had appointed new management and elected a new president who inherited the financial issues and had "*coped with the financial problems in a very good manner and make huge amounts of payments towards clubs, players and etc*". It was clear from the evidence of the President of the Club, that the Appellant now has implemented a workable financial plan that it strictly follows with the ultimate goal of decreasing the Club's debt. This positive progress should have been taken into account by the relevant UEFA bodies and therefore a proportionate and fair decision should have been given by UEFA.



52. The objectives behind the UEFA CL & FFP Regulations are to ensure clubs operate in a correct financial manner and act as a reliable member of the football family. UEFA should provide support to those clubs that are doing things right and different to their predecessors. UEFA would not be fulfilling its own objectives if it did not give clubs a chance to put things right.
53. At the hearing, the Club submitted that since 3 July 2012 it had confirmed to the Turkish Stock Exchange that it had paid or agreed to pay 28m Turkish Lira in payments to the tax authorities, to players and other clubs. This new management had a totally different and positive approach compared to the previous one.

#### *Proportionality*

54. The sanction that has been imposed on Beşiktaş cannot be seen as proportionate when compared with other UEFA decisions. In comparison to the sanction applied to the Appellant, Olympiacos Volou FC were excluded from the 2011/12 Season UEFA Europa League and given a further 3 year ban from UEFA Competitions, deferred for a probationary period of 5 seasons, after breaching article 5 of the UEFA Disciplinary Regulations. Further, the UEFA Appeals Body has backed the decision of the UEFA Control and Disciplinary Body to exclude Olympiacos Volou from this Season's UEFA Europa League, but did not increase the fine against the Club. Olympiacos Volou have been excluded from the 2011/2012 Season UEFA Europa League due to some allegations of match fixing at national level. It is a well-known fact that UEFA takes match-fixing issues very seriously and has a "*zero tolerance against match fixing*" policy. Despite these facts and despite Olympiacos Volou having been engaged with one of the most serious offences in sport, such as match fixing, it is impossible to understand how both clubs receive a 1 competition sanction with the rest deferred for a certain probationary period.
55. UEFA has exercised its powers on the Appellant unlawfully and disproportionately. This is an abuse of a dominant position.

#### *Legality and Misapplication of the Rules*

56. The UEFA CL & FFP Regulations are unlawful and have been wrongly interpreted by UEFA. In particular Articles 65, 66 and Annex VIII.
57. When assessing Annex VIII, if a club does not submit any arguments or written pleadings to FIFA or any other relevant authority, is the debt not in "dispute"? When considering the essence of the law, it is impossible to reach that conclusion. Considering no action or not submitting petitions to a legal process does not mean agreeing with the contents of the claim, in fact it means the opposite. According to the general principles of law, once a party does not accept a claim it should be deemed rejected or "disputed".

58. In summary, UEFA's actions resulted in an unfair and/or unlawful decision, which has caused great harm to the Club in front of its supporters and has damaged its image. Whilst the Appellant accepted the facts that overdue payables existed at the relevant dates, it maintained that these were "disputed". It also focused on the unequal treatment it had received compared to other clubs; on the fact its new management should receive some credit; and that UEFA should now monitor this new management and suspend the total ban and only apply it should the Club reoffend.

## **B. Respondent's Submissions**

59. In summary, the Respondent submits the following in defence:
60. The UEFA CL & FFP Regulations set forth a club licensing system for the admission to UEFA Competitions such as the UEFA Champions League and UEFA Europa League. Compliance with these rules is a condition of entry. These regulations aim at promoting financial fair play in UEFA club competitions by improving the economic and financial capability of the clubs, increasing their transparency and credibility and by ensuring that clubs settle their liabilities with creditors punctually. One of the requirements is that clubs are not allowed any overdue payables towards other clubs and/or towards employees and tax/social security authority. A key criteria is the absence of overdue payables towards other football clubs, such as amounts due as a result of transfer activities.
61. There are two relevant parts of the UEFA CL & FFP Regulations. The first deals with the issuing of yearly licences; the second deals with the monitoring process for all licencees during the year.
62. The licences are granted in the spring, based on financial statements as at the December of the previous year or 31 March of the year in question.
63. As part of the monitoring process, the licensee must prove that it has no overdue payables towards other clubs up to 30 June. If it has, then it must prove that these will be settled by 30 September as that same year.
64. If a club has overdue payables in December of the previous year or 31 March in any year in question, this is a ground for refusal of a licence (by an administrative decision, without the possibility of a suspension). If overdue payables as at 30 June appear during the monitoring process, the club is requested to provide evidence to demonstrate that it has no overdue payables on 30 September (additionally, it may incur disciplinary sanctions). If the club has overdue payables on 30 September, disciplinary proceedings are opened (which may lead to the club's exclusion from UEFA's competitions).

65. The Appealed Decision confirmed that the Appellant had overdue payables both at 31 March 2011 (when its license had been awarded) and on 30 June and 30 September 2011 (key dates in the monitoring procedure).
66. Further, the Appealed Decision provides *“with regard to transfer fees, training compensation and solidarity contributions, Beşiktaş had a systematic policy of waiting for FIFA or CAS to issue a ruling”*. In relation to the amounts due for the transfer of players [T.], [S.], [R.], [M.] and [F.], Beşiktaş did not dispute the amounts (and did not submit any arguments or briefs to FIFA or respectively to the CAS). However the corresponding amounts have been reported by the Appellant as being “in dispute”.
67. Therefore the Appealed Decision rightly considered that Beşiktaş did not comply with the monitoring requirements, concealed the existence of overdue payables and was in breach of Article 49 of CL & FFP Regulations which means that the Club should not have been awarded a licence in the first place.
68. On 31 March 2011 the Appellant had an overdue payable towards [Club X.] amounting to €1.5m. In addition, the Appellant had an overdue payable amounting to €750,000 at the same date (solidarity contribution) owed to [Club R.]. By having overdue payables on 31 March 2011, the Appellant did not satisfy one of the essential requirements under licensing process and therefore should have been refused a licence.
69. Further to the above, the Appellant also had overdue payables on 30 June and 30 September 2011 towards [Club X.], [Club P.] and [Club S.], [Club U.] and [Club A.], [Club R.] and the Turkish Social/Tax Authority. Therefore the Appellant was in breach of Articles 65 and 66 of the CL & FFP Regulations. The overdue amounts towards other clubs as at 30 September 2011 totaled €4,423,500.
70. The Appellant wrongly notified the TFF and UEFA that the overdue payables in June and September 2011 as being “in dispute”.
71. In relation to the overdue payables owed to [Club X.], the Appellant submitted that the amount was “in dispute” on 30 June 2011 because [Club X.] had filed a claim before the CAS to obtain payment; however it must be noted that the Appellant did not answer or dispute or comment on [Club X.’s] submissions during the CAS proceedings. Further, as regards to the situation on 30 September 2011, the Appellant claimed that the unpaid amount would have been “in dispute” at that time (although CAS had rendered its award) because the Appellant had made an offer to [Club X.] to defer payment. These overdue payables had been falsely reported as being “in dispute” although there was no dispute as to the fact that the sum was due.
72. On 30 June and 30 September 2011, the Appellant owed at least €98,500 in solidarity contributions to [Club P.]. The amount was overdue and not disputed, however the Appellant inaccurately presented the claim as being “disputed” in the transfer payables table submitted on 30 June and 30 September 2011.

73. In relation to the amounts owed to [Club U.] and [Club A.], both clubs had to file claims before FIFA to obtain payment of the solidarity contributions relating to the transfer of the player [M.]. At no stage did the Appellant dispute the overdue amount. However, the amounts had been falsely presented as being “disputed” in the transfer payables table submitted by the Club on both 30 June and 30 September 2011.
74. [Club R.] also had to file a claim with FIFA to obtain payment from the Appellant. The Appellant again raised no objection and eventually paid the overdue amount in December 2011. Although the Appellant did not answer to the claim, the amount was unduly reported as being “in dispute” in the transfer payables table submitted on 30 June and 30 September 2011.
75. The Appealed Decision is correct. The Appellant followed a systematic policy of waiting for FIFA or CAS decisions before making payments of transfer fees, training compensation and solidarity payments. In other words, the Appellant systematically left it to creditor clubs to take action before FIFA and never paid until FIFA issued a final decision. This allowed the Appellant to unduly delay the payment deadlines and to obtain some form of credit by failing to pay fees on time. The Appellant therefore gained an unfair advantage and further, it could endanger the financial equilibrium of the creditor clubs. There is hardly any doubt that it runs against the principles of “financial fair play”. The sums were not “disputed”; there were no arguments as required by Annex VIII of the UEFA CL & FFP Regulations; these sums were simply “unpaid”.
76. In relation to the solidarity contribution payments, it must be noted that FIFA regulations do not allow the debtor to wait until a decision is rendered by FIFA; the relevant FIFA regulations provide that these payments have to be made within 30 days following registration of the player.
77. If the existence of the overdue payables had been revealed before, the UEFA licence should have been refused. As of 31 March 2011, as the Appellant had overdue payables towards other clubs in the amount of €1.5m no UEFA licence should have been issued. It must therefore be considered that the Appellant unduly participated in the UEFA Champions League 2011/12 Season (from which the Appellant earned over €6m in revenue).
78. In the Györi Award exclusion from competition (plus a fine) was viewed as a proportionate and justified sanction for the club which had breached the UEFA CL & FFP Regulations by concealing information as to overdue payables (although the amount at stake in that case, €50,000, was by far less than the amount in this matter). Whilst in that CAS case the club had concealed the existence of a single overdue amount of €50,000, in this matter the Appellant followed a systematic policy to refuse payments towards other clubs, by leaving it up to creditor clubs to take action before FIFA. Further in the Györi Award the CAS also took into account the fact that the club benefited in playing in the UEFA Europa League without disclosing the correct and true overdue payables it had. In the present matter, the Appellant falsely presented important overdue payables as being in “dispute”, the amount being

€4,423,500 although they were just unpaid and obtained over €6m from participation in the UEFA Champions League 2011/12 (plus the amounts paid in the TV marketing pool).

79. In summary, the existence of overdue payables in March 2011 (which should have led to a refusal to grant the license); the importance of these overdue payables (€2,250,000); the existence of overdue payables in June and September 2011 amounting to €4,423,500; the importance of the amounts which had been falsely presented as being in dispute; and, last but not least, the fact that the Appellant followed a systematic policy to refuse payment of important sums owed to other clubs justify a severe sanction existing of a fine plus an exclusion from competition (without suspension).
80. The Respondent also answered the specific submissions made by the Appellant:

#### *Misunderstandings*

81. The Appellant stated that there have been some misunderstandings when preparing the transfer tables, however, these misunderstandings were not specified.

#### *Proceedings against the TFF and its decision*

82. The question of whether proceedings should have been launched against the TFF is not the subject matter of this appeal. The fact that the Appellant had been awarded a licence does not prevent the Respondent from taking disciplinary action within the course of the monitoring process. Further, the licence had not been granted by the Respondent but by the TFF; as a consequence there was no decision “confirmed” by UEFA against which the Respondent would “take legal action”.
83. At the hearing, UEFA stated that perhaps TFF should have shown more interest in the Club and the information it provided, but that does not alter the fact the Club knew the overdue payables were not “disputed” and mislead the TFF.

#### *Unequal treatment*

84. The Appellant has not received unequal treatment. In the PAOK case, that club was confronted with financial difficulties but did not try to hide overdue payables. PAOK acted in a fully transparent manner and submitted a reorganisation plan. In view of the efforts made by that club, the UEFA Disciplinary Body decided that the exclusion could be suspended for a probationary period. Further, PAOK had no overdue payables as at 31 March when it had been awarded a licence (the only violation by that Club was the existence of overdue payables in June and September 2011, during the monitoring process). By contrast, the Appellant had important overdue payables when it had been granted the licence. The Appellant should not have been awarded a licence and this is the key difference between these two cases.

85. At the hearing, Mr. Rodriguez stressed that the UEFA Appeals Body did take into account the actions of the new management as mitigating factors and suspended the second competition ban and reduced the fine imposed.
86. In comparison to Bursaspor, the UEFA Appeals Body had pronounced the exclusion without suspension although that club had only one overdue payable (which already existed when its licence had been granted) amounting to €300,000. The CAS recently admitted Bursaspor's appeal (in CAS 2012/A/2821) and suspended its exclusion and increased the fine from €50,000 to €250,000. However this matter was again different in that Bursaspor had only one overdue payable and had no systematic policy to leave it to creditor clubs to take action before FIFA and to refuse payment before a final FIFA or CAS decision was made. Against this background, the situation at Bursaspor and of the Appellant is clearly not the same; thus, there is no unequal treatment.

#### *Procedural Wrongs*

87. The Appellant submitted that the UEFA Appeals Body committed procedural wrongdoings in relation to setting a deadline to the Appellant to respond to an appeal. However, Article 54 para 1 of the Disciplinary Regulations does not mean that the chairman should always ask for written replies, especially in urgent cases such as this one.
88. In accordance with the Code for Sports-related Arbitration (hereinafter referred to as "the Code"), the CAS hears matters de novo and any procedural defects are cured by the proceedings before the CAS, with the Panel having full authority to review the facts of the case and to apply the law.

#### *New Management*

89. The Appellant also relies upon the fact that new management is now in place. A club cannot escape liability by changing its management team. It would be too easy for a club just to say "sorry, but here's our new management just monitor it now". The actions of the new management team are only ever a mitigating factor.

#### *Proportionality*

90. The Appellant also submits that the sanction would be disproportionate and makes a comparison with the Volou case, again raising the argument of unequal treatment. However, the cases are different (the Volou case involved match fixing, and that club has been excluded from the Europa League 2011/12 without suspension; additionally, Volou has been given a further 3 year ban, which has been suspended for a 5 year probationary period). Further, the Appellant is far from demonstrating that the Respondent exercised its discretion unfairly or

in “grossly disproportionate” manner. To the contrary, the sanction imposed in the Appealed Decision was perfectly reasonable for a club which had overdue payables on 31 March as well as on 30 June and 31 September 2011; which had falsely been presented as being “in dispute”.

91. At the hearing, UEFA made reference to various CAS jurisprudence, including the Györi Award, to confirm that a decision is not “disproportionate” just because an alternative decision could have been made, it has to be “evidently and grossly disproportionate”, which it is not in this case.

#### *Legality and Misapplication of the Rules*

92. The Appellant has also submitted that the UEFA CL & FFP Regulations are unlawful however the Appellant does not demonstrate in which respect these rules would be unlawful. UEFA argued the opposite – these regulations promote a system welcomed by the football family, to ensure payments of players, tax authorities and to other clubs – they maintain financial equilibrium. This is completely in line with EU law.
93. The Appellant considers that a claim should be considered as “disputed” even if the debtor has not submitted any arguments or written pleadings to the competent authority. The Appellant further refers to the principle *qui tacet non consentire videtur*. This principle relates to formation of contracts and not to the proper construction of the UEFA CL & FFP Regulations. If a club owes to another club a debt which is clearly set out in a contract, does not pay this debt, leaves it to the creditor club to go to FIFA or the CAS and does not submit any arguments or written pleadings to the competent authority, it is quite certain that this debt cannot be viewed as being “disputed” (especially in light of the provisions of Annex VIII of the UEFA CL & FFP Regulations).
94. In conclusion, none of the arguments submitted by the Appellant can be followed. Thus, the Appeal must be dismissed.

## **VI. LEGAL ANALYSIS**

### **VI.1 JURISDICTION OF THE CAS**

95. The jurisdiction of the CAS, which is not disputed, derived from Article 62.1 of the UEFA Statutes 2010 and Article R47 of the CAS Code.
96. Article 62.1 of the UEFA Statutes provides:
- “Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration”.*
97. Article R47 of the of the CAS Code provides that:

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

98. Further the jurisdiction of the CAS was confirmed by the signature of the Order of Procedure by the Parties. It follows that the CAS has jurisdiction to decide this dispute.

## **VI.2 ADMISSIBILITY**

99. In accordance with Article 62.3 of the UEFA Statutes 2010, “[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question”.
100. The grounds of the Appeal Decision dated 30 May 2012 were notified on 8 June 2012 and the Statement of Appeal was filed on 15 June 2012. This was within the required 10 days.
101. It follows that the appeal is admissible.

## **VI.3 SCOPE OF THE PANEL’S REVIEW**

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

## **VI.4 APPLICABLE LAW**

103. Article R58 of the CAS Code provides as follows:

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

104. Article 63(3) of the UEFA Statutes provides the following:

*“proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”.*

105. Therefore, as the UEFA Statutes provide, the proceedings shall take place in accordance with the CAS Code. The Panel noted that the parties throughout their submissions referred to the UEFA CL & FFP Regulations. Further, the Respondent submitted that the 2010 version are



applicable to this matter and that subject to the primary application of the UEFA CL & FFP Regulations, Swiss law applies complementary as UEFA is domiciled in Switzerland.

106. The Panel ruled that the UEFA CL & FFP Regulations should apply principally and additionally, Swiss law.

107. The Panel found the following Articles and Annexes to the UEFA CCL & FFP Regulations of particular importance:

108. Article 2 of the UEFA CL & FFP Regulations defines the “objectives” as follows:

*“1. These regulations aim:*

- (a) “to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club;*
- (b) to ensure that a club has an adequate level of management and organisation;*
- (c) to adapt clubs’ sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;*
- (d) to protect the integrity and smooth running of the UEFA club competitions;*
- (e) to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe.*

*2. Furthermore, they aim to achieve financial fair play in UEFA club competitions and in particular:*

- (a) to improve the economic and financial capability of the clubs, increasing their transparency and credibility;*
- (b) to place the necessary importance on the protection of creditors by ensuring that clubs settle their liabilities with players, special/tax authorities and other clubs punctually;*
- (c) to introduce more discipline and rationality in club football finances;*
- (d) to encourage clubs to operate on the basis of their own revenues;*
- (e) to encourage responsible spending for the long-term benefit of football;*
- (f) to protect the long-term viability and sustainability of European club football”.*

109. Article 49 of the UEFA CL & FFP Regulations provides that:

- (1) *“The licence applicant must prove that as at 31 March preceding the licence season it has no overdue payables (as defined in Annex VIII) that refer to transfer activities that occurred prior to the previous 31 December.*
- (2) *Payables are those amounts due to football clubs as a result of transfer activities, including training compensation and solidarity contributions as defined in the FIFA Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions.*
- (3) *The licence applicant must prepare and submit to the licensor a transfer payables table, unless the information has already been disclosed to the licensor under existing national transfer requirements (e.g. national clearing house system). It must be prepared even if there have been no transfers/loans during the relevant period.*
- (4) *The licence applicant must disclose all transfer activities (including loans) undertaken up to 31 December, irrespective of whether there is an amount outstanding to be paid at 31 December. In addition, the licence applicant must disclose all transfers subject to a claim pending before the competent authority under national law or proceedings pending before a national or international football authority or relevant arbitration tribunal.*
- (5) *The transfer payables table must contain the following information as a minimum (in respect of each player transfer, including loans):*
  - a) *Player (identification by name or number);*
  - b) *Date of transfer/loan agreement;*
  - c) *The name of the football club that formerly held the registration;*
  - d) *Transfer (or loan) fee paid and/or payable (including training compensation and solidarity contribution);*
  - e) *Other direct costs of acquiring the registration paid and/or payable;*
  - f) *Amount settled and payment date;*
  - g) *The balance payable at 31 December in respect of each player transfer including the due date for each unpaid element;*
  - h) *Any payable as at 31 March (rolled forward from 31 December) including the due date for each unpaid element, together with explanatory comment; and*
  - i) *Conditional amounts (contingent liabilities) not yet recognised in the balance sheet as of 31 December.*
- (6) *The licence applicant must reconcile the total liability as per the transfer payables table to the figure in the financial statements balance sheet for ‘Accounts payable relating to player transfers’ (if applicable) or to the underlying accounting records. The licence applicant is required to report in this table all payables even if payment has not been requested by the creditor.*

- (7) *The transfer payables table must be approved by management and this must be evidenced by way of a brief statement and signature on behalf of the executive body of the licence applicant”.*

110. Article 65 the UEFA CL&FFP Regulations provides that:

- (1) *“The licensee must prove that as at 30 June of the year in which the UEFA club competitions commence it has no overdue payables (as specified in Annex VIII) towards other football clubs as a result of transfer activities undertaken up to 30 June.*
- (2) *Payables are those amounts due to football clubs as a result of transfer activities, including training compensation and solidarity contributions as defined in the FIFA Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions.*
- (3) *By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit a transfer payables table, even if there have been no transfers/ loans during the relevant period.*
- (4) *The licensee must disclose all transfer activities (including loans) undertaken up to 30 June, irrespective of whether there is an amount outstanding at 30 June. In addition, the licensee must disclose all transfers subject to legal proceedings before a national or international sporting body, arbitration tribunal or state court.*
- (5) *The transfer payables table must contain the following information as a minimum (in respect of each player transfer, including loans):*
- a) Player (identification by name or number);*
  - b) Date of transfer/ loan agreement;*
  - c) The name of the football club that formerly held the registration;*
  - d) Transfer (or loan) fee paid and/or payable (including training compensation and solidarity contribution);*
  - e) Other direct costs of acquiring the registration paid and/ or payable;*
  - f) Amount settled and payment date;*
  - g) Balance payable at 30 June in respect of each player transfer;*
  - h) Due date(s) for each unpaid element of the transfer payable; and*
  - i) Conditional amounts (contingent liabilities) not yet recognised in the balance sheet as of 30 June.*
- (6) *The licensee must reconcile the total liability as per the transfer payables table to the figure in the financial statements balance sheet for ‘Accounts payable relating to players transfers’ (if applicable) or to underlying accounting records. The licensee is required to report in this table all payables even if payment has not been requested by the creditor.*

- (7) *The transfer payables table must be approved by management and thus must be evidenced by way of a brief statement and signature on behalf of the executive body of the licensee.*
- (8) *If the licensee is in breach of indicator 4 as defined in Article 62(3) [The licensee has overdue payables as of 30 June of the year that the UEFA club competitions commence], then it must also prove that, as at the following 30 September, it has no overdue payables towards other football clubs as a result of transfer activities undertaken up to 30 September. Paragraphs 2 to 7 above apply accordingly”.*

111. Annex VIII of the UEFA CL & FFP Regulations defines the notion of “overdue payables” as follows:

- (1) *“Payables are considered as overdue if they are not paid according to the agreed terms.*
- (2) *Payables are not considered as overdue, within the meaning of these regulations, if the licence applicant/ licensee (i.e. debtor club) is able to prove by 31 March (in respect of Articles 49 and 50) and by 30 June and 30 September (in respect of Articles 65 and 66) respectively that:*
  - a) *It has paid the relevant amount in full; or*
  - b) *It has concluded an agreement which has been accepted in writing by the creditor to extend the deadline for payment beyond the applicable deadline (note: the fact that a creditor may not have requested payment of an amount does not constitute an extension of the deadline); or*
  - c) *It has brought a legal claim which has been deemed admissible by the competent authority under national law or has opened proceedings with the national or international football authorities or relevant arbitration tribunal contesting liability in relation to the overdue payables; however, if the decision-making bodies (licensor and/or Club Financial Control Panel) consider that such claim has been brought or such proceedings have been opened for the sole purpose of avoiding the applicable deadlines set out in these regulations (i.e. in order to buy time), the relevant amount will still be considered as an overdue payable; or*
  - d) *It has contested a claim which has been brought or proceedings which have been opened against it by a creditor in respect of overdue payables and is able to demonstrate to the reasonable satisfaction of the relevant decision making bodies (licensor and/or Club Financial Control Panel) that the claim which has been brought or the proceedings which have been opened are manifestly unfounded”.*

## **VI.5 MERITS OF THE APPEAL**

112. In these present proceedings, the Panel had to determine the following:-

- (a) Were there any procedural irregularities?
- (b) If not, were there any substantive irregularities? In other words, did the UEFA Appeals Body treat the Appellant unfairly, disproportionately or unequally?

113. The Panel notes the principle objectives behind the UEFA CL & FFP Regulations are, inter alia, to protect the integrity of UEFA Club Competitions, to improve the financial capabilities of clubs, to protect creditors (players, tax authorities and other clubs) of clubs and to introduce more discipline in clubs' football finances. All of these objectives are there to protect the long-term viability and sustainability of European club football.
114. The Panel notes that the Appellant ultimately did not challenge the breaches of the UEFA CL & FFP Regulations, as set out by the Respondent and PWC. It was ultimately undisputed that:
- (a) as at 31 March 2011, the Appellant had significant overdue payables. In accordance with Article 49 of the UEFA CL & FFP Regulations, the Appellant should have disclosed those to the TFF. As it could not satisfy the test of having no overdue payables as at that date, it should not have been granted a licence to participate in the 2011/12 Europa League;
  - (b) however, it was granted that licence and as such was then subjected to the monitoring process. As at 30 June 2011, the Appellant had significant overdue payables to a number of clubs. In accordance with Article 65 of the UEFA CL & FFP Regulations the Appellant should have disclosed these too. If these had been properly disclosed, then the Appellant could not have satisfied the test of having no overdue payables as at that date and would then have had to demonstrate these overdue payable would be settled by 30 September 2011; and
  - (c) as at 30 September 2011, significant overdue payables remained due to a number of other clubs.
115. These breaches were eventually discovered and UEFA, in pursuance of its objectives, who then sought to sanction the Appellant, resulting in the Appealed Decision.

## 1. Procedural Challenges

### a) *Misapplication of an unlawful rule*

116. Whilst not denying the fact that these overdue payables existed before the CAS, the Appellant had before UEFA sought to argue that these were "disputed". UEFA, in the Appealed Decision were clear in their interpretation of Annex VIII of the UEFA CL & FFP Regulations, paragraph (1)(d), in that to dispute a claim brought by a creditor, it must be "contested" and the Appellant would need to demonstrate to the UEFA Appeals Body that any claim it faced was "manifestly unfounded".
117. The Appellant sought to argue before the CAS that UEFA had wrongly interpreted these regulations and that Annex VIII is itself unlawful. The Appellant argued that UEFA was wrong to assume that no action or not submitting petitions to a legal process meant a party

has accepted that process or claim. The Appellant argues that unless it is expressly accepted, a claim should be deemed objected to.

118. The Panel determined that Annex VIII of the UEFA CL & FFP Regulations was perfectly clear and could see no substantial arguments regarding its lawfulness. The Panel noted that the Appellant has merely called the regulations “unlawful” but advanced absolutely no grounds to challenge their legality. As such the Panel can see no reason to dispute the lawfulness of the regulations. The party facing the claim has to “contest” it.
119. In addition, the Appellant would need to show to the UEFA Appeals Body (or the UEFA Control and Disciplinary Body, as the case may be) that the claim it faced was “manifestly unfounded”. In these cases, the Appellant did nothing at all. There was no evidence of any objection or defence; the Appellant did not offer to pay part of any transfer fee, training competition or solidarity payments it felt was due; and then to contest the balance of the claim. The Appellant did absolutely nothing; whilst this may not amount to an acceptance of the claims, it certainly did not amount to “contesting” the claims. Further the Appellant was notable to demonstrate the claims were “unfounded” in any way. The Panel conclude that the UEFA Appeals Body interpreted and applied Annex VIII correctly and that the overdue payables were not “disputed”, just “unpaid”.

*b) Need to proceed against the licence grantor*

120. The second procedural challenge brought by the Appellant was that UEFA needed to bring an action under the UEFA CL & FFP Regulations against the TFF, as it had done in the Györi Award. UEFA stated it could have acted against the TFF, but that the case at hand is solely related to the Appellant and there is nothing in the UEFA CL & FFP Regulations that obliges UEFA to take action against the licence grantor in order to sanction the licence holder. The Panel concurred with UEFA on that point.
121. The Appellant appeared to be arguing that as UEFA had known that the TFF had issued the licence to the Club and failed to take action against the TFF, it has accepted the process. The Panel noted this line of argumentation seemed a little contradictory, in light of the fact it had argued the opposite when claiming its own silence over claims from other clubs could not be deemed its acceptance of those claims. The Panel determined here that UEFA ultimately did challenge the granting of the licence, but only when they became suspicious during the monitoring process. The Panel recognises UEFA cannot be deemed to accept every single federation’s or association’s decision to issue their clubs with licences. It must maintain the right to challenge these against both the licence holder (club) and licence grantor (federation) at a later stage should it become aware of any breaches of the UEFA CL & FFP Regulations.

*c) Procedural Wrongs*

122. The Appellant submitted that the process before the UEFA Appeals Body was in breach of its own regulations. The Panel certainly noted the lack of time the Club was presented with to contest such serious allegations, with severe sanctions, particularly when the Appellant was only given hours to prepare its defence to the UEFA disciplinary inspector's appeal.
123. That stated, this Panel, as many before it (there are detailed references on both the Györi Award and the Bursaspor award) recognises the curing effect at Article R57 of the Code. The Appellant's appeal against the Appealed Decision is heard de novo and the Appellant therefore had its opportunity to challenge the UEFA disciplinary inspector's appeal before this Panel.
124. The Panel therefore concludes that there were no procedural issues which should result in the Appealed Decision becoming null and void, so now turns to the substantive issues.

**2. Substantive issues**

*a) Unequal Treatment*

125. The Appellant relied particularly upon the PAOK case, but the Panel noted there were references to the Györi case, the Olympiacos Volou case and the Bursaspor case, which were all UEFA decisions arising of the UEFA CL & FFP Regulations or the UEFA Disciplinary Regulations.
126. The PAOK, Györi and Bursaspor cases all related to breaches of the UEFA CL & FFP Regulations, whereas Olympiacos Volou involved match fixing. Some clubs had a single instance of overdue payables; others had more than one; some had significant sums overdue; others less so; some should not have been issued with a licence (and earned significant revenues from the same); other breaches occurred only within the monitoring process. However, the Panel noted only one club should not have been granted a licence and then failed the monitoring test at both dates, with many, significant overdue payments – that club was the Appellant.

*b) Proportionality*

127. On the question of proportionality, the Panel accepts the position of UEFA, as established by the CAS jurisprudence it cited – just because another sanction could be issued, it does not make the one issued disproportionate. The Appellant would have to demonstrate that the Appealed Decision was “grossly disproportionate”. The Panel determined that the range of sanctions included a fine and a competition ban. Where a licence had been issued where it should not have been, due to the concealment of overdue payables by labeling them as “disputed”, whilst, as noted above, not contesting these; and where the club has earned significant revenues that it should not have; then it is within the range of a competition ban

and a fine. The Panel also noted that the Appellant had a systematic approach to debts with other clubs – it simply ignored them until forced by FIFA or the CAS to pay. This is sometimes referred to as a “FIFA loan”, a club procures credit from other clubs and thereby creates an uneven playing field. The Appellant had a large number of clubs that it had not paid. The Appellant cannot argue it had not paid in good faith, allegedly having it “made it a principle” to wait for final decisions, in order to obtain a correct calculation. If so, it should have provided the decision making bodies with its position and calculation parameters. As the Appellant simply ignored the claims without contesting them, it had acted in bad faith.

128. In addition, if clubs during the monitoring period have large amounts of overdue payables or many of them (or both as in the case of the Appellant), they will find themselves in the range of a competition ban and a fine. The number and/or amounts will be taken into consideration by UEFA. In this case, the Panel has no doubt that these breaches, especially when coupled with the fact the licence should not have been issued in the first place, should have resulted in the sanctions contained in the Appealed Decision.
129. The Appellant did argue, however, that a one competition ban looked disproportionate in the light of the Olympiacos Volou’s similar ban (putting the suspended part of their sanction to one side) when looking at their offence (match fixing) compared to the Appellant’s breaches. The Panel noted that this is perhaps a sign of how seriously UEFA considers significant breaches of the UEFA CL & FFP Regulations too. In any event, as stated above, the Panel determined the UEFA Appeals Body acted within the UEFA CL & FFP Regulations range of sanctions and determined the sanctions were proportionate to the Appellant’s breaches.

*c) Mitigation*

130. The Appellant also sought to argue that it should have been given a second chance, as it believed PAOK were. The Panel were impressed by the changes the new management team at the Club had made in a relatively short period of time, which should only put the Club in good stead for the future. However, the Panel also noted the evidence of UEFA’s compliance officer, who stated the Club was given a second chance, as the second competition ban was suspended and the fine issued by the UEFA Control & Disciplinary Body was reduced by the UEFA Appeals Body. If the new management continue to run the Club as they have started, then that second competition ban should fall away. The Panel also noted PAOK’s breaches were all in the monitoring process; it had earned its licence by not having any overdue payables on 31 March.

## CONCLUSION

131. In conclusion, the Panel were satisfied that the UEFA Appeals Body properly followed the UEFA CL & FFP Regulations and that the Appellant committed numerous breaches of these regulations gaining a licence to compete in the 2011/12 Europa League that it should not have received and continued to breach the regulations during the monitoring process by continually



labeling many and large overdue payables as “disputed”, whilst not contesting these in any way. These breaches were such that a competition ban and a fine was fair and proportionate. The efforts of the Appellant’s new management were to be commended, but had been taken into account by UEFA and as such, the Panel felt the Appellant was treated equally and fairly by the UEFA Appeals Body; as such the Panel dismisses the Appeal and upholds and confirms the UEFA Appeal Body’s decision.

### **ON THESE GROUNDS**

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

1. The appeal filed by Besiktas Jimnastik Kulübü against the decision of the UEFA Appeals Body dated 30 May 2012 is dismissed.
2. The decision of the UEFA Appeals Body dated 30 May 2012 is confirmed.
3. (...)
4. All other or further claims are dismissed.