



COURT OF ARBITRATION FOR SPORT (CAS)
TRIBUNAL ARBITRAL DU SPORT (TAS)
Ad hoc Division – XXI Olympic Winter Games in Vancouver

CAS arbitration N° OG 10/02 CBDG v/FIBT

FINAL AWARD

in the arbitration between

Confederação Brasileira de Desporto no Gelo (CBDG)
(the "Applicant")

and

Fédération Internationale de Bobsleigh et de Tobogganing (FIBT)
(the "Respondent")

and

Ms Fabiana Santos & Ms Daniela Ribeiro Santos
International Olympic Committee (IOC)
Olympic Council of Ireland
Australian Olympic Committee (AOC)

(the "Interested Parties")

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1. The Parties

1.1. The Applicant is the Confederaçao Brasileira de Desporto no Gelo (the Brazilian Ice Sports Federation, 'CBDG'). The Respondent is the Fédération Internationale de Bobsleigh et de Tobogganing ('FIBT') which opposes the CBDG's appeal.

2. Facts

2.1. The CBDG appeals against the FIBT's decision dated 26 January 2010 ('the challenged decision') to not allocate a quota place to the Brazilian NOC in the interests of the CBDG in the Women's 2-man Bobsleigh event ('Women's Bob Event') for the athletes Ms Fabiana Santos (pilot) and Ms Daniela Ribeiro Santos to participate in the 2010 Winter Olympic Games in Vancouver, Canada commencing on 12 February 2010.

2.2. The challenged decision allocates to the German and US NOCs, three teams in the Women's Bob Event; to the Canadian, Swiss, British and Russian NOCs, two teams; and to the Dutch, Italian, Belgian, Roumanian, Irish and Japanese NOCs, one team, respectively.

2.3. The challenged decision was already the subject of another case, i.e. **CAS arbitration N° OG 10/01 AOC v/FIBT (the 'AOC v. FIBT Case')** and was partly set aside by a CAS award dated 9 February 2010, which ordered that the Irish team be replaced by the Australian team through application of the continental representation rule. In these first proceedings, the CBDG participated as an Interested Party. The CBDG's position in this procedure was that it agreed with the AOC's interpretation of the Rules, which was accepted by the Panel. Following a recommendation by the Panel, the IOC Executive Board decided on 10 February 2010, to *include one more team in the Women's Bobsleigh competition in order to allow the Irish team to participate in the 2010 Vancouver Olympic Winter Games.*

2.4. The FIBT's Qualification System for the XXI Winter Olympic Games, Vancouver 2010, is set out in a document ('the Qualification System') established in collaboration between the FIBT and International Olympic Committee ('IOC') and issued in November 2008 based on chapter 4.1 of the FIBT International Rules Bobsleigh 2008, which states in relevant part as follows:

"Olympic Winter Games

The criteria for the right to participate in the Olympic Winter Games are determined by the I.O.C. The qualification rules are determined by the I.O.C. in collaboration with the F.I.B.T. The qualification rules are communicated directly by the I.O.C. to all National Olympic Committees."

2.5. The Qualification System provides for the allocation of 170 athletes for participation in the discipline of Bobsleigh at the 2010 Winter Olympic Games, including 130 men and 40 women. Qualification is achieved by the ‘pilots’ results, which are the basis for obtaining a qualification place for the pilots’ respective National Olympic Committee (‘NOC’). The system provides guarantees of participation in the Winter Olympic Games for the best bob teams, the host country and non-represented continents, provided that in each case the athletes are ranked among the top 50 men or top 40 women in the FIBT Ranking 2009/10 by the deadline of 17 January 2010.

2.6. The Qualification System reads in relevant part as follows:

“EVENTS

<i>Men’s Bobsleigh</i>	<i>2-man Bobsleigh Competition</i>
	<i>4-man Bobsleigh Competition</i>
<i>Women’s Bobsleigh</i>	<i>2-man Bobsleigh Competition</i>

ATHLETE / NOC QUOTA

ATHLETES QUOTA	<i>170 athletes</i>
	<i>130 Men</i>
	<i>40 Women</i>

QUALIFICATION SYSTEM

GENERAL PRINCIPLES

The qualification process takes place via participation in the Federation’s competition activity. Qualification is achieved by the ‘pilots’ results. Pilots gain a qualification slot for their NOC. Participation in the Olympic Winter Games is guaranteed for the best Bob teams. Representation of the host country and non-represented continents is also guaranteed, provided that athletes are ranked among the top 50 men or top 40 women in the FIBT Ranking.

The FIBT recognises five continents: Africa, America, Asia, Europe and Oceania.

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SYSTEM IN DETAIL FOR WOMEN’S BOBSLEIGH

During the 2009/10 season, the best results of each Pilot are summed up by name for the FIBT Ranking, regardless of the race series in which results were scored:

- *World Cup*
- *Europe Cup*
- *America Cup*

The number of races taken into account is the same as the number of World Cup races that are carried out during the qualification period.

The NOC quotas for the Olympic Winter Games are based on the updated ranking. In cases of equal points, the following decision criteria apply for the FIBT ranking:

- a) *First, the highest single points result obtained;*
- b) *Next, the highest single points obtained during the previous race.*

The quotas are assigned to the NOC. They may choose the pilots who may make use of this quota, provided that the pilots concerned have taken part and were ranked in at least five international FIBT races on three different tracks during the 2008/2009 and/or 2009/2010 competition seasons. They must have been ranked among the top 40 pilots of the FIBT ranking 2009/10 by the deadline of 17 January 2010.

The participation in the Olympic Winter Games is limited to:

- *Women's Bobsleigh: 20 crews including host country Teams per NOC:*
- *2 NOCs with 3 crews*
- *4 NOCs with 2 crews*
- *6 NOCs with 1 crew*

The athletes' quota per NOC is established according to the number of bob crews qualified, according to the following table

<i>Number of crews qualified: Women's Bob</i>	<i>Athletes quota</i>
<i>1 crew</i>	<i>2</i>
<i>2 crews</i>	<i>4</i>
<i>3 crews</i>	<i>6</i>

N.B.: No spare athletes are allowed in the Olympic Village. If any athlete has an accident or becomes otherwise unable to race during the official training period, according to the IOC/VANOC/FIBT late athlete replacement policy he may be replaced by another athlete who is not part of the NOC's athlete quota.

HOST NATION QUALIFICATION

If the male and female pilots of the NOC of the nation organising the Olympic Winter Games fail to qualify via the qualification process set out above, the NOC will still have the right to take part in the Olympic competitions, with one 2-man bob team, one 4-man bob team and one women's bob team respectively, provided that the pilots of these teams have taken part and were ranked in at least five international FIBT competitions, on three different tracks, during the 2008/2009 and/or 2009/2010 competition seasons and ranked among the top 50 men or top 40 women in the FIBT Ranking.

The selection of the pilots will be based on FIBT Ranking of the 2009/10 season set up during the qualification period.

If no pilot can achieve this condition, the host Nation will have no representative.

CONTINENTAL REPRESENTATION

Male and female pilots belonging to NOCs of non-represented continents may also take part in the Olympic Winter Games. Maximum of one 2-man bob team or one 4-man bob team and one women's bob team per continent, provided that the pilots of these teams have taken part and were ranked in at least five international FIBT competitions on three different tracks during the 2008/09 and/or 2009/10 competition seasons, and ranked among the top 50 men or top 40 women in the FIBT Ranking.

The selection of the pilots will be based on FIBT Ranking of the 2009/10 season set up during the qualification period.

If no pilot can achieve this condition, that continent will have no representative.

REALLOCATION OF UNUSED QUOTA POSITIONS

Places earned and not taken up are reallocated until all 30 crews (Men) or 20 crews (Women) are filled, in the following order of priority:

- *The highest ranked NOC(s) of non represented continents.*
- *If the number of non represented continents surpasses the number of places available for reallocation, only the highest ranked pilot in the FIBT ranking will enable his/her NOC to send a team to fill a reallocation position.*
- *In cases of equal points, the following decision criteria will be applied:*
 - a) *First, the highest single points result obtained;*
 - b) *Next, the highest single points obtained during the previous race.*

After this, if there are places still available for reallocation, only NOCs which do not already have a qualified team by the end of the qualification period will be considered.

- *Among the potential candidates, only the highest ranked pilot in the FIBT ranking will enable his/her NOC to send a team to fill a reallocation position.*
- *In cases of equal points, the following decision criteria will be applied:*
 - a) *First, the highest single points result obtained;*
 - b) *Next, the highest single points obtained during the previous race.*

The pilots concerned must have taken part and have been ranked in at least five international FIBT races on three different tracks, during the 2008/09 and/or 2009/10 competition seasons. They must also have been ranked among the top 50 men or top 40 women in the FIBT Ranking 2009/10 by the deadline of 17 January 2010 and provided the NOCs informed the FIBT of their request by the 10 January 2010.

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QUALIFYING TIMELINE

1 October 2009 Start of Qualification period

Qualifying events: 7 races from 1 Oct. 2009 to 17 Jan. 2010

10 January 2010 Deadline for NOCs which want to be considered for reallocation spots to inform the FIBT of their request in writing.

End of qualification period:

17 January 2010 For qualifications via FIBT races

20 January 2010 FIBT will inform the NFs, NOCs and VANOC of the places earned by qualified NOCs

22 January 2010 NOCs must inform the FIBT and VANOC that the earned places will be taken up

25 January 2010 FIBT to notify NFs of the unused quota position (if any) attributed to an NOC within the framework of the reallocation process

26 January 2010 End of reallocation period

1 February 2010 Timeline for Vancouver 2010 Organising Committee to receive entry forms submitted by the NOCs".

- 2.7. The FIBT's rankings of pilots for the Women's Bob Event by the deadline of 17 January 2010 shows the following ranking in relevant part:

Rank	Athlete	Nation	Points
1	KIRIASIS, Sandra	GER	1608
2	HUMPHRIES, Kaillie	CAN	1563
3	MARTINI, Cathleen	GER	1545
4	ROHBOCK, Shauna	USA	1530
5	UPPERTON, Helen	CAN	1442
6	PAC, Erin	USA	1424
7	SCHRAMM, Claudia	GER	1360
8	HAFNER, Sabina	SUI	1256
9	SCHAAF, Bree	USA	1184
10	STEPENKO, Amanda	CAN	1120
11	BAMERT, Maya	SUI	1096
12	MINICHELLO, Nicola	GBR	1048
13	KAMPHUIS, Esme	NED	984
14	MEYER, Fabienne	SUI	948
15	WALKER, Paula	GBR	832
16	SCHNEIDERH. STOECKEL, Anja	GER	830
17	SKULKINA, Anastasia	RUS	802
18	FEDOROVA, Olga	RUS	800
19	SZCZUREK, Stefanie	GER	770
20	GILLARDUZZI, Jessica	ITA	692
21	TOKOVAYA, Victoria	RUS	686
22	BAUMANN, Isabel	SUI	678
23	RADENOVIC, Carmen	ROU	560
24	WILLEMSEN, Elfje	BEL	544
25	HENGSTER, Christina	AUT	529
26	IOSSI, Francesca	ITA	506
27	ALLEMANN, Tamaris	SUI	504
28	HOEY, Aoife	IRL	488
29	HINO, Manami	JPN	430
30	MELLANO, Carola	ITA	428
31	SANTOS, Fabiana	BRA	356
32	KOSTROMINA, Ekaterina	RUS	324
33	LOCH-WILKINSON, Astrid	AUS	298

- 2.8. According to the FIBT Ranking, the Irish team achieved 488 points and the Brazilian team 356. Points can be acquired in World Cup competitions and other competitions. Teams which are allowed to compete in the World Cup may achieve considerably more points than those teams that are not admitted to the World Cup. While the Brazilian team was not eligible for the World Cup, the Irish team was admitted to it by a decision of the FIBT Executive Committee dated 26 November 2009 after the withdrawal of the French team.
- 2.9. The decision of the FIBT Executive Committee of 26 November 2009 was communicated by email from the FIBT Secretary General to the Irish Member Federation and to FIBT officials at the Cesana World Cup competition on the same day. It reads as follows:

“Dear Sirs,

We are pleased to inform you that during its meeting in 26th November 2009, the FIBT Executive Committee – on request of President Mr. Robert Storey – has decided to grant Ireland a quota for participation in the women’s bob World Cup exceptionally. Therefore, Ireland may enter one crew to the 2009-10 Women’s bob World Cup series, starting from the WC Competition in Cesana, Italy.

Your crew will replace the crew of France that would have the right to participate in the women’s bob World Cup series, but unfortunately the French Federation decided to withdraw their team from the World Cup.

At your disposal for any further information you may require, we are with best regards

Ermanno Gardella, FIBT Secretary General’.

- 2.10. The CBDG learned of the decision to admit the Irish team to the World Cup by 10 December 2009 when it saw the list of the teams starting at the World Cup in Winterberg, which included the Irish team.
- 2.11. On 11 December 2009, the President of the CBDG wrote to the Executive Committee of the FIBT to inquire whether the listing of the Irish team was a mistake, and sought official confirmation of the situation. It complained that the Irish team was not qualified to compete at the World Cup competitions this season.
- 2.12. Later that day, the President of the CBDG again wrote to the Executive Committee of the FIBT noting that all nations qualified to compete in the World Cup needed to confirm their participation by the deadline of 1 October 2009. According to the CBDG, since the Irish team could not confirm its participation by this deadline, it was not eligible to replace the French team, which withdrew after this deadline.
- 2.13. On 16 December 2009, the FIBT Secretary General advised the CBDG that the FIBT’s International Regulations do not impose any limit within which a given team must confirm or cancel its participation in the World Cup, that Ireland was first among the countries not qualified for the World Cup and was therefore admitted to replace the French team upon its withdrawal.
- 2.14. After this exchange between the Parties, some attempts were made to resolve the dispute without resort to formal dispute resolution. On 8 January 2010, the CBDG submitted a request to the FIBT Court of Arbitration in which it requested an interim injunction. The interim relief requested was as follows:

“Prohibit the defendant FIBT to allow the Irish Bobsled Association

- a) *to participate in the FIBT woman bob World Cup of the current season 2009/10 and*
- b) *to assign the points that the latter has obtained through the participation in the FIBT woman bob World Cup of the 2009/10 season.*

2. *The defendant FIBT has to cover the costs of the arbitration proceedings and to indemnify the plaintiff in an adequate manner”.*

2.15. On 15 January 2010, the FIBT Court of Arbitration issued a signed statement by its President, which rules, inter alia, that:

“1. The Request for Arbitration is to be rejected. The FIBT Court of Arbitration is not competent for the present case. Neither the Court of Arbitration has to issue further statements with regard to the decisions taken or implemented by the FIBT’s bodies.”

2.16. The Parties confirmed that this statement was the final decision of the FIBT Court of Arbitration with respect to this matter. In particular, on 6 February 2010, the President of the CBDG informed the CAS: *“that [the CBDG] ha[s] exhausted [its] case with FIBT CoA on January 15th, 2010”.*

2.17. The Irish team participated in the World Cup commencing with the Winterberg event and the FIBT ranking of 17 January 2010 reflects the points acquired in these races.

3. Procedure

3.1. On 8 February 2010, the CBDG filed its application with the Court of Arbitration ad hoc Division (‘CAS’) and referred to documents which already had been submitted to the CAS for the AOC v. FIBT Case. By email dated 10 February 2010, the CBDG formally requested that all the correspondence and attachments previously submitted be included for the file of the case at hand and considered at the hearing.

3.2. On 8 February 2010, the President of the ad hoc Division of CAS decided that the Panel for this case would be constituted of Michael Geistlinger as the chairman and Henri Alvarez and Ulrich Haas as co-arbitrators. The hearing was ultimately fixed for 11 February 2010, 1.30 pm, at the CAS ad hoc Division premises in Vancouver, Renaissance Vancouver Hotel Harbourside, 3rd floor, 1133 West Hastings Street, Vancouver, British Columbia, Canada. The IOC, VANOC and the Brazilian Olympic Committee were notified of the hearing. The Panel decided on 10 February 2010 also to notify the Brazilian athletes, Fabiana Santos and Daniela Ribeiro Santos, and to consider them as Interested Parties.

- 3.3. In its original application, the CBDG did not refer to the challenged decision, nor did it refer to an arbitration clause or identify the applicable rules/regulations, but it did refer to its previous correspondence in connection with the AOC v. FIBT Case.
- 3.4. On 8 February 2010, the Respondent submitted its “*response regarding the Brazilian matter*” before the CAS, including its submissions on jurisdiction and the merits.
- 3.5. On 10 February 2010, the CBDG asked the CAS to summon also the FIBT Vice President for International Relations, David Kurtz, to the hearing. The CAS requested the FIBT to include Mr Kurtz in its delegation for the hearing. Further, the CBDG also asked to have the Brazilian Olympic Committee present at the hearing, which was allowed by the Panel. At the hearing, the Chief of Mission of the Brazilian Olympic Committee advised that it wished only to have the status of an observer in the proceedings. The Panel decided to consider the International Olympic Committee (‘IOC’) as an Interested Party.
- 3.6. The hearing took place on Thursday, 11 February 2010, at 1.30 pm, at the CAS Ad Hoc Division Premises in Vancouver. In addition to the Panel, Mr Matthieu Reeb, CAS Secretary General, and Mr Jean-Philippe Dubey and Mrs Pauline Pellaux, CAS Counsels, the following persons attended the hearing:

For the Applicant: Mr Eric Leme Walther Maleson, CBDG President (by phone), Mrs Lisa Papandrea, Secretary General (by phone); Dr Christian Krähe, Counsel;

For the Respondent: Mr Ermanno Gardella, FIBT Secretary General, Mr David Kurtz, FIBT Vice President (by phone); Mr Paul Pruszynski, FIBT Vice President; Mr Donald Krone, FIBT Director of Communication; Mr George McIntosh, QC; Mrs Sarah Storey and Mr Tim Dickson, Counsels;

For the Interested Parties:

AOC: no representation

Olympic Council of Ireland: Mr Patrick Hickey, President, Mr Giles J. Kennedy, lawyer; Mrs Siobhain Hoey, Chef de Mission; Mr Horst Hörnlein, Irish Women’s Bobsleigh Coach; Mrs Crystal Amos, Assistant;

IOC: Mr Christophe Dubi, Sports Director;

For the other Participants:

Brazilian Olympic Committee: Mr Edson Figueiredo Menezes, Chief of Mission, Ms Ana Luiza Pinheiro, Director of the Legal Department, Mr Gustavo Harada.

- 3.7. During the hearing, all Parties were given ample opportunity to present their arguments on the issues.

4. The Positions of the Parties

A. The Position of the Applicant

- 4.1. At the hearing, the Applicant clarified that the decision it challenges in these proceedings was the FIBT's decision of 26 January 2010 in which the FIBT sets out the list of NOCs qualified to participate in the women's Bobsleigh event. The CBDG says that the FIBT wrongly admitted the Irish women's Bobsleigh team to compete in the Winter Olympic Games. By way of relief, the CBDG requests that the decision of 26 January 2010 of the FIBT be set aside and that the Brazilian women's team be admitted to compete in place of the Irish women's team. The Panel understands this to mean that the CBDG seeks the place of the Irish team allocated to it as a result of the decision of the IOC Executive Board to include one additional team in the Women's Bobsleigh competition. In the alternative, it requests that the Panel direct the IOC to offer an additional place in the women's Bobsleigh competition for the Brazilian women's team.
- 4.2. The CBDG says that the underlying problems which give rise to the FIBT's challenged decision of 26 January 2010 are errors committed by the FIBT in ranking and in point allocation during the 2008/2009 and 2009/2010 qualifying seasons. The CBDG says that the FIBT improperly admitted the Irish women's 2-man bob team in the women's bob events on the World Cup circuit after the withdrawal of the French women's team. According to the CBDG, at the end of the 2008/2009 season, the Irish women's team did not have enough points to participate in the World Cup for the following season. However, when the French women's team was withdrawn from the World Cup in November 2009, the Executive Committee of the FIBT decided to allocate the place in the World Cup circuit vacated by the French women's team to Ireland. The CBDG says that this permitted the Irish women's team to collect a significant number of points in World Cup competition which, it alleges, permitted the Irish team to pass the Brazilian women's team in points and ranking.
- 4.3. The CBDG says that the decision to admit the Irish women's team to the World Cup circuit violated Art. 1.13 of the FIBT's International Bobsleigh Rules, 2008 (the 'Rules'), pursuant to which the quota for the current season are based on the final

FIBT ranking for the previous year. On that basis, the CBDG says the Irish women's team was not qualified for the 2009/2010 season. As a result, the CBDG says that Ireland was given an undue advantage to score more points, particularly since the points available in World Cup competition are significantly more than those available in the America or European Cup. In addition, the CBDG says that another consequence of the FIBT awarding the place in the World Cup competition to the Irish women's team is that Ireland then decided to cancel the participation of its women's team in the America Cup in Lake Placid, New York. As a result of the Irish team's withdrawal from that race, only five sleds competed and, pursuant to FIBT regulations, six sleds were required to score points in that competition. Therefore, the Applicant says that the FIBT's decision not only favoured the Irish team by allowing it to score more points, but it also precluded the Brazilian women's team from scoring points in the competition at Lake Placid.

- 4.4. The CBDG says that the FIBT wrongly applied its rules in allocating a spot in the World Cup competition to the Irish women's team. Referring, *inter alia*, to the minutes of the FIBT Sports Committee meeting, it says that there was no legal basis for such a decision under the FIBT rules and that the Executive Committee of the FIBT did not have the authority to take the decision it did. The CBDG says that it only learned of the FIBT's decision to admit the Irish women's team to the World Cup circuit on or about 10 December 2009 through other contacts in the sport and the press. On 11 December 2009, the CBDG wrote to the FIBT to complain of the FIBT's decision regarding the replacement of the French women's Bobsleigh team in the World Cup competitions. It took the position that pursuant to a decision of the FIBT Sports Committee, all nations qualified for competing in the World Cup were required to confirm their participation in the World Cup by October 1st of each year. Since France had originally confirmed its participation and competed in the World Cup during 2009 and only withdrew after 1 October 2009, the CBDG took the position that the FIBT could not approve the appointment of the Irish women's team to replace the French team. The CBDG brought its application to the FIBT Court of Arbitration pursuant to its interpretation of Art. 18.1.1 of FIBT Statutes. The CBDG submitted that the language of Art. 18.1.1 of the FIBT Statutes is unclear and that, in its view, the FIBT Court of Arbitration was competent to settle the dispute. The CBDG also submitted that the dispute it submitted to the FIBT Court of Arbitration was a dispute between two members of the FIBT and that, therefore, its request fell within Art. 18.1.1 of the FIBT Statutes.

4.5. In these proceedings, the CBDG says that the jurisdiction of this Panel arises from Art. 59 of the Olympic Charter and Art. 18 of the FIBT Statutes. It submits that the decision of the FIBT Court of Arbitration is not valid. In any event, it says that this is irrelevant since jurisdiction in this case arises from Art. 59 of the Olympic Charter. It also submits that Art. 18 of the FIBT Statutes does not give any jurisdiction to hear this dispute to the CAS Appellate Arbitral Division.

B. The Position of the Respondent

4.6. The Respondent says that the Panel should dismiss the Application on both jurisdictional grounds and on the merits. With respect to jurisdiction, the FIBT says that the matter in dispute relates to the FIBT's application of its rules on or about 26 November 2009 in relation to its World Cup competitions. Therefore, the dispute is not a "*dispute arising on the occasion of, or in connection with, the Olympic Games*" or during a period of ten days preceding the opening ceremony of the Olympic Games. Besides that, it was not properly done.

4.7. The FIBT also submitted that, at the latest, the decision of the Executive Committee of the FIBT to admit the Irish women's Bobsleigh team to the World Cup competition on 26 November 2009 became known to the CBDG on 10 December 2009. The FIBT says that, if it was not content, CBDG should have directed its application to the Appellate Division of CAS pursuant to Art. 18.1.2 of the FIBT Statutes. The FIBT says that the issue in dispute arises from a prior event related to the 2008/2009 and 2009/2010 World Cup seasons and is not an Olympic matter. The real dispute between the Parties is a previous, separate matter which cannot now be raised in the context of an Ad Hoc Division proceeding simply because the Brazilian women's team seeks to qualify for competition in the Olympics. The FIBT notes that neither the CBDG nor the Brazilian Olympic Committee entered a women's Bobsleigh team in its list of competitors.

4.8. On the merits, the FIBT says that it properly admitted the Irish women's team to the Women's Bobsleigh World Cup circuit on 26 November 2009, replacing the French team. According to the FIBT, it had the full authority to take this decision pursuant to Articles 1.3, 6.1 and 21.1 of the FIBT Statutes. Pursuant to the latter, the Executive Committee of the FIBT is deemed competent to take any decision not foreseen in the FIBT Statutes. The FIBT says that there is nothing in the FIBT Rules which prohibits replacing a national team that withdraws with another national team in World Cup competitions. Further, the FIBT says that there is a specific precedent for the action taken by its Executive Committee. In the 2008/2009 season, the Bulgarian team was withdrawn by its federation from the World Cup. The FIBT

admitted to the World Cup competition the next eligible nation, Roumania, without objections. The FIBT says that it acted within the letter and spirit of its rules in deciding to admit the next ranked women's Bobsleigh team to compete on the World Cup circuit.

- 4.9. Further, the FIBT questioned the CBDG's calculation of points earned in Bobsleigh competition during the 2009/2010 season. It also submits that there is no evidence to suggest that if the Irish women's Bobsleigh team had not been admitted to the World Cup competition, the Brazilian women's Bobsleigh team would have obtained more points or qualified ahead of the Irish team for the Winter Olympic Games. It notes that on the only occasions when the two teams competed head to head in the 2009/2010 season, the Irish team placed higher than the Brazilian team.

C. The Positions of the Interested Parties

The IOC

- 4.10. The IOC made two brief comments. The first was that the decision of the IOC Executive Board in response to the award in the AOC v. FIBT Case to include one additional team in the women's Bobsleigh competition was an exceptional measure. Second, the IOC noted that throughout the full process of registration and delegation review meetings in the preparation of a final list of entries, no women's Bobsleigh team had been entered by the Brazilian Olympic Committee.

The Olympic Council of Ireland

- 4.11. The Olympic Council of Ireland submits that the relevant decision at issue in these proceedings was the decision of the FIBT Executive Committee to admit the Irish women's Bobsleigh team in World Cup competition in November 2009. According to the Olympic Council of Ireland, this is an internal or "domestic" issue within the FIBT. This is not a dispute relating to the Olympics and qualification for the Winter Olympic Games. If the dispute over the admission of the Irish team to the World Cup could still properly be considered by CAS, the reference could only be heard by the CAS Appellate Body in the normal course. It submitted that this was not an appropriate case for a CAS ad hoc panel at the Olympic Games.
- 4.12. The Olympic Council of Ireland also noted that the CBDG had not submitted a proper application in this case. Further, the Brazilian Olympic Committee had not registered a women's Bobsleigh team for the Winter Games.
- 4.13. With respect to the merits, the Olympic Council of Ireland submitted that the FIBT Executive Committee clearly had the jurisdiction and discretion to make the decision that it did to admit the Irish women's team to the World Cup circuit for the 2009/2010

season after the withdrawal of the French women's Bobsleigh team. According to the Olympic Council of Ireland, this had occurred in the past and was consistent with a fundamental guarantee of the FIBT's qualification system, the best Bobsleigh teams are guaranteed the opportunity to compete.

The Athletes

- 4.14. At the hearing, a representative of the CBDG made a statement on behalf of the members of the Brazilian women's Bobsleigh team, Ms. Fabiana Santos and Ms. Daniela Ribeiro Santos, indicating that this Brazilian women's team had won a gold medal at the Salt Lake City Games and had worked very hard in competition since that time. She also stated that the athletes were of the view that the FIBT had given the Irish team an unfair advantage.

5. Analysis

A. Jurisdiction

- 5.1. These proceedings are governed by the CAS Arbitration Rules for the Olympic Games (the "CAS ad hoc Rules") enacted by the International Council of Arbitration for Sport (ICAS) on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PIL Act"). The PIL Act applies to this arbitration as a result of the location of the seat of the CAS ad hoc Division in Lausanne, Switzerland, pursuant to Art. 7 of the CAS ad hoc Rules.

- 5.2. The jurisdiction of the CAS ad hoc Division arises out of Rule 59 of the Olympic Charter. The provision provides:

“Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.”

- 5.3. The wording “*arising on*” or “*in connection with*” is broad wording reflecting the IOC's intention that all disputes falling within this scope be submitted to arbitration and not to the jurisdiction of national courts. In the present case, the matter in dispute is whether or not the Brazilian NOC, on behalf of the CBDG, has the right to be allocated a quota place in the Women's Bob Event in the Winter Olympic Games. This is a dispute which is covered by the arbitration clause in Art. 59 of the Olympic Charter.

- 5.4. Art. 59 of the Olympic Charter does not specify which Division within CAS is competent to deal with the matter. However, Art. 1 (1) of the ad hoc Rules specifies as follows:

“The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 59 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.”

- 5.5. Whether or not the ad hoc Division is competent to decide the matter depends on the question at what point in time “*a dispute arises*“. This question has been considered by a previous CAS panel, which held that a dispute arises when the appeal is filed (see CAS OG 06/002 marg. No. 13 seq). The Panel concurs with this jurisprudence. In the case at hand the appeal was filed on 8 February 2010 and, thus, falls within the 10 day period preceding the Opening Ceremony, which is scheduled for 12 February 2010. Consequently, the Panel finds that it has jurisdiction with respect to the CBDG’s appeal of the FIBT’s allocation of 26 January 2010 for the Women’s Bob Event.

II. Deadlines and Internal Remedies

- 5.6. Art. 1 (2) of the ad hoc Rules reads as follows:

“In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective.”

- 5.7. Art. 18.1 of the FIBT Statutes reads as follows:

“The FIBT recognises two Courts of Arbitration:

*18.1.1 **The FIBT Court of Arbitration.** The FIBT Court of Arbitration is the court of first instance in all disputes arising between Members, or between a member and the Congress as well in the case of complaints against sanctions and penalties imposed by the Executive Committee.*

*18.1.2 **The Court of Arbitration for Sport (CAS) – Appellate Arbitration Division.** The Court of Arbitration for Sport (CAS) or more specifically the Appellate Arbitral Division of the CAS, deals with matters of last instance where internal FIBT disputes and disciplinary procedures have been exhausted.”*

- 5.8. In the case at hand, the decision challenged is the decision by the FIBT Executive Committee dated 26 January 2010 allocating to various NOCs places in the Women's Bob Event. It is undisputed among the Parties that provisions in the FIBT Statutes (Art. 18) do not provide for an internal remedy against this type of decision of the Executive Committee. Thus, the requirements listed in Art. 1 (2) of the ad hoc Rules are also fulfilled.

III. Applicable Law

- 5.9. Under Art. 17 of the CAS ad hoc Rules, the Panel must decide the dispute "*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate*".

IV. Scope of Review and Merits

- 5.10. Art. 16 of the ad hoc Rules describes the Panel's power to review the case at hand. The provision reads as follows:

"The Panel shall have full power to establish the facts on which the application is based."

- 5.11. In the case at hand it is not entirely clear how to interpret the CBDG's application. No specific request has been filed by the CBDG in their application filed 8 February 2010. Counsel for the Applicant submitted at the hearing that the CBDG requested to be allocated a place in the Women's Bob Event and, thus, that its application is directed against the FIBT decision dated 26 January 2010 and aimed at the additional place allocated for the Women's Bob Event by the IOC.
- 5.12. The question arises, however, to what extent this Panel is allowed to review said decision by the FIBT. In the Panel's view, limits to the scope of review may derive from the nature of the decision in dispute. The decision by the FIBT dated 26 January 2010 to allocate places in the Women Bob Event to certain NOCs is a complex one. In essence, the allocation of a certain place in the Olympic competition is not based on a single decision, but on a whole series of decisions which built one upon another.
- 5.13. In a first step, the FIBT has to decide which teams are allowed to enter or participate in the World Cup and other competitions for the purpose of qualification. In a further step, points have to be allocated to the various athletes in the competitions according to the nature of the competition and the competition results obtained by the athletes. Then, at the end of the qualification period, a ranking is compiled on

the basis of the competition results. Finally, the Qualification System has to be applied to the FIBT ranking as it stands at the end of the qualification period.

- 5.14. It is disputed between the Parties whether when appealing the last (and final) step of the qualification process the Panel's scope of review extends to all preceding steps or decisions. It is the Panel's view that this is not the case if – as in the present case – the previous stages of the qualification process have become binding upon the Parties. This is true – in particular – when earlier steps in the qualification process are separately reviewable and have not been challenged or appealed. The Panel is supported in this view by the CAS jurisprudence (TAS 2008/A/1740 SC FC VASLUI c/ FRF & SC Dinamo 1948, no. 128 et seq.).
- 5.15. It is undisputed between the Parties that the decision by the Executive Committee of the FIBT to award to the Irish team the place in the World Cup previously held by the French team was appealable. It is also undisputed between the Parties that the CBDG did not file an appeal or otherwise seek to set aside or annul the decision by the Executive Committee of the FIBT. The CBDG only filed a "*request for interim injunction*". At no point in time did the CBDG seek to set aside or void the decision of the Executive Committee of the FIBT to replace the French team in the World Cup by the Irish team.
- 5.16. In addition, the competent body to appeal the decision of the FIBT to replace the French team with the Irish team in the World Cup is, according to the Respondent, the Court of Arbitration (CAS) in Lausanne. The Respondent submits that this follows from the wording in Art. 18.1.2 of the FIBT Statutes. In the Panel's view this appears to be correct.
- 5.17. Art. 18.3.3 of the FIBT Statutes provides that the time limit for submitting an appeal to the CAS from a decision of the FIBT Court of Arbitration is 21 days after receipt of the decision in question. Art. R49 of the Code of Sports-related Arbitration provides that the time limit to appeal all other decisions to the CAS is 21 days after receipt of the relevant decision. The CBDG acknowledged that it was aware of the decision to replace the French team by the Irish team by 10 December 2009 and requested further information from the FIBT in this respect. On 16 December 2009, the Secretary General of the FIBT wrote to the CBDG stating:

"Please pardon my delay in responding to your request for clarification regarding the admission of the Irish women's team to the World Cup ... In the meantime, I took solace in the knowledge that you had received replies from several of the other FIBT

officials in addition to myself to whom you had submitted your request. Ireland was first among the countries not qualified for the World Cup. France, which did qualify, participated in the first World Cup race of the season at Park City and then informed us officially that it was withdrawing its team. Consequently, we admitted the first among the not qualified teams, i.e. Ireland ...”.

- 5.18. Thus, the FIBT communicated to the CBDG its decision to admit the Irish team to the World Cup on 16 December 2009. At the hearing, the Parties confirmed that they tried to settle their dispute amicably and had negotiations which extended until early January. On 8 January 2010, the CBDG filed its request for an interim injunction with the FIBT Court of Arbitration.
- 5.19. The CBDG submitted that it was unclear from the FIBT Statutes when an appeal must be filed with the FIBT Court of Arbitration and when it must be lodged with CAS. The Parties agree that the wording of Art. 18.1 of the FIBT Statutes could use some refinement. In light of the ambiguity, it would have been prudent for the CBDG to file appeals with both the FIBT Court of Arbitration and the CAS in order to preserve its rights. However, the CBDG did not file any appeal at all. Instead, it filed only a request for interim relief and only with the FIBT Court of Arbitration. The CBDG filed its appeal with the CAS ad hoc Division in respect of the 26 January 2010 decision.
- 5.20. In the Panel’s view, the source and the gravamen of the dispute between the Parties is the FIBT’s decision on 26 November 2009 to admit the Irish women’s Bobsleigh team to the World Cup to replace the French women’s team. This was the key decision which affected the rest of the competition, the entire qualification process and the allocation decision. Although the Panel has jurisdiction to review the FIBT’s allocation decision of 26 January 2010, it finds that the decision truly in dispute between the Parties is the previous decision of 26 November 2009. It was open to the CBDG to appeal that decision, but it did not. In these circumstances, the Panel believes that its scope of review does not extend to the decision of the FIBT’s Executive Committee of 26 November 2009 and that it would be inappropriate to review the FIBT’s allocation decision of 26 January 2010 on the basis of alleged errors in that first decision.
- 5.21. Further, and in any event, the Panel finds that, on the merits, the decision of 26 November 2009 was within the power of the Executive Committee of the FIBT and that it was neither unreasonable nor arbitrary to replace the withdrawing French team with the next ranked Irish team.

- 5.22. The Parties agreed that there is no provision in the International Rules Bobsleigh 2008 (the 'Rules') for replacement of a World Cup team that withdraws. When there are no specific provisions in the Rules, Art. 21.1 of the FIBT Statutes gives the Executive Committee competence to take any decision not foreseen in the Statutes. This article, read together with Art. 12.2 of the Rules, which authorizes the FIBT Executive Committee to determine modifications to the Rules, gives the Executive Committee broad power to interpret, modify and fill gaps in the Rules. In fact, the FIBT had previously made decisions regarding the replacement of a withdrawing team from the World Cup without objection by any of its members. Thus, both the Statutes and past practice support the conclusion that the Executive Committee had the power to decide whether to replace and, if so, which team should replace the French team when it withdrew after the commencement of the season.
- 5.23. Although the Parties disagreed as to the exact ranking of the teams as of 26 November 2009, there was no doubt that the overall sporting performance of the Irish team in the 2008/2009 season was better than that of the Brazilian team. At the conclusion of the 2008/2009 season, the Irish team was ranked 14th, immediately behind the French team, which was the last team admitted to the World Cup. In addition, when the Irish and Brazilian teams competed at the same events, the Irish team finished ahead of the Brazilian team. Therefore, in the Panel's view, it was reasonable and appropriate for the FIBT to allocate the French team's place in the World Cup to the Irish women's team. On the basis of the evidence and arguments presented, there is no basis to disturb that decision.
- 5.24. With respect to CBDG's request that the Panel direct the IOC to offer an additional place in the Women's Bob Event, the Panel finds that this would not be appropriate. First of all, the Panel's power is limited to making a recommendation to the IOC, which should be exercised only in exceptional circumstances. The Panel has no authority to direct that the IOC create an additional place in the competition. Furthermore, the circumstances in this case are different from those in the AOC v FIBT case and the same expectations do not arise.
- 5.25. Accordingly, for the reasons set out above, the CBDG's application must fail.

6. Decision

On the basis of the foregoing facts and reasons set out in this Award, the ad hoc Division of the Court of Arbitration for Sport rules that:

1. The application filed by the CBDG on 8 February 2010 is denied.
2. The 26 January 2010 FIBT decision, as amended by CAS Award No. OG 10/01 AOC v/ FIBT, is upheld.

Vancouver, 12 February 2010

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

President of the Panel

Michael Geistlinger

Ulrich Haas
Arbitrator

Henri Alvarez
Arbitrator