Arbitration CAS 2020/A/7516 Antalyaspor A.Ş. v. Abuja City FC & Fédération Internationale de Football Association (FIFA), award of 1 September 2021

Panel: Mr Frans de Weger (The Netherlands), Sole Arbitrator

Football
Training compensation
Proposal as final and binding decision
Importance of time limits in CAS proceedings
Absence of complex factual or legal issues as precondition to issue a proposal
Legal basis to consider failure to reject a proposal as an acceptance
Validity of communications via TMS
Duty to check the "Claims" tab in TMS
Venire contra factum proprium
Consequences of an implicit acceptance of a FIFA proposal

1. **In disputes relating to training compensation, Article 13 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (FIFA Procedural Rules) provides that the FIFA administration may make written proposals, without prejudice, to the parties regarding the amounts owed in the case in question as well as the calculation of such amounts. The amount to be paid set forth in a proposal only becomes final and binding if such proposal is accepted by both parties or if no objection is raised against it within the stipulated time limit. However, the parties to which the proposal is issued do not necessarily know whether the opposing party accepted or rejected the proposal until this is confirmed by FIFA. Accordingly, a proposal itself cannot be considered a final and binding decision; only a *"confirmation letter"* is a decision that definitely affects the legal position of the parties involved.**

2. **As a general principle in CAS proceedings, deadlines are of crucial importance for the proper conduct of CAS proceedings and must, therefore, always be strictly respected by the parties involved. As such, the strict compliance with the rules on time limits is necessary due to the equal treatment of the parties and legal certainty.**

3. **The assessment of whether or not there are complex factual or legal issues is to be made on a *prima facie* basis and on the basis of the claim alone. The FIFA administration must be afforded ample discretion in determining whether or not it considers a case to be complex and, thus, whether or not to issue a proposal to the interested clubs, given that such discretionary power is wholly counterbalanced by the fact that each of those clubs has the right, at its sole discretion, to reject the FIFA proposal and ask for a reasoned decision (with a subsequent right of appeal to the CAS).**

4. **Article 13 of the FIFA Procedural Rules and FIFA Circular no. 1689 constitute a**

sufficient regulatory basis to qualify a failure to respond within 15 days as an acceptance of the FIFA proposal.

5. **Article 9bis of the FIFA Procedural Rules explicitly states that the rules concerning communications with parties are set out *"[a]s a general principle"*, clearly leaving room for different rules for some specific situations. As it can be inferred from Article 1 of Annex 6 of the FIFA Regulations on the Status and Transfer of Players (RSTP), Annex 6 prevails as a more specific rule over the default rules set forth by the FIFA Procedural Rules, in application of the widely accepted interpretive principle *lex specialis derogat legi generali*. In this respect, Article 1(1) of Annex 6 FIFA RSTP provides that, in deviation from what is provided in the FIFA Procedural Rules, all claims related to training compensation and solidarity mechanism must be submitted and must be "managed" through the Transfer Matching System (TMS), with FIFA communications certainly being part of the claim management process. FIFA TMS is a proper means for modern and quick communication, and a standard within the industry of professional football. It is duly provided for in the FIFA regulations and no less secure than email or any other comparable modern means of communication.**

6. **Article 2(1) of Annex 6 FIFA RSTP not only requires clubs to regularly check the "Claims" tab in TMS, but it also indicates that a failure to do so is not a valid excuse for any procedural disadvantages that may arise. The duty to check the "Claims" tab at least every three days is not unreasonable. Although FIFA has amended certain provisions in its regulations due to the Covid-19 pandemic and provided further documents in relation to the Covid-19 pandemic, none of these changes or documents exempted parties from their obligations in relation to TMS.**

7. **According to the principle of *venire contra factum proprium*, where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party.**

8. **The implicit acceptance of a FIFA proposal is akin to concluding a settlement agreement, i.e. once concluded, a party to the settlement cannot withdraw its consent from the settlement agreement at will, but it is, in principle, legally bound by it. As such, a parallel can be drawn to a settlement agreement in Swiss court, which mechanism is modelled on Swiss Civil Procedure Code ("CPC"), and which results in the preclusion of looking into the merits of the case. Such approach is subject to limited grounds for revision under Article 328 CPC, to have such decision reviewed in order to protect a party from great injustice where the party did not do anything but remaining silent.**

I. PARTIES

1. Antalyaspor A.Ş., (the "Appellant" or "Antalyaspor") is a football club with its registered office in Antalya, Turkey. Antalyaspor is affiliated to the Turkish Football Federation (the "TFF"), which in turn is affiliated to the *Fédération Internationale de Football Association*.

2. Abuja City FC (the "First Respondent" or "Abuja") is a football club with its registered office in Abuja, Nigeria. Abuja is affiliated to the Nigerian Football Federation (the "NFF"), which in turn is also affiliated to the *Fédération Internationale de Football Association*.

3. The *Fédération Internationale de Football Association* (the "Second Respondent" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

4. Abuja and FIFA are hereinafter jointly referred to as the "Respondents", and together with Antalyaspor as the "Parties", where applicable.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file, the video-hearing and relevant documentation produced in this appeal. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Award only refers to the submissions and evidence it considers necessary to explain its reasoning.

A. Background Facts

6. In March 2019, A. (the "Player"), a football player of Nigerian nationality born [in] 2000, was registered as an amateur player with Antalyaspor.

7. During the 2019/2020 season, Antalyaspor requested the TFF to be provided with the international player passport of the Player to be retrieved from the NFF during the first transfer window of the 2019/2020 season.

8. During this period, Antalyaspor also inquired the Player about his previous clubs, and contacted the former club of the Player, Hearts Football Club ("Hearts FC"), also affiliated to the NFF, to be provided with the training clubs of the Player. Hearts FC informed Antalyaspor that the Player during his training period had only been registered with Hearts FC and Green Horse Football Academy ("Green Horse"), also affiliated to the NFF and as appellant also claiming training compensation from Antalyaspor in relation to the same Player before CAS,

registered under *CAS 2020/A/7517*. Furthermore, Hearts FC stated that Green Horse had waived its right to claim a potential training compensation.

9. On 24 June 2019, Antalyaspor, Hearts FC and the Player concluded a transfer agreement (the "Transfer Agreement") following which *"*[Hearts FC] *and* [the Player] *express that* [the Player] *is* [Hearts FC]*'s player and in this case any third party shall not claim any compensation (transfer fee, training compensation, solidarity contribution, etc.) from* [Antalyaspor]. *In case* [Hearts FC] *will pay all damages, compensation, etc. to* [Antalyaspor]*"*.

10. On 26 July 2019, Antalyaspor received from the TFF the Player's player passport dated 25 July 2019 (the "First Player Passport") as retrieved by the NFF. The First Player Passport affirmed the statements by Hearts FC, and entailed that the Player had been registered with Green Horse for the four seasons of his 12th, 13th 14th and 15th birthday (i.e. from 1 January 2012 until 31 December 2015) and with Hearts FC for the three seasons from his 16th until his 18th birthday, and part of the season of his 19th birthday (i.e. from 1 January 2016 until 19 March 2019).

11. On 8 August 2019, Green Horse signed a waiver which, *inter alia,* stipulated that *"*[Green Horse] *have released* [the Player] *to* [Hearts FC]. *Without any conditions or demands for compensation"* (the "Waiver").

12. On 15 August 2019, the Player and Antalyaspor concluded an employment contract, and the Player was registered for Antalyaspor with the TFF in FIFA's Transfer Matching System ("TMS").

13. On 3 August 2020, Abuja provided Antalyaspor with a new player passport issued by the NFF, which was *"up-dated"* on 24 July 2019 (the "Second Player Passport"). The Second Player Passport entailed that the Player had been registered with Green Horse for the five seasons of his 12th, 13th 14th, 15th and 16th birthday (i.e. from 1 January 2012 until 31 December 2016), with Abuja for the season of his 17th birthday (i.e. from 1 January 2017 until 31 December 2018) and with Hearts FC for the seasons of his 18th birthday and part of the season of his 19th birthday (i.e. from 1 January 2018 until 19 March 2019). Abuja also requested some additional information from Antalyaspor in order to calculate the training compensation due to Abuja in accordance with the Second Player Passport.

14. On 20 August 2020, Antalyaspor responded to the requests of Abuja of 3 August 2020, and informed Abuja that *"[t]here is a discrepancy between two players' passports, the one we previously received from the* [NFF] *via the* [TFF], *and the one you submitted. Please note that we are examining the matter at hand and also contacting* [the Player]*'s previous club,* [Hearts FC]. *We will not fail to revert back to you as soon as possible"*.

15. On the same day, Abuja responded that they *"are quite aware of the differences"* and that they wanted to ensure Antalyaspor that *"the* [NFF] *conducted a full investigation before coming up with the* [Second Player Passport] *which we sent you"*.

16. On 1 September 2020, Antalyaspor informed Abuja that *"*[the First Player Passport] *was crucial during the decisive phase whether to sign* [the Player] *as a professional or not"*. Furthermore, Antalyaspor informed Abuja that it *"made the utmost effort to obtain the player passport by official means. After several attempts*, [the First Player Passport] *was received from the* [NFF]*, via the* [TFF]. […] [Abuja] *is not apparent in the* [First Player Passport] *and consequently is not entitled to any training compensation. Therefore, we must respectfully decline your request for the collection of the training compensation that* [Abuja] *is allegedly entitled to"*.

17. On the same day, Abuja responded that *"it is unfortunate you were misinformed about* [the Player]*'s history even before you received* [the First Player Passport] *but our clients should not and cannot be disenfranchised because of that. Like I told you, the NFF did a thorough investigation before releasing* [the Second Player Passport] *so it is in your best interest to abide by it otherwise we will approach FIFA for justice as we have already commenced"*.

B. Proceedings before the FIFA Dispute Resolution Chamber

18. On 14 August 2020, Abuja submitted in TMS a claim against Antalyaspor with the FIFA Dispute Resolution Chamber (the "DRC"), claiming EUR 60,000 as outstanding training compensation for the Player.

19. On 9 October 2020, the FIFA DRC secretariat (the "FIFA DRC Secretariat"), issued the following proposal (the "Proposal") to Abuja and Antalyaspor via FIFA TMS.

> *"*[…] *[I]n accordance with Article 13 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, i.e. the Procedural Rules, and the FIFA Circular 1689, please find enclosed the proposal made by the FIFA secretariat in accordance with the above mentioned provision (Enclosure 1).*
>
> *In sum, the proposed amount due by* [Antalyaspor] *to* [Abuja] *is as follows:*
>
> ***EUR 60,000 as training compensation, plus 5% interest p.a. as of the due date***
>
> *In accordance with Article 13 of the Procedural Rules, it is informed that the parties have to either accept or reject the proposal* ***within the 15 days following this notification via TMS, i.e. until 24 October 2020****. In this regard,* [Abuja] *is limited only to accept or reject the proposal, excluding hereby any possibility to amend its original claim.*
>
> *In case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA Player Status' Department within stipulated deadline, the proposal will become binding.*
>
> *In case of rejection by* [Antalyaspor]*, the latter will have* ***five additional days, i.e. until 29 October 2020*** *to provide its position to the claim. Should* [Antalyaspor] *wish to extend its deadline to file its position, it must request said extension before the expiration of the above mentioned date, in which case the deadline is automatically extended for* ***ten (10) additional days, i.e. until 8 November 2020*** *in accordance with Article 16 par. 11 of the Procedural Rules.*

Please also be informed that in case of rejection of the proposal by one of the parties, a formal decision on this matter will be taken by the Single Judge of the sub-committee of Dispute Resolution Chamber in due course.

Equally, we wish to point out that the relevant proposal will always be without prejudice to any formal decision which could be passed by the competent deciding body in the matter at a later stage in case the proposal is rejected by one of the parties" (emphasis in original).

20. On 14 October 2020, Abuja informed the FIFA DRC Secretariat via FIFA TMS that it accepted the Proposal.

21. Antalyaspor did not reply to the Proposal within the time limit granted until 24 October 2020.

22. On 2 November 2020, the FIFA Players' Status Department informed Abuja and Antalyaspor as follows via FIFA TMS (the "Confirmation Letter"):

"We refer to the above-mentioned matter and in particular to the proposal made by the FIFA secretariat in accordance with Article 13 of the Procedural Rules.

As mentioned in our previous communication, in case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA Player Status' Department within the stipulated deadline, the proposal will become binding.

Bearing the above in mind, we would like to inform the parties involved that the proposal has become binding. Consequently, **[Antalyaspor]** *has to pay to* **[Abuja]***, within 30 days as from the date of this notification, if not done yet, the amount of* ***EUR 60,000, plus 5% interest p.a. as of the due date*** *until the date of effective payment.*

In the event that the aforementioned sum is not paid by [Antalyaspor] *within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

[Abuja] *is directed to inform* [Antalyaspor] *immediately and directly of the account number to which the remittance is to be made and to notify the FIFA Dispute Resolution Chamber of every payment received"* (emphasis in original).

23. On 5 November 2020, Abuja sent an invoice for payment of training compensation to Antalyaspor, and referred to the FIFA letter of 2 November 2020, which stated that the Proposal had become valid and binding.

24. On 9 November 2020, Antalyaspor submitted its position to the Proposal to FIFA, together with evidence and reasons for the refusal of Abuja's claim for training compensation.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 13 November 2020, Antalyaspor lodged a Statement of Appeal with the Court of Arbitration for Sport ("CAS"), pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2020) (the "CAS Code"), challenging the Proposal that became binding on 25 October 2020 and notified by means of the Confirmation Letter on 2 November 2020, naming Abuja and FIFA as the respondents and requesting a sole arbitrator to be appointed.

26. On 20 November 2020, Antalyaspor submitted its Appeal Brief.

27. On 23 November 2020, the CAS Court Office acknowledged receipt of the Appeal Brief and invited the Respondents to submit to the CAS an Answer, pursuant to Article R55 of the CAS Code, within 20 twenty days upon receipt of its letter by courier.

28. On 25 November 2020, the CAS Court Office informed the Parties that the Division President decided to refer the matter to a sole arbitrator and that case *CAS 2020/A/7517*, as referred to above, be submitted to the same sole arbitrator.

29. On 30 November 2020, the CAS Court Office, pursuant to Article R55 par. 3 of the CAS Code, the time limit set out in the letter of the CAS Court Office of 23 November 2020 was set aside, as per request of FIFA, and a new time limit would be fixed upon Antalyaspor's payment of its share of the advance of costs.

30. On 22 December 2020, the CAS Court office, in accordance with Article R55 of the CAS Code, invited FIFA to submit to the CAS an Answer, within twenty days upon receipt of such letter.

31. On 22 December 2020, Abuja informed the CAS Court Office that it was its understanding that *"all Answers of all Respondents to the brief was shifted till when the Appellants paid the Advance of Costs and it is on this grounds that we did not file our Answer as we waited to be informed that the Advance of Costs has been paid and the time limit had begun to count"*. For this reason, Abuja requested the CAS to apply the same time limit as granted to FIFA.

32. On the same day, the CAS Court Office invited Abuja to submit its Answer, provided that its admissibility would be assessed and ruled by the Sole Arbitrator once constituted.

33. On 6 January 2021, Abuja submitted its Answer to the CAS.

34. On 21 January 2021, after a granted extension, FIFA submitted its Answer.

35. On 21 January 2021, the CAS Court Office informed the Parties on behalf of the Deputy President of the Appeals Arbitration Division, pursuant to Article R54 CAS Code, that the Panel was constituted as follows:

Sole Arbitrator: Mr Frans de Weger, Attorney-at-Law in Zeist, The Netherlands.

36. On 3 February 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing on 17 March 2021 in these proceedings by video-conference further to Articles R44.2 and R57 of the CAS Code.

37. On 11 February 2021, the CAS Court Office, and with reference to the CAS Court Office' letter of 22 December 2020, the Parties were informed that the Sole Arbitrator decided to admit Abuja's Answer to the file and that the reasons in support of the Sole Arbitrator's decision would be given in the final Award.

38. On 25 February, Antalyaspor and Abuja submitted a signed copy of the Order of Procedure.

39. On 3 March 2021, FIFA submitted a signed copy of the Order of Procedure.

40. On 17 March 2021, a hearing by videoconference was held. At the outset of the hearing, the Parties confirmed not to have any objection to the appointment of the Sole Arbitrator.

41. In addition to the Sole Arbitrator and Mr Giovanni Maria Fares, CAS Counsel, the following persons attended the hearing by video-conference on 17 March 2021:

    a) For the Appellant

        1) Mr Ismet Bumin Kapulluoğlu, Attorney-at-Law;

    b) For the First Respondent

        1) Mr Goke Oshatoba, President, Party Witness;

        2) Mr Johnny Precious Ogbah, Attorney-at-Law;

        3) Mr Nasiru Jibril, TMS Manager NFF, witness

    c) For the Second Respondent

        1) Mr Miguel Liétard Fernández-Palacios, Director of Litigation;

        2) Mr Saverio Paolo Spera, Senior Legal Counsel.

42. The Sole Arbitrator heard evidence from Mr Nasiru Jibril, the TMS manager of the NFF, who issued the First Player Passport and the Second Player Passport, as witnesses called by Antalyaspor. Mr Goke Oshatoba could not be heard due to a bad internet connection and was thus not heard as witness.

43. The Parties had full opportunity to examine Mr Nasiru Jibril as witness, as well as to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.

44. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and confirmed that their right to be heard had been respected.

45. The Sole Arbitrator confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the Award.

IV. SUBMISSIONS OF THE PARTIES

A. Submissions on the admissibility of the Appeal and CAS' jurisdiction

46. The Sole Arbitrator has carefully reviewed all of the Parties' submissions and will briefly summarise the positions. To the extent relevant, they will be dealt with in more detail in the sections of the Sole Arbitrator's findings. Given that the Respondents raise an admissibility objection and Abuja also disputes the jurisdiction of the CAS, the positions of the Respondents are set out first, before summarising Antalyaspor' position.

a. The Second Respondent

47. On 21 January 2021, FIFA lodged the following requests for relief:

"a. To declare the present appeal inadmissible;

b. Alternatively, to reject the appeal on the merits;

c. To order [Antalyaspor] *to bear all costs incurred with the present procedure".*

48. FIFA's submissions may, in essence, be summarised as follows:

i. With regard to the admissibility of the appeal

- The legal framework for proposals such as the Proposal is to be found in the FIFA Procedural Rules, specifically Article 13 thereof. In short, i) the FIFA administration can make written proposals to the parties in limited matters (including training compensation); ii) the parties can either accept or reject the proposal within 15 days and; iii) the failure to answer will be deemed as a tacit acceptance to the proposal and the latter will have binding effects.

- It is unclear if Antalyaspor is trying to appeal the Proposal or the Confirmation letter. However, the appeal should be considered inadmissible in both cases.

- If directed against the Proposal, Antalyaspor' appeal would contradict not only the wording but also the very purpose of Article 13 FIFA Procedural Rules and would

permit Antalyaspor to *"revive"* an issue which was already settled by the Proposal which was accepted (either explicitly or tacitly) by the clubs.

- As Abuja accepted the Proposal and Antalyaspor failed to provide an answer within the granted deadline in accordance with Article 13 FIFA Procedural Rules, the Proposal was tacitly accepted by Antalyaspor and became final and binding.

- Article 13 FIFA Procedural Rules has the effect of settling a considerable number of training compensation and solidarity contribution disputes in a swift and efficient manner and had an immediate and impressive impact, i.e. over 70% of such disputes has been settled without an adjudication procedure. Allowing appeals against these proposals, especially when they have become final and binding, would render the system that FIFA implemented ineffective.

- Moreover, the system allows the relevant clubs to finally submit their dispute before the FIFA DRC and to obtain a decision from this body, if one of them does not want to accept the proposal. However, they must object the proposal within 15 days, otherwise, this right to object would preclude and the proposal would become final and binding.

- The present appeal is not only inadmissible (due to the preclusive effects of not having objected the Proposal in due time) but also goes against the principle of *venire contra factum proprium*. Antalyaspor was estopped from appealing either the Confirmation Letter or the Proposal (after 24 October 2020) because it led to the legitimate expectations that it had accepted the Proposal and that the dispute was already settled. Now, Antalyaspor has changed its course of action to the detriment of Abuja and even FIFA and this aspect of the legal system.

- Regarding the Covid-19 pandemic as a justification for its failure to respond to the Proposal, FIFA argues that Antalyaspor has a general obligation to access TMS regularly, but at least every three days, according to Article 3(2) of Annex 3 RSTP, Article 3.1(2) of Annexe 3 RSTP and FIFA Circular 1689. As the only requirement to use FIFA TMS is an internet connection, Antalyaspor's TMS official could have accessed the platform at any time.

- If the appeal is directed against the Confirmation Letter, the appeal is also inadmissible because it cannot be considered to constitute a decision.

- The Confirmation Letter does not contain any ruling; it did not resolve any issue in a final way and had a mere informative nature. Indeed, the Confirmation Letter indicates that *"we would like to* ***INFORM*** *the parties that the proposal* ***became*** *binding"* (emphasis added by FIFA). In contrast to the Confirmation Letter, the Proposal did contain a (proposed) ruling, i.e. *"the proposed amount due by* [Antalyaspor] *to* [Abuja] *is […] EUR 60,000 as training compensation, plus 5% interest p.a. as of the due date"* which would become binding if the Parties accepted it or if they failed to reject it within the regulatory deadline.

- The Confirmation Letter did not produce legal effects. Antalyaspor may argue that the Confirmation Letter intended to produce legal effects as it i) set a starting period to pay the amounts of the Proposal; and ii) warned that if the payment was not done in this period, the matter would be submitted to the FIFA Disciplinary Committee. Even when these mere procedural issues are mentioned in the Confirmation Letter, they do not modify the informative character of the communication.

- The Confirmation Letter does not have *animus decidendi*. Contrary to the Proposal, which indeed had the intention to solve the training compensation matter between Antalyaspor and Abuja, the Confirmation Letter was a mere communication with simple information which did not aim to solve any issue. The matter was decided in terms of the Proposal, since 24 October 2020. If Antalyaspor wanted to challenge the Proposal, it should have done so within the 15-day deadline, failing which the Proposal became final and binding.

- The above points are corroborated by CAS jurisprudence, confirming that a mere letter which simply reminded about a past, final, binding and immutable Proposal, cannot be considered a decision in itself.

ii. With regard to the merits

- With regard to the dispute between Antalyaspor and Abuja, FIFA is of the opinion that it does not have standing to be sued as Antalyaspor's requests for relief are solely directed against Abuja and find their cause purely in the training compensation dispute.

b. The First Respondent

49. On 5 January 2021, Abuja lodged the following requests for relief:

> *"Based on the foregoing,* [Abuja] *respectfully requests CAS to issue an award:*
>
> *(a) Declaring the lack of jurisdiction in the present case,*
>
> *(b) Alternatively, declaring the present appeal inadmissible;*
>
> *(c) Confirming that the proposal became binding when* [Antalyaspor] *failed to reject it and ordering them to pay the proposal sum plus interest as accrued since the date of the proposal;*
>
> *(d) In any event, ordering* [Antalyaspor] *to bear all costs incurred with the present procedure and to cover all the expenses of* [Abuja] *related to the present procedure".*

50. Abuja's submissions may, in essence, be summarised as follows:

i. With regard to CAS' jurisdiction and the admissibility of the appeal

- Abuja not only disputes the admissibility of the appeal but also CAS' jurisdiction given that the appeal has not been lodged against a decision in view of Article 58 par. 1 FIFA Statutes and Article R47 of the CAS Code.

- The Proposal does not meet the conditions set out in the CAS Code for the filing of an appeal to CAS. Failure to reject the Proposal means that the legal remedies have not been exhausted.

- What Abuja is appealing against is a FIFA Proposal that they failed to reject and consequently allowed to become binding which is not appealable, and not a decision.

- Article 13(1) FIFA Procedural Rules stipulates, *inter alia*, that *"[i]n disputes relation to training compensation and the solidarity mechanism without complex factual or legal issues, or in cases in which the DRC already has a clear, established jurisprudence, the FIFA administrator may make written proposals […]"* and that they can, within 15 days of receipt of the proposal, request a formal decision. However, *"failure to do so will result in the proposal being regarded as accepted by and binding on all parties"*.

- Once Abuja confirmed that it agreed with the Proposal on 14 October 2020, there could be no doubt whatsoever for Antalyaspor that the only way to avoid the Proposal becoming final and binding was to reject it and request a formal decision. As a result of Antalyaspor failing to provide an answer to FIFA within 15 days of the notification, the Proposal became final and binding.

- The FIFA RSTP establishes an obligation for all TMS users to *"check the Claims tab in TMS at regular intervals of at least every three days and pay particular attention to any petitions or requests for statements"* and requires all TMS users to *"check TMS at regular intervals on a daily basis and pay particular attention to any enquiries or requests for statements"*.

- Antalyaspor's claim that their TMS manager was not able to log on to TMS because of his restricted working hours in connection with the Covid-19 pandemic should not be accepted, as he was very active via email as evidenced by his email correspondence with Abuja. Furthermore, Abuja had informed Antalyaspor that they had commenced proceedings at FIFA in their email of 1 September 2020 and for this reason Antalyaspor ought to have monitored their TMS for any claims.

- According to Swiss Law *"a notification or declaration is deemed to be received when it entered the sphere of control of the recipient and one could reasonably assume that the recipient was able to take note of it"*. Therefore, Antalyaspor should be deemed to have become aware of the Proposal as soon as it was uploaded onto the FIFA TMS system.

- The *"access to justice"* and the connected *"right to be heard"* or to a *"fair trial"* cannot be invoked by a party without the observance of the proper rules governing the procedure for the exercise of right.

ii. With regard to the merits

- Article 20 of the FIFA RSTP states that: *"[t]raining compensation shall be paid to a player's training club(s) when a player signs his first contract as a professional"*.
- As proven by the Second Player Passport, Abuja is a training club in the sense of the FIFA RSTP and is thus in principle entitled to a training compensation.
- In accordance with the well-established jurisprudence of FIFA and CAS, the agreement between Hearts and Antalyaspor and also the Waiver cannot be held to the detriment of Abuja.
- The presence of multiple player passports cannot and should not disenfranchise Abuja from its legitimate claim as it has proven beyond reasonable doubt that it trained the Player and the Player himself has confirmed the accuracy of the Second Player Passport.
- The FIFA DRC decision of 20 May 2011 (no. 511126) should not be taken into consideration, as it does not depict a true picture of the complexities of the grassroot registrations in third world countries such as Nigeria.

c. The Appellant

47. On 20 November 2020, Antalyaspor lodged the following requests for relief:

"a. to grant a permanent relief reversing the Confirmation Letter and reject [Abuja]*'s claim,*

b. to rule that [Abuja] *is not entitled to any training compensation amount,*

c. to establish that the costs of the present arbitration procedure shall be borne by the Respondents,

d. to condemn the Respondents to pay [Antalyaspor] *a contribution towards its legal and in connection with the present proceedings".*

48. Antalyaspor' submissions may be summarised as follows:

i. With regard to the admissibility of the appeal

- With regard to the Appealed Decision, Antalyaspor states in its written submissions that *"[t]he present appeal is filed against the proposal made by FIFA on 25 October 2020, which became binding on 2 November 2020"*.
- With reference to CAS 2009/A/2000, Antalyaspor finds that the Proposal constitutes an appealable decision (i) as it contains a ruling, (ii) is a *"final decision"* in the sense that all internal channels for review have been exhausted and finally, (iii) was passed by a FIFA body.

- Antalyaspor only became aware of the Proposal when it had become *"final and binding"* in accordance with the FIFA regulations. The reasons for this are that the emergent proposal system that has been used only for the last year is using TMS only for communication and that the TMS official of Antalyaspor was not able to supervise TMS as restricted working hours had been implemented because of the escalation of the Covid-19 pandemic in Turkey.

- Although the Proposal has *"become binding"*, Antalyaspor is of the opinion the that the dispute will fall under the *de novo* competence of the CAS, as it only became aware of the procedure after the FIFA Proposal had become binding.

ii. With regard to the merits

- Antalyaspor complied with its obligation to do research to the Player's previous career before signing him as a professional under all reasonable expectation. In this regard, Antalyaspor underlines that it (i) inquired the Player about his previous registrations; (ii) inquired the Player's previous club, Hearts FC; and (iii) ultimately retrieved the First Player Passport from the NFF via the TFF.

- Antalyaspor had every reason to believe that the Player was not registered with any other club than Hearts FC and Green Horse, since a waiver signed by Hearts FC confirmed that the Player was not registered with Abuja.

- Antalyaspor determined the amount of training compensation in accordance with the First Player Passport, which it duly relied on.

- Abuja was not included in the First Player Passport transmitted to Antalyaspor, and the Player and his former club, Hearts FC, did not inform Antalyaspor about an (eventual) registration with Abuja.

- The ultimate dependable contact to retrieve the training history of a Player is the relevant national association.

- In line with the principle of legal certainty and the FIFA DRC jurisprudence, Antalyaspor cannot be held liable for the alteration of the information in the Second Player Passport one year after the Player's registration with Antalyaspor. In this regard, Antalyaspor refers to a FIFA DRC decision dated 20 May 2011, no. 511126.

V. JURISDICTION

49. The present arbitration is governed by chapter 12 of the Swiss Private International Law Act ("PILA"), which provides in Article 186(1) PILA that the Sole Arbitrator is entitled to rule on his jurisdiction ("Kompetenz-Kompetenz"). The Sole Arbitrator will therefore first decide if he is competent to hear this case.

50. Article R47 CAS Code reads as follows:

> *"Appeal*
>
> *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 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".*

51. Article 58(1) FIFA Statutes (2019 edition) reads as follows:

> *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

52. While FIFA does not contest the jurisdiction of the CAS referring to Article 58(1) of the FIFA Statutes and Article R47 of the CAS Code, the jurisdiction of the CAS is disputed by Abuja. In particular, Abuja argues that there is no jurisdiction because (i) Antalyaspor has not exhausted all legal remedies available at FIFA as Antalyaspor did not reject the Proposal and (ii) the Appealed Decision in this case does not meet the requirements identified by CAS case law in order to consider it a *"final decision"*.

53. The Sole Arbitrator is aware that there is some debate as to whether the *"exhaustion of legal remedies"* is a question of jurisdiction or a question of admissibility (RIGOZZI/HASLER, in ARROYO M. (Ed.), Arbitration in Switzerland, Article R47 CAS Code, marg. No. 37; See also MAVROMATI/REEB, The Code of the CAS, R47, marg. no. 12 and 32). However, the Sole Arbitrator finds that, in this case, it remains dispensable to deal with this issue as he does not follow Abuja's argument that Antalyaspor has not exhausted all legal remedies. While the failure to reject the Proposal might preclude the Sole Arbitrator from addressing the merits of Antalyaspor' appeal, this does not change the fact that there are no further internal remedies available at FIFA, as FIFA held that the Proposal became *"final and binding"*. As will follow in more detail from the findings of the Sole Arbitrator under the Section "Admissibility of the Appeal", the Proposal was only confirmed by means of the Confirmation Letter that definitely affected the legal position of the parties involved.

54. In relation to the second argument raised by Abuja, the Sole Arbitrator notes that also the question whether an appealed decision *"constitutes a decision"* is at times handled as a question of jurisdiction (see, *inter alia*, CAS 2019/A/6253 and CAS 2007/A/1251) and sometimes as a question of admissibility (see, *inter alia*, CAS 2017/A/5058) by the CAS. In this regard, the Sole Arbitrator notes that both FIFA and Abuja have also raised the argument that the appealed decision does not *"constitute a decision"* to object the admissibility of the appeal by Antalyaspor. More specifically, FIFA raised the additional question as to which decision is being appealed by Antalyaspor, the Proposal or the Confirmation Letter.

55. Also in relation to this argument, so the Sole Arbitrator finds, it remains dispensable to deal with the question whether the *"constitution of a decision"* is a question of jurisdiction or a question

of admissibility, as the Sole Arbitrator finds that the decision appealed by Antalyaspor, i.e. the Confirmation Letter, constitutes a decision. However, the Sole Arbitrator decides to address the conclusion that the decision appealed by Antalyaspor *"constitutes a decision"* under the admissibility of the appeal, as FIFA raised an additional question, as set out above. The jurisdictional objection by Abuja is however considered on the basis that the Appealed Decision does constitute a decision.

56. Based on the foregoing, the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY OF THE APPEAL

57. As set out under the Sections *"Submissions of the Parties"* and *"Jurisdiction"*, the Respondents dispute the admissibility of Antalyaspor' appeal.

58. FIFA is of the opinion that it is unclear whether Antalyaspor appealed the Proposal or the Confirmation Letter. In case Antalyaspor appealed the Proposal, FIFA maintains that in the absence of any objection being raised by Antalyaspor and/or Abuja by 24 October 2020, the Proposal had already entered into force. In case that the appeal was filed against the Confirmation Letter of 2 November 2020, FIFA argues that the Confirmation Letter cannot be considered an appealable decision, since it is merely a letter of informative nature.

59. Abuja is of the opinion that the appeal is inadmissible in this case as (i) Antalyaspor has not exhausted all legal remedies available at FIFA as Antalyaspor did not reject the Proposal and (ii) the appealed decision in this case does not meet the requirements identified by CAS case law in order to consider it a *"decision"*. Since the first argument raised by Abuja has already been addressed under the Section *"Jurisdiction"*, as set out above, the Sole Arbitrator will only address the Respondents' arguments that the Appealed Decision does not constitute a decision.

60. In light of the above positions, the Sole Arbitrator recalls that the Proposal of the FIFA DRC Secretariat of 9 October 2020 provides, *inter alia*, as follows:

> *"In case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA Player Status' Department within stipulated deadline, the proposal will become binding".*

61. The Sole Arbitrator notes that the FIFA Players' Status Department confirmed in the Confirmation Letter that the content of the Proposal had entered into force, determining, *inter alia*, as follows:

> *"***[Antalyaspor]** *has to pay to* **[Abuja]***, within 30 days as from the date of this notification, if not done yet, the amount of* ***EUR 60,000 plus 5% interest p.a. as of the due date*** *until the date of effective payment.*
>
> *In the event that the aforementioned sum is not paid by* [Antalyaspor] *within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision"* (emphasis in original).

62. As correctly noted by the FIFA, the Sole Arbitrator will first have to determine if Antalyaspor filed an appeal against the Proposal of 9 October 2020 or the Confirmation Letter of 2 November 2020. The Sole Arbitrator agrees with FIFA that this is not clear, although, as also stated by FIFA, it appears that Antalyaspor filed its appeal against the Confirmation Letter.

63. Be that as it may, in its submissions, Antalyaspor stipulated that *"[t]he present appeal is filed against the proposal made by FIFA on 25 October 2020, which became binding on 2 November 2020"*. Furthermore, at the hearing Antalyaspor declared that in the context of the appeal against the intended legal effects of the decision by FIFA, the Proposal and the Confirmation Letter had to be *"construed together"* and *"must be taken into account together"*. In other words, so the Sole Arbitrator understands, if the Proposal and the Confirmation Letter are taken into account separately they will not have the aspects of a formal decision in order to appeal against it.

64. Given the fact that Antalyaspor also submitted the Confirmation Letter as the Appealed Decision and further to the explanation provided during the hearing that the Proposal and the Confirmation Letter are interconnected, as set out above, the Sole Arbitrator is convinced that the appeal was directed against the Confirmation Letter of 2 November 2020. The Sole Arbitrator also considers this to be the most logical interpretation as there can be no doubt that the Proposal of 9 October 2020 in itself did not produce any 'legal effects', as will also be further explained below.

65. Having decided that the appeal was filed against the Confirmation Letter, the Sole Arbitrator will subsequently have to assess whether the Confirmation Letter constitutes an appealable decision. The Sole Arbitrator wishes to recall in this context that both FIFA and Abuja find that the Confirmation Letter could not be considered an appealable decision.

66. Whereas the Confirmation Letter confirmed that an amount of EUR 60,000 had to be paid by Antalyaspor to Abuja, as proposed by FIFA in the Proposal, the Sole Arbitrator finds that the Confirmation Letter also contains a number of aspects that were not yet addressed in the Proposal, but that were only imposed on Antalyaspor in a final and binding manner by means of the Confirmation Letter: the Confirmation Letter (i) confirmed that the Proposal was binding either in case it was accepted by all parties or if the parties failed to provide an answer; (ii) confirmed that the Proposal had become binding; (iii) confirmed that Antalyaspor had to pay an amount of EUR 60,000 to Abuja, whereas the Proposal only refers to this amount as a proposal that could still be objected to; (iv) provided for a grace period of 30 days; (v) determined that interest at a rate of 5% *per annum* would have to be paid over the due amount as soon as the 30 day grace period lapsed; and (vi) determined that the matter would be referred to the FIFA Disciplinary Committee if Antalyaspor would not pay the due amount to Abuja within 30 days.

67. The Sole Arbitrator wishes to emphasise that the amount to be paid set forth in a proposal only becomes final and binding if such proposal is accepted by both parties or if no objection is raised against it within the stipulated time limit. However, the parties to which the proposal is issued do not necessarily know whether the opposing party accepted or rejected the proposal until this is confirmed by FIFA. Accordingly, the Sole Arbitrator finds that a proposal itself cannot be considered a final and binding decision, as mentioned before, but that the elements

mentioned above lead to the conclusion that only a *"confirmation letter"*, such as the Confirmation Letter, is a decision that definitely affects the legal position of the parties involved.

68. The Sole Arbitrator also finds support in Article 13(3) FIFA Procedural Rules of the 2021 edition, which provision determines that *"[t]he confirmation letter shall be considered a final and binding decision pursuant to the FIFA Regulations on the Transfer and Status of Players"*. Even though this provision is not directly applicable to the proceedings in the matter at hand as it was only implemented during the present proceedings before CAS, it does shed more light as to the status of a confirmation letter.

69. Furthermore, the Sole Arbitrator wishes to clarify that the situation in the matter at hand is different from the situations in the jurisprudence relied on by FIFA (i.e. CAS 2020/A/6732, CAS 2019/A/6406). In such cases, CAS held that the letters issued by FIFA confirming the consequences of a failure to comply with a certain order as already set out in the underlying disciplinary decision were not appealable decisions.

70. First of all, the underlying decision in CAS 2020/A/6732 specifies that if no payment would be made by the debtor, and the creditor would request for the relegation of the debtor, *"the relegation will be automatic, without the FIFA Disciplinary Committee having to make a formal decision"*. The situation in CAS 2019/A/6406 is comparable. Conversely, the Proposal does not indicate that no formal decision would follow but, rather, it indicates that the Proposal would become final and binding, which is different as will be set forth in further detail below.

71. Second, the debtors in CAS 2020/A/6732 and CAS 2019/A/6406 can escape the implementation of the disciplinary measures referred to in the disciplinary decision without any assistance being required from the creditors, i.e. if they would pay the due amount no sanctions would be imposed. It can therefore also be expected from them to file an appeal against the disciplinary decision in question if they disagree with the sanctions set forth therein and not wait until FIFA informs it that the sanctions are indeed implemented. This is different in the matter at hand, because the consent of both Abuja and Antalyaspor – be it explicit or implicit – was required before the Proposal could be implemented. Without the step of issuing a *"confirmation letter"* such as the Confirmation Letter, the Proposal itself is not enforceable.

72. For these reasons, the Sole Arbitrator finds that the jurisprudence relied on by FIFA is not applicable to the matter at hand and does not stand in the way of considering the Confirmation Letter as an appealable decision.

73. Having considered that the Confirmation Letter is a final decision and as such appealable, the Sole Arbitrator notes that Article 58.1 of the FIFA Statutes states as follows:

> *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"*.

74. As the Confirmation letter was sent on 2 November 2020, and the claim in front of CAS was lodged on 13 November 2020, the time limit in accordance with Article 58.1 of the FIFA Statutes was duly complied with by Antalyaspor, and the Sole Arbitrator finds that all requirements of Article R48 CAS Code were complied with.

75. Whether Antalyaspor can still challenge the amount awarded to Abuja by means of the Confirmation Letter, notwithstanding Antalyaspor' implicit acceptance of the Proposal, or whether it is precluded to do so, is a different issue altogether and will be addressed in detail below.

76. Hence, the Sole Arbitrator finds that Antalyaspor' appeal against the Confirmation Letter is admissible.

VII. APPLICABLE LAW

77. Antalyaspor submits that the present case is governed by Swiss law pursuant to the jurisprudence of the CAS.

78. Abuja did not make any specific submissions to the applicable law, but throughout its submissions it made reference to Swiss law and FIFA regulations.

79. FIFA submits that, pursuant to Article 57(2) FIFA Statutes, the provisions of the CAS Code shall apply to the proceedings and that CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law. In this respect, FIFA also refers to Article R58 CAS Code. FIFA takes the view that the FIFA Statutes and regulations – namely the FIFA RSTP and the Procedural Rules – constitute the applicable law to the matter at hand and subsidiarily Swiss law shall be applied should the need arise to fill a possible gap in the FIFA regulations.

80. Article R58 CAS Code provides the following:

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

81. Article 57(2) 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".*

82. The Sole Arbitrator finds that primarily the various regulations of FIFA are applicable, in particular the FIFA RSTP and the FIFA Procedural Rules, and additionally Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. PRELIMINARY ISSUES

83. Before turning to the examination of the main issues, the Sole Arbitrator has to address two preliminary points as raised during the course of the present appeal proceedings.

A. Admissibility of Abuja's Answer

84. The first issue relates to the admissibility of Abuja's Answer.

85. In this regard, as set out above, on 11 February 2021, the Parties were informed by the CAS Court Office that the Sole Arbitrator decided to admit Abuja's Answer to the file and that the reasons in support of this decision would be given in the final Award.

86. As a starting point, as a general principle in CAS proceedings, the Sole Arbitrator wishes to emphasise that deadlines are of crucial importance for the proper conduct of CAS proceedings and must, therefore, always be strictly respected by the parties involved. As such, the Sole Arbitrator further underlines that the strict compliance with the rules on time limits is necessary due to the equal treatment of the parties and legal certainty, which has also been confirmed by the Swiss Federal Tribunal ("SFT") (see, *inter alia*, SFT 4A_54/2019, SFT 4A_238/2018, SFT 4A_692/2016 and SFT 5A_741/2016).

87. Against this background, the Sole Arbitrator recalls that on 30 November 2020, the CAS Court Office, pursuant to Article R55 par. 3 of the CAS Code, informed the Parties that the time limit set out in the letter of the CAS Court Office of 23 November 2020 was set aside, as per request of FIFA, and a new time limit would be fixed upon Antalyaspor's payment of its share of the advance of costs. After payment of its share by Antalyaspor, it was on 22 December 2020 that the CAS Court office invited FIFA in order to submit to the CAS its Answer, within twenty days upon receipt of such letter.

88. Although the Sole Arbitrator fully supports that the content of Article R55 of the CAS Code and the consequences must be clear to any party represented by external counsels as was communicated to the Parties by the CAS Court Office by means of its letter of 22 December 2020, the Sole Arbitrator, however, to a certain extent, has some understanding for Abuja's position in relation to the misinterpretation of the letter dated 30 November 2021 that was raised.

89. In this regard, noting that the time limit to file an answer is not an absolute time limit, at the same time being aware that extensions can only be granted upon justified grounds, the Sole Arbitrator, also considering the absence of objection from Antalyaspor and FIFA, finds it fair, under the specific circumstances, to admit the Answer to the file. As a matter of fact, from the letter of the CAS Court Office of 23 November 2020 it follows that Abuja and FIFA were both invited to submit their Answer within twenty days upon receipt of that letter. The time limit set out in that particular letter, which thus applied to both Abuja and FIFA, was set aside by means of the letter of the CAS Court Office of 30 November 2020, following a request *ex* Article R55 par. 3 of the CAS Code advanced by FIFA. Indeed, the Sole Arbitrator observes

that in the letter of 30 November 2020, even if it was sent in reply to a request from FIFA, it was not explicitly mentioned that it only concerned FIFA's time limit.

90. Therefore, in view of the specific circumstances and for the sake of procedural fairness, also considering the absence of any objection from the other Parties to the admissibility of Abuja's Answer, the Sole Arbitrator, as mentioned above, understands that Abuja could be in the good faith assumption that also its time-limit to file the Answer was set aside and not only that of FIFA and so concludes that the Answer is admissible and will be admitted to the file.

B. Request for bifurcation

91. The second issue to address relates to Abuja's request, as was made at the outset of the hearing, to bifurcate the current CAS proceedings. In fact, as mentioned above, Abuja disputes the admissibility of Antalyaspor's appeal and objects to the jurisdiction of CAS.

92. Confronted with this oral request, and after having heard the Respondents' positions at the hearing as to this specific issue, taking the view not to bifurcate the proceedings, the Sole Arbitrator decided to reject Abuja's request and informed the Parties accordingly.

93. With the above in mind, the Sole Arbitrator now confirms by means of this Award his decision to reject Abuja's request to bifurcate the current CAS proceedings. As communicated to the Parties during the hearing, the Sole Arbitrator finds that such request was made relatively late. Moreover, the issue of the admissibility of the appeal as well as CAS' jurisdiction are not that complex, and at the least not doubtful to the Sole Arbitrator, that this particular issue would justify a bifurcation of the present arbitration, especially not at this stage of the proceedings, as has been mentioned before.

94. Consequently, also in light of the absence of any agreement between the Parties as to this request, and particularly also in view of procedural efficiency in the present case, which is another important aspect when taking the decision, the Sole Arbitrator concludes not to bifurcate the present CAS appeals proceedings.

IX. PRECLUSION

95. Notwithstanding the above conclusions with respect to the jurisdiction of CAS and the admissibility of Antalyaspor' appeal, the Sole Arbitrator finds that he may nonetheless be precluded from addressing the merits of Antalyaspor' appeal, because of the latter's failure to object against the content of the Proposal by 24 October 2020.

96. In order to determine whether or not this is the case, the Sole Arbitrator is required to verify whether the Proposal was correctly notified to the Appellant. Furthermore, the Panel is also required to address the Appellant's argument that the Covid-19 pandemic *"and the increasing case numbers necessitated restricted working hours and that the TMS official of the Appellant was not able to log in to and check TMS"*. In other words, so the Sole Arbitrator understands, due to the Covid-19 pandemic in Turkey the TMS official of Antalyaspor was not able to make use of TMS,

which was, as was also noted by Antalyaspor, the only communication platform for the Proposal.

A. FIFA's entitlement to issue the Proposal

97. Article 13 FIFA Procedural Rules provides as follows:

> *"1. In disputes relating to training compensation and the solidarity mechanism without complex factual or legal issues, or in cases in which the DRC already has clear, established jurisprudence, the FIFA administration (i.e. the Players' Status Department) may make written proposals, without prejudice, to the parties regarding the amounts owed in the case in question as well as the calculation of such amounts. At the same time, the parties shall be informed that they have 15 days from receipt of FIFA's proposals to request, in writing, a formal decision from the relevant body, and that failure to do so will result in the proposal being regarded as accepted by and binding on all parties.*
>
> *2. If a party requests a formal decision, the proceedings will be conducted according to the provisions laid down in these rules".*

98. The Sole Arbitrator finds that the above-cited provision, in principle, provides a regulatory basis for the FIFA administration to issue a proposal in disputes related to training compensation, but that this authority is subject to certain preconditions that need to be complied with.

99. The requirement that the dispute must concern training compensation or the solidarity mechanism is undisputedly complied with in the case at hand.

100. As to the second precondition, the Sole Arbitrator finds that the reference in Article 13(1) FIFA Procedural Rules to disputes *"without complex factual or legal issues"* is somewhat unfortunate, as this determination can actually only be made if and when all parties involved have communicated their views, a situation Article 13 FIFA Procedural Rules in fact aims to avoid for reasons of efficiency. Rather, the Sole Arbitrator derives from this provision that the assessment of whether or not there are complex factual or legal issues is to be made on a *prima facie* basis and on the basis of the claim alone. The Sole Arbitrator also finds that the FIFA administration must be afforded ample discretion in determining whether or not it considers a case to be complex and, thus, whether or not to issue a proposal to the interested clubs, given that such discretionary power is wholly counterbalanced by the fact that each of those clubs has the right, at its sole discretion, to reject the FIFA proposal and ask for a reasoned decision (with a subsequent right of appeal to the CAS).

101. The Sole Arbitrator finds that FIFA's assessment that the claim for training compensation submitted by Abuja on 14 August 2020 did not seem *prima facie* to raise any complex factual or legal issues, thus permitting the FIFA administration to issue the Proposal. In any event, the Sole Arbitrator finds that FIFA did not arbitrarily or unreasonably exert its above-mentioned ample margin of discretion in qualifying this matter as *"simple"* and considering that Abuja's claim did not raise complex factual or legal issues.

102. It should be borne in mind that the issuance of the Proposal in no way prejudiced the position of Antalyaspor, as it was by no means required to accept the Proposal.

103. For these reasons, the Sole Arbitrator finds that FIFA was entitled to notify the Proposal to Antalyaspor and Abuja on 9 October 2020.

B. Equating a failure to respond to acceptance

104. Article 13 FIFA Procedural Rules is further considered relevant by the Sole Arbitrator because of the legal basis for the FIFA administration to understand that a failure to respond within 15 days is deemed as an acceptance.

105. This policy not only derives from Article 13(1) FIFA Procedural Rules, but was reiterated by means of FIFA Circular no. 1689, determining that *"[t]his proposal will become final and binding after 15 days following its notification if it is accepted by all parties or the parties fail to provide an answer within the deadline"*, *"[o]nce the proposal of the PSD has been notified to the parties via TMS* […]*"* and *"[s]hould none of the parties reject the proposal of the PSD* ***within the 15 days following its notification via TMS****, the proposal will become binding on them"* (emphasis in original).

106. The Sole Arbitrator considers this to be a sufficient regulatory basis to qualify a failure to respond as an acceptance of the Proposal.

C. Notification of the Proposal via TMS and Antalyaspor's duty to regularly check the "Claims" tab in TMS

107. The Sole Arbitrator finds that *"silence"* by Antalyaspor can only be qualified as an acceptance, if Antalyaspor was properly notified of the Proposal. Antalyaspor thus must have had the possibility to respond to the filed claim within the established time limit of 24 October 2020.

108. The Sole Arbitrator notes that it is undisputed between Antalyaspor and Abuja that the Proposal had been made available to Antalyaspor via TMS on 9 October 2020. However, Antalyaspor argues that its TMS manager had no access to his club's offices and TMS account, was therefore not aware of the Proposal and was thus not able to download or respond to the Proposal before 24 October 2020. Antalyaspor argues that only after 5 November 2020, when Abuja had informed Antalyaspor about the Proposal becoming final and binding, it was able to respond to the Proposal.

109. Article 13(1) FIFA Procedural Rules does not provide for the means of notification to be used by the FIFA administration. However, Article 13(2) FIFA Procedural Rules specifies that the proceedings are to be conducted in accordance with the FIFA Procedural Rules if a party requests a formal decision, i.e. if no party requests for a formal decision, the (other) FIFA Procedural Rules do not apply.

110. Because the procedure concerning disputes in training compensation and the solidarity mechanism are generally governed by Annex 6 FIFA RSTP, the Sole Arbitrator finds that one

would have to resort to this Annex to verify whether communication via TMS is a legally permissible way of communication.

111. This is confirmed by Article 1 of Annex 6 FIFA RSTP, which provides as follows:

> *"1. All claims related to training compensation according to article 20 and to the solidarity mechanism according to article 21 must be submitted and managed through TMS. The claims shall be entered in TMS by the club holding a TMS account or, in the case of a club without a TMS account, by the association concerned.*
>
> *2. Unless otherwise specified in the provisions below, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber shall be applied to the claim procedure, subject to any slight deviations that may result from the computer-based process".*

112. Although one could envisage a more clearly worded delineation, the Sole Arbitrator finds that it can be inferred from this provision that Annex 6 FIFA RSTP prevails as a more specific rule over the default rules set forth by the FIFA Procedural Rules, in application of the widely accepted interpretive principle *lex specialis derogat legi generali*, often applied in CAS jurisprudence (see, *inter alia*, CAS 2013/A/3274 at para. 78, TAS 2016/A/4474 at para. 323, and CAS 2017/A/5003 at paras. 199, 235, 273 and 278). In this respect, Article 1(1) of Annex 6 FIFA RSTP provides that, in deviation from what is provided in the FIFA Procedural Rules, all claims related to training compensation and solidarity mechanism must be submitted and must be *"managed"* through TMS (and certainly the FIFA communications in this case are part of the claim management process). The Sole Arbitrator is also comforted by the fact that Article 9bis of the FIFA Procedural Rules, explicitly states that the rules concerning communications with parties are set out *"[a]s a general principle"*, clearly leaving room for different rules for some specific situations, as is the case here.

113. Furthermore, the Sole Arbitrator deems FIFA TMS to be a proper means for modern and quick communication, and a standard within the industry of professional football. Moreover, it is duly provided for in the FIFA regulations and no less secure than email or any other comparable modern means of communication.

114. Accordingly, the Sole Arbitrator finds that Antalyaspor was properly notified of the Proposal via TMS on 9 October 2020.

115. Even if, as it claims, Antalyaspor only took note of the Proposal and the Confirmation Letter at the same time on 5 November 2020, the Sole Arbitrator finds this to be wholly irrelevant. Indeed, the Sole Arbitrator finds that the mere fact that Antalyaspor did not take note of the Proposal until after the time limit to object against it had expired is of no avail to it, as Antalyaspor was required to regularly access TMS, a requirement Antalyaspor uncontestably failed to fulfil without a proper justification.

116. Article 2 of Annex 6 FIFA RSTP provides as follows:

> *"1. All clubs and all member associations shall check the "Claims" tab in TMS at regular intervals of at least every three days and pay particular attention to any petitions or requests for statements.*
>
> *2. Professional clubs and member associations will be fully responsible for any procedural disadvantages that may arise due to a failure to respect paragraph 1 above".*

117. FIFA Circular no. 1689 further provides as follows:

> *"Finally, we kindly remind you that according to art. 2 par. 1 of Annexe 6 of the RSTP, all clubs and all members associations shall check the "Claims" tab in TMS at regular intervals of at least every three days"* (emphasis in original).

118. In this respect, Article 2 of Annex 6 FIFA RSTP, as cited above, not only requires clubs to regularly check the *"Claims"* tab in TMS (paragraph one), but it also indicates that a failure to do so is not a valid excuse for any procedural disadvantages that may arise (paragraph two).

119. Additionally, the Sole Arbitrator also brings in mind that Article 3(2) of Annex 3 RSTP even states that *"[a]ll users shall check TMS at regular intervals on a daily basis and pay particular attention to any enquiries or requests for statements"*. Moreover, also from Article 3.1(2) FIFA RSTP this duty of care follows, as it derives from this provision that *"[c]lubs are responsible for ensuring that they have the necessary training and knowhow in order to fulfil their obligations. In this regard, clubs shall appoint TMS managers who are trained to operate TMS, and shall be responsible for the training of a replacement TMS manager if required, so that clubs are at all times in a position to fulfil their obligations in TMS* […]*"*.

120. The Sole Arbitrator does not consider the duty to check the *"Claims"* tab at least every three days to be unreasonable and finds that Antalyaspor should bear the consequences of its failure to do so.

121. In addition, Antalyaspor did not explain to the comfortable satisfaction of the Sole Arbitrator why the Covid-19 pandemic would have prevented it from timely accessing TMS, particularly also considering that FIFA has demonstrated that Antalyaspor had accessed the TMS during certain periods, while the Covid-19 pandemic was still ongoing. Therefore, even if one were to believe that Antalyaspor's TMS manager could truly not access TMS from home (something that the Sole Arbitrator finds implausible given that TMS is accessible from any device with an internet connection), the Sole Arbitrator is of the opinion that the fact that Antalyaspor was prevented from accessing the office cannot be accepted. As Antalyaspor did not comply with its duty to check the *"Claims"* tab, it must now bear all detrimental consequences, as warned beforehand by Article 2 of Annex 6 FIFA RSTP. In this regard, the Sole Arbitrator is aware that FIFA amended certain provisions in its regulations due to the Covid-19 pandemic and provided further documents in relation to the Covid-19 pandemic, but none of these changes or documents exempted parties from their obligations in relation to TMS.

122. Further to this, as convincingly stated by Abuja, in the email of 1 September 2020 from Abuja to Antalyaspor it was already mentioned that Abuja would *"approach FIFA for justice"*. Put

differently, this email should also have triggered Antalyaspor to keep a very close eye on TMS as any such claims would be submitted via this platform, which was known to Antalyaspor.

123. Finally, the Sole Arbitrator does not want to leave unmentioned that if Antalyaspor's TMS manager truly did not have access to TMS, for whatever reason, Antalyaspor could have informed FIFA accordingly. Alternatively, authority could have been given to someone with good internet access, at an early stage to avoid the situation that time limits would not be complied with, noting that Antalyaspor also took a risk by having only one TMS manager.

124. Consequently, the Sole Arbitrator finds that Antalyaspor' failure to regularly check the *"Claims"* tab, as a consequence of which it only took note of the Proposal when the time limit to object thereto had already expired, is of no avail to it.

D. The consequences of Antalyaspor' failure to timely object against the Proposal

125. The Sole Arbitrator finds that the regulatory framework implemented by FIFA precludes Antalyaspor from disputing the content of the Proposal after 24 October 2020.

126. Since silence is deemed acceptance under the pertinent FIFA rules, as set out above, Antalyaspor is legally deemed to have accepted the content of the Proposal and, by the same token, to have waived its right to reject the Proposal by the elapsing of the deadline of 24 October 2020.

127. Although the amount to be paid to Abuja was only formally confirmed by means of the Confirmation Letter issued on 2 November 2020, Antalyaspor was already precluded from challenging the amount of EUR 60,000 to be paid to Abuja by 25 October 2020.

128. Allowing Antalyaspor to do so would also amount to a violation of the principle of *venire contra factum proprium* (the doctrine, recognized by Swiss law, providing that where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party (CAS 2008/O/1455, para. 16), i.e. by failing to object against the Proposal within the time limit granted without a proper justification, Antalyaspor induced legitimate expectations on Abuja and FIFA that it accepted the Proposal.

129. The Sole Arbitrator finds that the implicit acceptance of the Proposal by Antalyaspor is akin to concluding a settlement agreement, i.e. once concluded, a party to the settlement cannot withdraw its consent from the settlement agreement at will, but it is, in principle, legally bound by it. As such, a parallel can be drawn to a settlement agreement in Swiss court, which mechanism is modelled on Swiss Civil Procedure Code ("CPC"), and which results in the preclusion of looking into the merits of the case. Such approach is subject to limited grounds for revision under Article 328 CPC, to have such decision reviewed in order to protect a party from great injustice where the party did not do anything but remaining silent. However, no such grounds have been submitted in the present case.

130. Consequently, the Sole Arbitrator finds that Antalyaspor is precluded from revisiting the Confirmation Letter insofar as it concerns the amount due to Abuja by Antalyaspor.

E. Conclusion

131. Based on the foregoing, and after having taken into due consideration all the specific circumstances of the cases, the evidence produced and the arguments submitted by the Parties, the Confirmation Letter is upheld as the Sole Arbitrator concludes that he is precluded from addressing the merits of the present appeal.

132. Therefore, the Sole Arbitrator does not consider it necessary to make a final determination as to the substantive issues that are at stake under the merits, such as the plea of FIFA relating to its lack of standing to be sued, which is – according to settled jurisprudence of the CAS (cf. CAS 2009/A/1869; CAS 2015/A/3959; CAS 2015/A/4131) and the SFT (see SFT 128 II 50, 55) – also a question related to the merits of the case. Accordingly, the Sole Arbitrator finds that the issue of the FIFA's standing to be sued, similar as to the other substantive issues under the merits, does not have to be addressed.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has jurisdiction to decide the dispute between Antalyaspor A.Ş., Abuja City FC, and FIFA.

2. The appeal filed by Antalyaspor A.Ş. on 13 November 2020 against the decision issued on 2 November 2020 by the Players' Status Department of the *Fédération Internationale de Football Association* is admissible.

3. The appeal filed by Antalyaspor A.Ş. on 13 November 2020 against the decision issued on 2 November 2020 by the Players' Status Department of the *Fédération Internationale de Football Association* is dismissed.

4. The decision issued on 2 November 2020 by the Players' Status Department of the *Fédération Internationale de Football Association* is confirmed.

5. (…).

6. (…).

7. (…).

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