



**Arbitration CAS 2016/A/4517 Bologna FC 1909 S.p.A. v. Gonzalo Luis Madrid Pineiro, award of 13 March 2017**

Panel: Mr Sofoklis Pilavios (Greece), President; Mr Michele Bernasconi (Switzerland); Mr José Juan Pintó (Spain)

*Football*

*Contract of agency*

*Reduction of a contractual commission owed to a player's agent based on the principle of proportionality*

**In exceptional cases, by application of article 417 of the Swiss Code of Obligations, freedom of contract may be limited, with the aim to restore balance between the competing interests of the parties, or with the aim to remedy an undesirable, unreasonable or immoral effect of a contractual agreement on the basis of the principle of proportionality. On such basis, a CAS' panel can decide to lower an unreasonably high player's agent contractual commission to an amount it deems appropriate and commensurate given the overall services rendered by an agent to a club and said parties' original agreement.**

**I. PARTIES**

1. Bologna Football Club 1909 S.p.A. (the "Appellant" or "Bologna" or the "Club") is an Italian Football Club with its registered office in Bologna, Italy, affiliated to "Federazione Italiana Giuoco Calcio" ("FIGC"), *i.e.* the Italian Football Federation.
2. Mr. Gonzalo Luis Madrid Pineiro (the "Respondent" or the "Agent") is a Uruguayan national and a FIFA Players' Agent licensed by the Uruguayan Football Association.

**II. FACTUAL BACKGROUND**

**A. Background Facts**

3. Below is a brief summary of the main relevant facts as established on the basis of the parties' submissions and the evidence adduced. Additional facts and allegations found in the parties' written submissions, oral pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.
4. On 1 July 2008, Bologna and the Agent concluded an agreement under the title "Mandate" (in Italian "Mandato") (the "First Agreement"), by means of which Bologna granted the Agent an exclusive mandate to act in its interests in relation to the transfer of the player M. (the "Player")

to Bologna and the conclusion of an employment contract of five years. This mandate was agreed to be valid from 1 July 2008 to 31 August 2008.

5. The First Agreement provided that if Bologna signed an employment contract with the Player for a term of five years, the Agent would be entitled to receive a fee of EUR 2,000,000, payable in three instalments, as stated therein.

6. The First Agreement also provided that only in the event that the Player, following his registration with Bologna, was definitively transferred for value to another club, by no later than 31 August 2012, Bologna would have to pay the Agent an additional fee in accordance with paragraphs (a) - (f) as follows:

*“a) The amount of 500.000,00 Euros plus VAT if applicable in case the Company receives for the definitive transfer of the player an amount varying between 1.000.000,00 Euros and 3.000.000,00 Euros within 30 days from the actual receipt by the Company of the amount paid for the transfer of the player.*

*b) The amount of 1.500.000,00 Euros plus VAT if applicable in case the Company receives for the definitive transfer of the player an amount varying between 3.000.000,00 Euros and 5.000.000,00 Euros within 30 days from the actual receipt by the Company of the amount paid for the transfer of the player.*

*c) The amount of 3.000.000,00 Euros plus VAT if applicable in case the Company receives for the definitive transfer of the player an amount varying between 5.000.000,00 Euros and 8.000.000,00 Euros within 30 days from the actual receipt by the Company of the amount paid for the transfer of the player.*

*d) The amount of 4.000.000,00 Euros plus VAT if applicable in case the Company receives for the definitive transfer of the player an amount varying between 8.000.000,00 Euros and 12.000.000,00 Euros within 30 days from the actual receipt by the Company of the amount paid for the transfer of the player.*

*e) The amount of 5.500.000,00 Euros plus VAT if applicable in case the Company receives for the definitive transfer of the player an amount varying between 12.000.000,00 Euros and 16.000.000,00 Euros within 30 days from the actual receipt by the Company of the amount paid for the transfer of the player.*

*f) The amount of 6.500.000,00 Euros plus VAT if applicable in case the Company receives for the definitive transfer of the player an amount varying between 16.000.000,00 Euros and 20.000.000,00 Euros within 30 days from the actual receipt by the Company of the amount paid for the transfer of the player”.*

7. On 21 July 2008, with the intermediation of the Agent, the Player signed a five-year employment contract valid until 30 June 2013 and registered with Bologna from the Uruguayan Club “Montevideo Wanderers F.C”. Following this Bologna paid the Agent a fee of EUR 2,000,000,

in execution of the terms of the First Agreement and according to the payment schedule that was provided therein.

8. On 12 July 2011, Bologna agreed to transfer the Player to the Italian Club Società Sportiva Calcio Napoli S.p.A. (“Napoli”) for a transfer fee of EUR 9.000.000.
9. On 13 July 2011, Bologna and the Agent concluded a further agreement (the “Second Agreement”), in which they confirmed the fulfilment of the conditions set forth in the First Agreement under which, if the Player was transferred for value to another sport club within 31 August 2012 Bologna would have to pay the Agent pursuant to paragraph (d) thereof: *“the amount of 4,000,000 (four million) Euros, plus VAT if applicable, in case the Company [i.e. Bologna] receives for the definitive transfer of the play an amount varying between 8.000.000 (eight million) Euros and 12,000,000 (twelve million) Euros, within 30 days from the receipt by the Company of the amount paid for the transfer of the Player”*.
10. On this premise the Second Agreement stipulated that Bologna shall pay the Agent an all-inclusive amount of EUR 4,000,000 in twenty four monthly instalments within a period stretching over three sports seasons, namely 2011-2012, 2012-2013 and 2013-2014, starting on 30 September 2011 and ending on 30 April 2014, according to a detailed schedule which specified the amount of the each particular instalment and the respective due date for payment.
11. The first payment was due on 30 September 2011. However, Bologna failed to make any of the agreed instalment payments and as a result the entire amount of EUR 4,000,000 remained unpaid.

## **B. Proceedings before FIFA Players’ Status Committee**

12. On 17 September 2012, the Agent lodged a claim against Bologna in front of the Players’ Status Committee of the Fédération Internationale de Football Association (the “FIFA PSC”) and requested payment of the amount of EUR 4,000,000, as outstanding commission on the basis of the First Agreement and the Second Agreement, and, payment of an unspecified amount of legal costs and monetary damages.
13. On 23 September 2015, the Single Judge of the FIFA PSC rendered a decision on the matter (the “Appealed Decision”) with, *inter alia*, the following operative part:
  - *“The Respondent, Bologna FC, has to pay the Claimant, Gonzalo Luis Madrid Pineiro within 30 days as from the date of notification of the present decision the total amount of EUR 4,000,000 as well as 5% interest per year on the said amount from 17 September 2012 until the date of effective payment.*
  - *Any other claims lodged by the Claimant, Gonzalo Luis Madrid Pineiro are rejected.*
  - *The costs of the proceedings in the amount of CHF 15,000 are to be paid by the Respondent, Bologna FC, within 30 days as from the date of notification of the present decision (...).”*

14. On 7 March 2016 the grounds of the Appealed Decision were communicated to the parties, determining, essentially, the following:
- The claim was lodged on 17 September 2012 and the first instalment requested by the Agent was due on 30 September 2011. Therefore, the claim was lodged within the two years provided in the FIFA Players' Agent Regulations (the "FIFA PAR") and is not time-barred.
  - The Second Agreement was signed by both parties. Hence this document is considered to be valid and binding upon the Agent and Bologna.
  - The clear content of the Second Agreement stipulates that the parties confirmed that the conditions set forth in paragraph (d) of the First Agreement were fulfilled and therefore Bologna undertook to pay to the Agent the amount of EUR 4,000,000 in several instalments from 30 September 2011 until 30 April 2014.
  - In the Second Agreement the Agent and the Club had agreed upon a lump sum of EUR 4,000,000 to be paid by the Club in several instalments. In other words, the content of the Second Agreement is not in contradiction with Article 29 par. 1 and 2 of the FIFA PAR.
  - Considering the basic legal principle of *pacta sunt servanda*, bearing in mind the content of the Second Agreement, as well as recalling the content of Article 29 par. 1 and par. 2 of the FIFA PAR, and, taking into account the fact that the parties had agreed upon the payment of a lump sum, the Single Judge came to the conclusion that the Bologna had to pay the Agent the sum of EUR 4,000,000 as per the Second Agreement.
  - The Agent's request for "monetary damages" was not supported by convincing evidence, and therefore, such request should be dismissed.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 25 March 2016, Bologna filed a Statement of Appeal against the Appealed Decision pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code"), with the Court of Arbitration for Sport (the "CAS"). With its Statement of Appeal Bologna nominated Mr Michele A.R. Bernasconi, attorney-at-law in Zurich, Switzerland, as an arbitrator in the present matter. By same correspondence Bologna requested an extension of twenty days of the deadline to file an Appeal Brief.
16. On 4 April 2016, the Agent informed the CAS Court Office that he did not object to Bologna's request for an extension to file an Appeal Brief. By same correspondence the Agent nominated Mr José Juan Pintó, attorney-at-law in Barcelona, Spain, as an arbitrator in the present matter.
17. On 2 May 2016, Bologna filed an Appeal Brief pursuant to Article R51 of the Code within the extended deadline. The brief contained the following requests for relief:

- i. To uphold the appeal filed by Bologna Football Club 1909 S.p.A against the decision of the Single Judge of the Players' Status Committee dated 23 September 2015.*
  - ii. To set aside the decision of the Single Judge of the Players' Status Committee dated 23 September 2015 in its entirety.*
  - iii. To dismiss any and all claims for compensation by Mr. Gonzalo Luis Madrid Pineiro.*
  - iv. Alternatively, to reduce the compensation awarded to Mr. Gonzalo Luis Madrid Pineiro to an appropriate amount.*
  - v. To order any other remedy the Panel deems appropriate.*
  - vi. To condemn Mr. Gonzalo Luis Madrid Pineiro to pay all the arbitration costs.*
  - vii. To order Mr. Gonzalo Luis Madrid Pineiro to pay a substantial contribution towards Bologna Football Club 1909 S.p.A's legal costs.*
18. On 13 May 2016, pursuant to Article R54 of the Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:  
  

President: Mr Sofoklis Pilavios, attorney-at-law in Athens, Greece  
Arbitrators: Mr Michele Bernasconi, attorney-at-law in Zurich, Switzerland  
Mr José Juan Pintó, attorney-at-law in Barcelona, Spain.
19. On 20 June 2016, the Agent filed an Answer to the Appeal, within the extension granted to the original deadline, in accordance with Article R55 of the Code, with the following requests for relief:  
  

*“the Respondent respectfully requests CAS to:*

  - Rule that the July 1, 2008 Mandate is valid under the provisions of article 19 par. 3 of the Players' Agent Regulations;*
  - Rule that the July 1, 2008 Mandate and the July 13, 2011 Agreement is valid under the provisions of the articles 20 par. 5 and 29 of the Players' Agent Regulations;*
  - Rule that the July 1, 2008 Mandate and the July 13, 2011 Reiteration constitute valid and binding agreements between the Appellant and the Respondent;*
  - Order Bologna FC to pay to the Agent the principle sum of four million and additional late payment interest at the rate of 5% per annum since September 17, 2012.*

*Consequently,*

- *Confirm the decision passed by the Single Judge of the Players' Status Committee on September 23, 2015;*
  - *Dismiss all requests for relief of Bologna FC;*
  - *Order Bologna FC to pay to Mr. Gonzalo Luis Madrid Pineiro all the arbitration and legal costs borne by him under the proceeding before the PSC and his present defense before the CAS”.*
20. On 22 June 2016, the CAS Court Office invited the parties to state whether they prefer for a hearing to be held in this matter or for the Panel to issue an award based solely on the parties' written submissions.
  21. On 6 July 2016, Bologna informed the CAS Court Office of its preference for a hearing to be held, whereas the Agent had already submitted a request for a hearing in his Answer of 20 June 2016.
  22. On 26 September 2016, the CAS Court Office sent a copy of the Order of Procedure to the parties and on 29 September 2016 and on 3 October 2016 Bologna and the Agent, respectively, returned duly signed copies.
  23. On 3 October 2016, a hearing was held in Lausanne, Switzerland.
  24. The Panel was assisted by Mr Daniele Boccucci, Counsel to CAS and the hearing was attended by the following persons on behalf of the parties:
    - a) For the Appellant: i) Mr Antonio Rigozzi, counsel; ii) Ms Brianna Quinn, counsel; iii) Mr Mattia Grassani, counsel; iv) Mr Luigi Carlutti, counsel; and v) Mr Luca Smacchia, counsel;
    - b) For the Respondent: i) Mr Gonzalo Luis Madrid Pineiro, the Respondent himself; ii) Mr Daniel Delgado Gurmando, Representative of the Company Galliditas Limited; iii) Mr Emanuel Moulin, counsel; iv) Mr Martin Valluis, Counsel; and v) Ms Iuliana Babei, counsel.
  25. The following witnesses testified: i) Ms Antonella Nicolini (by telephone conference); ii) Mr Albano Guaraldi (by telephone conference); iii) Mr Alessandro Gabrieli (by telephone conference); iv) Mr Riccardo Bigon (by telephone conference), all for the Appellant; and, v) Mr Salvatore Bagni, for the Respondent. In addition to the witnesses, Mr. Joshua Goldsmith attended the hearing as interpreter and translator for the Respondent.
  26. Before the hearing was concluded, both parties expressly stated that they did not have any objection with respect to the procedure and that their right to be heard had been respected.

27. The Panel confirms that it carefully took into account in its deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

#### IV. SUBMISSIONS OF THE PARTIES

28. The submissions of Bologna, in essence, may be summarized as follows:
- Bologna admits it has paid the Agent EUR 2,000,000 as fee for his assistance in the conclusion of a five-year employment contract with the Player, as provided in the First Agreement, yet argues that by this payment it has fully discharged all its financial obligations *vis à vis* the Agent.
  - Bologna refuses to pay the Agent an additional fee in the requested amount of EUR 4,000,000, arguing that the first and the Second Agreements are in breach of several provisions of the applicable FIFA PAR, as established in the jurisprudence of FIFA and CAS.
  - As a result of this breach, Bologna submits that the Agent cannot legitimately rely on the respective remuneration provisions of these Agreements and cannot seek to enforce payment of the amounts provided therein.
  - In particular, Bologna maintains that paragraphs (a) – (f) of the First Agreement are in breach of Article 20 par. 5 of the FIFA PAR, as there is no provision for a lump sum, rather for several amounts that vary depending on the eventual value of the transfer of the Player. The fact that payment of a lump sum was specified later in the Second Agreement is not sufficient.
  - Further, Bologna argues that the claim for additional agent fee after the Players' transfer to Napoli is "illegal", as it is linked entirely to the amount of the transfer to a new Club. According to Bologna an arrangement of this sort enables the Agent to establish a proportional interest in the future transfer of the Player, which is strictly prohibited under Article 29 par. 1 and 2 of the FIFA PAR.
  - In addition, this arrangement is also contrary to Article 2 par.1 of the FIFA PAR, according to which agents should be remunerated only for services they provide, whereas, in the present case, the Agent requests compensation in relation to the transfer of the Player to Napoli, in which he had no involvement.
  - Bologna also invokes breach of Article 19 par. 3 of the FIFA PAR arguing that the First Agreement and the Second Agreement effectively resulted into the extension of the parties' contractual relationship with an overall duration exceeding the maximum period of two years.

- As a final remark Bologna suggests that the true nature of the contractual provisions for additional compensation to the Agent indicates a covert scheme of “Third Party Ownership” (“TPO”) of the Player’s economic rights by the Agent, which is illegal under Swiss law.
- On those grounds, payment of additional agent fees is premised on an illegal and immoral agreement and, consequently, the respective contractual provisions in the First and the Second Agreements are null, void and unenforceable on the basis of Articles 19 and 20 of the Swiss Code of Obligations (“SCO”).
- Finally, Bologna contends it has paid the Agent a significant fee as high as EUR 2,000,000 for his services with respect to the acquisition of the Player in 2008, and, thus, further payment of a much more significant amount of EUR 4,000,000 would result into an excessive amount of remuneration. On those grounds, Bologna invokes Article 417 of SCO to establish an instance of excessive agent fee and requests the Panel to reduce it to an appropriate amount.

29. The submissions of the Agent, in essence, may be summarized as follows:

- The Second Agreement is a reiteration of the terms of the First Agreement in so far as the Second Agreement expressly refers to paragraph (d) of the First Agreement and confirms the fulfilment of the conditions provided therein.
- Bologna never disputed the fact that it duly signed both the first and the Second Agreement.
- By signing the Second Agreement, Bologna effectively confirmed the content of the First Agreement, and by doing so, it has waived any right to oppose to payment of the amount of EUR 4,000,000 on the basis of the FIFA PAR.
- At any rate, both Agreements are in conformity with the FIFA PAR and cannot be deemed null and void. More specifically:
  - a. The First Agreement was valid from 1 July 2008 until 31 August 2008, and expired as soon as the agreed agency activity was successfully completed. Therefore, there is no violation of Article 19 par. 3 of the FIFA PAR, with respect to the maximum duration of two years.
  - b. The First Agreement provided that the Agent would receive an agent fee of EUR 2,000,000 for the acquisition of the Player, plus an additional fee framed in different amounts between EUR 500,000 to EUR 6,500,000, conditionally in the event of the transfer of the Player to a new Club, and the final amount would ultimately depend on the value of the transfer. On this basis, the First Agreement provided in advance for a fixed sum of compensation in all events, and not a percentage, in a way compatible with Article 20 par. 5 of the FIFA PAR.



- c. The Second Agreement confirmed that Bologna was under the obligation to pay the Agent a fee of EUR 4,000,000 and that such obligation was triggered after the Player's transfer to Napoli for a transfer value of EUR 9,000,000. Therefore, there is no violation of Article 29 par. 1 and 2 of the FIFA PAR, in so far as this provision expressly prohibits the new club acquiring the player from paying the agent any compensation.
  - d. The Agent had always acted as the exclusive representative of Bologna and not as representative of any other party, player or club. Therefore, there is no violation of Article 2 par. 1, or Article 19 par. 8 of the FIFA PAR.
  - e. There is no indication of a TPO scheme of the Player's rights by the Agent. In any case, Article 18 of the FIFA RSTP that strictly prohibits any TPO arrangements are effective as of May 1, 2015, and therefore are not applicable in the present matter.
- According to the principle *pacta sunt servanda* the amounts that have been determined by the contractual will of the parties cannot qualify as excessive. Consequently, there is no scope for application of Article 417 of SCO. At any rate Bologna failed to provide economic evidence to substantiate what would constitute an appropriate reduction.

## V. JURISDICTION

- 30. The jurisdiction of the CAS in this matter, which is not contested by the parties, derives from Article 67(1) of the FIFA Statutes and Article R47 of the Code.
- 31. Article 67(1) of the FIFA Statutes determines that: “[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.
- 32. Article R47 of the Code provides that:  
  
*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.*
- 33. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the parties.
- 34. It follows that the CAS has jurisdiction to decide on the present matter.

## VI. ADMISSIBILITY

35. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*

36. The motivated part of the Appealed Decision was notified to the parties on 7 March 2016. The Appellant filed its Statement of Appeal on 25 March 2016. Therefore, the 21-day deadline to file the appeal was met.

37. The Panel therefore finds that the appeal is admissible.

## VII. APPLICABLE LAW

38. Article R58 of the Code provides the following:

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

39. The Panel notes that that Article 66(2) of the FIFA Statutes stipulates the following: *“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*

40. Accordingly, the Panel shall decide the present matter pursuant to the relevant FIFA Regulations and, in particular, pursuant to the relevant provisions of the FIFA PAR, the relevant provisions of the FIFA RSTP, and Swiss law shall be applied subsidiarily.

41. As to the applicable edition of the FIFA PAR and taking into account that the parties concluded the First Agreement on 1 July 2008, the Panel confirms that the 2008 edition of such Regulations is applicable.

## VIII. MERITS

42. The Panel observes that in the present matter there are two relevant Agreements that lay down the obligation of Bologna to remunerate the Agent for his services with respect to the transfer of the Player to the Club and the conclusion of a five-year employment contract.

43. In this respect, the Panel holds that the First Agreement is the principal Agreement of the parties by means of which Bologna agreed to pay the Agent a fee of EUR 2,000,000 for his

entire agent services, plus, an additional fee, only conditionally, upon the subsequent transfer of the Player by Bologna to a new club.

44. The Second Agreement was made only after Bologna had agreed to transfer the Player to Napoli for a value of EUR 9,000,000. This is essentially a supplementary Agreement in which the parties confirmed that the conditions for payment of an additional amount of fee to the Agent had been fulfilled, and, that paragraph (d) of the First Agreement had become applicable, according to which the additional fee amounted to EUR 4,000,000.
45. Bologna does not dispute it has signed both Agreements and does not question the circumstances under which these Agreements were made. It is therefore established on the basis of the evidence produced before the Panel that both Agreements were made with the intention of creating legal effects, and, so are deemed to be valid and binding contractual documents.
46. Further, the Panel finds that there is no contention with regard to the wording of the First or the Second Agreement. Both Agreements contain sufficiently precise terms and, thus, are capable of giving rise to rights and obligations with regard to the remuneration provisions contained therein.
47. The central point of contention rests as to whether the agreement for payment of additional fees to the Agent, as set out in paragraphs (a) – (f) of the First Agreement, is in fact compatible with the applicable provisions of the FIFA PAR. A related point of contention is whether Bologna may be released from any liability arising thereby, should the Panel establish an infringement of the FIFA PAR.
48. The Panel finds it is necessary to distinguish that in the case at hand the Agent had been engaged by Bologna, and not by the Player.
49. With these considerations in mind the Panel notes that payment of an additional amount of agent fee was contingent on the occurrence of a future and uncertain event, namely the transfer of the Player to a new club. Yet, such fee was sufficiently and precisely determined within the range of six specific amounts, escalating from EUR 500,000 to EUR 6,500,000, in a way associated with the eventual value of the transfer.
50. To the evaluation of the Panel this is a well-defined payment obligation agreed upon in advance. Consequently, by the agreement of the parties the remuneration owed to the Agent in all events was sufficiently quantified as a lump sum in advance, as required under Article 20 par. 5 of the FIFA PAR.
51. At any rate, the fact that the parties entered into the Second Agreement in 2011, in which they reaffirmed the additional amount of fee that had to be paid to the Agent, is not inconsistent. To the understanding of the Panel by this Agreement the parties intended to spell out clearly the obligation of Bologna to pay the Agent an additional fee of EUR 4,000,000, on the basis of paragraph (d) of the First Agreement, which had become relevant, after the transfer of the Player to Napoli for EUR 9,000,000.

52. It is also quite telling, that by the same Agreement Bologna also committed to a precise and carefully drafted payment plan in twenty four instalments with specific due dates for payments, for the entire amount of EUR 4,000,000.
53. In this light, the Panel finds that the Second Agreement is an explicit acknowledgment by the Club of its obligation to pay the Agent additional fees in the amount of EUR 4,000,000. This straightforward admission leaves no room for doubt that this is a case of remuneration due to the Agent for services rendered to a Club, within the limits provided for in Article 29 par. 1 and 2 of the FIFA PAR.
54. At the same time, the Panel holds that the parties did not extend in any way the duration of their representation agreement of 2008 (*i.e.* the First Agreement), beyond the maximum duration provided for in Article 19 par. 3 of the FIFA PAR.
55. Besides, had Bologna found grounds to contest the legality of any further entitlement of the Agent for an extra amount of agent fees, it had ample time to do so in the interim, before agreeing to sign the Second Agreement in 2011, and, before committing to a payment plan for such a significant amount of money. In this context, the Panel notes that Bologna is a club participating in the Italian first division (“Serie A”) and it is reasonable to assume that Bologna has some degree of experience in similar dealings with agents.
56. On those grounds, and based on the evidence submitted to the Panel, the respective provisions of the First and the Second Agreement, whereby Bologna undertook to pay the Agent an additional amount of EUR 4,000,000 as remuneration for his agency activities are under the circumstances of the present case not incompatible with the FIFA PAR and, thus, should be held binding and enforceable on the parties. The Panel at the hearing has invited the parties to clarify their position on whether or not the First and the Second Agreement shall be considered invalid, in full or in part, because of mandatory provisions of Swiss law or other legal principles. No arguments, however, have been submitted at the hearing to convince the Panel that the First and Second Agreements – or part of those – shall be considered null and void.
57. Having established so, the Panel turns its attention to examine the total amount of remuneration due to the Agent under these Agreements and whether this may qualify as a reasonable and proportionate amount of agent fee.
58. For this purpose it should be stressed that Bologna had already paid the Agent EUR 2,000,000 for his intermediation in the transfer of the Player from Montevideo Wanderers to Bologna and the conclusion of a five-year employment contract that had been fully completed already in July 2008.
59. It is also important that both parties appear to agree that the Agent had no involvement in the subsequent transfer of the Player from Bologna to Napoli in July 2011, which simply activated the obligation for additional payments. Therefore, on the basis of the evidence produced to the Panel and the contentions of the parties, the amount of EUR 4,000,000 was intended simply as

a supplementary compensation for the agency activity and the services provided by the Agent back in July 2008, when Bologna secured the services of the Player with a five-year contract.

60. This plainly means that, since then, the Agent was not required to make any further use of his network or of his negotiation skills: he was not called to undertake any additional risks, expenses or effort that would reasonably justify additional remuneration of such magnitude.
61. On the basis of these objective factors, and in view of the particular circumstances of the case, the Panel finds that the amount of EUR 4,000,000 that purports to represent merely an additional fee for agent services that had already been concluded and had already been rewarded with payment of EUR 2,000,000, is an unreasonably high and excessive fee.
62. And even considering, as a hypothetical point of reference, the transfer value of the Player, which in year 2011 amounted to EUR 9,000,000, it becomes all too evident that the amount of EUR 4,000,000 represents, in and of itself, an unusually high agent fee that exceeds typical rates and market norms in similar cases.
63. As a result, the Panel has not been satisfied by the arguments of the Agent that the fee shall be considered normal, fair and appropriate. Rather, the Panel finds certain merit in the arguments of Bologna, that, if added together, the entire amount of remuneration due to the Agent under the First and the Second Agreement results into an unreasonable and manifestly disproportionate fee in relation to the job and the services provided.
64. On the basis of the foregoing, there is legitimate scope for application of Article 417 SCO, as argued by Bologna, with the aim to reduce the amount of the Agent's remuneration to a reasonable extent.
65. Indeed, in exceptional cases, by application of Article 417 SCO, freedom of contract may be limited, with the aim to restore balance between the competing interests of the parties, or with the aim to remedy an undesirable, unreasonable or immoral effect of a contractual agreement on the basis of the principle of proportionality.
66. The Panel is convinced that under the circumstances of this case the agreement of the parties results into an unreasonable amount of agent fees. Yet, it cannot go unnoticed that this amount was determined on the basis of a negotiated First Agreement in 2008, and was also further confirmed and reiterated with a Second Agreement in 2011. In this respect, it is of little importance at whose instigation these Agreements were ultimately made. The fact remains that the parties had expressed their contractual will in two instances and this had been recorded in two relevant contractual documents.
67. This is why the Panel is mindful not to intervene intensively in the sphere of the contractual freedom of the parties. For this purpose, special weight should be given to the fact that the parties had determined a definite fee of EUR 2,000,000 to be paid with the successful conclusion of the Agent's work, plus a conditional fee, ranging between EUR 500,000 to EUR

6,500,000 and only in the event of the transfer of the Player to a new club, in which the Agent would have no further involvement.

68. So, having regard to the overall structure of the agreement of the parties and the actual services offered by the Agent, the Panel considers that any additional amount of fee to the Agent cannot be substantially higher, and in fact, cannot exceed the amount of EUR 2,000,000 that he had already received as compensation for his overall agent services to the Club.
69. Therefore, by application of Article 417 SCO and taking into account the specific circumstances of the present case, the additional amount compensation due to the Agent on the basis of paragraph (d) of the Agreement of 1 July 2008 is now reduced to EUR 2,000,000, which to the estimation of the Panel, is an appropriate and commensurate amount in relation to the overall services rendered and the original agreement of the parties.
70. In conclusion, the Panel determines that the amount of additional compensation to be finally awarded to the Agent shall amount to EUR 2,000,000 on the basis of the Second Agreement. In lack of any convincing argument submitted by the parties, the interest payable on such amount shall start as determined by the Appealed Decision, *i.e.* as from 17 September 2012 (which is the date of the claim filed before the FIFA PSC by the Agent) and shall remain at a rate of 5% *p.a.*.
71. Because of such conclusion, all other requests and prayers for relief shall be dismissed. This includes, for the avoidance of any doubt, those preliminary ruling requests of Respondent (see par. 19 above) that in view of the conclusion reached do not need to be further addressed by the Panel.

## ON THESE GROUNDS

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

1. The appeal filed on 25 March 2016 by Bologna FC against the Decision passed on 23 September 2015 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is partially upheld.
2. The Decision issued on 23 September 2015 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is amended as follows:

Bologna FC is ordered to pay Gonzalo Luis Madrid Pineiro the amount of EUR 2,000,000 (two million Euros) within 30 days from the notification of the present award with interest at a rate of 5% *per annum* from 17 September 2012 until date of full payment.

3. The other elements of the Decision of the Single Judge of the Players' Status Committee of FIFA are confirmed.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.