



**Arbitration CAS 2012/A/3031 Katusha Management SA v. Union Cycliste Internationale (UCI), award of 2 May 2013 (operative part of 15 February 2013)**

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Luc Argand (Switzerland); Mr Michele Bernasconi (Switzerland)

*Cycling*

*Refusal of registration according to the UCI Licensing Regulations*

*Deviation, by special agreement, from the Panel's full power of review*

*Full power of review and review of evidently and grossly disproportionate sanctions*

*Purpose of Article 2.15.011 of the UCI Cycling Regulations*

*Grossly disproportionate character of a sanction*

- 1. The question of the possibility for the parties to deviate, by special agreement, from the general rule of Article R57 of the CAS Cod needs to be considered in a broader context, taking in mind the nature and function of the CAS and those mandatory rules that may limit the power of an association to limit access to justice. The CAS jurisdiction cannot be imposed to the detriment of an athlete's fundamental rights. In other words, an athlete basically cannot be precluded from obtaining in CAS arbitration at least the same level of protection of his/her substantive rights that he or she could obtain before a State court. In conclusion, the unrestricted scope of review of the CAS Panel as provided under Article R57 of the CAS Code may be validly limited to the same standard of review as the standard provided by State court proceedings. In Switzerland, this would mean that a review of a cassatory nature ("nature cassatoire") as provided at Article 75 CC would be accepted. However, a provision limiting the CAS power of review to arbitrariness, would not be in line with Swiss mandatory rules and/or with the Swiss ordre public.**
- 2. It is possible for a CAS Panel, even though it has full power of review of the disputed facts and law in the exercise of its jurisdiction, to accept that the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence. While not excluding, or limiting, its power to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the Code), a CAS panel can decide, in specific and appropriate circumstances, not to exercise the power it indisputably enjoys, and will defer to the discretion exercised by the internal body of an association**
- 3. Purpose of Article 2.15.011 of the Regulations, as well as of the entire licensing system is not to establish (additional) sanctions on dopers and their teams, but to help build an anti-doping environment where cheaters could not flourish.**

4. **A decision to deny the registration to a team appears to be grossly disproportionate if the granting of a registration could have been accompanied by indications suitable to directly guarantee the ongoing implementation of measures by a team.**

## 1. BACKGROUND

### 1.1 The Parties

1. Katusha Management SA (“Katusha” or the “Appellant”) is a Swiss company with its registered seat in Geneva, Switzerland. Its goal is mainly the development and management of one or several professional cycling teams in Switzerland or abroad. In particular, Katusha is the “paying agent” and licence holder, under the rules of the Union Cycliste Internationale (UCI), of the Russian cycling ProTeam Katusha (the “Team”), which has competed since its date of creation in 2009 as a UCI ProTeam.
2. The Union Cycliste Internationale (the “UCI” or the “Respondent”) is an association under Swiss law, with headquarters in Aigle, Switzerland. The UCI is an international sporting federation and the world governing body for cycling. In such capacity, the UCI oversees competitive cycling events internationally.

### 1.2 The Dispute between the Parties

3. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
4. In 2004 the UCI created a system, under which the teams of professional riders need to obtain a license or a registration to compete at international and national level. More specifically, as to the international level, the UCI Cycling Regulations (the “Regulations”) currently provide for a license to take part in the UCI World Tour events, which include the major international competitions (such as the *Tour de France*, the *Giro d’Italia*, etc.) (the “World Tour license”: Articles 2.15.001 to 2.15.267 of the Regulations), and a registration to participate in the Professional Continental circuit (comprising races of the various continental calendars) (the “Professional Continental registration”: Articles 2.16.001 to 2.16.054). In order to obtain a World Tour license or a Professional Continental registration, teams need to satisfy sporting, ethical, financial and administrative criteria. The ongoing satisfaction of the same criteria is verified every year, as teams holding a World Tour license or a Professional Continental registration have to register again for the following season.
5. On 18 November 2011, the UCI Licence Commission (the “License Commission”) granted Katusha, for its Team, a World Tour licence for a four-year period, i.e. valid from 1 January

2012 until 31 December 2015 (the “License”).

6. In the License, the License Commission indicated *inter alia* the following:

*“It emerges from the UCI evaluation file that the Team has employed a large number of riders who have been subject to anti-doping proceedings and sanctions.*

*In addition, the Commission outlines the recent case “Alexander Kolobnev”, which occurred during the Tour de France 2011. On 25 October 2011 the Russian Cycling Federation Anti-Doping Commission sanctioned the rider with a reprimand for anti-doping rule violation.*

*All these facts may evoke doubts with regard to the Team’s attitude towards doping.*

*Considering the aforementioned remarks as regards doping, the Commission urges the new management of the Team to use every endeavour to reinforce its fight against doping in order to restore the reputation of the Team in this regard and to avoid the occurrence of new doping cases within the Team.*

*Indeed, the Commission considers that further failures in terms of ethics could expose the Team to the withdrawal of its license”.*

7. At the end of season 2012, the Team was ranked 2<sup>nd</sup> in the UCI World Tour ranking and its leader, Joaquim Rodriguez, finished 1<sup>st</sup> among the World Tour riders.
8. On 13 September 2012, Katusha filed its registration form with the UCI for the season 2013.
9. On 15 October 2012, the auditor appointed by UCI and in charge of reviewing the teams’ applications for their registration (the “Auditor”) issued a preliminary report, that evaluated the conformity with the Regulations and the other applicable rules of the budget, the financial documentation, the working contracts, the insurances and the bank guarantee provided by Katusha. As indicated in this preliminary report, it appeared to the Auditor that the Appellant did not fulfil the “*Financial Criterion*” and the criterion relating to “*Working contracts and Insurances*” to obtain the registration for 2013. In accordance with the Regulations, the Auditor’s preliminary report only addressed the financial aspects of the Appellant’s application. It did not examine the sporting, ethical and administrative requirements.
10. Upon receipt of such preliminary report, Katusha was given the possibility to provide the Auditor with explanations and documents about the criteria labelled as “*not fulfilled*”. As a result, from 16 to 30 October 2012, the Appellant provided the Auditor with explanations and documents regarding its financial situation.
11. The explanations provided by Katusha were however considered to be insufficient by the Auditor, in particular with respect to the increase in the “*competition expenses*” in 2012 (+195% compared to the 2011 budget).
12. On 31 October 2012, therefore, the Auditor submitted its final report to the UCI, concluding that the financial criterion was “*not fulfilled*”, since the Appellant “*did not provide any evidence*” explaining the great increase in the competition costs.

13. Taking into account the Auditor's report, as well as the other criteria mentioned in the Regulations that a team needs to fulfil to obtain a registration, the UCI established the "UCI Team Evaluation Report 2013" concerning the Appellant (the "Evaluation Report 2013").
14. Such Evaluation Report 2013 indicated that the ethical criterion and the financial criterion were problematic. The first one required "assessment" by the Licence Commission in view of the Appellant's history of doping cases, and the second one did not comply with the Regulations.
15. On 2 November 2012, the UCI informed the Appellant that, in view of the conclusions of the Evaluation Report 2013 and in accordance with the Regulations, it was unable to register the Team for the season 2013 and that the case would be transferred to the Licence Commission.
16. Upon specification by the Auditor, the Appellant provided the Licence Commission on 18 November 2012 with an explanation regarding the increase in the "competition expenses" for 2012, along with several documents. The Appellant specified that the main sponsor had paid an additional amount of EUR 2,000,000 in order to balance the losses of 2011.
17. On 22 November 2012, a hearing was held in Geneva, Switzerland, before the Licence Commission. During the hearing, the issues concerning the financial and ethical criteria were discussed. As to the first point, the Auditor confirmed that, in view of the Appellant's announcement that a sponsor had provided an additional amount of EUR 2,000,000 in order to cover the deficit, the equity problem was solved. With regard to the second point, the Commission referred to the License, and the "warning" therein contained (§ 6 above), and questioned the Appellant's representatives about the measures taken by Katusha after such warning.
18. On 10 December 2012, the Licence Commission informed the Appellant, and published in its website the news, of its decision "to refuse Katusha's registration for 2013".
19. On 18 December 2012, the Licence Commission transmitted to Katusha the text of its decision dated 7 December 2012 rejecting the Appellant's application for 2013 (the "Decision") with the grounds supporting it.
20. The Decision reads, in the pertinent portions, as follows:
  - “4. With regard to the financial aspect of the case, the representatives of the team provided various documents relating to the company's equity capital and accounting at the hearing. The representative of the Auditor Ernst&Young confirmed that this equity capital appears to be positive to date and that the reservation expressed in its report to the UCI may be lifted on this point.  
  
However, the accounts are still difficult to fathom and the auditor's representative has asked the team to produce more transparent accounts. The Auditors specifically mentions that travel expenses of 28 m € are significantly higher than in other teams. The team is also accused of failing to announce these significant changes of the budget to the UCI and the Auditor, despite its obligation laid out in art. 2.15.085.  
  
The team explains that the significant increase (+ 195%) in costs in relation to the budget consolidated under the heading "Competition costs" is due to the activity of the previous manager. The latter bought

*TV rights and spent large amounts of money on travel and invitations to journalists, etc. The team promises to take steps to prevent such wastage in future.*

*Finally, while nothing that the team's financial management was chaotic and poor during 2011, the representative of the UCI took note of the promises made by the team on this point.*

*In view of these facts it appears that if, contrary to what emerged from the report by the Auditor dated 31 October 2012, the financial stability of the team appears to be assured for 2013, to date this team has not been managed in a manner that is worthy of a team in the first division of international cycling. The Commission is of the opinion that the team's financial situation should in any event be subject to periodical audits during the season.*

*However, these findings are not sufficient in themselves to prevent the registration of the team.*

5. *The report by the UCI that is addressed to the Commission emphasises another point in the "Ethical Criterion" section that constituted a ground for refusing to register the team and referring the case to the Commission.*

*This section consists of several headings, which are mainly:*

- *the doping cases in the team since its formation, namely in this instance two cases that occurred in 2009, one in 2011 and one in 2012;*
- *the cases of riders hired by the team, who had infringed the anti-doping rules in another team in the past 7 cases in this instance;*
- *the cases of staff who were team members and had infringed the anti-doping rules in the past, in this instance the cases of Andrei Mikhaylov and Eric Zabel;*
- *cases of infringing the rules regarding the riders' whereabouts obligations, namely 8 filing failure and 4 missed tests from 2009 to 2012.*

*With the exception of the infringements committed in 2012, which will be addressed again below, the large number of cases cited above had already been noted in the report by the UCI addressed to the Commission 2011. ...*

6. *In this report 2012, cited above, the UCI noted 2 new factors that arose in 2012 with regard to doping cases of infringement of the rules of the riders' whereabouts obligations and in particular the case of rider Denis Galimzyanov, who tested positive for EPO in April 2012.*

*During his testimony at the hearing of 22 November 2012, the team's general manager explained that this rider had obtained the EOP in Moscow, without the knowledge of his team. Denis Galimzyanov admitted having taken EPO and was informed by Hans-Michael Holzger that he would be suspended from the Team. A few days later, the rider sent a letter to the Team, in which he declared that the Team was not involved in the matter. In the opinion of Hans-Michael Holzger, Denis Galimzyanov, who was badly ill and speaks poor English, could not have written that letter by himself. The team's general manager also pointed out that the national federation had put a lot of pressure on this rider, who was considered as a promising rider. Later, the team manager met the rider personally and the latter exonerated again the team in that respect, explaining that he purchased the EPO on his own. Hans-Michael Holzger stated that the explanations given by this rider did not appear credible to him.*

*When questioned about the measures that had been adopted following the warning contained in the decision pronounced by the Commission in 2011, the general manager stated that the internal rules are strict, meetings are organised by the team to keep up to date with the anti-doping rules, and that there are regular*

*meetings with the coach and doctors for preventive purposes. Hans-Michael Holzer added that he felt that the Commission was making excessive demands if it was asking for a guarantee that no new cases would occur. He assumed the Commission that under no circumstances would a cheat receive support from the team, which adopts a very firm stance in the matter. He also declared not being in favour of internal testing programmes. The Commission pointed out to him that the statements made this day with regard to combating cases of doping within the team had not changed since 2011 and that there was nothing new about the stance adopted of the team, to which Hans-Michael Holzer replied that he was unable to give a guarantee that no new cases would occur.*

- 7.1 *Respect of ethical rules in cycling, in particular with regard to the attitude of the UCI ProTeam towards these rules, is an essential factor in the assessment by the Commission of the condition for participating in the cycling competitions. It is all the more so nowadays when the conditions for combating anti-doping and the general attitude towards doping have changed and where serious doping cases, which damage the image of sport, have occurred and continue to be disclosed periodically.*

*The endeavours by the UCI to combat this scourge, in particular by creating the biological passport, are valuable tools in this regard. These endeavours are not sufficient per se; they must be supported by the teams themselves, who are better placed to adopt a proactive approach to encourage their riders and members of staff to behave correctly.*

*The approach taken by certain UCI ProTeam should be noted in this regard since they have announced specific preventive and proactive approaches, like a team that aims to have its riders as well as the staff sign a document stipulating that they have been involved in a doping case, or the approach that intends to measure the performance capabilities of its riders on a regular basis.*

- 7.2 *This is not the approach that has been adopted by Katusha until now.*

*As it had done in 2011, when the licence was granted, is admittedly declared that it was adopting a strict attitude towards doping. But, despite being heavily warned by the Licence Commission in 2011, this team has not in fact fundamentally changed its attitude towards this problem.*

*The statements made by its general manager are revealing in this regard, since he reiterates that it is not possible to guarantee that no new doping cases will occur and that the Commission is unreasonable to ask for such a guarantee.*

*It is certainly true that a team cannot guarantee that there will be no new cases of infringing the anti-doping rules amongst its riders. The Commission has moreover never formally stated such requirement.*

*These statements reveal indeed the absence of a more voluntarist attitude towards combating doping. The fact of inviting riders to information meetings or unequivocally announcing the first line taken by the team with regard to doping is not sufficient. These findings are of particular relevance for the Katusha team.*

*It was essential in the present case not simply continue adopting the stance of the previous year, which had shown its limitations.*

*Moreover, the Katusha case is not comparable to the case of a team in which, after one or more problem-free seasons, a doping case suddenly occurs.*

*The history of this team is a long list of doping cases that have affected the riders as well as members of staff. The list presented by the UCI, which is not disputed by the team, is a serious charge in this regard. It is actually the longest list of doping cases of all the UCI WorldTour teams that have appeared before the Commission in 2012. The number of cases that have occurred in the team since it was formed in*

*2009 is particularly worrying. Indeed, since its creation in 2009, the team counts 4 doping cases that happened, three of them being severe infringements (EPO). Likewise, the riders of the team have recurrent problems with the whereabouts obligations. The use of EPO in 2012, barely a few months after the warning given to the team by the Commission, is evidence of a worsening situation in relation to 2011, since the use of EPO must be regarded as a serious breach of the anti-doping rules.*

*The Commission had given a clear warning. It showed that the license had only been granted in 2011 with serious reservations. The warning was not given sufficient consideration even though the team would be likely to have its license withdrawn in the event of a new doping case and such a decision could have actually been pronounced during the season if the case had been notified to the Commission.*

*In these circumstances, there was no question of the team adhering to its positions of the previous year. Even if by hardening its position it could not guarantee that no new cases would occur, the team would still have a duty to show that it was actively strengthening the measures it had adopted for this purpose.*

*Since it failed to understand the serious implications of the severe warning issued by the Commission in its decision of 18 November 2011, the Katusha team must accordingly be refused registration for the 2013 season. Consequently, the license granted on 18 November 2011 is automatically withdrawn in accordance with Article 2.15.071 UCIR”.*

21. Following the Decision, and a letter from UCI dated 19 December 2012, on 2 January 2013, Katusha filed a request to be registered as a Professional Continental Team for the season 2013.
22. On 14 January 2013, the UCI granted Katusha the registration as a Professional Continental Team for the season 2013, noting the following:

*“... your team handed down a registration request ... accompanied by several documents ....*

*These appendices draw a list of measures the team intends to put in place for the season 2013. It contains for example:*

- *A document regarding the financial measures undertaken, such as the putting in place of an account frame that better matches the UCI budget frame. It further announced that the financial management of Team Katusha and the Up-and-Coming Teams will be separated.*
- *An explanation and planning on the anti-doping fight with annexes, which is based on four main steps (education and prevention; control and follow-up of riders, sanctions and constant improvement of the measure aiming to fight against doping).*
- *The team refers to the standard contract it signed with team members for the 2013 season, and which contains detailed information on doping prevention. It has further put in place new internal regulations of the team which include particularly:*
  - *Health Prevention measures (art. 5) which require that any possible health problem should be reported and any therapy be approved by the team physician.*
  - *A section regarding Doping Prevention (art. 7) which sets standards regarding the use of medically indicated drugs or other treatments as well as the team’s access to the riders’ biological passport profiles.*
  - *The execution of an SRM performance monitoring programme of all riders, whose data will be continuously analyzed under different aspects, including the aim to detect possible performance enhancing manipulation.*

- *It has put in place a “trust committee”, which is made of representatives of staff and riders and which has the task of preventing and / or solving problems that (could) appear within the team and which meets eight times a year;*
  - *it mentions that the Russian Cycling Federation is in negotiation with RUSADA in order to develop a particular programme for the fight against doping. Katusha would participate in said programme which would mainly concern its Russian riders.*
  - *The Team further asked the CADF whether it could buy supplementary tests for its non-Russian riders.*
- ...

*The UCI therefore decides to grant registration as a UCI Professional Continental Team to Team Katusha for the season 2013, given that the above-mentioned measures will effectively be fulfilled and put into practice. The UCI will monitor the team on these issues and will periodically (every 3 months) reassess the team in those regards. Hence, the team must submit the following documents on 1 April 2013, 1 July 2013 and 1 October 2013:*

- *Financial documents to be determined by Ernst & Young at 21 January 2013 at the latest.*
- *Proof that the RUSADA programme is concluded and that Katusha is part of that programme by 1 April 2013 at the latest.*
- *Detailed report about the activity of the Team as regards prevention and anti-doping which covers at least the above-mentioned measures”.*

## **2. THE ARBITRAL PROCEEDINGS**

### **2.1 The CAS Proceedings**

23. On 20 December 2012, Katusha filed a statement of appeal with the Court of Arbitration for Sport (the “CAS”), pursuant to Article R48 of the Code of Sports-related Arbitration (the “Code”), to challenge the Decision.
24. The statement of appeal filed by Katusha had attached 22 exhibits (A-1 to A-22). It contained *inter alia* the appointment of Mr Luc Argand as arbitrator and an application for provisional measures, whereby the Appellant requested the CAS to:
  - “1. *Order UCI to temporarily register KATUSHA as a UCI ProTeam in 2013, until the CAS Panel issues a final award on the merits in the present matter.*
  2. *Order UCI to allow KATUSHA to participate in all UCI competitions in 2013 including all UCI WorldTour competitions, until the CAS Panel issues a final award on the merits in the present matter.*
  3. *Order UCI to inform all competition organisers accordingly.*
  4. *UCI shall bear all the costs of the CAS Order on Provisional Measures”.*
25. On 27 December 2012, UCI filed its answer, together with 14 exhibits (R-1 to R-14), to the Appellant’s application for provisional measures, requesting that such application be dismissed.
26. On 28 December 2012, the Deputy President of the Appeals Arbitration Division of the CAS

issued an order <sup>(1)</sup> on the Appellant's request for provisional measures as follows:

- “1. *The application for provisional measures filed by Katusha Management SA on 20 December 2012 in the matter CAS 2012/A/3031 Katusha Management v. UCI is rejected.*
2. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*

27. In a letter of 3 January 2013, the UCI appointed Mr Michele Bernasconi as arbitrator.
28. By communication dated 14 January 2012, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr Luc Argand and Mr Michele Bernasconi, arbitrators.
29. On 14 January 2013, the Appellant filed its appeal brief in accordance with Article R51 of the Code, together with 30 exhibits (A-23 to A-52) and the witness statements signed by Mr Peter Stocker, by Mr Hans-Michael Holczer, and by Mr Viatcheslav Ekimov. The appeal brief, in addition, contained the indication of the witnesses to be heard at the hearing, as well as the following procedural request:

*“The Appellant requests the production of all the UCI 2013 Evaluation Reports (for all the 2013 UCI ProTeams)”.*

30. In a letter dated 18 January 2013, the Respondent noted that the Appellant had lodged with the CAS, together with the appeal brief, some documents (notably, exhibits A-31 to A-39 and A-45 to A-47) which were not submitted to the License Commission, even though such documents existed at the time the Decision was rendered and could therefore be submitted to the License Commission. By referring to Article 2.15.240 of the Regulations, therefore, the UCI requested that

*“exhibits A-31 to A-39 and A-45 to A-47 ... be removed from the file and ... the Appellant be informed that it is not allowed to rely on said exhibits”.*

31. On 1 February 2013, the Appellant requested that the Respondent's motion to have exhibits A-31 to A-39 and A-45 to A-47 removed be dismissed, as *“all the exhibits submitted by the Appellant along with the Appeal Brief were either already in the hands of the UCI (and should have thus been submitted by the UCI administration to the License Commission) or were already mentioned in the License Commission Decision dated 7 December 2012 or could have been submitted to the License Commission if the right to be heard of the Appellant had been respected”.* At the same time, the Appellant insisted on its *“procedural request”* (§ 29 above) and asked the Panel to be authorized to file some new documents, attached as exhibits A-53 to A-57, *“neither known nor available for the Appellant at the time it submitted its Appeal Brief”.*

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<sup>1</sup> In its operative part. The full text of the Order, together with the grounds, was notified to the parties on 25 January 2013.

32. On 1 February 2013, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (the “Order of Procedure”), which was accepted and countersigned by the parties.
33. On 2 February 2013, the Respondent filed its answer to the appeal, seeking its dismissal. Attached to the answer, the Respondent lodged the witness statements signed by Mr Pierre Zappelli, by Mr André Hurter, by Mr Javier Barrio and by Mr Olivier Banuls, and 28 exhibits (R-15 to R-42), which included a redacted version of the UCI 2013 Evaluation Reports for the UCI Pro Teams Astana, RadioShack Leopard and Garmin Sharp, i.e. of some of the documents object of the Appellant’s “procedural request” (cf. § 29 above).
34. A hearing was held on 8 February 2013 on the basis of the notice given to the parties in the letter of the CAS Court Office dated 21 January 2013. The Panel was assisted at the hearing by Ms Andrea Zimmermann, Counsel to the CAS. The following persons attended the hearing:
  - i. for the Appellant: Mr Viatcheslav Echimov, General Manager of Katusha, and Mr Peter Stocker, Director of Katusha, assisted by Mr Alexis Schoeb and Mr Marc Baumgartner, counsel;
  - ii. for the Respondent: Ms Otilie Morand, Manager of the UCI Legal Department, assisted by Mr Jean-Marc Reymond and Ms Delphine Rochat, counsel.
35. At the hearing, the parties made submissions in support of their respective cases. The Appellant, *inter alia*, declared that, in light of the urgency of the case and of the filings of the Respondent (§ 33 above), it did not insist in its procedural request (§ 29 above); in the same way, the Appellant conceded that the voice recording of the hearing before the License Commission, and its transcription, lodged by the Respondent together with its answer in this arbitration, accurately reflected the discussions that had taken place on that occasion between the parties. The parties, then, also answered questions posed by the Panel, *inter alia* with regard to the scope of its power of review, and the relevance in that context of Article 75 of the Swiss Civil Code, as well as of the principles dictated by the Swiss Federal Tribunal in its case law elaborated in setting aside proceedings of CAS awards.
36. Mr Stocker, Mr Holczer, Mr Ekimov, Ms Morand, Mr Zappelli, Mr Barrio and Mr Banuls answered the questions asked by the Panel and the parties. All witnesses confirmed the content of their respective witness statements. Mr André Hurter, a witness indicated by the Respondent, was not heard, with the consent of the parties: his witness statement, however, remained unchallenged. The depositions and declarations rendered at the hearing can be briefly summarized to include the following:
  - i. Mr Stocker testified about the hearing before the License Commission; while admitting that he did not actively participate in the discussions that took place on that occasion, he confirmed specifically that Mr Ekimov had mentioned that Katusha was willing to undergo, and pay for, additional out-of-competition doping controls organized by the World Anti-Doping Organization or UCI, and that the content of the riders’ contracts

- for 2013 as well as of the internal rules was referred to at the hearing;
- ii. Mr Ekimov also confirmed that at the hearing before the License Commission mention was made of the anti-doping measures adopted by Katusha in 2012 to be implemented in 2013, as well as of the Team's availability for additional out-of-competition controls. Mr Ekimov added that as a result of the Decision, the Team has not been invited by the organizers to compete at the UCI World Tour events scheduled for 2013;
  - iii. Mr Holczer, a former board member of Katusha, testified about the discussions at the hearing before the License Commission. He admitted that during such hearing he did not produce any document relating to the anti-doping measures adopted by Katusha in 2012, and that had not approached UCI to have support in the fight against doping;
  - iv. Ms Morand confirmed that she acted as secretary at the hearing before the License Commission, and that she took care of the voice recording of the discussion and of the preparation of the minutes. In addition, Ms Morand answered some questions about the history of Katusha, as the continuation of the team Tinkoff Credit Systems. She then explained that the "ethical criteria" to obtain a World Tour license or a Professional Continental registration are the same, and that Katusha, after the Decision, took steps that allowed it to be registered as a Professional Continental team for the season 2013;
  - v. Mr Banuls, the Manager of the UCI Anti-Doping Foundation, explained his role in the preparation of the Evaluation Report 2013, and answered questions regarding the riders' contracts and the internal regulations adopted by Katusha with respect to the season 2013, underlining that the fight against doping requires concrete actions and not only the approval of documents;
  - vi. Mr Barrio, the UCI World Tour Coordinator, also described his responsibility in the preparation of the Evaluation Report 2013, and explained that model riders' contracts are lodged with the UCI only in a pre-registration phase and that the indications contained in such model contracts may not be sufficient to show a team's attitude in the fight against doping;
  - vii. Mr Zappelli, President of the License Commission, described the role and independent position of the License Commission within the UCI. He also testified about the hearing before the License Commission and underlined that no request was submitted by Katusha to be allowed to file additional documents after it, in accordance with Article 2.15.024 of the Regulations.
37. At the conclusion of the hearing, the parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings and that they had been given the opportunity to fully present their cases.
  38. As agreed at the hearing, on 12 February 2013 the parties filed their respective statements of costs.
  39. On 15 February 2013, the operative part of this award was issued and notified to the parties.

## 2.2 The Position of the Parties

40. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

### a. *The Position of the Appellant*

41. The Appellant's prayers for relief, indicated in its appeal brief, are the following:

1. *The Decision rendered by the UCI Licences Commission on 18 December 2012 shall be set aside.*
2. *KATUSHA shall be registered as a UCI ProTeam for the 2013 season (UCI WorldTour).*
3. *UCI shall bear all the costs of this arbitration and shall be ordered to pay compensation towards the legal fees and other expenses incurred by the Appellant in connection with these proceedings".*

42. In support of its challenge, the Appellant notes that the Decision is based only on "reproaches" concerning anti-doping issues, and that it is "in many aspects unlawful, in any case groundless, unfair and as a result arbitrary". More specifically, the Appellant, after summarizing the proceedings that led to the Decision, submits that the Decision:

- i. breaches the Regulations;
- ii. violates several procedural and legal principles;
- iii. breaches Swiss and European competition law;
- iv. is an unlawful attack on the Appellant's personality rights; and
- v. is arbitrary.

43. Preliminarily, however, the Appellant underlines that notwithstanding the provision contained in Article 2.25.241 of the Regulations (under which the CAS shall examine only whether the contested decision is arbitrary), the Panel's power to review the facts and the law defined by Article R57 of the Code remains unrestricted. In the Appellant's opinion, in fact, "this limitation of the scope of review of the CAS is not acceptable in the present case as it is not in compliance with Swiss Federal Tribunal jurisprudence and is contrary to art. 6(1) of the European Convention on Human Rights". Such provision guarantees that each dispute is heard at least by one judicial authority that has full jurisdiction as to the facts and the law and is independent and impartial. As the License Commission is not a judicial body satisfying the conditions set by Article 6.1 of the European Convention on Human Rights, this first degree of jurisdiction could only be the CAS, which should have a full power to review the facts and the law.

44. The Appellant, in any case, contends that, even in the case the Panel should consider its powers restricted by Article 2.25.241 of the Regulations, the Decision should be set aside as "arbitrary" and contrary to the fundamental rights of the Appellant.

45. In the Appellant's opinion, the Decision breaches the Regulations under several point, as:
- i. it involves a "*wrongful evaluation of the facts by the License Commission*", and therefore is arbitrary, being in clear contradiction with the facts, because:
    - the minutes attached to the Decision ignore several important statements, proposals and requests made by the Appellant during the hearing before the License Commission and do not reflect the reality of such hearing,
    - the Decision fails to acknowledge the measures taken by the Appellant against doping,
    - the comparison with the doping cases that have affected other teams is "*contrary to the reality*",
    - the Decision fails to take into account some other elements in favour of Katusha, such as the positive comment, contained in the Evaluation Report 2013, concerning the behaviour of the Team during the races;
  - ii. the Appellant fulfilled all the registration conditions, including the financial and ethical criteria: therefore, the registration for 2013 should have been granted. In fact, while the satisfaction of the sporting and administrative criteria was never in issue,
    - the satisfaction of the financial condition is admitted in the Decision, and
    - the ethical criterion was also satisfied, since
      - ✓ the indications contained in the License (§ 6 above) cannot be considered to constitute a "warning" and are based on inconsistent elements,
      - ✓ the issues on which the Decision is based are unfounded,
      - ✓ the Regulations do not provide for a regime of strict liability: therefore, Katusha cannot bear responsibility for the "*too many doping cases since its creation*", failing evidence of its implication,
      - ✓ Katusha strongly and immediately reacted to the doping case that affected one of its riders (Mr Galimzyanov) in 2012,
      - ✓ the situation of Mr Kolobnev was the same in 2012 as in 2011,
      - ✓ the whereabouts infringements imputed to the Team's riders do not constitute anti-doping rule violations, and the data relating thereto are not clear,
      - ✓ the Appellant cannot be blamed for having hired riders or staff member with doping precedents, as, *inter alia*, there is no prohibition for them to return to activity after serving the sanction,
      - ✓ the Team took supplementary anti-doping measures aimed at effectively combating doping: new contracts were signed, which include major changes with respect to doping, new internal rules were adopted, periodical consultations between the general manager of the Team and team doctors, sport directors and coaches are organized in order to discuss doping issues;
  - iii. the withdrawal of the License, automatically implied in the denial of the Team's

registration for 2013, violates Article 2.15.040 of the Regulations, which the License Commission had, but failed, to follow. In addition, a deadline had to be given to Katusha, under Article 2.15.042 of the Regulations, in order to allow it to remedy the situation leading to the withdrawal of the License.

46. The Appellant submits, then, that the Decision violates several procedural and legal principles. More specifically, Katusha maintains that
- i. the Decision is in “*clear contradiction with the facts*”;
  - ii. a violation of the “*right of due process*” was committed, because
    - there was a violation of the “*right to be heard*” since
      - ✓ UCI failed to inform the Appellant of any ethical issue prior to the hearing before the License Commission,
      - ✓ the License Commission did not take into account all the explanations provided by the Appellant during the hearing and established “*biased and partial*” minutes of such hearing,
      - ✓ the License Commission failed to allow the Appellant to provide additional explanations and documents after the hearing,
    - there was a violation of the principles of “*fairness and good faith*”, since UCI did not react during the season 2012 to an alleged lack of action by the Appellant with respect to doping issues;
  - iii. the principle of “*proportionality*” was breached, as alternative measures could be adopted to obtain the adoption by Katusha of additional anti-doping measures;
  - iv. the “*equality of treatment*” principle was violated, since other teams in the same situation as Katusha obtained a World Tour license or the registration for the following season.
47. The Appellant, at the same time, claims that the Decision breaches Swiss and European competition law, and more specifically the provisions prohibiting the abuse of a dominant position, since it is “*unjustified*”, “*disproportionate*” and “*discriminatory*”.
48. In addition, it is the Appellant’s opinion that the Decision constitutes an “*unlawful attack on the Appellant’s personality*” rights, protected by Article 28 of the Swiss Civil Code, because it is not justified by the consent of the injured party, by an overriding private or public interest, or by a legal provision.
49. Finally, the Appellant submits that the Decision is “*arbitrary*”, since *inter alia* it harms in an inadmissible way the sense of justice or fairness.

**b. *The Position of the Respondent***

50. In its answer, the UCI requested the CAS to issue an award:

“I. *Dismissing entirely any and all Requests for Relief made by the Appellant Katusha Management SA;*

II. *Ordering the Appellant Katusha Management SA to pay all the costs of the arbitration, including without limitation the fees and expenses of the Panel as well as all expenses incurred by UCI in defending the case*".

51. In support of its request to have the appeal dismissed, the Respondent makes several remarks with respect to (i) the history of Katusha, (ii) the License Katusha obtained on 18 November 2011, (iii) the Evaluation Report 2013 and (iv) the hearing before the License Commission. More specifically, UCI underlines that:

- i. Katusha is the successor of the team Tinkoff Credit Systems: it is therefore *"justified that the 2013 UCI Report about the team Katusha included the history of the former team Tinkoff Credit Systems"*;
- ii. the License granted to Katusha in 2011 contained an express warning as to the consequences of *"further failures in terms of ethics"*;
- iii. the indication contained in the Evaluation Report 2013 that assessment was required by the License Commission with respect to the satisfaction of the ethics criterion clearly informed the Appellant that the point would be examined by the License Commission;
- iv. during the hearing before the License Commission, the Appellant did not submit any explanation or exhibit regarding its ethical failures, and was unable to demonstrate that it had implemented any kind of measures following the warning contained in the License. Indeed, the Appellant did not seek advice, help, guidance or assistance from UCI in that respect.

52. The UCI, then, answers in details all the allegations submitted by the Appellant, denying them.

53. More specifically, it is the Respondent's submission:

- i. that Article 2.15.239 of the Regulations limits the power of the CAS Panel to review decisions only if they are arbitrary, by way of derogation from Article R57 of the Code. Such departure from the provision of the Code, and the full power of review of the facts and the law it grants, is to be admitted since:
  - the License Commission is an independent tribunal and not an organ of the Respondent,
  - the limited power of review allowed by the Regulations has been confirmed by CAS precedents (CAS 2008/A/1745 and CAS 2004/A/777),
  - the parties, exercising their autonomy, are allowed to vary institutional rules;
- ii. that under Article 2.15.240 of the Regulations the Appellant is only allowed to produce documents which were in the hands of the License Commission and can only raise issues that were discussed before it;
- iii. with respect to the evaluation of the facts by the License Commission,
  - that *"the minutes of the hearing are precise and accurate"*, as shown by a comparison with the recording and the transcription of the discussions. More exactly, *"no important*

*statements have been omitted*". Therefore, it is demonstrated that:

- ✓ references to zero tolerance policy, internal rules and exchange of information with the team doctors are mentioned in the minutes,
  - ✓ the alleged express request to the License Commission and the Respondent to provide indications as to the measures that should be taken by Katusha is "*inexistent*",
  - ✓ the Appellant's alleged proposal to double the number of anti-doping controls on its riders has never been made before the License Commission,
- that "*the License Commission did not fail to take into account the alleged measures taken by Katusha*", since no such measures were presented or mentioned during the hearing. When mentioned (for instance, with regard to the exchange of information between the manager and the doctor), they were taken into account, but considered insufficient,
  - that no comparison with doping cases among other teams was made to misrepresent the reality. In fact, the License Commission does not compare teams: it simply examines whether each team complies with the registration criteria. In any case, the examination of the cases of other teams makes it clear that they had obtained a World Tour license or the registration because they managed to take the appropriate measures to prevent doping cases,
  - that "*the decision takes into account all relevant elements*", as in any case the good behaviour of the Team's riders during the races is not sufficient to compensate for its serious failures regarding doping;
- iv. with respect to the fulfilment of the conditions for registration,
- that the sporting criterion was satisfied,
  - that the administrative criteria were fulfilled,
  - that the financial criterion posed some problems, and only at the hearing before the License Commission was considered to be satisfied,
  - that the Appellant clearly did not fulfil the ethical criterion, since after the warning contained in the License, Katusha did not change its attitude towards doping, by adopting effective measure, required by the number of doping cases in the Team's history and by the presence of riders and staff members with precedents of anti-doping rule violations;
- v. with respect to the "*withdrawal of the license*", that the automatic withdrawal of the License, caused by the Decision pursuant to Article 2.15.071 of the Regulations, is one of the "other cases" mentioned by Article 2.15.040 of the Regulations, and is therefore justified. In addition, the granting of an additional deadline was "*useless*", as the License Commission had all the elements necessary in order to take its decision;
- vi. with respect to the alleged "*contradiction with the facts*", that no elements of fact have been omitted or misrepresented: "*the Appellant has no one to blame but itself for not submitting all relevant documents and exhibits to the License Commission*";
- vii with respect to the alleged "*violation of the right of due process*", that

- the Appellant was fully informed prior to the hearing before the License Commission *inter alia* that assessment was required on the ethical criterion,
  - the minutes of the hearing before the License Commission are accurate and exhaustive, and show that all explanations given by the Appellant were taken into account by the License Commission,
  - a deadline to provide additional explanations was useless;
- viii. with respect to “*procedural fairness and good faith*”, that the Appellant should blame itself for its lack of action, and its incapability of taking proactive measures and reacting to the warning contained in the License;
- ix. with respect to “*proportionality*”, that, since the ethical criterion was not satisfied, the registration for 2013 could not be granted, and that no other less restrictive measures were available, taking into account the warning already contained in the License;
- x. with respect to “*equality of treatment*”, that no other team was in the same factual situation as the Appellant, and these differences justify a difference in treatment;
- xi. with respect to “*Swiss and EU competition law*”, that
- the Respondent cannot be qualified as a private undertaking in a dominant position,
  - the Appellant failed to identify the relevant product market on which the Respondent’s alleged dominant position would be exercised,
  - no abuse was committed as the Decision was necessary and proportionate to the objective pursued, does not create an unfair inequality of treatment between the ProTeams and is objectively justified;
- xii. with respect to the Appellant’s “*personality rights*”, that no unlawful attack was committed, as any violation would be justified by the law and by an overriding private and public interest;
- xiii. with respect to “*arbitrariness*”, that the Decision was not arbitrary since it was not made in contradiction with the facts and it does not violate the general principles of the right to be heard and of procedural fairness.

### **3. LEGAL ANALYSIS**

#### **3.1 Jurisdiction**

54. CAS has jurisdiction to decide the present dispute between the parties.
55. The jurisdiction of CAS is not disputed. In particular, the jurisdiction of CAS is based on Article 2.15.226 of the Regulations and is furthermore confirmed by the Order of Procedure.

#### **3.2 Appeal Proceedings**

56. As these proceedings involve an appeal against a decision rendered by the License Commission of the UCI brought on the basis of rules providing for an appeal to the CAS, they are considered

and treated as appeal arbitration proceedings in a non disciplinary case, in the meaning and for the purposes of the Code.

### 3.3 Admissibility of the Appeal

57. The admissibility of the appeal is not challenged by the Respondent. The statement of appeal was filed within the deadline set in Article 2.15.229 of the Regulations. No further internal recourse against the Decision is available to the Appellant within the structure of the UCI. Accordingly, the appeal is admissible.

### 3.4 Scope of the Panel's Review

58. According to Article R57 of the Code,

*“the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance...”*

59. Under this provision, the Panel's scope of review is basically unrestricted: the Panel has full power to review the facts and the law. The Panel consequently hears an appeal case *de novo* and is not limited to the consideration of the submissions before the body that has rendered the decision: the Panel can consider all new argument produced before it and issue a new decision which replaces the decision challenged. This implies that, even if a violation of the principle of due process, or of the right to be heard, occurred in prior proceedings, it may be cured, at least to the extent such violation did not finally impair the parties' rights, by a full appeal to the CAS (CAS 94/129; CAS 98/211; CAS 2000/A/274; CAS 2000/A/281; CAS 2000/A/317; CAS 2002/A/378). In fact, the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the hearing before the tribunal of first instance *“fade to the periphery”* (CAS 98/211, citing Swiss doctrine and case law).

60. Article 2.15.239 of the Regulations, however, provides that

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

61. In addition, the Regulations provide also for the following:

at Article 2.15.240:

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

at Article 2.15.241:

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

62. In other words, while Article R57 of the Code provides for a wide scope of the Panel’s power of review of the facts and the law, the provisions of the Regulations dealing with the CAS jurisdiction appear to limit it to the examination of whether the challenged decision, and its outcome, is “*arbitrary*”: under the Regulations, therefore, the power of the CAS Panel to “*make a new decision that shall replace the contested one*”, i.e. to decide *de novo* (Article 2.15.241), can be exercised only subject to a narrowly defined power to set aside the challenged decision.
63. In light of the foregoing, the question that the Panel has to solve is how to reconcile those rules and their dissimilar definition of this Panel’s power.
64. The question of the possibility for the parties to deviate, by special agreement, from the general rules set in the Code has been discussed on several occasions, in the CAS jurisprudence and in scholarly writings, also with respect to the UCI rules and/or with respect to Article R57 of the Code. For instance,
  - i. an issue arose with respect to those provisions in the UCI anti-doping regulations, now repealed, that allowed the respondent to file a counterclaim in CAS appeals proceedings (Article 335 of those regulations, repealed as of 1 February 2011), while the Code, after its modification effective as of 1 January 2010, no longer allowed counterclaims. In the CAS award of 18 February 2011, TAS 2010/A/2101, para. 75-82, the conclusion of the Panel was that the Code provision was mandatory and that the parties could not deviate from that particular rule. The same conclusion, even though on different grounds, was reached by another CAS Panel, in an award of 23 December 2011, TAS 2011/A/2325, para. 125-31;
  - ii. with specific reference to Article R57 of the Code,
    - in CAS 2009/A/1782 (award of 12 May 2009, para. 68-73), the Panel had to consider whether Article O.5.1 of the 2008 IIF Programme, providing that the CAS should limit its scope of review to a “*consideration of whether the decision being appealed was erroneous*”, was consistent with the broad definition of the Panel’s power contained in the Code. In that respect, the Panel held (at para. 70) that  
*“... any agreement between the parties to restrict the powers of this Panel would have to be viewed critically in the light of the limitations imposed by the Swiss ordre public. Agreements between athletes and international federations are – in general terms – not concluded voluntarily on the part of the athletes but rather imposed upon them unilaterally by the federation (ATF 133 III 235, 242 et seq.). There is, therefore, a danger that a federation acts in excess of its powers unless the contents of the agreement does take sufficiently into account also the interests of the athlete. The Panel has some doubts whether a provision that restricts the Panel’s power to amend a wrong decision of a federation to the benefit of the athlete balances the interests of both parties in a proportionate manner”*;

- in CAS 2011/A/2479 (award of 12 September 2011, para. 84), the Panel was faced with a provision of the UCI anti-doping regulations (Article 235) somehow restricting the Panel’s power of review, when the decision challenged consisted in the imposition of a provisional suspension of the rider accused of an anti-doping rule violation. In that situation, the Panel found that:  
*“... these restrictions as to its scope of review in relation to the matter in dispute are, in principle, compatible with general principles of access to justice provided that disciplinary proceedings are pending before the competent hearing body, that the latter has unrestricted powers when reviewing the subject matter before it and that the latter may order any provisional and procedural measures it deems necessary to safeguard the interests and the rights of the parties involved”;*
  - in CAS 2004/A/777, award of 31 January 2005, the Panel had to consider Article 2.15.239 of the Regulations, which at the time provided that the Panel would be bound by, and could not review, points, considerations or decisions which are at the discretion of the Licence Commission, unless such points, considerations or decisions are materially ungrounded or are evidently unjustified. The Panel followed such provision, without questioning its consistency with Article R57 of the Code, but held (at para 61) that the review allowed by Article 2.15.239 of the Regulations (as it then was), included  
*“any case of breach of the fundamental rights of the applicants. Indeed, it would not be logical to consider that by applying for a UCI ProTour Licence an applicant would waive its fundamental rights”;*
  - on the other hand, in CAS 2008/A/1745, award of 29 March 2010, the Panel found that the scope of review contemplated by Article R57 was limited to arbitrariness pursuant to Article 2.15.239 (in the text corresponding to the one currently in force). No explanation was given for such conclusion;
  - other Panels (see CAS 2011/A/2340, para. 169 et seq.; CAS 2008/A/1583 & 1584, para. 30; CAS 2007/A/1413, para. 56) have finally confirmed that in terms of access to justice, any restriction of the rights of a member of an association would in any event require to be justified by an overriding, reasonable interest of good administration of justice;
  - in any case, in scholarly writings, doubts as to the possibility for the parties to deviate from Article R57 of the Code were cast for instance by RIGOZZI, *L’arbitrage International en matière de sport*, Bâle 2005, p. 557, since *“l’art. R57 al. 1 Code TAS constitue une disposition centrale dans le système du TAS”*.
65. Based on such background, it is this Panel’s opinion that the question mentioned above (§ 63) needs to be considered in a broader context, taking in mind the nature and function of the CAS and those mandatory rules that may limit the power of an association to limit access to justice.
66. The CAS was created as an arbitral institution to deal with sports-related disputes: based on an arbitration agreement, the CAS jurisdiction – because of its features – is recognized as a valid and enforceable alternative to State courts’ jurisdiction (judgments of the Swiss Federal Tribunal

of 15 March 1993, ATF 119 II 271, and of 27 May 2003, ATF 129 III 445). Indeed, sports organizations, by inserting in their statutes a CAS arbitration clause, often exclude any concurrent jurisdiction of ordinary courts. This is, for instance, the case of the UCI, with respect to the decisions of the License Commission, which can be challenged “solely” before CAS.

67. In that regard, it is to be noted that, as underlined by the Swiss Federal Tribunal in its judgment of 22 March 2007, ATF 133 III 235:

*“sports competition is characterized by a highly hierarchical structure, as much on the international as on the national level. Vertically integrated, the relationships between athletes and organisations in charge of the various sports disciplines are distinct from the horizontal relationship represented by a contractual relationship between two parties ... . This structural difference between the two types of relationships is not without influence on the volitional process driving the formation of every agreement. In principle, when two parties are on equal footing, each party expressed its intention without being dependent on the other. This is the usual structure in the case of international commercial relations. However, the situation is very different in the sports arena. Aside from the (theoretical) case of a famous athlete who, due to his notoriety, would be in a position to dictate his requirements to the international federation in charge of the sport concerned, experience has shown that, by and large, athletes will often not have the bargaining power required and would therefore have to submit to the federation’s requirements, whether they like it or not. Accordingly, any athlete wishing to participate in organised competition under the control of a sports federation whose rules provide for recourse to arbitration will not have to choose but to accept the arbitral clause, in particular by subscribing to the articles of association of the sports federation in question in which the arbitration clause was inserted, all the more so if the athlete in question is a professional athlete. Such an athlete will face the following alternative: to consent to arbitration or to practice his sport merely non-professionally ... . Put before the alternative of submitting to arbitral jurisdiction or else practise his sport just “in his own garden” ... and watch competition “on the television” ..., any athlete wishing to engage in true competition or having to do so as his sport is his only source of income (financial or in kind, advertising income, etc) will in fact, nolens volens, have to opt for submitting to arbitral jurisdiction”.*

(translation by PATOCCHI/SCHERRER, in 1 *Swiss Int’l Sports Arb. Rep.*, 40-42).

68. This situation has, in the Panel’s opinion, an important consequence, which is also rooted, and has already been expressed, in the CAS precedents referred to above: the CAS jurisdiction cannot be imposed to the detriment of an athlete’s fundamental rights. In other words, an athlete basically cannot be precluded from obtaining in CAS arbitration at least the same level of protection of his/her substantive rights that he or she could obtain before a State court. As an author put it (HAAS, *Role and Application of Article 6 of the European Convention on Human Rights in CAS Procedures*, in 2012 *Int’l Sports L. Rev.* 3, 42, at 53-54), arbitration may be accepted, in the eyes of the European Convention on Human Rights, as a valid alternative to access to State courts, only if arbitration proceedings constitute a true equivalent of State court proceedings. In such context, a significant limitation to the mandate of CAS Panels can be viewed as a way to restrict the athlete’s access to justice: therefore, its imposition through mandatory arbitration could be seen as unsatisfactory if it prevents the athlete from obtaining at least the minimum standard of review provided by State court proceedings. This conclusion applies chiefly if the sports organization, whose decision is challenged, is an association based in Switzerland, whose resolutions, failing the CAS jurisdiction, would be subject to the control of ordinary courts pursuant to Article 75 of the Swiss Civil Code. In fact, as BADDELEY, *L’association sportive face au*

*droit. Les limites de son autonomie*, Bâle 1994, 281-282, indicated, the right to have a decision rendered by an association reviewed by a State court can be waived *inter alia* only if the control on such decision is exercised by an arbitration tribunal which is an equivalent of a State court (“*gleichwertiger Rechtsschutz*”: see cf. Berner Kommentar-ZGB/RIEMER, 1990, Art. 75 N. 85; BERNASCONI/HUBER, *Die Anfechtung von Vereinsbeschlüssen*, *SpuRt*, 6/2004, p. 268 et seq.).

69. In conclusion, the Panel finds that the unrestricted scope of review of the CAS Panel as provided under Article R57 of the CAS Code may be validly limited to the same standard of review as the standard provided by State court proceedings. In Switzerland, seat of the UCI, this would mean that a review of a cassatory nature (“*nature cassatoire*”) as provided at Article 75 CC would be accepted. However, a provision such as Article 2.15.239 of the Regulations, as interpreted in the light of both the exclusion of the competence of Swiss State courts, the exclusive competence of CAS, and of the necessity to guarantee the Appellant’s right of access to justice, limiting the CAS’ power of review to arbitrariness, would not be in line with Swiss mandatory rules and / or with the Swiss *ordre public* (cf. CAS 2009/A/1782, above). In such situation, the judiciary control would not be fully exercised and may leave the door open to a review of a higher standard by State courts, as if the type of dispute at stake was not covered at all by the arbitration clause. The question to know whether a limitation such as the one provided by Article 2.15.239 of the Regulations would be acceptable if expressly stated in writing in an arbitration agreement signed by both parties can be left undecided as such agreement does not exist in the present matter.
70. Article 2.15.239 of the Regulations, however, if considered together with Article 2.15.240 and Article 2.15.241 of the Regulations, is not devoid of any meaning. In fact, it invites the Panel to pay respect, by way of self-restraint, to the decisions of the License Commission, while exercising its power of review of the facts and the law. In that regard, this CAS Panel, even though it has full power of review of the disputed facts and law in the exercise of its jurisdiction, accepts the *dictum* in the award of 21 May 2010, CAS 2009/A/1870, at para. 125, under which “*the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see TAS 2004/A/547, §§ 66, 124; CAS 2004/A/690, § 86; CAS 2005/A/830, § 10.26; CAS 2005/C/976 & 986, § 143; 2006/A/1175, § 90; CAS 2007/A/1217, § 12.4)*”. While not excluding, or limiting, its power to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the Code), a CAS panel can decide, in specific and appropriate circumstances, not to exercise the power it indisputably enjoys, and will defer to the discretion exercised by the internal body of an association. This is actually what Article 2.15.239 of the Regulations calls for.

### 3.5 Admissibility of Documents

71. An aspect which is somehow limited to the above definition of this Panel’s power of review is the admissibility of the production in this arbitration of documents not filed before the License Commission. While, in principle, an unlimited definition of the power of a CAS Panel to review the facts and the law normally implies that the Panel can consider also new evidence produced before it (§ 59 above), Article 2.15.240 of the Regulations seems to limit the scope of documents

and submissions on which a CAS Panel can exercise its power of review. As a result, the Respondent challenges the admissibility of some documents filed in this arbitration by the Appellant, which were not part of the documentation considered by the License Commission (§ 30 above). In addition, the admissibility of some productions by the Appellant, made on 1 February 2013 after the appeal brief had been lodged (§ 31 above) has to be evaluated also on the basis of Article R56, first paragraph of the Code.

72. The documents whose admissibility is challenged by the Respondent pursuant to Article 2.15.240 of the Regulations are the following:
- i. A-31: power-point presentation “*Registration 2012 UCI World Tour*”;
  - ii. A-32: power-point presentation “*Performance Development Program Katusha since October 2011*”;
  - iii. A-33: email from a Swiss lawyer to Katusha concerning the preparation of internal rules for Katusha;
  - iv. A-34: internal regulations of Katusha Team;
  - v. A-35: Katusha model contract for self-employed riders for 2013;
  - vi. A-36: handwritten note of Mr Galimzyanov dated 17 April 2012 (Russian original with English translation);
  - vii. A-37: termination letter dated 24 April 2012 from Katusha to Mr Galimzyanov;
  - viii. A-38: exchange of email messages dated 24 and 24 April 2012 between Katusha and UCI regarding the termination of the contract of Mr Galimzyanov;
  - ix. A-39: list of anti-doping tests undergone by the Team’s riders in the period between January and October 2012;
  - x. A-45: Katusha request for registration as a UCI Professional Continental Team dated 2 January 2013;
  - xi. A-46: “*Explanation and Planning anti-doping fight Katusha Management SA (KMSA) 2013*” dated 2 January 2013;
  - xii. A-47: exchange of emails of 7 and 8 January 2013 between Katusha and UCI.
73. The documents whose admissibility is to be verified also under Article R56, first paragraph of the Code are the following:
- i. A-53: UCI decision dated 14 January 2013 to grant Katusha the registration as a Professional Continental Team for 2013;
  - ii. A-54: email from Katusha to UCI dated 14 January 2013;
  - iii. A-55: email from UCI to Katusha dated 15 January 2013;
  - iv. A-56: email from Katusha to UCI dated 15 January 2013;
  - v. A-57: email from UCI to Katusha dated 16 January 2013.

74. The Panel notes that Article 2.15.240 of the Regulations could be seen to contain two rules:
- a. the first rule provides that the CAS can judge on the appeal only by reference to “*the license application documentation as it stands at the moment when the license commission has taken its decision*”; consequently, “*no subsequent additions to this documentation*” is allowed;
  - b. the second rule allows the appellant to raise before the CAS only “*documents, statements and written evidence*” which refer to the same elements as
    - those found in the License Commission’s file, or
    - those taken into account by the License Commission in its decision.
75. Such provision could be viewed, at first sight, to be contradictory. On one hand, it precludes the possibility to consider documents not included in “*the license application documentation*” as defined at the time of the challenged decision; on the other hand, it allows an appellant to “*raise*” evidence which refers to the elements that the License Commission took into account in adopting its decision.
76. In the Panel’s opinion, however, such contradiction is only ostensible, and not real. The rules contained in Article 2.14.240 of the Regulations, in fact, are based on a distinction between documents whose existence is in itself a condition to be met for the satisfaction of the registration criteria, and evidence which refers to the relevant “*elements*” contained in the file of the License Commission or in any case evaluated by the License Commission. In other words, it is not possible for an appellant before the CAS to satisfy in the arbitration proceedings a registration criterion by producing a document required to be lodged in the registration procedure and to be included in the “*the license application documentation*” (such as, for instance, the documents referring to the financial criterion); it is however possible to submit and invoke (“*raise*”) other evidence relating to the circumstances considered by the License Commission.
77. Such conclusion appears to the Panel in line with the scope of its power to review the facts and the law, as defined above (§§ 58-70) and in any case necessary for a review of the Decision of the License Commission, and for the safeguard of the Appellant’s rights, that is to be allowed to dispute, in adversarial proceedings, the findings of the License Commission. Finally, such conclusion is also in line with the principle that in a case like the present one, a Panel, in accordance with the applicable rules of an association, has to verify whether certain conditions were met at a certain point of time.
78. In light of the foregoing, the Panel concludes that it has the power to take into account the documents submitted in this arbitration, but challenged by the Respondent (listed at § 72 above), to the extent they relate to the circumstances considered by the License Commission in rendering the Decision.
79. This conclusion applies also to the documents submitted by the Appellant on 1 February 2013. In their regard, in addition, the Panel notes that their filing was not precluded by Article R56, first paragraph of the Code, as they were lodged with the CAS before the Respondent had submitted its answer. The Panel notes indeed that the Respondent’s answer was filed only the

following day, on 2 February 2013; and the same time, however, the Panel remarks that those documents were not unknown to the UCI and that the Respondent had the possibility to apply for (even a brief) extension of the deadline for filing its answer, in order to take them into account in its context. In any case, the Respondent's rights were not impaired as those documents could be (and actually were) discussed at the hearing before this Panel. In conclusion, the production of such documents is admissible; and they will be considered by this Panel to the extent they relate to the circumstances evaluated by the License Commission in rendering the Decision.

### 3.6 Applicable Law

80. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code, applicable also pursuant to Article 2.15.242 of the Regulations.

81. According to Article R58 of the Code, the Panel is required to decide the dispute

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

82. Pursuant to Article 78 of the UCI Constitution,

*"In the absence of a choice of applicable law by the parties, the Court of Arbitration for Sport will apply Swiss law".*

83. As a result of the foregoing, the Panel considers the UCI rules and regulations to be the applicable regulations for the purposes of Article R58 of the Code, and that Swiss law applies subsidiarily, in accordance with Article 78 of the UCI Constitution.

### 3.7 The Dispute

84. Object of these proceedings is the Decision, which denied Katusha, a team holding the World Tour license, the registration for the season 2013. As a result, the main question that the Panel has to consider is in essence whether under the Regulations the Appellant was entitled to such registration.

85. More specifically, the question is whether Katusha satisfied the ethical criterion contemplated by the Regulations – the satisfaction of the other criteria being undisputed, at this stage of the proceedings.

86. The ethical criterion is defined by Article 2.15.011 of the Regulations to include:

*"the respect by a team or its members for:*

*a) the UCI regulations, inter alia as regards anti-doping, sporting conduct and the image of cycling;*

- b) *its contractual obligations;*
  - c) *its legal obligations, particularly as regards payment of taxes, social security and keeping accounts;*
  - d) *the principles of transparency and good faith”.*
87. The License Commission held (§ 20 above) that Katusha did not satisfy such criterion, *inter alia* because:
- i. Katusha had been given a warning in the License; but,
  - ii. that notwithstanding, its attitude towards doping did not change in 2012, as shown:
    - by the new doping case involving one of its riders (Mr Galimzyanov), which could have led to the withdrawal of the License during the season, if that case had been notified to the License Commission, and
    - by the declarations of the representatives of Katusha at the hearing before the License Commission.
88. In other words, as made clear by the Decision, the issue affecting Katusha regards the first point of Article 2.15.011 of the Regulations, i.e., the respect paid by Katusha to the UCI rules regarding anti-doping. This Panel, therefore, shall conduct its examination, exercising its power of review (as defined above: §§ 58-70 and §§ 76-79), with respect to such point.
89. Before entering into said analysis, however, the Panel wishes to underline the importance of the licensing systems created by international sports organizations, which are, as noted by Commission of the European Union in the *White Paper on Sport* of 11 July 2007 (doc. COM(2007) 391 final) that endorsed them, a useful “*tool for promoting good governance in sport*”. More specifically, the rules adopted by UCI in that respect appear crucial for the safeguard of the viability, if not of the survival, of the sport of cycling at national and international level. Their role can hardly be underestimated. In fact, they are designed to allow UCI to guarantee a proper competitive level, to address financial and organizational issues, and to increase the standards in terms of ethics.
90. The Panel notes that the following points are (or have become in the course of the arbitration), among the others, undisputed between the parties:
- i. the commission of an anti-doping rule violation by one of the Team’s riders, Mr Galimzyanov, in 2012, and the reaction taken by Katusha as soon as it became aware of such anti-doping rule violation;
  - ii. the circumstances relating to the hearing before the License Commission, including the declarations rendered and the documents and/or information supplied (or not supplied) in its occasion.
91. With respect to the first point, the Panel observes that the anti-doping rule violation committed by Mr Galimzyanov is noted in the Evaluation Report 2013 as one of the events that occurred in 2012, as such triggering the remark that “*assessment [was] required*” with respect to the ethical criterion. The other aspect mentioned as “new” in the Evaluation Report 2013 concerns the

whereabouts failures that occurred in 2012, whose number is however disputed, and whose relevance is not emphasized by the UCI in this arbitration.

92. With respect to the second point, the Panel remarks that the Appellant, in its written submissions, challenged in this arbitration the summary minutes of the hearing held before the License Commission, prepared by the UCI administration and attached to the Decision, which were defined to be *“biased and partial”*. At the same time, however, the Panel notes that the Respondent filed in this arbitration the voice recording of such hearing, and its transcript, and that their content is not challenged by the Appellant. On their basis, the Panel remarks that the minutes attached to the Decision accurately summarized the important points discussed and the events that occurred at the hearing before the License Commission, and wishes to commend the UCI administration in that respect. The criticism expressed by the Appellant in their respect is without merit.
93. On the basis of the minutes, of the voice recording and of the transcript of the hearing before the License Commission, it appears clear to the Panel that in such occasion:
- i. Katusha (Mr Holczer), when requested by the UCI, by reference to the case of Mr Galimzyanov, *“what did the team do when you got the report last year from the license commission where you had this warning ... to prevent this kind of doping cases ...?”*, answered by referring:
    - to the internal regulations, defined to be *“pretty strong”*,
    - to internal meetings with riders and doctors,
    - to an internal exchange of information, and
    - to the development of *“doping compliance declarations”* within the team, which were being looked into to verify whether they could *“work together with the contract of riders”*;
  - ii. Katusha did not explicitly mention any other measure taken, did not expound on the riders’ contracts for year 2013, and did not supply, or request to be allowed to provide, additional documents and/or information.
94. At the same time, and in that connection, it appears to the Panel that the Respondent does not dispute (if not for the possibility for this Panel to consider them and for their relevance in this arbitration concerning a challenge to the Decision: §§ 30 e 71 above) the following circumstances:
- i. that the internal regulations mentioned at the hearing before the License Commission were indeed adopted by Appellant;
  - ii. that Katusha adopted and applied for the season 2013 a new standard form of contract for professional riders, with specific obligations imposed on the riders with respect to anti-doping prevention; and
  - iii. that Katusha studied the possibility to implement a team anti-doping certification, to join the *“MPCC”* (being the *“Mouvement pour un Cyclisme Crédible”* or Movement For Credible Cycling), to reinforce the internal system of meetings of the so called *“Trust Committee”*, in order to prevent and solve problems also with respect to riders’ health, and to

participate in a programme negotiated by the Russian Cycling Federation and the Russian Anti-Doping Agency.

95. With respect to the above, more specifically, the Panel notes that the internal regulations of Katusha include, at their Article 7 (“*Doping Prevention*”), a number of measures concerning anti-doping issues, as follows:

- “1. *The company neither owns nor keeps drugs apart from the first aid equipment.*
  - a. *The Athletes, the employees and consultants of the Company cannot keep, at any time, any drug containing substances prohibited by the anti-doping directive and any kind of drug whose use has not been previously authorized by the team physician, accounting its possession by a specific medical prescription.*

*No medicine, drugs, natural or homeopathic dietary supplements can be purchased, possessed, advised, given or taken by anyone and nor can any therapeutic action be effected by anyone (masseurs, physiotherapists, Sports Managers and, generally, non-medical personnel), without the authorization of the team physician or sports doctor.*
  - b. *The purchased drugs should be compulsory attested by regular medical prescription written on the headed paper of the doctor that has prescribed it and indicating:*
    - *issue date*
    - *the name of the person the therapy has been prescribed to*
    - *the name of the drug*
    - *the stamp of the chemistry where the drug has been purchased*
    - *the date of the purchase*
    - *price.*
2. *In case drugs with non-refilling prescription are purchased (prescription kept by the chemist), the Athletes or the member of the staff should anyway keep carefully, together with the drug, a copy of the prescription all the competitive season long.*
3. *Drugs possessed by the Athletes or by the members of the staff, kept in their own residence, should always be kept with the relevant original medical prescription. Drugs used by relatives of a Katusha Member should always adhere to the regulations in force and be used along with the regular medical prescription.*
4. *Katusha Members should not any drugs, medicines, vials, needles, syringes leave in the hotel rooms. The disposal of health waste should always be effected carefully and in accordance with the directives in force.*
5. *Katusha will be provided with the names of all coaches, managers and medical and paramedical professionals that belong to each rider personal staff. Katusha shall at its own discretion contact any of these staff members. Medical and paramedical professionals that belong to each rider personal staff shall be expressly allowed by the rider to communicate all information requested by the team doctor.*
6. *Any Athlete and any member of the staff should take care of his own baggage, which should always been safely locked.*
7. *Katusha is allowed at its own discretion to control and check riders baggage and hotel room.*
8. *In application of the ADAMS Program Athletes should inform the company in advance of the transfer of their usual domicile. The team shall have a direct access to the ADAMS account of each rider for control purpose.*
9. *The team will be informed within 3 days of each notification recording of a missed test and/ or filing failure*

*to whereabouts obligation.*

10. *The team doctor shall have access to each rider biological passport.*
11. *The team will periodically proceed with analysis of riders training data as measured by SRM or similar technology.*
12. *The team may if it deems it necessary proceed with additional analysis and medical testing”.*

96. In addition, the Panel remarks that the 2013 contract for professional riders adopted by Katusha contains the following provisions:

Whereas D:

*“Both Parties are acquainted with and declare that they will abide wholly by*

- a. the UCI constitution and regulations, ....*
- c. the Internal Code of conduct [attached to the contract], ...*
- f. anti-doping rules as stated by the World Anti-Doping Agency”.*

Article 6 (“Health Protection and Anti-Doping Prevention”):

- “1. The parties undertake to respect the Riders’ health protection programme.*
- 2. The Rider agrees to inform Katusha of all the names of all coaches, managers and medical and paramedical professionals that belong to his personal staff and to inform Katusha immediately on any changes within his staff.*
- 3. The Rider hereby agrees that Katusha may request that, for the duration of this Contract, members of his personal staff be duly approved by Katusha before being appointed.*
- 4. The Rider hereby agrees to comply with all Anti-Doping Rules as set out by UCI and affiliated organisations and by the World Anti-Doping Agency.*
- 5. The Rider hereby agrees to provide the Katusha team doctor access to his biological passport.*
- 6. The Rider hereby agrees to comply with the Anti-Doping Administration & Management System Program (hereafter “ADAMS Program”) as implemented by the World Anti-Doping Agency.*
- 7. The Rider agrees to inform the Katusha Team physician of his use of any medication or specific diet prescribed by non-team doctors or acquired over the counter or via Internet.*
- 8. The Rider declares that on the date of signing the present Agreement, the number of missed tests and/or filing failures with respect to the ADAMS Program he had in the last 18 month is [\_\_\_\_\_].*
- 9. The Rider is obliged to inform Katusha within 3 days after receiving notification the recording of a missed test and/or filing failure”.*

Article 12 (“Termination of the Contract”):

*“Without prejudice to the legislation governing the present Contract, it may be terminated before expiry, in the following cases and on the following conditions: ...*

- 2. Katusha may terminate the present Contract, without notice or liability, in the event of serious misconduct on the part of the Rider. It has to be considered as serious misconduct within the terms of this Contract:  
...*

- b) *Wilful or repeated non-respect of the internal regulations of Katusha team.*
- c) *Violation of anti-doping regulations ...*
- d) *A significant variation of the biological passport data and the subsequent opening of a disciplinary procedure by the UCI ...”.*

97. In light of the foregoing, there are two questions for the Panel to answer. The first is whether the adoption of the mentioned measures (§ 94 above) is sufficient for the satisfaction of the ethical criterion contemplated by the Regulations. The second is whether the adoption of such measures can be considered in this arbitration, and with respect to the Appellant’s application for the 2013 registration as a World Tour team. The Panel answers positively to both questions.
98. With respect to the first question, more specifically, the Panel finds that the adoption of the mentioned measures marks a quite important step made by Katusha along the lines indicated by the UCI, also in the License, in order to build an anti-doping environment within the Team.
99. In that regard, indeed, the Panel notes that Article 2.15.011 of the Regulations does not specify the measures that need to be adopted within a World Tour Team: mention is made only of the requirement that anti-doping rules be respected by the team and its members. The identification of such measures, namely, is problematic with respect to the consequences of the anti-doping rule violations committed by riders on a team’s possibility to obtain the registration (or a World Tour license). It is in fact common ground that the Regulations do not provide for a system of strict (or for any form of vicarious) responsibility, so that teams are held automatically liable for the anti-doping rule violations committed by their riders: therefore, the denial of registration (or of a World Tour license) is not an automatic consequence of a rider’s anti-doping rule violation. The key aspect, as the parties concede, for the grant of the registration (or of the license) relates to the creation within the team of a system of preventive and deterrent measures, intended to contribute to an effective fight against doping, i.e., apt to reduce the exposure to, and the risk of, doping practices. Purpose of Article 2.15.011 of the Regulations, as well as of the entire licensing system (§ 89 above), in fact, appears to the Panel not to establish (additional) sanctions on dopers and their teams, but to help build an anti-doping environment where cheaters could not flourish.
100. In other words, the mere fact that a doping offence was committed by Mr Galimzyanov, one of the Team’s riders, in 2012 is not sufficient to lead *per se* to the denial of the Appellant’s registration for 2013. As mentioned, in fact, the point is whether suitable measures to reduce the risk of doping have been adopted. The indication that if the License Commission had been informed of such anti-doping rule violation it might have revoked the License cannot be considered as a factor against the Appellant. Indeed, the Respondent did not start any withdrawal procedure against the Appellant. Had the doping violation of Mr Galimzyanov be considered of such a serious nature in relation with the behaviour and the license status of Appellant, Respondent would have acted accordingly. Fact is that the License was not revoked – and this could have led Katusha to believe that the measures it was adopting were positively considered by Respondent.
101. A list of possible measures, suitable to achieve the mentioned purpose, has been indicated in

this arbitration by Mr Banuls in his witness statement. The qualification of Mr Banuls to authoritatively specify such measures is beyond discussion: Mr Banuls, in fact, is the UCI Cycling Anti-Doping Foundation Manager, responsible for all the operational aspects of the anti-doping activities. Mr Banuls listed a number of those measures, as adopted by some teams:

- “• *Develop a set of internal rules to prevent doping*
- *Forbid contact with doctors external to the team*
- *Set an internal code of conduct*
- *Develop, implement and maintain a doping free culture in the team*
- *Ask riders' biological passport values and any relevant medical information before hiring a rider*
- *Ask riders' biological passport values to UCI with the riders' consent when the rider is in the team*
- *Ask rider's whereabouts failure registered by the UCI to the UCI with the riders' consent*
- *Dietetics program in order to find alternatives to enhance performances*
- *Have the riders live in the same area to strengthen the team and better manage the riders*
- *Set a limited number of races per rider per season to prevent the use of prohibited methods or substances*
- *Provide a full support to riders concerning whereabouts information*
- *Provide a full medical support to riders and implement regular medical checks*
- *Define a trial period for new riders if they are not in line with the team spirit”.*

102. The comparison between the measures mentioned by Mr Banuls and the measures implemented by Katusha, for instance in the provisions of its internal regulations or of the 2013 contract, makes it clear that the latter match the former under nearly all aspects.
103. The point, indeed, was confirmed by the UCI administration itself, when, on 14 January 2013 (§ 22 above), it granted Katusha the registration as a UCI Professional Continental Team for 2013, by taking into account the measures adopted by the Appellant, mentioned above (§ 94).
104. Therefore, the Panel, answering the first question, finds that the measures adopted by Katusha satisfy the ethical criterion contemplated by the Regulations.
105. At the same time, the Panel holds, answering the second question in front of it (§ 97 above), that the adoption of the mentioned measures can be considered also in this arbitration, with respect to the Appellant's application for the 2013 registration as a World Tour team.
106. As indicated above, in fact, in accordance with Article 2.14.240 of the Regulations, it is possible (i) for the Appellant to submit and invoke (“raise”) before the CAS not only the documents included in the “*the license application documentation*”, but also evidence relating to the circumstances considered by the License Commission, and (ii) for the Panel to consider such evidence in order to establish whether the criteria for registration (and, here, chiefly the ethical criterion) were satisfied.
107. In that respect, the Panel notes that at the hearing before the License Commission mention was made of the Katusha internal regulations, of the internal exchange of information and of the

development of “*doping compliance declarations*”. No document was provided, but also not requested, for a further explanation of the same. In addition, however not mentioned extensively at the hearing before the License Commission, and not considered by the License Commission, the 2013 contract adopted by Katusha had been provided to the Auditor and the UCI in the framework of the registration process. As a result, of all those elements account can be taken also in these arbitration proceedings. And all the elements submitted confirm that Katusha had satisfied the ethical condition established under the Regulations.

108. The Panel, at the same time, reminds the Appellant of the need that the measures be followed-up: their mere adoption, although important, is in fact not sufficient to finally create an anti-doping environment within the Team – and chiefly so in a team “exposed” to doping, and the object of a previous “warning”. As a result, in order to keep the License and obtain the registration for the following season(s), Katusha should confirm during the entire 2013 season that it is actively implementing the measures adopted, in accordance with the Regulations. In that respect, Katusha is to be reminded of the power of the UCI to withdraw the License pursuant to Article 2.15.040 of the Regulations, *inter alia*, if the information taken into account in granting the registration has changed so that the registration conditions are no longer satisfied.
109. The Panel notes that, in light of the measures adopted by Katusha, the Decision to deny the registration for 2013 appears to be grossly disproportionate: the granting of a registration could have been accompanied by indications suitable to directly guarantee the ongoing implementation of such measures; as such, it would have followed a more reasonable, coherent and proportionate approach, to take into account both the efforts made by the Appellant and the purposes sought by the Regulations. This is particularly true if one does compare the time and attention devoted by UCI and by the Licence Commission to the fulfilment by Appellant of the financial conditions. And it is also true that if one considers the content of the Evaluation Report 2012 and the one of the Evaluation Report 2013, Appellant could not reasonably expect that its registration would have been denied, notwithstanding the clarification of the financial requirements.
110. As a result of the foregoing, the Panel concludes that the appeal brought by Katusha against the Decision is to be upheld, and that the Decision is to be set aside.
111. At the same time, the Panel wishes to underline that this conclusion is not to be intended to constitute a backwards step in the fight against doping. This Panel is indeed mindful of the fact that the fight against doping requires a tough stance against anybody who tries to undermine it (CAS 2001/A/777, para. 88), and does not underestimate its importance. A coherent, reasonable and proportionate approach is however an indefectible part of such fight.

### **3.8 New decision on the Appellant’s application for registration as a UCI ProTeam for the season 2013**

112. According to Article 2.15.241 of the Regulations, in the event the challenged decision is annulled, the CAS is called to make a new decision that replaces it. Therefore, this Panel, having

set aside the Decision, has to issue a new decision on the Appellant's application for registration as a UCI ProTeam for the season 2013.

113. For the reasons already expressed, and taking in consideration that Appellant, on the basis of basically the same circumstances, has been granted the registration as a Professional Continental Team, few weeks after the denial of the ProTeam registration, the Panel considers that the application of Appellant met all the required conditions to obtain a ProTeam registration. Such registration is therefore to be granted.
114. At the same time, the Panel underlines the necessity that Katusha shows the ongoing satisfaction of the ethical criterion, and allows the UCI to verify that the measures adopted, which permit the registration for 2013, are actively and continuously implemented. A failure to implement the measures it adopted, would justify a withdrawal of the License and/or the denial of the registration for the following season.

### **3.9 Conclusion**

115. In light of the foregoing, the Panel holds that the appeal brought by Katusha against the Decision is to be upheld, and the Decision is to be set aside. The application of Katusha to be registered as a UCI ProTeam for the season 2013 is accepted, and registration is granted to Katusha for the season 2013. All other prayers and requests are dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed by Katusha Management SA on 20 December 2012 against the decision taken by the License Commission of the Union Cycliste Internationale (UCI) on 7 December 2012 is upheld.
2. The decision taken by the License Commission of the Union Cycliste Internationale (UCI) on 7 December 2012 is set aside.
3. The application of Katusha Management SA to be registered as a UCI ProTeam for the season 2013 is accepted, and registration is granted to Katusha Management SA for the season 2013.
- (...)
6. All other prayers for relief are dismissed.