CAS 2017/A/5003 Jérôme Valcke v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Prof. Massimo Coccia, Attorney-at-law, Rome, Italy
Arbitrators:	The Hon Michael J Beloff QC, Barrister, London, United Kingdom
	Prof. Ulrich Haas, Professor, Zurich, Switzerland
Ad hoc Clerk:	Mr. Francisco A. Larios, Attorney-at-law, Miami, Florida, USA

in the arbitration between

Mr. Jérôme Valcke, Barcelona, Spain

Represented by Dr. Marco Niedermann and Mr. Jonas Oggier, Attorneys-at-law, Niedermann Rechtsanwälte, Zurich, Switzerland, and Dr. Stéphane Ceccaldi, Attorney-at-law, JuriConseil Avocats, Marseille, France

Appellant

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Messrs. Antonio Rigozzi, Sébastian Besson and William McAuliffe, Attorneys-at-law, Lévy Kaufmann-Kohler, Geneva, Switzerland

Respondent

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I. INTRODUCTION

1. This appeal is brought by Mr. Jérome Valcke against a decision of the FIFA Appeal Committee (hereinafter the "Appeal Committee") taken on 24 June 2016 (hereinafter the "Appealed Decision") which (i) partially confirmed the decision of the Adjudicatory Chamber of the FIFA Ethics Committee (hereinafter the "Adjudicatory Chamber") taken on 10 February 2016, (ii) held that Mr. Valcke violated Articles 13 ("*General Rules of Conduct*"), 15 ("*Loyalty*"), 16 ("*Confidentiality*"), 18 ("*Duty of disclosure, cooperation and reporting*"), 19 ("*Conflicts of interest*"), 20 ("*Offering and accepting gifts and other benefits*") and 41 ("*Obligation of the parties to collaborate*") of the FIFA Code of Ethics (2012 edition), and (iii) sanctioned Mr. Valcke with a ban of 10 years from taking part in any football-related activity at national and international level (Administrative, sports or any other) from 8 October 2015 and with a fine of CHF 100,000.

II. PARTIES

A. The Appellant

2. The Appellant, Mr. Jérôme Valcke, is the former FIFA Secretary General, i.e. "*the chief executive officer (CEO) of FIFA*", according to the current FIFA Statutes, or "*the chief executive of the general secretariat*", according to the previous versions of those Statutes. It is generally recognized that the Secretary General holds the second most powerful position within FIFA (as indeed is the case in many other international federations).

3. On 27 June 2007, Mr. Valcke was appointed by the FIFA Executive Committee to serve as "General Secretary" (position renamed as "Secretary General" as of the 2008 edition of the FIFA Statutes), following which he signed an employment contract on 2 July 2007. On 17 September 2015, the FIFA Emergency Committee suspended Mr. Valcke from his duties as FIFA Secretary General and put him on leave. On 11 January 2016, FIFA terminated the Appellant's employment agreement with immediate effect. Prior to his tenure as the FIFA Secretary General, Mr. Valcke served as FIFA Director of Marketing and TV from mid-2003 until the end of 2006.

B. The Respondent

4. The Respondent, *Fédération Internationale de Football Association* or FIFA, is the international governing body of football at worldwide level, headquartered in Zurich, Switzerland.

III. BACKGROUND

A. Factual background

5. Below is a summary of the relevant facts and allegations based on the written submissions, oral pleadings and evidence adduced by the Parties. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

a) Mr. Valcke's involvement in JB Sports Marketing AG's sale of FIFA World Cup Ticket

6. In 2009 and 2010, as evidenced by some written correspondence, Mr. Benny Alon of JB Sports Marketing AG (hereinafter "JB") threatened FIFA with a multimillion dollar lawsuit, claiming to have knowledge of ticket irregularities in connection with the 2006 FIFA World Cup. Mr. Alon demanded that FIFA should enter into an agreement by which FIFA would sell JB Sports Marketing thousands of tickets to multiple editions of the FIFA World Cup in exchange for Mr. Alon's silence about the alleged wrongdoings.

7. On 29 April 2009. following the instructions of then FIFA President, Mr. Joseph Blatter, and inspired by FIFA's wish to avoid negative publicity right before the 2010 FIFA World Cup, JB and FIFA entered into an agreement under which FIFA agreed to sell to JB several thousands of Category 1 tickets at their regular face value to multiple editions of the FIFA World Cup (hereinafter the "JB Agreement"). The total number of Category 1 tickets sold was 8,750 for each of the FIFA World Cup editions of 2014, 2018 and 2022.

8. For the 2014 Brazil World Cup, FIFA specifically agreed to provide JB with the following inventory of tickets:
   - 1,000 Category 1 tickets for the final,
   - 500 Category 1 tickets for each of the semi-finals,
   - 150 Category 1 tickets for each of the quarterfinals,
   - 150 Category 1 tickets for each of the round of 16 matches,
   - up to 250 Category 1 tickets for the host nation's group phase matches,
   - up to 200 Category 1 tickets for 9 group phase matches of JB's choice, and
   - up to 200 category 1 tickets for group phase matches.

9. The Appellant and Mr. Markus Kattner, then Deputy Secretary General of FIFA, signed the JB Agreement on behalf of FIFA, while Messrs. Heinz Schild and L. Georg Séchu signed it on behalf of JB in their respective capacity as member and president of that company's board.

10. The JB Agreement stipulated *inter alia*:

    - "*Upon request by FIFA… JB will provide 60 FIFA guests with an invitation for a golf tournament organized and paid by JB and taking place in years 2010, 2014, 2018 and 2022. The Parties agree and acknowledge that FIFA is neither obliged to attend such golf tournaments with FIFA management nor to invite guests to attend such tournament*" (Clause 1.5);

    - "*JB shall fully comply with, and cause any and all entities and individuals to whom it allocates tickets, including its representatives, staff, or guests to fully comply with this Agreement, in particular the following terms and conditions, regulations and codes which will be enforced by FIFA for all contractual editions of the FIFA World Cup™: a. the General Ticket Terms and Conditions for the use of tickets in its applicable form; b. the Sales Regulations for tickets in its applicable form…*" (Clause 5.1);

    - "*The tickets will be printed with the name 'FIFA' or any other neutral designation and if possible without price indication, but mentioning the Category 'Cat. 1'*" (Clause 5.3);

    - *"JB shall liaise directly and exclusively with the FIFA Secretary General's office"* (Clause 6.1);

    - "*JB undertakes to comply with all applicable national and international provisions…*" (Clause 6.9); and

    - "*JB, its professional advisors, its bodies, its members, its employees, its agents and any other individuals involved on behalf of JB agrees not to make any statements about FIFA, its bodies, employees and agents*" (Clause 7.2).

11. On 29 April 2010, during the negotiation of the JB Agreement, FIFA refused to sign a side letter drafted and proposed by JB which stated that "*JB Sports Marketing will have the rights to purchase from FIFA a limited number of Cat 1 tickets for the FIFA World Cup in 2010, 14, 18 and under certain conditions 2022 and resell to clients/buyers*". On the same day FIFA also refused to amend Clause 9 of the JB Agreement to include the line "*however selling the ticket inventory does not constitute a breach of this agreement*".

12. In anticipation of the 2014 FIFA World Cup, the Brazilian Parliament (*Congresso Nacional*) enacted Law no 12,299 of 27 July 2010 (hereinafter the "Brazilian Fan Act") to impose civil and criminal sanctions for the unauthorized sale of FIFA World Cup tickets, including the resale of tickets at prices above face value. More specifically, the Brazilian Fan Act prohibited anybody:

- "*to sell tickets to a sporting event for a higher price than that stamped on the ticket*" (in the original text: "*Vender ingressos de evento esportivo, por preço superior ao estampado no bilhete*"), offence punishable by imprisonment from one to two years and by fines, and

- "*to provide, divert, or facilitate the distribution of tickets for sale for a higher price than that stamped on the ticket*" (in the original text: "*Fornecer, desviar ou facilitar a distribuição de ingressos para venda por preço superior ao estampado no bilhete*"), offence punishable by imprisonment from two to four years and by fines.

13. On 27 February 2013, Mr. Alon emailed Mr. Valcke to inform him that JB had started to resell tickets for the FIFA Confederations Cup 2013 (tickets which were also part of the deal) and for the ensuing FIFA World Cup 2014, asking for an authorization from Mr. Valcke before formalizing the sales with invoices: "*We need to start moving the CC tickets, we are only 3 month away. Can you invoice JB for the CC tickets. For the follow Brazil, we are selling but I can't invoice until you email Heinz an authorization. I know you are crazy busy but we really are selling*". On the same day Mr. Valcke replied that he would "*send letters to Heinz tomorrow*". To this end, on 1 March 2013, Mr. Valcke requested Mr. Alon to provide the details on the addressee of the letters.

14. On 5 March 2013, Mr. Alon emailed Mr. Valcke to once again inform him that JB was reselling tickets and requested approval of the resale: "*I have to give an answer regarding the C.Cup and a Brazil WC games, it is a huge sell and would hate to let it go. Can I go ahead and confirm what we talked about?* Mr. Valcke replied "*You can go ahead*".

15. In March 2013, Mr. Alon and Mr. Valcke met in the latter's office at FIFA headquarters. At the meeting, Mr. Alon asked Mr. Valcke to adjust the contractually agreed allocation of tickets since the 2014 World Cup draw had turned out unfavourably for JB. Essentially, Mr. Alon sought a qualitative improvement on the ticket inventory awarded under the JB Agreement, to which Mr. Valcke agreed by changing the ticket inventory to JB's benefit. Mr. Alon testified before the Swiss criminal prosecutor that at this meeting: "[*Mr. Valcke] asked me whether there was anything he could do for me. I said yes, that we could improve our contract. He went to the safe and took out our contract. After that we negotiated on the clause concerning the choice of matches in the group stage, because the draw regarding the Brazilian World Cup turned out to be unfavorable for us (large distances between the individual playing sites, etc.). I told him that the total of 2,400 tickets for 12 matches was not a big volume. He asked me which matches I would prefer to receive and why he should accept that choice. I told him that we got along well together and had always had a good business relationship. I suggested giving us all the Brazilian match tickets up to the final 7 matches, plus the first three matches of the German team and two other matches that would be picked after the draw. We agreed on those 12 matches. In return, VALCKE negotiated for himself a 50% share of the ticketing revenue from those 12 matches plus 50% on any other tickets that he could give to JBSM. After that, we kept VALCKE informed about how we were doing with selling the tickets. There was a detailed email correspondence on that subject, which I ask you to consult.*".

16. Mr. Valcke, on the other hand, testified before the Swiss criminal prosecutor that: "*We always talk about those 12 matches which FIFA had the right to choose. As Mr SCHILD explained, at a certain point, JB SPORTS MARKETING AG asked FIFA to make that choice and gave FIFA a list of 7 matches with its preferred selection. That list was given to the Ticketing department at the Secretary General's Office, which confirmed that those 7 matches were available. It issued a confirmation, which was then signed by me personally and sent to Mr SCHILD. Approval was granted for those 7 matches, with the proviso that the other 5 matches would be selected by FIFA after the final draw*".

17. In exchange for the extension, Mr. Alon claims that Mr. Valcke agreed to a 50 percent kickback on the profits of the ticket resales for the 12 matches awarded. Mr. Valcke admits that he received such an offer from Mr. Alon but is adamant that he never accepted it.

18. On 2 April 2013, Mr. Valcke sent to Mr. Heinz Schild of JB a letter to confirm the agreement to extend the JB Agreement to include all 6 of the Brazilian team matches up to the FIFA World Cup semi-final, totalling 1,200 Category 1 tickets, and 200 category 1 tickets to the FIFA World Cup final. Mr. Valcke also indicated that the tickets to the last 5 matches (1,000 Category 1 tickets) would be selected by FIFA after the final draw in December 2013.

19. On 3 April 2013, Mr. Valcke and Mr. Alon exchanged emails about meeting in Zurich on that day for Mr. Alon to hand over certain "*documents*" to Mr. Valcke, the latter also mentioning as a hindrance for the planned meeting the simultaneous presence at FIFA headquarters of Mr Jaime Byron, CEO of Match Hospitality AG, i.e. the company that was FIFA's exclusive partner for hospitality packages:

- Mr. Alon: "*I need to see some people today before I h[e]ad to Geneva. Can you give me a clue to when we can meet this morning*".

- Mr. Valcke: "*Jaime* [Byrom] *is at FIFA today. So not a good place for you! I will be landing in Zurich around 11.30. At what time you go to Geneva?*"

- Mr. Alon: "*You are right, I plan to take a train around 3 latest 4 pm. I have the document at the hotel, so we can meet anywhere*".

- Mr. Valcke: "*I call you*".

- Mr. Alon: "*Great*".

- Mr. Valcke: "*Benny, I am landing at 11.30 so around 11.45 at FIFA. Have a lunch at 12 with Jaime followed by a meeting at 2 and then at 3 a staff meeting. I have no idea how to meet. For the documents close them somewhere and we go through next time. In a potential race for presidency cannot look at them until my decision on future is clear. Documents are my pension fund when looking for something else if not anymore at FIFA by end of 2014 first half of 2015 at latest! But call you when landing*".

- Mr. Alon: "*You can stop by the hotel on the way to FIFA, I will wait for you and give you the Document. I will wait for your call.*"

20. Ultimately, Messrs. Valcke and Alon did not meet on 3 April 2013.

21. However, in a separate email sent later that same day to Mr. Valcke's private Gmail account, Mr. Alon sent Mr. Valcke a photograph of a suitcase and told him that he would provide the "*document*" whenever requested: "*As you can see, the suitcase have the France flag colors and a 1940 white Ferrari on it. On my way back to put the document back, whenever you need it you just have to let me know. It will growing* [sic] *as we get close to the games and I will send you the list as soon as I get home*".

22. Mr. Valcke replied that same day with an "*ok perfect. Thanks Benny*".

23. The Parties disagree as to the true meaning of the allusions to "*document*" or "*documents*".

24. On the one hand Messrs. Alon and Schild testified in the Swiss criminal proceedings that Mr. Valcke knew that it was a code expression for "*cash*", which served as an advance on the 50 percent kickback payment and would lead to revenues of an estimated CHF 2 million for Mr. Valcke. According to Messrs. Alon and Schild, as soon as JB received the letter of 2 April 2013 from Mr. Valcke confirming the reallocation of tickets as requested, JB sought to transfer him USD 500,000 as an advance on the 50 percent kickback. Messrs. Alon and Schild testified that they went together to the Bank Coop to withdraw the cash. More specifically, when deposed by the Swiss criminal prosecutor, they testified *inter alia*:

    Mr. Alon:

    - "*[t]here is an e-mail that I wrote to Jérôme VALCKE in which I wrote that the documents are ready. By that, I meant the money. And Jérôme VALCKE answered that he didn't know what to do with those documents at that time and that he would take them later. I don't know what 'later' meant, possibly after the FIFA elections, I think. He said he would use those documents as his pension fund*";
    - "*We had some money and he told us that he was busy and we should keep the money until he was ready to accept the money*";
    - In response to the question "*what was your understanding of "it will growing as we get closer?"*: "*[w]e had a suitcase with the money and were ready to pay and the answer was exactly as it is says here… In my opinion, the amount that VALCKE was supposed to receive would keep increasing as we came closer to the World Cup*".

    Mr. Schild:

    - "*Alon already wanted to give an upfront payment to Valcke shortly after the agreement on the 50% share or after confirmation of the assignment of the tickets. An upfront payment generally means an advance payment. He therefore made an appointment with Valcke to hand over the money. The meeting was supposed to be held on 3 April 2013. The day before, I went with Alon to pick up the money, which was in a safe deposit box in a bank…. I think the amount of the upfront payment was somewhere between FR 300,000.00 and FR 500,000.00. That was about how*

much money we took out of the safety deposit box at the bank. Then Valcke sent an email to Alon telling him he couldn't come to the meeting on 3 April 2013. That's why the money never changed hands";

- "*I know exactly how much we withdrew from the safe. It was USD 500,000. The exchange rate had changed several times so it was somewhere between CHF 300,000 and CHF 500,000*";
- "*According to our estimate, the allocated tickets would have generated about CHF 4 million at the expected selling prices, so that would be CHF 2 million under the 50% agreement. That depended on the actual selling price, though. If the term "surplus proceeds" is used there, it isn't correct because we're talking about the selling price. If the matches had been different, the gross sales would have been different, too*".

25. On the other hand, Mr. Valcke claims that the term "*document*" in the emails referred to the highly sensitive information related to alleged ticketing irregularities in connection with the 2006 FIFA World Cup used by Mr. Alon to blackmail FIFA in 2010. As noted in paragraph 17 above, Mr. Valcke denies ever agreeing to or accepting any up-front payment of USD 500,000 or other payments in relation to the alleged 50/50 deal.

26. On 23 April 2013, Mr. Alon sent an email to Mr. Valcke's private Gmail account with subject header "*pension fund*", the purpose of which, according to Mr. Alon's testimony in the criminal proceedings, was to keep Mr. Valcke informed about his alleged share of the profits (i.e. the 50 percent kickback) deriving from the sale of 2014 FIFA World Cup tickets. The email reads:

"*Please send us the invoice for the CC.*

We received full payment for the following games

Germany game 1	*200 cat 1x $570.00=$114,000.00 (face $190.00)*
Germany game 2	*200 cat 1x $570.00=$114,000.00 (face $190.00)*
Germany game 3	*200 cat 1x $570.00=$114,000.00 (face $190.00)*
Rio Rd of 16	*50 cat 1x $1,300.00=$65,000.00 (face $230.00)*
Salvador Rd of 16	*50 cat 1x $1,300.00=$39,000.00 (face $230.00)*
Sao Paulo Rd of 16	*50 cat 1x $1,300.00=$39,000.00 (face $230.00)*

All these tickets are within the total number of tickets under the J.B. contract.
Funny we are getting better prices then Match, without hospitality.
We are doing better th[a]n the NY Stock Exchange."

27. According to Mr. Alon's testimony before the Swiss criminal prosecutor, after the Confederations Cup which took place from 15 to 30 June 2013, for reasons unknown to him, Mr. Valcke asked JB to suspend the sales of FIFA World Cup tickets.

28. On 16 July 2013, Mr. Alon sent an email to Mr. Valcke's private Gmail account to (i) complain about the request to suspend sales of tickets and (ii) update Mr. Valcke on the

FIFA World Cup tickets that JB had sold up to that date for which it had received a 50 percent non-refundable payment. The email read: "*I now know that I have a strong heart. We can sell our entire inventory, but we stop selling after your email. It will be 3 weeks, but better safe than sorry (you are killing me). I know that we will talk on Monday, just wanted to give you a view of what we have sold up to now and for all these sells we have received 50% payment non refundable, so this is really up to date…. (we made US$114,000 each on Germany)…*".

29. On 17 July 2013, Mr. Valcke replied from his private Gmail account and told Mr. Alon that he could continue selling tickets: "*You can sell. It is just about from where you will get the tickets. So easy, we talk on Monday*".

30. On 26 September 2013, Mr. Alon messaged Mr. Valcke on his private Gmail account expressly referring to a "*deal*" (which Mr. Alon testified in the criminal proceedings referred to the 50 percent kickback deal) and making reference to an imminent surgical treatment to be performed on Mr. Valcke: "*Well, after we talked today you can at l[eas]t feel good that you will have a nice Tombstone in you[r] honor if you don't survive the surgery… Even so I am sure that everything will go well, it would be smart for you to give your wife Heinz Schild info just in case… all she will need to do is contact him and he will then contact me, a deal is a deal*." Before the Swiss criminal prosecutor, Mr. Alon clarified that with the term "*deal*" he was a referring to the "*50:50 agreement on profit sharing*".

31. On 26 November 2013, the company Match Hospitality AG (hereinafter "MH", cf. *supra* at para. 19) sent a formal letter to FIFA (i) complaining about Mr. Alon reselling tickets with authorization from FIFA, (ii) stressing that reselling tickets above face value contravened the FIFA regulations and Brazilian law, (iii) indicating that selling as part of hospitality packages would breach the exclusivity agreement FIFA granted MH, and (iv) presenting as the only viable solution that Mr. Alon be designated as a MH sales agent.

32. At this time, Mr. Valcke began a move to restructure the JB Agreement. His idea was to terminate the JB Agreement and to enter into a new agreement between JB and MH under the auspices of FIFA, whereby JB would become a sales agent of MH.

33. Also around the same time, Mr. Alon requested Mr. Valcke to provide 2,282 additional tickets to secure a deal with a "*Rossi Group*" from Brazil. According to Mr. Alon's testimony before the Swiss criminal prosecutor, Mr. Valcke agreed to this additional resale and increased JB's inventory from 8,750 to 11,032 tickets. Mr. Alon so testified in response to the prosecutor's question "*What is the contractual basis of the Rossi deal?*": "*The original contract between FIFA and JBSM. It is indicated clearly that FIFA states in the contract that JBSM is permitted to sell no more than 8,750 tickets. Then we also had the agreement with Jérôme regarding the 12 matches. When Rossi came to us with this query, I had to go to Jérôme and ask whether we were allowed to purchase these tickets. We had a written contract, which was dated. And if we had a deal with Jérôme, we could also enter into a deal with Rossi. And Jérôme said we could have the tickets. That brought the number of tickets to 11,032.* When questioned: *There is no written agreement with FIFA. Jérôme saw the contract with Rossi and the contract*

was agreed by a handshake. First they said we could not have the tickets, and then they said 'Just tell me how many you want'."

34. On 10 December 2013, Mr. Alon sent an email to Mr. Valcke's private Gmail account accepting in principle the restructuring of the business relationship, all the while insisting that the JB Agreement remain in force:

> "*We had a 90 minute conference call with our lawyers, and then just now an additional 45 minutes to get some answers.*
>
> *All six lawyers agreed that a deal can be struck, and fairly quickly. That if it is the wish of FIFA then we will become a Match agent. They also agreed that Dec 22 is a reasonable target. However the[re] is a lot that need[s] to be done between now and Dec 19 and we will do everything possible on our side.*
>
> *All six lawyer[s] were adamant that the original contract between FIFA/JBSM must stay in place under the Brazilian and Swiss law. however, if JB cancel the contract with FIFA then JBSM will be in breach of contract with every company that we signed a contract with to buy tickets from us.*
>
> *Even if the company is willing to now sign a new Match contract, once we told them that their lawyer that we have a contract with FIFA then it cannot be cancel[led] under any circumstances.*
>
> *[…]*
>
> *With[in] just two full days, we now know exactly how it is going to work both for FIFA & JBSM. We know we need to protect us in Brazil, and if we are protected then FIFA is protected as well…*".

35. On 12 December 2013, Mr. Alon wrote to Mr. Valcke's private Gmail account to express his lawyer's disagreement with "*completely cancel[ling]*" the JB Agreement and his distrust of MH's CEO, Mr. Jaime Byrom. Mr. Alon went on to propose an amendment to the JB agreement that "*would cover us both*".

36. Later that same day on 12 December 2013, Mr. Valcke replied from his personal Gmail account to Mr. Alon and stressed that JB had "*no choice*" but to accept the new business arrangement. Mr. Valcke explained that if JB did not do so, "*the deal [i.e. the JB Agreement] will be cancelled by FIFA or we all face as individuals criminal offense*"., Underscoring the seriousness of the matter, Mr. Valcke insisted that Mr. Alon "*just do it*".

37. On 18 December 2013, FIFA hand-delivered a letter to JB's Mr. Schild bearing Mr. Valcke's signature. As to this aspect, Mr. Valcke alleges that FIFA's legal team prepared this letter and used the FIFA Secretary General's electronic signature in his absence. In the letter Mr. Valcke purportedly first requested that Mr. Alon avoid making future communications to his private email account. He then thanked JB for confirming that it was "*close*" to entering into an agreement with MH that would enable JB to act as a sales agent of MH. Next, in response to JB's declaration of 10 December 2013 that the JB Agreement had to remain in force so that JB did not commit a breach of contract

with every company that had signed a contract to purchase tickets, Mr. Valcke, expressing his surprise, explained *inter alia* that (i) according to Article 5.1 of the previous JB Agreement, JB did not have the right to resell or transfer tickets to third parties without FIFA's prior written consent (which it never gave or would be in the position to give), (ii) JB would only be able to resell tickets if it became a sales agent of MH, and (iii) any resale of tickets would be a breach of the JB Agreement, the FIFA General Terms and Conditions, and the Brazilian Fan Statute.

38. On 20 December 2013, JB and FIFA terminated the JB Agreement. On the same day, JB and MH entered into a non-exclusive agency agreement, approved by Mr. Valcke on behalf of FIFA, which appointed JB as a sales agent of MH, thereby allowing JB to sell to its original customers by providing hospitality packets in compliance with FIFA's ticketing policy and under MH's pricing structure (hereinafter the "JB-MH Agency Agreement").

39. Further on the same day, JB and Mr. Byrom (the CEO of MH, acting in his personal capacity) agreed to sign a Side Letter to the JB-MH Agency Agreement, under which Mr. Byrom *inter alia* committed to pay USD 8.3 million to JB (hereinafter the "Side Letter"). According to a FIFA internal memo dated 22 September 2014 (see *infra* at para. 43), FIFA had made an oral commitment that it would reimburse Mr. Byrom for this amount.

40. When questioned by the Swiss criminal prosecutor whether the termination of the JB Agreement caused JB's loss of the ticket inventory previously guaranteed to it by FIFA, Mr. Alon replied: "*No. Jérôme VALCKE and the attorneys guaranteed to us that we would receive all the tickets. Jérôme asked us to switch from FIFA to BYROM, but the number of tickets remained exactly the same, namely 8,750 plus 2,282. We asked Jérôme for 8,750 and 2,282 tickets, and that is stated in the side letter*".

41. On 23 December 2013, Mr. Alon emailed Mr. Valcke to express his disappointment with the JB-MH Agency Agreement and the loss that it had generated: "*Well, you wanted to have everything done by the 23. JB agreed to a Match/Jaime contract in a huge los[s] to JB. But it was the only way that I could protect you in Brazil and within FIFA. Not only that we are not paying Face V[a]lue, but we are paying $8.5 million for Match Hospitality that we don't need. Make me sick. We lost the rest of our ticket inventory which include the following best WC tickets ever…. Match are sold out of th[ese] tickets, so JB could have generate[d] an easy $7 to $8 million from these tickets. We are now basically out of business for the 2014 WC. Makes me sad…*"

42. The next day, Mr. Valcke replied: "*I know the deal you have is not as good as the potential but it is not only for me it is also for you that such deal had to be done. We are not in a friendly environment and the deal could have been an opportunity for some people to create troubles. You will make your money in a safe way*".

43. On 22 September 2014, Mr. Kattner, FIFA's then Director of Finance, issued a memorandum to Mr. Issa Hayatou, then Chairman of the FIFA Finance Committee, summarizing the relationship between FIFA and JB and requesting approval for a reimbursement payment to Jaime Byrom in the amount of USD 8.3 million.

44. On 28 October 2014, accordingly, after the approval of the FIFA Finance Committee, Mr. Valcke and Mr. Byrom agreed that FIFA would reimburse the full amount that Mr. Byrom had committed to pay JB in the Side Letter in order to compensate JB for termination of the JB Agreement based on the profit JB expected to earn if it had been allowed to continue selling its entire ticket inventory under that agreement.

b) Mr. Valcke's travel expenses

45. FIFA engaged the auditing company KPMG to review Mr. Valcke's travel costs in connection with his trips between 2010 and 2015. Based on KPMG's report issued on 27 November 2015, FIFA determined that during his tenure as Secretary General, Mr. Valcke took four trips which were inconsistent with FIFA's travel policies and regulations, because of his use of private jets for which there were no security or cost saving reason and on which he was accompanied by family members at the expense of FIFA. The four trips were to St. Petersburg in 2015, India and the Taj Mahal in September 2012, Doha in September 2013, and from London to Manchester in July 2012.

(i) Trip to St. Petersburg in 2015

46. Mr. Valcke took a private jet to attend an extraordinary meeting of the FIFA Executive Committee on 20 July 2015 and the preliminary draw for the 2018 FIFA World Cup on 25 July 2015 in St. Petersburg, Russia accompanied by his wife, daughter, two sons, and the children's nanny. The flight for his son, Mr. Sébastian Valcke, included a "*feeder flight*" (i.e. a commercial flight to join the private jet) from Rio de Janeiro, Brazil via São Paolo, Brazil to Zurich. Mr. Valcke requested FIFA that his son's flight be "*à titre privé*" and upgraded from economy to business. According to KPMG, by using the private jet instead of a commercial flight, FIFA incurred additional costs of approximately USD 71,699 USD, which were never deducted from Mr. Valcke's salary.

(ii) Trip to India and the Taj Mahal in September 2012

47. Mr. Valcke travelled with a FIFA delegation on a private jet to Delhi, India for business from 4 to 9 September 2012, accompanied by his wife and one of his sons. FIFA covered the costs of the feeder flights for his family members. Mr. Valcke then postponed the return of the private jet to Zurich so that he could visit the Taj Mahal (as allegedly suggested by the President of the India Football Association) by private jet. The other two members of the FIFA delegation returned to Zurich on a commercial flight. According to KPMG, FIFA deducted CHF 18,870 from his salary for the trip to the Taj Mahal. However, FIFA never deducted the extra costs of the parking fee of the private jet in Agra or the two commercial flight tickets that FIFA had to purchase for the two members of the FIFA delegation to return to Zurich on the originally scheduled date (costing CHF 5,660 in total).

(iii) Trip to Doha in September 2013

48. Mr. Valcke travelled from Zurich to Doha (via Paris on the first leg) in September 2013 using a private jet for a business meeting with the Emir of Qatar. According to KPMG, by using the private jet instead of a commercial flight, FIFA incurred additional costs of approximately USD 135,609, which were never deducted from Mr. Valcke's salary.

(iv) Trip from London to Manchester in July 2012

49. On the occasion of the 2012 Olympic Games, Mr. Valcke took a private jet, accompanied by (aside from the President of the Canadian Soccer Association and other prominent members of the football community) his son Mr. Sébastien Valcke, to attend a football match in Manchester, United Kingdom held on 26 July 2012. According to KPMG, by using the private jet instead of a commercial flight, FIFA incurred an additional cost of approximately USD 21,066, which FIFA never deducted from Mr. Valcke's salary.

50. On 11 October 2013, Mr. Kattner (then Director of Finance of FIFA) sent a memo to Mr. Valcke in which he attached an overview of costs for private jets usage between January 2011 and September 2013, which amounted to USD 11.7 million. In the memo Mr. Kattner explained that there had been continuous increases over the past years of private jet usage and urged Mr. Valcke to find more cost efficient alternatives whenever possible and appropriate.

c) Mr. Valcke's involvement in the FIFA-EON transaction

51. On 8 July 2013, Mr. Valcke, Mr. Thierry Weil (then FIFA Director of Marketing) and Mr. Sébastian Valcke (son of the Secretary General) had a meeting at the Manchester, United Kingdom offices of EON Reality Inc. (hereinafter "EON"), a multinational virtual reality and augmented reality software developer. At that time, Mr. Sébastien Valcke had a relationship with, although he was not formally employed by EON.

52. At this meeting, EON presented a new technology which could potentially be used at FIFA's fan fest in Rio de Janeiro Brazil during the 2014 FIFA World Cup. According to the testimony of Mr. Weil at the FIFA Appeal Committee, the idea to meet with EON came from Mr. Valcke based on a proposal emanating from his son: "*Jérôme came to me, Mr. Valcke came to me and said his son has actually a company which makes something really special which is completely new, which has not been seen before and which could be of extreme interest for FIFA and his partners to be at the FIFA fan fest. And that's how it started and that's when then we resp. Mr. Valcke asked me to go with him to London together with his son to visit this company to see what the product is and what the product is all about – that is what we did actually*".

53. After the introductory meeting, Mr. Weil's marketing team conducted the negotiations with EON on behalf of FIFA. On 16 January 2014, the final services agreement between FIFA and EON was signed by Mr. Kattner and Mr. Weil on behalf of FIFA.

54. During these negotiations between EON and FIFA, Mr. Valcke and his son exchanged several emails in which Mr. Valcke counselled his son on how to conduct himself and negotiate his position with EON in connection with the intended EON-FIFA agreement. On 18 July 2013, for instance, Mr. Valcke wrote his son to advise him on how he should structure his employment contract with EON, emphasizing that he should be considered as the person responsible for opening up the world of sport to EON: "*Bref tu demande[s] un contrat de 24 mois renouvelable. Paiement mensuel de 5000$, à déduire de ta première commission, vols payes et frais de voyage. Voilà assez simple et rien d'anormal. Tu dois ajouter que tu prends a 100% cette responsabilité d'ouvrir le monde*

du sport a eon, le sport qui avec la musique est le seul langage universel et industrie en bonne santé qui offre un véritable nouveau débouché pour cette industrie".

55. On 28 July 2013, EON signed an employment contract with Mr. Sébastien Valcke.

56. On 28 August 2013, Mr. Valcke emailed his son a to-do-list which included EON-related work ("*Document promotion Eon Sports*").

57. On 27 October 2013, Mr. Sébastien Valcke forwarded Mr. Valcke an email related to internal exchanges he had with Mr. Lejerskar, the EON Founder and Chairman. In the forwarded email, Messrs. Sébastien Valcke and Mr. Lejerskar discussed the potential EON-FIFA deal and the compensation that the former would receive if he managed to convince FIFA to enter into it and to pay a down payment of $709,000 USD.

58. Mr. Sébastien Valcke demanded that if EON wished to move the deal forward, EON would have to agree to his requested commission payment; EON did agree.

59. In response to the forwarded email, Mr. Valcke emailed his son to indicate who he should contact at FIFA to update about the impending deal: "*Contacte Thierry [Weil], Adresse lui un email pour lui expliquer donc les nouvelles condition du deal avec FIFA et le potentiel EA etc. Fais le que tu te réveilles que je puisse suivre*".

60. On 28 October 2013, EON signed a contract addendum to Mr. Sébastien Valcke's employment contract to reflect the agreed-upon compensation.

61. The next day, Mr. Sébastien Valcke sent his father an email in which he attached a copy of the addendum and expressed his dissatisfaction with the terms: "*... Déjà ils [EON] changent tout le temps de version, je croyais qu'ils avaient acceptés les conditions dans mon mail en fait pas du tout, du coup je touche 5% du résultat net du contrat donc tu calcules ça fait à peu près 5k... voilà je crois que je vais attendre ce soir et leur dire qu'on arrête là*!". Nonetheless, Mr. Sébastien Valcke went on to sign the addendum.

62. On 4 November 2013, Mr. Sébastien Valcke emailed his father to report that FIFA had responded positively to EON's latest email and that he would ask Mr. Weil to send the FIFA-EON services agreements to be signed between EON and FIFA: "*Sinon le business ça va ils ont répondu positivement au dernier mail Eon et je vais relancer [T]hierry aujourd'hui pour lui demander d'envoyer le service agreement…*".

63. On 14 November 2013 Mr. Valcke sent an email to Mr. Thierry Weil to inquire whether he had finalized the deal with EON. Mr. Weil immediately responded that FIFA would send out the FIFA-EON services agreement that same day. Mr. Valcke then forwarded this email to his son.

64. On 16 January 2014, EON and FIFA (represented by Mr. Kattner and Mr. Weil) signed the FIFA-EON services agreement and on 13 February 2014, FIFA paid to EON the down payment of $709,000 USD.

d) Mr. Valcke's offer of a benefit to the Caribbean Football Union

65. On 6 March 2011, Mr. Jack Warner, the then President of the Caribbean Football Union ("CFU"), sent an email to Mr. Valcke requesting to grant to the CFU the purchase for the Caribbean region of the media rights for the 2018 and 2022 FIFA World Cups. The email read in the relevant parts:

> "*SG, in June last year in SA I had personally requested of you the above referenced [TV/Radio Rights for World Cup 2018/2022 for the Caribbean]. On that occasion, it was the third time I had made such a request of you.*
>
> *You told me then than by December of last year you would be in a better position to accede to my request based on some marketing matters which you still had to resolve.*
>
> *In December of last year when I approached you on this matter once again you advised me that I should wait until the next Ex Co meeting when you will be in a better position to advise. At the end of January 2011 when I came to your office to discuss some matters I again raised this issue and you again re-confirmed your earlier advice.*
>
> *I then wrote to you a couple weeks ago reminding you of this matter and the need for it to be resolved when I come to Zurich for meetings at the end of January and you then suggested that I should speak with the President when I come to Zurich at the end of February.*
>
> *By now you would have known that I did not speak with the President on this or any other matter and I do not wish to advise Secretary General that I have no intention of emasculating myself further re what I consider to be a legitimate request which was first granted in the era of Dr Havelange and Canedo and continued after they left the FIFA.*
>
> *As I said at Friday's Ex Co meeting I have been in the FIFA for 29 consecutive years representing my region and my Confederation with dignity. I have no intention of besmirching that dignity now. So suffice it to be said that if by March 15 2011 you still are unable to accede to my request I will understand. I hold no bitterness of any kind and do sincerely thank you for all your kindness of the past, relative to granting the rights previous World Cups to the Caribbean Football Union.*"

66. On 7 March 2011, Mr. Valcke replied to Mr. Warner's email and indicated that despite having received other offers for the media rights of the 2018 and 2022 FIFA World Cup (including one offer for USD 4 million), he would "gift" them to Mr. Warner for USD 1 million. Mr. Valcke wrote: "*I will bring to the next M & TV Board meeting the extension of your rights. We put a value of USD1,000,000 for 18/22. It is not even fair. It is a gift and you know it. We got some proposals but never written, because I don't want to open a negotiation, for USD4 mio*". As a comparison, FIFA had sold to the CFU the media rights to the previous editions of the FIFA World Cup in 2010 and 2014, for USD 600,000, a commitment to increase the 2014 fees, and a 50-50 split of all gross revenues generated from the sale by authorized sub-licensees of broadcast sponsorship and commercial airtime opportunities.

67. At the time Mr. Valcke sent this email, a FIFA presidential election was coming up on 1 June 2011. It was widely expected that Mr. Mohamed Bin Hammam would run in that election and challenge the incumbent FIFA President, Mr. Blatter. As Mr. Valcke testified before the CAS, he recognized that this meant potentially losing his position as FIFA Secretary General: "*I mean, I have been with Blatter, and I was his Secretary General, which means that if Mohammed Bin Hammam – because he was the one running against Blatter – would have been elected, I'm sure I would have been out of FIFA*". It should be noted that the CFU voted using a "*block vote system*", meaning that the 25 national federations forming that union would all vote the same and, in that way, would have a significant impact on any voting matters.

68. On 19 March 2011, only 12 days later, Mr. Valcke emailed Mr. Nicolas Ericsson of the FIFA TV Division about media rights negotiations for Thailand with Mr. Worawi Makudi, then FIFA Executive Committee member and President of the Football Association of Thailand. In the email, Mr. Valcke suggested that FIFA refrain from selling media rights at a discount to Thailand since Mr. Worawi was a supporter of Mr. Mohamaed Bin Hamman (referred to as "MbH") in the election: "*...For Thailand the value within the 800 is 80. Regarding Makudi, as agreed Thailand is a key market and may I sayn [sic] <u>knowing his support to MbH there is even less reason at all to make any special favor, meaning to sell under value the rights</u>*".

69. Ultimately, in relation to the Caribbean region, FIFA did not award the media rights for the 2018 and 2022 editions of the FIFA World Cup to the CFU. Instead, on 5 December 2014, FIFA awarded those rights to DirectTV Latin America LLC for a total fee of USD 20 million.

e) Mr. Valcke's destruction of evidence

70. On 2 June 2015, Mr. Villiger and the law firm Quinn Emanuel Urquhart & Sullivan, LLP (hereinafter "Quinn Emanuel"), FIFA's external counsel, sent a letter to all FIFA employees, including Mr. Valcke, in connection with the Swiss and U.S. investigations against FIFA. The letter indicated that all employees had to preserve all information and documents stored in any form from 1 January 2002 and to refrain from amending, destroying or in any way altering any relevant document (hereinafter the "Document Preservation Notice"). The memorandum explained that the expression "relevant document" included "*any documents or information... including in particular... Internal and external email correspondence; Documentation supporting all FIFA related activities; and Accounting and bank records (if any)*". More specifically, the memorandum required FIFA employees to take the following actions:

> "*Preserve: Please preserve all Relevant Documents stored in any form, including paper and electronic files, such as emails…*
>
> *Do Not Alter or Destroy: Under no circumstances should you or anyone else amend, destroy or in any way alter any Relevant Document.*
>
> *Err on the Side of Caution: If you have any doubts as to whether a document is a Relevant Document, please include it in the documents you preserve*".

71. On 22 September 2015, Quinn Emanuel emailed Mr. Valcke's lawyer Mr. Barry Berke, to seek confirmation whether his client had preserved and would continue to preserve "*all documents, records and other materials or information (whether in paper or electronic format) in his possession, custody, or control relating to any FIFA business, including but not limited to any e-mails sent or received from non-FIFA e-mail accounts (such as personal e-mail accounts), social media services (such as Facebook, WhatsApp and the like), and/or SMS/texts.*". Quinn Emanuel also requested that Mr. Valcke produce to it all such documents, records and other materials or information. There is no evidence on the record that Mr. Valcke or his lawyer responded to this email.

72. On 14 October 2015, Quinn Emanuel instructed a forensic expert to conduct an examination of Mr. Valcke's work laptop, which in the meanwhile Mr. Valcke had returned to FIFA.

73. On 15 October 2015, Quinn Emmanuel sent another email to Mr. Valcke's lawyer to again seek confirmation that no documents, records, files, e-mails, data, or other materials or information had been deleted or altered in any manner during the period that the FIFA's laptop was in Mr. Valcke's or his lawyer's possession. Quinn Emmanuel further requested confirmation that no FIFA documents or records had been taken from the laptop and that the computer's hard drive was not mirrored or otherwise copied. The Panel has seen no evidence that Mr. Valcke or his lawyer responded to this email.

74. On 11 December 2015 the forensic expert issued a report. which concluded that the user "jva1240", attributed to Mr. Valcke within FIFA's IT framework, downloaded and attempted to use a data destruction tool named "Eraser", a software used to securely erase files and folders beyond forensic recoverability. However, the Eraser program apparently failed to install because the user had restricted permissions on the laptop.

75. The forensic expert also identified that the user deleted a total of 1,034 files or folders (consisting of Word and Pdf docs, Excel spreadsheets and email messages) between 24 September and 11 October 2015 (the day before handing over his work laptop to FIFA) using the built in Recycle Bin feature. The user selectively chose the deleted documents, as proven by the fact that a small number of files remained within each folder. The user moved the selected documents in bulk to the Recycle Bin within minutes of each other and then permanently deleted them en masse. According to Mr. Valcke, the deleted files were private files except for two that were FIFA-related and that he unintentionally deleted as they were inadvertently filed in his private folders.

f) Mr. Valcke's failure to cooperate

76. On 10 March 2015, the Office of the Attorney General of Switzerland (hereinafter the "Swiss OAG" or "Swiss Prosecutors") opened criminal proceedings on suspicion of criminal mismanagement and of money laundering in connection with the awarding of the FIFA World Cups of 2018 and 2022. On 27 May 2017, the Swiss OAG seized data and documents at FIFA's headquarters and, on the same day, six high-ranking FIFA officials were arrested and detained in Zurich pending extradition at the request of the U.S. Attorney's Office for the Eastern District of New York, which suspected them of having received millions of US dollars in bribes. The U.S. Department of Justice and the U.S. Attorney's Office for the Eastern District of New York were investigating,

among other things, payments FIFA made to the CFU and CONCACAF totalling USD 10 million in relation to the 2010 FIFA World Cup.

77. On 18 September 2015, upon the opening of the disciplinary proceedings against him for possible violations of Articles 13, 15, 16, 19, 20, 21 and 22 FCE, the FIFA Investigatory Chamber requested Mr. Valcke to make himself available for an interview with the chief of investigation on 21 September 2015 in Zurich. Mr. Valcke initially accepted this request, only then seeking through his counsel to postpone the meeting in order to have preparation time and be provided, before the interview, access to all the files in the possession of the Investigatory Chamber related to the investigation.

78. On 20 September 2015, Mr. Valcke's counsel, on behalf of their client, requested access to the investigation files before the interview and to postpone the interview until Mr. Valcke had the opportunity to review the evidence and files. Mr. Valcke's counsel based the request on Article 39 of the 2012 FIFA Code of Ethics ("FCE"), according to which a party "*shall be granted the right to be heard, the right to present evidence, the right for evidence leading to a decision to be inspected, the right to access files and the right to a reasoned decision*". Mr. Valcke's counsel added that "*in light of the pending U.S. and Swiss investigations, it is particularly important that Mr. Valcke be provided access to all FIFA emails and documents related to the matter being investigated, and that he be afforded all the rights remedies and fairness to which he is entitled*".

79. On 21 September 2015, the FIFA Investigatory Chamber rejected Mr. Valcke's request to have access to the investigation files before the interview took place. The FIFA Investigatory Chamber drew Mr. Valcke's attention to Article 39 FCE and explained that in exceptional circumstances (such as when confidential matters need to be safeguarded) the right to be heard could be restricted. On this basis, the FIFA Investigatory Chamber informed Mr. Valcke that, although his right to be heard would be fully respected, for the time being, it was not in a position to provide him with all the documentation in its possession; he would however be allowed access to "*the relevant files part of the investigation and all pertinent evidence leading to a decision at a later stage*". The FIFA Investigatory Chamber concluded by requesting an interview with Mr. Valcke on 28 September 2015.

80. On 22 September 2015, the Investigatory Chamber also requested Mr. Valcke to provide it by 24 September 2015 with all email exchanges and correspondences that had been made between him and Mr. Benny Alon and/or Mr. Heinz Schild, concerning FIFA and/or its activities, from email accounts not under the FIFA server. The Investigatory Chamber requested that Mr. Valcke provide all exchanges with said individuals or any others related with the company JB from any personal email in connection with FIFA and/or its activities and all relevant correspondences relating to email exchanges with journalists concerning the matter of the investigation.

81. On 23 September 2015, Mr. Valcke's counsel confirmed their client's willingness and availability to meet for an interview. However, they repeated their request for the Investigatory Chamber to grant Mr. Valcke access to the investigation files before the meeting, arguing that the Investigatory Chamber's categorical refusal to grant their client such access constituted an unreasonable infringement on his right to be heard under Article 39 FCE as well as his broader rights under the Swiss procedural laws. Mr.

Valcke's counsel once again insisted that "*in light of the pending U.S. and Swiss criminal investigations, there can be no question that under the FCE and relevant procedural laws, Mr. Valcke should be afforded immediate access to files upon which the Investigatory Chamber seeks to question Mr. Valcke*". Mr. Valcke's counsel questioned how the allegations against him warranted "*exceptional*" treatment that would permit denial of his fundamental right to access to the investigation files.

82. On 24 September 2015, the FIFA Investigatory Chamber took note of the Appellant's agreement to attend the meeting on 28 September 2015 and reiterated its position conveyed on 21 September 2015 regarding Mr. Valcke's request for prior access to the investigation files. Further, since Mr. Valcke had not yet provided the full email correspondence from any of his personal emails conducted between himself and Mr. Alon and Mr. Schild, and/or any others related with JB, in connection with FIFA and/or its activities, the Investigatory Chamber granted him until 25 September 2015 to provide the documentary evidence, while reminding Mr. Valcke of his duty, pursuant to Article 41 FCE, to collaborate in establishing the facts of the case, in particular by complying with requests for information by the Investigatory Chamber. Mr. Valcke did not provide the requested emails by the set deadline.

83. On 25 September 2015, Mr. Valcke's counsel again requested for the Investigatory Chamber to provide Mr. Valcke with the investigation files prior to any interview and, in the meantime, to adjourn the meeting scheduled for 28 September 2015. They explained that the Swiss OAG had requested access to Mr. Valcke's emails and was examining the same allegations being reviewed by the Investigatory Chamber, which could result in Mr. Valcke being summoned by the Swiss OAG to answer questions on the same topic discussed at the interview requested by the Investigatory Chamber. Mr. Valcke's counsel explained that this only heightened the importance of granting their client access to all the investigation files and the opportunity to review them before conducting the requested interview. Mr. Valcke's counsel insisted that their client was eager to collaborate with the Investigatory Chamber but that he wished to do so "*without prejudicing his position in connection with the Swiss and U.S. criminal investigation*".

84. The same day, the Investigatory Chamber repeated its position conveyed on 21 September 2015 regarding Mr. Valcke's request for the investigation files, adding that: "*... noting your reference to the apparent ongoing investigation conducted by the Swiss Attorney General, you are hereby reminded that any ordinary proceedings ongoing at national level are independent from the activities of the investigatory chamber of the FIFA Ethics Committee ...*". The Investigatory Chamber insisted on Mr. Valcke attending the interview and providing the documentary evidence requested on 22 September 2015, once again reminding him of his duty under Article 41 FCE to act in good faith and to collaborate in establishing the facts of the case.

85. On 26 September 2015, Mr. Valcke's counsel expressed their disappointment over the Investigatory Chamber's approach and reiterated their position on prior access to the investigation files, adding that "*the confidentiality of the FIFA internal proceedings cannot prevent the recording of any interview and any documents produced in the internal proceeding from ending up in the hands of the Department of Justice and the Swiss Federal Attorney General and might prejudice his position in such proceeding*". Mr. Valcke's counsel insisted that their client was eager to cooperate with the

Investigatory Chamber but only once he had the opportunity to review the investigation files. Mr. Valcke's counsel requested that in the meantime the meeting scheduled for 28 September 2015 be adjourned.

86. On the same day, the Investigatory Chamber informed Mr. Valcke that the meeting scheduled for 28 September 2015 was cancelled.

87. On 28 September 2015, the Investigatory Chamber warned Mr. Valcke for his failure to comply with prior requests to attend an interview and provide certain documentary evidence. It reminded Mr. Valcke yet again of his duty to cooperate under Article 41 FCE and that a continued failure by him to cooperate could result in sanctions imposed under Article 41 FCE. The same day, by separate letter, the Investigatory Chamber also requested that Mr. Valcke provide by 29 September 2015 the documentary evidence it requested on 22 September 2015.

88. On 29 September 2015, Mr. Valcke's counsel sent a letter to the Investigatory Chamber repeating that their client was willing to cooperate but only if granted prior access to the investigation files. Mr. Valcke's counsel maintained that the denial of such access constituted a violation of his fundamental rights and protections afforded under Swiss law, adding that "*the confidentiality of the FIFA internal proceedings provides no valid protection against disclosure to the criminal authorities of depositions made in such proceedings*" and "*given the simultaneous investigation of the Attorney General's office, Mr. Valcke must be afforded the same rights as accorded to him by the rules on criminal proceedings and he cannot be expected to prejudice his position in the ongoing investigations by the Swiss and US authorities*".

89. On 25 January 2016, FIFA filed a criminal complaint against Mr. Valcke with the Swiss OAG for the same facts under investigation by the FIFA Ethics Committee. In March 2016, as confirmed by publicly available information, the Swiss OAG opened criminal proceedings against the Appellant.

B. Proceedings before the FIFA Adjudicatory Chamber and Appeal Committee

90. In order to understand FIFA's decisions, it is important first to summarize briefly the provisions of the FCE that are relevant to those decisions (the full text of those provisions is included in the Panel's analysis of the alleged infractions below at paras. 172 *et seq.*).

- Article 13 FCE ("*General Rules of Conduct*") requires that persons bound by the FCE (i) be aware of the importance of their duties and concomitant obligations and responsibilities, (ii) respect all laws and regulations, (iii) show commitment to an ethical attitude, and (iv) not abuse their position;

- Article 15 FCE ("*Loyalty*) obliges persons bound by the FCE to have a fiduciary duty to FIFA;

- Article 16 FCE ("*Confidentiality*") demands that persons bound by the FCE no divulge confidential information;

- Article 18 FCE ("*Duty of disclosure, cooperation and reporting*") requires persons bound by the FCE to report any potential breaches of the FCE and, at the request of the Ethics Committee, contribute to clarifying the facts of a case or possible breaches;

- Article 19 FCE ("*Conflicts of interest*") obliges persons bound by the FCE to (i) disclose any personal interests that could be linked with their prospective activities, (ii) avoid any situation that could lead to a conflict of interest, and (iii) disclose any existing or potential conflict of interest and not perform their duties if a conflict of interest exists.

- Article 20 FCE ("*Offering and accepting gifts and other benefits*") prohibits persons bound by the FCE to offer or accept undue gifts or other benefits to and from persons within or outside FIFA.

- Article 41 FCE ("*Obligation of the Parties to Collaborate*") requires parties in proceedings to collaborate establishing the facts of a case, in particular by complying with requests for information from the Ethics Committee and an order to appear in person.

91. On 7 October 2015, the Adjudicatory Chamber of the FIFA Ethics Committee (hereinafter the "Adjudicatory Chamber") provisionally banned Mr. Valcke from taking part in any football-related activity at national and international level for a maximum duration of 90 days. The Adjudicatory issued the grounds of its decision the next day on 8 October 2015. This provisional ban was confirmed on 24 November 2015 and then extended for a period of 45 days on 5 January 2016.

92. On 10 February 2016, the Adjudicatory Chamber issued its final decision against Mr. Valcke. It sanctioned Mr. Valcke with a ban of twelve years from taking part in any football-related activity at national and international level (Administrative, sports or any other) from 8 October 2015 and a fine in the amount of CHF 100,000 for having infringed Articles 13 ("*General rules of conduct*"), 15 ("*Loyalty*"), 16 ("*Confidentiality*"), 18 ("*Duty of disclosure, cooperation and reporting*"), 19 ("*Conflicts of interest*"), 20 ("*Offering and accepting gifts and other benefits*") and 41 ("*Obligation of the parties to collaborate*") of the FCE. More specifically, the Adjudicatory Chamber ruled *inter alia* that:

    (a) The Investigatory Chamber did not violate Mr. Valcke's procedural rights. The Investigatory Chamber was entitled to reject Mr. Valcke's requests to access the investigation files before appearing for an in-person hearing with the chief of investigation. Article 39 FCE does not provide for an unconditional right of the parties to access files immediately upon the opening of an investigation proceedings and may be restricted in exceptional circumstances. Mr. Valcke was eventually provided with the final investigation report and its exhibits.

    (b) Mr. Valcke violated Article 19, paras. 1-3 FCE in relation to JB's reselling of FIFA World Cup ticket, because (i) Mr. Alon (an acquaintance of Mr. Valcke) and his company JB gained an advantage from selling FIFA World Cup tickets, which was not explicitly or implicitly permitted under the JB Agreement, (ii) Mr. Valcke had his own personal interests involved, as proven by the references to "*documents*",

i.e. his "*pension fund*", in correspondences with Mr. Alon, (iii) Mr. Valcke did nothing to inhibit the selling activities of JB and instead reaffirmed and encouraged it to sell, and (iv) Mr. Valcke failed to avoid any situation that could lead to a conflict of interest, continued his involvement in these activities in the face of the conflict of interest, and failed to disclose that conflict. Additionally, Mr. Valcke violated Article 15 FCE and Article 13, paras. 1-3 FCE for this misconduct.

(c) Mr. Valcke violated Article 19, paras. 1-3 FCE in relation to his travel expenses because he gained an advantage (i) for himself by visiting the Taj Mahal on FIFA's expense purely for sightseeing reasons and repeatedly choosing private jets for his trips over commercial flights, and (ii) for his family by having them accompany him on these trips at FIFA's expense. Additionally, Mr. Valcke also violated Articles 15 and 13, paras. 1-4 FCE for this misconduct.

(d) Mr. Valcke violated Article 19, para. 1-3 FCE in the context of the FIFA-EON Transaction, because (i) his son benefitted directly (through a compensation package granted by EON) from the agreement between EON and FIFA and the related FIFA's down payment of $709,000 USD, (ii) he counselled his son on how to negotiate his position with EON, (iii) he informed his son about internal email correspondence he had with Mr. Weil on 14 November 2013, and (iv) he failed to avoid a situation that could lead to a conflict of interest and continued his involvement in the FIFA-EON deal in the face of the conflict of interest. Additionally, Mr. Valcke violated Articles 15 and 13, para. 1-4 FCE for this misconduct. He also violated Article 16, para. 1 FCE for forwarding to his son an internal email of FIFA which was confidential per Article 3.2 of the FIFA Employee Regulations.

(e) Mr. Valcke violated Article 20, para. 1 FCE (or its predecessor, Article 10, para. 2 FCE 2009) for offering the CFU an undue gift in the form of the media rights for the 2018 and 2022 FIFA World Cups in exchange for a price of only $1,000,000 USD, a fee far below the market price. Additionally, he also violated Articles 15 and 13, paras. 1-3 FCE (or its predecessors Articles 9, para. 1 and 3 paras. 1-2 FCE 2009) for this misconduct.

(f) Mr. Valcke violated Article 18, para. 2 FCE and Article 41, paras. 1 and 2 FCE for the destruction of evidence, and, more specifically, for failing to (i) confirm that no documents or other materials had been deleted or altered by him as the Investigatory Chamber requested on 15 October 2015, and (ii) deleting over 1,000 files or folders from his work laptop despite the Document Preservation Notice and the Investigatory Chamber's letter of 22 September 2015. Additionally, Mr. Valcke violated Articles 15 and 13, paras. 1-3 for this misconduct.

(g) Mr. Valcke violated Article 18, para. 2 and Article 41, paras. 1 and 2 FCE for failing to cooperate, and, more specifically, for failing to (i) accept an interview with the chief of investigation in order to clarify the facts of the case, and (ii) produce documentary evidence as the Investigatory Chamber originally requested on 22 September 2015. Additionally, Mr. Valcke violated Articles 15 and 13, paras. 1-3 for this misconduct.

93. The Adjudicatory Chamber deemed that Mr. Valcke's violation of Article 20 FCE warranted a ban from taking part in any football-related activity for 8 years. For the remaining violations of Articles 13, 15, 16, 18, 19, and 41, the Adjudicatory Chamber increased the sanction by four years, to reach a total of twelve years ban. In addition, the Adjudicatory Chamber held that a pecuniary fine of CHF 100,000 was appropriate.

94. On 24 June 2016, the Appeal Committee issued its decision against Mr. Valcke's appeal against the Adjudicatory Chamber's decision (Ref. 150718 FRA ZH; hereinafter the "Appealed Decision"). The Appealed Decision partially confirmed the Adjudicatory Chamber's decision and reduced the sanction to a ban of ten years, while maintaining the fine at CHF 100,000. The Appeal Committee held *inter alia* that:

(a) The FIFA Ethics Committee was competent to deal with the matter. The proceedings against Mr. Valcke were (i) of an ethical nature and not employment-related, and (ii) internal proceedings of a private association, which are independent from any decision taken by any other FIFA body, including the body competent to terminate an employee's employment contract. It is irrelevant that Mr. Valcke no longer was a FIFA employee at the time of the proceedings, as (i) the violations at stake occurred while he was performing his duties as the FIFA Secretary General, and (ii) the proceedings were initiated when he was still a FIFA official. Further, FIFA officials that are also employees of FIFA are subject to the same rules and sanctions applicable to any other official.

(b) Mr. Valcke breached Article 18, para. 2, Article 41, paras. 1 and 2, and Articles 15 and Article 13, paras. 1-3 FCE for failing to cooperate with the investigation. The Investigatory Chamber was entitled to reject access to the investigation files before an in-person interview on the basis of Article 39, para. 2 FCE for confidentiality reasons. Moreover, denial of access to such files does not discharge a party from his unconditional duty to collaborate under the FCE.

(c) Mr. Valcke violated Articles 19, para. 1-3 in the context of JB's reselling of FIFA World Cup tickets. First, it was not proven to the Appeal Committee's satisfaction that FIFA was aware of JB's reselling of tickets. In any case, Mr. Valcke's high positon at FIFA required him to be responsible and held accountable for any misconduct in the administration of which he is aware and does not take measures against, irrespective of the potential awareness of other individuals at FIFA. Second, the JB Agreement did not permit JB to sell tickets, nor did FIFA consent to such resale. Third, JB, an acquaintance of Mr. Valcke, gained an advantage by selling tickets above face value, which Mr. Valcke knew of and even actively encouraged. Fourth, Mr. Valcke, by using the term "*pension fund*" in email correspondences with Mr. Alon about retrieving certain "*documents*", at minimum created the appearance of also having his own private and personal interests involved. Fifth, Mr. Valcke failed to disclose his conflict of interest and to cease from performing his duties. Mr. Valcke also violated Article 15 FCE for his considerable degree of disloyalty for not communicating to FIFA the actual dealings with JB, as well as for encouraging the company to resell tickets. Additionally, he violated Article 13, paras. 1-3 FCE for his failure – through all the above mentioned conduct – to show commitment to an ethical attitude and to be aware of the importance of his duties and concomitant obligations and responsibilities.

(d) Mr. Valcke violated Article 19, paras. 1-3, Article 15 and Article 13, paras. 1-4 FCE in relation to his travel expenses. Mr. Valcke (i) made unjustified use of the private jets by having more family members accompany him on his business trips than the maximum number allowed for a FIFA Executive Committee member, and, in one instance, using the private jet for a personal trip with family, (ii) in doing so, created inappropriate and unnecessary additional costs for FIFA, (iii) did not deduct from is salary or reimburse FIFA for the costs that it incurred, and (iv) continued to select private jets for travels and invite family members after Mr. Kattner warned him – in a general manner – of the increase in costs due to private jet use.

(e) Mr. Valcke violated Article 19, paras. 1-3 FCE and Article 13, paras. 1-4 FCE in relation to the FIFA-EON transaction. Even though Mr. Valcke did not sign the FIFA-EON service agreement, he was personally involved in the matter by (i) visiting EON's facilities together with his son and Mr. Weil for the initial meeting in July 2013, and (ii) counselling his son on how to conduct the negotiations with FIFA. The proper approach would have been for Mr. Valcke to, at most, facilitate the contact between his son and the competent person at FIFA and then refrain from taking any further steps towards the conclusion of the agreement. Whether an actual negative impact or disadvantage to FIFA occurred is irrelevant for determining conflict of interest. Mr. Valcke also violated Article 16, para. 1 FCE for forwarding a confidential internal email of FIFA related to the FIFA-EON transaction to his son. Since Article 16, para. 1 FCE is a *lex specialis* to Article 15 FCE, no separate examination of Article 15 FCE is needed.

(f) Mr. Valcke violated Article 20, para. 1 FCE for offering the CFU media rights for the 2018 and 2022 FIFA World Cups in exchange for only USD 1 million, a fee far below the market price. The relevant email of 7 March 2011 constituted an "offer" and not an "expression of intent". The "offering" of a gift is included in the scope of Article 10 FCE (2009 edition) prohibiting gifts. The fact that FIFA did not ultimately award the media rights to the CFU is irrelevant, as Mr. Valcke offering the rights below market value was sufficient to constitute an infringement under Article 10 FCE (2009 edition). Since Article 20 is a *lex specialis* to Articles 15 and 13 FCE, no separate examination of Articles 15 and 13 is needed.

(g) Mr. Valcke violated Article 18, para. 2, Article 41, paras. 1-2, and Articles 15 and 13, paras. 1-3 FCE for deleting over 1,000 files from his work laptop. The Document Preservation Notice demanded the preservation of "*all information and documents*", including private files and data, and in any case, Mr. Valcke deleted at least 3 files that were FIFA-related. The fact that Mr. Valcke eventually submitted to the Investigatory Chamber the deleted official FIFA documents does not rescind his prior violation of the document preservation memorandum. Mr. Valcke also (i) attempted to install software to securely erase files beyond forensic recoverability, and (ii) failed to answer Quinn Emanuel's requests of 22 September and 15 October 2015 for confirmation that he had preserved, and would continue to preserve, all documents records and other materials and information, and for their production.

(h) The reduction of the ban from eight to six years for the violation of Article 20 FCE is appropriate given the following mitigating circumstance that the Adjudicatory Chamber did not consider: the context of the 2018/2022 FIFA World Cups media

rights, in particular, the involvement of the then FIFA President (who might well have influenced the decision to make the CFU offer) and Mr. Warner as then CONCACAF President and long-serving FIFA vice-president.

(i) The ban of 4 years for the remaining violations of Articles 16, 18, 19 and 41 FCE is appropriate, while no sanctions are given for the violations of Articles 13 and 15 FCE.

(j) A pecuniary fine of CHF 100,000 is appropriate.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

95. On 23 February 2017, in accordance with Article R47 and R48 of the Code of Sport-related Arbitration (the "CAS Code"), the Appellant filed a statement of appeal.

96. On 13 April 2017, in accordance with Article R51 of the CAS Code, the Appellant filed his appeal brief.

97. On 28 April 2017, the CAS Court Office notified the Parties that, on behalf of the President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the CAS Code, the Panel appointed to decide the matter would be constituted by Prof. Avv. Massimo Coccia, LL.M. as chairman, the Hon. Michael J. Beloff M.A. Q.C. designated by the Appellant, and Prof. Dr. Ulrich Haas designated by the Respondent.

98. On 9 June 2017, the CAS Court Office notified the Parties that Mr. Francisco A. Larios, Esq. had been appointed *ad hoc* clerk.

99. On 18 July 2017, in accordance with Article R55 of the CAS Code, the Respondent filed its answer.

100. On 26 July 2017, the CAS Court Office sent the Parties the Order of Procedure to be signed by 31 July 2017. Both parties signed it for acceptance and returned it to the CAS.

101. On 11 October 2017, the hearing took place at the CAS headquarters in Lausanne, Switzerland.

102. The following persons were in attendance at the hearing:

- The Panel, assisted by Messrs. Francisco A. Larios (*ad hoc* clerk) and Antonio de Quesada (CAS Counsel).

- For the Appellant: Mr. Jérôme Valcke as Appellant, Messrs. Marco Niedermann, Jonas Oggier, and Stéphan Ceccaldi as counsel, and Prof. Gabriel Aubert as expert witness.

- For the Respondent: Prof. Antonio Rigozzi, Prof. Sébastien Besson, and Mr. William McAuliffe as counsel, and Prof. Thomas Probst as expert witness.

103. At the outset of the hearing, the Parties confirmed they had no objections to the constitution and composition of the Panel.

104. At the end of the hearing, the Parties acknowledged the Panel had fully respected their rights to be heard and to be treated equally and made no procedural objections.

105. On 16 October 2017, the Panel requested the Parties, following their agreement at the end of the hearing, to file post-hearing briefs, within which they were expected to answer a list of questions posed by the Panel.

106. On 11 and 13 December 2017, respectively, the Appellant and Respondent filed their post-hearing briefs.

107. On 19 December 2017, the Respondent sent a communication to the CAS Court Office to (i) complain about the Appellant disregarding in its post-hearing brief the Panel's directives of 16 October 2017, and (ii) reserve the right to file specific procedural requests to address the matter after a full review of the post-hearing brief.

108. On 22 December 2017, Respondent confirmed its position, objected to the Appellant's alleged new arguments and evidence filed with its post-hearing brief, and requested an opportunity to comment on them.

109. On 3 January 2018, the Respondent replied to the Appellant's objections.

110. On 5 January 2018, the Panel decided to admit into the file all the arguments and exhibits submitted by the Appellant with its post-hearing brief and provided the Respondent, as it had requested, an opportunity to file a short written submission limited to commenting on points raised in its letter of 22 December 2017. The Respondent filed said submission on 17 January 2018.

V. SUBMISSIONS OF THE PARTIES

A. Mr. Jérôme Valcke

111. The Appellant requests the following relief:

> "*1.1 The Decision of the Appeal Committee of the Fédération Internationale de Football Association dated June 24, 2016 (Ref. 150718 FRA ZH) shall be set aside in its entirety.*
>
> *1.2 The sanctions imposed on the Appellant shall be lifted immediately and definitively;-*
>
> *Eventualiter, the sanctions imposed on the Appellant shall be reduced and otherwise limited appropriately.*
>
> *2. The Appellant shall be awarded an appropriate indemnity for legal fees and other expenses incurred*".

112. The Appellant's submissions, in essence, may be summarized as follows:

- The Parties entered into the arbitration agreement when the Appellant accepted to become FIFA's Secretary General, which materialized when he signed his

employment contract on 2 July 2007, and *ipso iure* submitted himself to all applicable FIFA Statutes and its arbitration clause. The FIFA Executive Committee's appointment of the Appellant as FIFA Secretary General on 27 June 2007 was not the moment when the Parties entered into an arbitration agreement because it constituted a unilateral act by FIFA not reflecting Appellant's acceptance to submit himself to the applicable FIFA regulations.

- The present CAS arbitration is a domestic arbitration governed by Article 353 ff. of the Swiss Code of Civil Procedure ("CPC") because both parties had their domicile in Switzerland at the time they entered into the arbitration agreement. The signing of the Order of Procedure – which inadvertently referenced Chapter 12 of the Switzerland's Federal Code on Private International Law ("PILA") – does not affect this classification. The Appellant did not opt out of the application of Part 3 of the CPC in favour of Chapter 12 PILA by signing the Order of Procedure.

- Pursuant to Article 57, para. 2 FIFA Statutes the applicable law are the various FIFA regulations and, additionally, Swiss law. "Additionally" does not mean "subsidiarily" but rather "in addition", meaning that Swiss law applies at the same level as the FIFA regulations. Given the parties' choice of the FIFA regulations and Swiss law as *lex causae*, mandatory provisions of Swiss law must take precedence over any FIFA regulations where there is conflict between the two sets of rules. Even though the present arbitration deals with sanctions issued on the basis of Swiss association law, Swiss employment law is relevant to the present dispute as any sanction imposed must comply with that law.

- FIFA had no authority to impose sanctions against the Appellant that contravene mandatory provisions of Swiss law. The Appellant was both an ordinary FIFA employee and, by virtue of his employment contract only, a FIFA official. As his status as an employee and official were inseparable, FIFA had to respect the mandatory provisions of Swiss employment law in their employment relationship and in sanctioning him.

- The sanctions FIFA imposed on the Appellant violated mandatory provisions of Swiss employment law, because (i) the ban falls outside the limited recourse an employer has to "sanction" an employee at fault, and (ii) the fine lacked an adequate contractual basis, as the relevant FIFA provisions used to impose it do not satisfy the requirements of predetermination and limitation established under Swiss law and is inconsistent with the principle of *nulla poena sine lege certa*. FIFA also violated the principle of *ne bis in idem* by terminating the Appellant's employment contract while also sanctioning him with a ban and fine.

- The Appellant did not violate Articles 19, 15 and 13 FCE in relation to his dealings with Mr. Alon and JB. Nothing about the Appellant's involvement in the sale of FIFA World Cup tickets was improper. The Appellant acted appropriately and in the interests of FIFA in his dealings with Mr. Alon (who was not an "acquaintance"), using his best efforts to protect FIFA from legal, financial and reputational damage. When entering into the JB Agreement all the FIFA executives involved – including, besides the Appellant, Messrs. Blatter, Kattner, Villiger, Hayatou and Scala (then Chairman of the FIFA Audit and Compliance Committee)

– were aware that JB would resell the tickets and allowed it, or at the very least, did not object to it. The Appellant cannot, therefore, be singled out for a sanction. Moreover, there is no evidence that the Appellant – who was at all times transparent with FIFA – gained any advantage from his dealings with Mr. Alon and JB.

- The Appellant did not breach Articles 19, para. 1-3, Articles 15 and 13, para. 1-4 FCE in relation to his travel expenses. The Appellant's travel expenses were appropriate and consistent with FIFA policies and practices. The Appellant never took advantage of his position, never acted in conflict of interest, and always acted transparently and in the best interest of FIFA. Each one of the four travels for which FIFA sanctioned him was a business flight taken for safety or time saving reasons and in line with FIFA's established practice on accompaniment of family members. In any case, (i) estoppel precluded FIFA from challenging the travel expenses, and (ii) the sanction for this alleged breach must be reduced as the FIFA Appeal Committee, without knowing it, dropped three of the Adjudicatory Chamber's charges against the Appellant (use of private jet for flights to St. Petersburg, India and Qatar) without taking that into account in determining the sanction.

- The Appellant did not breach Articles 19 or 13 FCE in relation to the FIFA-EON transaction. The Appellant was not involved in the negotiations and did not pressure anyone at FIFA to close the deal. The Appellant's son involvement in the transaction was wholly transparent and the EON deal was not unfair or disadvantageous for FIFA. In any case, even if the Panel finds a breach of Articles 19 and 13 FCE, the sanction must be reduced as the FIFA Appeal Committee explicitly dropped the charge of a violation of Article 15 FCE without taking that into account in determining the sanction.

- The Appellant did not breach Article 16 FCE by forwarding an internal email of FIFA about the EON deal to his son, since that email did not include any confidential information and was not sent to the Appellant with the understanding or communication of confidentiality.

- The Appellant did not breach Article 10, para. 2 FCE (2009 edition). The Appellant did not offer or attempt to offer a gift to the CFU by sending the email dated 6 March 2011 to Mr. Warner. The email was meant only to "silence" the "pushy" Mr. Warner and, at most, expressed an intent to bring Mr. Warner's request to the relevant deciding body. Even if the Panel finds that the Appellant did offer or attempt to offer a gift, it is not a sanctionable offense under the applicable 2009 FCE, which, unlike Article 20, para. 1 FCE (2012 edition), only prohibited the "giving" of gifts. Nothing in the 2009 Code of Ethics creates "*attempt*" liability. Moreover, the Appellant did not suggest an "undue benefit" to CFU by referring to a "gift" in the email. Nor is an "undue benefit" proven by comparing the alleged USD 1 million offer for media rights to the subsequent sale of the same media rights to DirectTV Latin America LLC for a total fee of USD 20 million. In any case, if the Panel finds a breach of Article 20 FCE, the sanction must be reduced as the FIFA Appeal Committee explicitly dropped the charge of a violation of Articles 15 and 13 FCE without taking that into account in determining the sanction.

- The Appellant did not breach Articles 18 or 41 FCE for the alleged destruction of evidence. The Document Preservation Notice only required the preservation of FIFA-related information. Only three of deleted files were FIFA-related; however they were (i) accidentally deleted, and (ii) entirely unrelated to the FIFA Ethics Committee's investigation against the Appellant. In any case, prohibiting FIFA employees to delete private files is illegal under Swiss employment law, personal rights law and data projection law.

- The Appellant also did not violate Articles 18 or 41 FCE for not accepting an interview with the Investigatory Chamber. The Appellant had the right to invoke the right against self-incrimination. At the time the Investigatory Chamber notified the Appellant that it had opened formal ethics proceedings against him on 18 September 2015, there were criminal proceedings already pending in U.S. and Switzerland. The Appellant thus faced a severe dilemma: fully cooperate with the Investigatory Chamber at the risk that FIFA would make available all documents and transcripts of testimonies to public investigators (as they were when FIFA filed a criminal complaint in January 2016) or refuse fully to cooperate at the risk of being sanctioned. Given the risk of the documents of the FIFA internal proceedings being made available to the criminal authorities (which materialized), the Appellant should have been afforded the same procedural rights in the FIFA-internal ethics proceedings as accorded to him by the rules on criminal proceedings, including the right against self-incrimination. In any case, the Appellant repeatedly and explicitly expressed his willingness to cooperate and attend an interview, provided FIFA granted him prior access to the investigation files. FIFA wrongly denied him access to said file and thereby violated his fundamental rights to fairness and due process. FIFA failed to demonstrate what "exceptional" reason under Article 39, para. 2 FCE it had to refuse him access to the investigation files.

- Pursuant to the principle of *lex specialis derogat legi generali*, the Appellant cannot be sanctioned under Articles 13 and 15 FCE in relation to his dealings with Mr. Alon and JB, his travel expenses, his alleged obstruction of the Ethics Committee's investigation, or his alleged refusal to cooperate, or under Article 13 for the FIFA-EON transaction, since the Appeal Committee based said alleged infringements on same exact facts used to sanction him under the more specific Articles 19, 18 and 41 FCE. If the Panel holds the Appellant did not violate said articles, then the sanction must be reduced appropriately.

- Subsidiarily, the total sanction imposed on the Appellant is disproportionate. The Appeal Committee failed to consider (i) mitigating circumstances, in particular, the Appellant's achievements for FIFA, and (ii) the several charges the Appeal Committee dropped.

B. FIFA

113. The Respondent requests the following relief, namely that the Panel issue an award:

"*1. Dismissing Mr. Valcke's appeal.*

2. Confirming the Decision under appeal.

3. Ordering Mr. Valcke to pay a significant contribution towards the legal fees and other expenses incurred by FIFA in connection with these proceedings".

114. The Respondent's submissions, in essence, may be summarized as follows:

- The Appellant became bound by the FIFA Statutes and its arbitration clause when the FIFA Executive Committee appointed him as FIFA Secretary General on 27 June 2007. However, assuming the Appellant was domiciled in Switzerland at that time and that the present arbitration is thus a domestic one, in signing the Order of Procedure on 26 July 2017, which stated "*Chapter 12 of the Swiss Private International Law Statute (PILS) shall apply, to the exclusion of any other procedural law*", the Appellant opted out of Part 3 of the CPC in accordance with Article 353, para. 2 CPC and into the international arbitration rules of the PILA.

- The Appellant was both a FIFA employee subject to the provisions of his employment contract, and, as the FIFA Secretary General, a body ("*organ*") of the international federation subject to the ethical standards embodied in the FCE. The obligations arising from the employment contract must be treated differently from those arising from the FIFA Statutes and regulations as far as their formation and legal effects are concerned. Disciplinary proceedings based on the employment relationship are limited by the mandatory rules of labour law, while disciplinary proceedings under association law are limited by the mandatory law of association, personality rights and public policy. Given that FIFA's ban is purely related to association law and directed at the Appellant as an organ of FIFA, employment law is irrelevant.

- FIFA had the authority to impose sanctions against the Appellant, as there is no contravention of the mandatory provisions of Swiss association law.

- The Appellant violated Articles 19 by authorizing and encouraging Mr. Alon (who was, or at least became, his acquaintance) and his company JB to resell FIFA World Cup tickets in breach of the JB Agreement and the GTC, as well as by having a direct 50 percent kickback share in the profits of resold tickets. The Appellant helped Mr. Alon and JB gain an advantage by making profits on the resale of tickets, thereby putting himself in a position of conflict of interest. The Appellant himself obtained a personal advantage through the 50 percent kickback. The Appellant also failed to report this conflict of interest. Additionally, the Appellant, by putting his and his acquaintance's interests before those of FIFA, violated Articles 15 FCE and 13 FCE, respectively, for acting disloyally and failing to show commitment to an ethical attitude and awareness of his duties and concomitant obligations and responsibilities. On this point, the principle of *lex specialis* does not apply. The same facts can constitute a violation of both Articles 19 FCE and Articles 15 and 13 FCE; the only limitation is double jeopardy, meaning that FIFA cannot impose two sanctions for the same facts, which it has not done (as the Appealed Decision did not impose any sanction for the violations of Articles 15 and 13 FCE).

- The Appellant violated Article 19 FCE for making several trips that were inappropriate and inconsistent with FIFA's regulations dealing with travel expenses. The Appellant, in violating said regulations and repeatedly flying by

private jets without an acceptable reason (i.e. for security, time saving or cost saving reasons), flying with much more than one family member, and not reimbursing FIFA for costs associated with trips of additional accompanying family members, gained an advantage for himself and his family members at the expense of FIFA. In doing so, the Appellant also violated Articles 15 and 13 FCE for his disloyalty, failure to act in an ethical manner, and abuse of his position as FIFA Secretary General.

- The Appellant violated Article 19 FCE by personally involving himself (on both sides) in the FIFA-EON transaction. In particular, the Appellant violated that provision because (i) his son benefitted directly financially from the FIFA-EON transaction, (ii) he played an important role in connecting the two entities by participating in the first meeting, (iii) he advised his son on how to handle the deal, and (iv) he followed-up with Mr. Weil about whether the parties had reached a deal. In involving his private and personal interests and gaining an advantage for a family member, the Appellant placed himself in a position of conflict of interest. The Appellant also violated Article 16 FCE for forwarding an internal email about the FIFA-EON deal to his son, and Article 13 for abusing his position as FIFA Secretary General by engaging in nepotism and conducting himself without credibility and integrity and without awareness of the importance of his duties and concomitant obligations and responsibilities.

- The Appellant violated Article 20 FCE by offering an improper benefit to the CFU. The Appellant's offer to the CFU of the media rights for the FIFA World Cups of 2018 and 2022 at the price of USD 1 million constituted an offer of a gift. It is evident that this constitutes a gift because the Appellant (i) described it as such, and (ii) was well aware that the actual value of those rights were much higher than the amount offered. It was "*undue*" offer because the Appellant failed to provide a reason why the offer of media rights below their market value was somehow "*due*" to Mr. Warner. Article 10 FCE (2009 edition) is not narrower than Article 20 FCE (2012 edition). Offering gifts and attempting to give such gifts is an infringement under either version of the provision. By adding the term "offering" in Article 20 FCE, FIFA meant only to clarify the meaning of the provision.

- The Appellant violated Article 18 and 41 FCE for failing to contribute to clarifying the facts by (i) deleting over 1,000 files from his work laptop despite the Document Preservation Notice, which required *all* and not only FIFA-related or investigation-related documents to be preserved, (ii) failing to comply with requests of 22 September 2015 to produce to the Investigatory Chamber certain documents for inspection and of 15 October 2015 to confirm that he had not deleted or altered any documents or other materials, and (iii) not agreeing to meet for an interview with the Investigatory Chamber (in this regard, the Appellant was neither entitled to make acceptance of an interview with the Investigatory Chamber contingent on prior receipt of the investigation file, nor entitled to rely on the right of self-incrimination). With this misconduct, the Appellant also violated Article 15 FCE for disloyally placing his own personal interests above those of FIFA, and Article 13 FCE for acting in a manner that fails to show commitment to an ethical attitude and complete credibility and integrity.

- The sanction imposed is proportionate to the offense.

VI. JURISDICTION

115. Article R47 of the CAS Code provides as follows:

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

116. According to Article 81, para. 1 of the FIFA Code of Ethics ("FCE"): "*Decisions taken by the Appeal Committee are final, subject to appeals lodged with the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the FIFA Statutes*".

117. Pursuant to Articles 55, para. 3 and 58, para. 1 of the FIFA Statutes, "*Decisions pronounced by the Appeal Committee shall be irrevocable and binding on all the parties concerned. This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS)*" and "*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…*".

118. It follows, as the parties did not dispute and is confirmed by their signature of the Order of Procedure, that the CAS has jurisdiction to decide the present dispute.

A. The seat or domicile of the parties

119. The parties, however, dispute whether this is a domestic arbitration governed by Part 3 of the CPC or an international arbitration governed by Chapter 12 of the PILA.

120. The Panel recalls that under Article 176, para. 1 PILA an arbitration is domestic, and thus subject to Part 3 of the CPC, if the seat of the arbitral tribunal is in Switzerland and if, at the time when the arbitration agreement is entered into, both parties were domiciled or habitually resident in Switzerland.

121. In this respect, the Panel finds that the Appellant entered into the arbitration agreement on 27 June 2007, when the FIFA Executive Committee appointed the Appellant as FIFA General Secretary – as that position was then named – and he accepted the appointment. On that day, the Executive Committee appointed the Appellant as a body ("*organe*") of FIFA and he immediately assumed his role. Indeed, as recorded in the minutes of that meeting, the Appellant was invited into the meeting room, accepted his appointment as FIFA General Secretary, thanked the FIFA Executive Committee for their trust, and declared it was an honour to be given the role to represent FIFA. It was at this time that the Appellant *ipso jure* submitted himself to the FIFA Statutes under Article 7, para. 1 of the 2006 edition (now Article 8, para. 1) that stated that "*the bodies and Officials must observe the Statutes, regulations, decisions and Code of Ethics of FIFA in their activities*" and, in turn, to the arbitration clause contained therein. The Swiss Federal

Tribunal (also indicated hereinafter as "SFT") confirmed this analysis in the *Platini* case, by holding that Mr. Platini became *ipso jure* bound by the FIFA Statutes when he joined the FIFA Executive Committee (4A_600/2016 of 29 June 2017, at para. 1.1.1): "*comme le recourant a intégré le Comité exécutif de l'intimée en 2002, il a été soumis ipso iure aux statuts de cette association depuis lors*".

122. The Panel rejects the Appellant's contention that he became a FIFA official only upon signing the employment contract on 2 July 2007 and that his appointment on 27 June 2017 by the FIFA Executive Committee was a "*unilateral*" act which did not reflect the Appellant's acceptance to submit himself to the FIFA Statutes and the arbitration clause contained therein. The Panel finds, from a factual angle, that the Appellant did accept straight away his appointment (as proven by the minutes of the meeting cited in the preceding paragraph) and, from a legal angle, that the employment contract served a separate function, namely to govern all employment related matters, such as the salary, duration, vacation, etc., associated with his appointed position of FIFA General Secretary. However, that employment contract was not a necessary pre-requisite for the Appellant to become the FIFA General Secretary. The Panel is of the view that Article 66, para. 2 FIFA Statutes (2006 edition, in force at the time of the appointment), stipulating that the General Secretary "*shall be appointed on the basis of an agreement governed by private law*", merely means that the General Secretary had also to be formally hired on the basis of an employment contract (differently from other FIFA officials such as the President or the Executive Committee members), and not that he was appointed only through the signature of the employment contract.

123. This Panel's reading is confirmed by two significant elements of contextual and teleological interpretation: (i) Article 31, para 10 of the same 2006 edition of the FIFA Statutes states that the "*Executive Committee shall appoint … the General Secretary on the proposal of the President*", and certainly the Executive Committee does not sign the employment contract on behalf of FIFA; and (ii) accepting the Appellant's interpretation would mean that the FIFA General Secretary would be immune from the FCE (and, in particular, from disciplinary proceedings against him for any ethical violations committed) between the moment the Executive Committee appoints him as FIFA General Secretary and the moment he signs the employment contract (which could well take some time), which would be an unreasonable and unacceptable consequence.

124. Having decided that the Appellant became subject to the FIFA Statutes and the arbitration clause contained therein when the FIFA Executive Committee appointed him as FIFA General Secretary and he immediately accepted it – i.e. on 27 June 2007 – the Panel notes that, at that time, the Appellant was domiciled in Switzerland. As such, and with FIFA also domiciled in Switzerland and the arbitral tribunal seated in that same country, the present arbitration would appear to be, in principle, a domestic arbitration.

B. The impact of the signing of the Order of Procedure

125. The Respondent contends, however, that in subsequently signing without any reservation the Order of Procedure – it was unconditionally signed for acceptance by both parties (see *supra* at para. 100) – the Appellant agreed to opt out of the application of Part 3 of the CPC and into Chapter 12 of PILA. The relevant part of the Order of Procedure reads: "*In accordance with the terms of the present Order of Procedure, the*

parties agree to refer the present dispute to the Court of Arbitration for Sport (CAS) subject to the Code of Sports-related Arbitration (2017 edition) (the "Code"). Furthermore, the provisions of Chapter 12 of the Swiss Private International Law Statute (PILS) shall apply, to the exclusion of any other procedural law". The Appellant explains that, when he accepted without reservations the Order of Procedure, he did not notice that this clause was present; however, the Panel finds that it cannot disregard a clause of an agreement signed by both parties merely because one party, assisted by his legal counsel, was inattentive at the time of the signature.

126. Pursuant to Article 353, para. 2 CPC: "*The parties may exclude the application of this Part [3] by making an express declaration to this effect in the arbitration agreement or a subsequent agreement, and instead agree that the provisions of the Twelfth Chapter of the PILA apply. The declaration must be in the form specified in Article 358*". According to Swiss jurisprudence, it is insufficient for the parties to declare that the provisions of Chapter 12 PILA shall apply (something that in this case the parties certainly did); they must also expressly declare, either in the arbitration agreement or in a subsequent agreement, that Part 3 of the CPC shall be excluded (116 II 721 at para. 4; 4A_254/2013 at para. 1.2.3; 4P.140/200 at para. 2a). With this in mind, the Panel has doubts as to whether the parties truly opted out of a domestic arbitration. In particular, the Panel finds it doubtful that the language "*to the exclusion of any other procedural law*", present in the OP, is sufficient to be considered as an "*express declaration*" to opt out of the CPC.

127. In any event, the Panel recognizes that the practical effect of characterizing the present arbitration as domestic or international is generally limited and, in this particular proceeding, essentially insignificant. It only has a potential future effect on the applicable standard of review in the event the award is appealed to the Swiss Federal Tribunal. In fact, only if this proceeding were considered as a domestic arbitration would this award be reviewable also under the standard of "*arbitrariness*" (Article 393(e) CPC), given that this concept is not present among the grounds of appeal listed for international arbitration (Article 190, para. 2 PILA). Accordingly, given the practical irrelevance and the fact that neither party's motions for relief ask the Panel to determine this issue, the Panel will make no ruling on it, as it can be left to be decided by the Swiss Federal Tribunal if and when this award is challenged.

C. Validity of the arbitration agreement

128. Since the substantive or formal validity of the arbitration agreement has not been disputed by the Parties, the Panel need not consider this issue.

D. Scope of the arbitration agreement

129. In the Panel's view, the present dispute, covered by the arbitration agreement included in the FIFA rules, is limited to issues pertaining to the functions of the Appellant as an organ of FIFA and, thus, to matters of association law, leaving out any issue or dispute of labour law. Therefore, the Panel harbours no doubt that it can adjudicate the present dispute, as there is a long tradition at CAS – endorsed by the jurisprudence of the Swiss Federal Tribunal – of arbitrating disciplinary disputes based on association law.

130. The fact that, according to Swiss jurisprudence, domestic labour law disputes could not, in principle, be arbitrated on the basis of an arbitration agreement entered into before the end of the labour relationship is thus irrelevant.

VII. ADMISSIBILITY

131. Article R49 of the Code provides as follows:

> "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document*".

132. According to Article 58, para. 1 of the FIFA Statutes, appeals "*shall be lodged with CAS within 21 days of notification of the decision in question*".

133. FIFA notified the grounds of the Appealed Decision on 3 February 2017. The Appellant then lodged an appeal at CAS on 23 February 2017, i.e. within the 21 days allotted under Article 58, para. 1 of the FIFA Statutes. It follows that the Appellant's appeal is admissible.

VIII. APPLICABLE LAW

134. Article R58 of the Code provides as follows:

> "*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*".

135. According to Article 58, para. 2 of the FIFA Statutes, "*[t]he 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.*"

136. In light of those provisions, the Panel must decide the present dispute in accordance with, primarily, the FIFA Regulations (in particular, the FCE) and, additionally, Swiss law.

IX. PRELIMINARY LEGAL ISSUES

137. The parties have two disagreements with respect to the application of certain legal concepts. The first concerns an intertemporal issue, that is what version of the FCE applies to the issue of whether the Appellant offered an improper benefit to Mr. Warner and the CFU (see supra at paras. 65-69). The second concerns a prioritisation issue, that

is whether and to what extent the mandatory laws of Swiss employment law apply to the present case, with several related sub-issues.

A. Intertemporal issue in the application of the FCE

138. On the one hand, the Appellant argues that the previous version of the FCE, the 2009 edition, must apply, because the email at the basis of the alleged ethical infringement was sent on 7 March 2011, before the FCE 2012 came into force. On the other hand, the Respondent points to Article 3 ("*Applicability in time*") of the FCE (2012 edition) to support its position that the 2012 edition applies. That article stipulates that the FCE "*shall apply to conduct whenever it occurred including before the passing of the rules contained in this Code except that no individual shall be sanctioned for breach of this Code on account of an act or omission which would not have contravened the Code applicable at the time it was committed nor subjected to a sanction greater than the maximum sanction applicable at the time the conduct occurred…*".

139. According to well-established CAS jurisprudence, intertemporal issues in the context of disciplinary matters are governed by the general principle *tempus regit actum* or principle of non-retroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts occurring before their entry into force (CAS 2008/A/1545, para. 10; CAS 2000/A/274, para. 208; CAS 2004/A/635, para. 44; CAS 2005/C/841, para. 51), (iii) any procedural rule – on the contrary – applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurred prior to the entry into force of that rule unless the principle of *lex mitior* makes it necessary.

140. Article 3 FCE (2012 edition) departs from the traditional *lex mitior* principle by reversing it so that the new substantive rule applies automatically unless the old rule is more favourable to the accused. The CAS has previously held that even if the starting point of Article 3 FCE (2012 edition) is different, the approach is equivalent to the traditional principle of *lex mitior* (CAS 2016/A/4474, at para. 147).

141. Pursuant to this approach, and given that the Appellant's conduct under scrutiny occurred before the entry into force of the 2012 FCE, the Panel must compare the texts of Article 10 FCE (2009 edition) ("the old rule") and Article 20 FCE (2012 edition) ("the new rule"):

- Article 10 FCE (2009 edition), entitled "*Accepting and giving gifts and other benefits*", provides in the relevant parts:

  "*1. Officials are not permitted to accept gifts and other benefits that exceed the average relative value of local cultural customs from any third parties. If in doubt, gifts shall be declined.*

  2. While performing their duties, officials may give gifts and other benefits in accordance with the average relative value of local cultural customs to third

parties, provided no dishonest advantages are gained and there is no conflict of interest"; whereas,

- Article 20 (FCE 2012), entitled "*Offering and accepting gifts and other benefits*", provides in the relevant parts:

  "*1. Persons bound by this Code may only offer or accept gifts or other benefits to and from persons within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, which a) have symbolic or trivial value; b) exclude any influence for the execution or omission of an act that is related to their official activities or falls within their discretion; c) are not contrary to their duties; d) do not create any undue pecuniary or other advantage and e) do not create a conflict of interest. Any gifts or other benefits not meeting all of these criteria are prohibited*".

142. The Panel accepts that the texts of the above rules differ in their language, but is not persuaded by the Appellant's contention that the new rule expands rather than merely emphasizes what is inherent in the old rule or that the latter is, on its true construction, more favourable to him than the former. In the Panel's view, both the offering and the giving of gifts (other than of a kind specifically permitted) are proscribed under both sets of rules as being objectionable. To focus on the absence of an express use of the word "offer" or "offering" in the old rule makes no more sense than to focus on the absence of the word "give" or "giving" in the new rule. It can hardly be contemplated that the draftsman intended to outlaw only offers but not actual making of gifts in the new rule or, by parity of reasoning, intended to outlaw only making of gifts but not their offer in the old rule. Both rules embrace acts which are the mirror image of each other vis-a-vis gifts, i.e. giving or accepting, and the Panel considers that a purposive construction in this disciplinary (not criminal) context eliminates any material distinction between them. Moreover, the Panel finds that "giving" in the old rule must include "offering" since the vice lies in the offer. Whether or not an offer is accepted depends solely upon the reaction of the intended recipient – a matter which is not within the control of the offeror. Exculpating the offeror merely because there was a virtuous intended recipient who declined it, while condemning an offeror whose offer is accepted, would be a very odd and irrational rule that could not have been the intent of the draftsman. The Panel, therefore, concludes that nothing turns in this case on the general principle of *tempus regit actum*, being the offer of an improper benefit by the Appellant to the CFU caught under either rule; the Appealed Decision was correct in this regard.

143. For the sake of completeness, the Panel must add that the application of Article 10 FCE (2009 edition) does not contravene any procedural right of the Appellant, such as the prohibition of *ultra petita*. Even though the Appealed Decision concluded that the Appellant breached Article 20 FCE (2012 edition), it assessed the Appellant's conduct at issue not only under that provision but also under Article 10 FCE (2009 edition). Moreover, the underlying Adjudicatory Decision explicitly held that the Appellant had violated Article 10, para. 2 FCE (2009 edition). Indeed, it held that "*Since it does not meet all of the criteria provided for by art. 20 par. 1 of the FCE, the adjudicatory chamber finds that Mr. Valcke violated that same provision, or art. 10 par. 2 of the FCE 2009, respectively*". Further, for a CAS award to be *ultra petita* it must go beyond what

the Parties sought in their motions for relief (CAS 2017/A/5086 at para. 121). In the present case, the Parties have entrusted the Panel – at the request of the Appellant – to determine whether he committed an ethical violation by offering an undue gift to Mr Warner and the CFU. Therefore, by applying Article 10 FCE (2009 edition), the immediate predecessor of Article 20 FCE (2012 edition), to make that assessment, the Panel does not purport to adjudicate beyond the matter submitted and does not act *ultra petita*.

144. As for the remaining alleged ethical violations, the Panel finds, as is undisputed, that the 2012 edition of the FCE applies.

B. FIFA's authority to impose the applicable sanction

145. The Appellant challenges that FIFA has the authority to impose a ban or a fine on the Appellant. More specifically, the Appellant argues that (i) FIFA has no authority to impose a ban on the Appellant because such a sanction contravenes mandatory provisions of Swiss employment law, (ii) FIFA cannot impose a ban or sanction because there is no adequate contractual basis for such sanctions, and (iii) by imposing the ban and firing the Appellant, FIFA violated the principle of *ne bis in idem*. In light of the Appellant's claims, the Panel must first determine whether the mandatory provisions of Swiss employment law apply to a sanction imposed by a sport governing body pursuant to Swiss association law, and if so, whether the sanction of a ban from partaking in activities of that sport governing body violates that mandatory law. Second, the Panel must determine whether the sanction of a ban satisfies the requirements of predetermination and limitation under Swiss law. Third, the Panel must decide whether FIFA had the right – in light of the *ne bis in idem* principle – to, on the one hand, fire the Appellant under employment law and, on the other hand, sanction him with a ban and fine under association law. The Panel will address each issue separately below.

a) The applicable legal framework

146. By submitting their dispute to the CAS, the Parties have agreed on the conflict of law rule contained in Article R58 of the CAS Code. According thereto, the dispute must be decided – primarily – according to the "applicable regulations", i.e. the rules and regulation of the sporting entity that has issued the decision that forms the matter in dispute. Accordingly, the dispute must be decided – primarily – according to the rules and regulations of FIFA.

147. According to Article 58, para. 2 of the FIFA Statutes, "*[t]he 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*." The question, thus, is how this referral to "Swiss law" in the FIFA Statutes must be construed. In the Panel's view, it is obvious that Article 58 para. 2 of the FIFA Statutes, by using the terms "*primarily*" and "*additionally*", provides for a hierarchical relationship between the "FIFA regulations" – including of course in such category the FIFA Statutes and all other FIFA rules – and "Swiss law". This hierarchical relationship has been understood in constant CAS jurisprudence as implying that the "additionally" applicable Swiss law is merely intended to clarify that the FIFA regulations are based on a normatively shaped basis, deriving from Swiss law, and that any matter that is not covered by FIFA regulations must be decided in accordance with Swiss law. Consequently, the purpose

of the reference to Swiss law in Article 58, para. 2 of the FIFA Statutes is to ensure the uniform interpretation of the standards of the football industry worldwide. Swiss law does govern, for example, the *interpretive methods* with regard to FIFA rules. Similarly, Swiss law applies when determining the question of standing to sue or standing to be sued, because of a lacuna in the FIFA regulations that must be clarified under the "additionally" applicable Swiss law (CAS 2014/A/3850, no. 62 *et seq*.). The same principle applies to the question of who bears the burden of proof for particular issues, since this legal question – in the absence of any explicit provision – is equally subject to Swiss law under Article 58, para. 2 of the FIFA Statutes (CAS 2014/A/3742, no. 59 et seq.; 2014/A/3527, no. 67).

148. By corollary, the referral contained in Article 58, para. 2 of the FIFA Statutes to Swiss law cannot be construed as meaning that wherever the FIFA regulations and Swiss law are in contradiction, Swiss law takes precedence. Nor can this referral be construed to mean that FIFA regulations only take precedence insofar as this is compatible with Swiss mandatory law. Instead, the wording ("primarily", "additionally") clearly indicates that, in principle, the FIFA regulations always take precedence over Swiss law.

149. Such interpretation is perfectly in line with Article 187, para. 1 of the PILA or Article 381, para. 1.a CPC. According thereto, the parties may agree to apply "*rules of law*" to the merits. The term of art "rules of law" clearly covers also rules that do not origin from a State legislator. Thus, the interpretation followed here, according to which a non-national law takes precedence over a national law, is clearly covered by the autonomy granted by Swiss statutory arbitration law (see CR-DIP/Bucher, 2011, Art. 187 no. 42; Arroyo & Burckhardt, *Arbitration in Switzerland, The Practitioner's Guide*, 2013, Art. 187 nos. 9, 29; Berger & Kellerhals, *Domestic and International Arbitration in Switzerland*, 3rd ed. 2015, no. 1396; Haas, in Bernasconi & Rigozzi (Ed.), *Sport Governance, Football Disputes, Doping and CAS Arbitration*, 2009, pp. 215, 218).

150. For these reasons, the Panel finds that FIFA's authority to impose disciplinary sanctions cannot be limited by mandatory Swiss law.

b) Relationship between Swiss labour law and association law

151. On a subsidiary basis the Panel finds that, as the Appellant acknowledges, the present arbitration does not deal with an employment-related dispute but, rather, with sanctions issued by a sport governing body based on association law.

152. The question for the Panel is whether and to what extent Swiss employment law comes into play in such a dispute. This is because, notwithstanding that a dispute is an arbitrable non-labour related dispute, certain provisions of labour law may, at least in principle, apply. This is often the case, for instance, in disputes over football transfers where Swiss labour law provisions are sometimes applied (in that particular scenario, very different from the case here at hand, those Swiss labour provisions are essentially used to fill loopholes in the FIFA regulations on players' status and transfer). More specifically, the Panel must decide whether Swiss employment law is applicable to the present case to the extent that it precludes the Respondent from imposing a ban on the Appellant from partaking in any football-related activity for a set period of time.

153. The Panel is of the view that the Appellant was in a situation of "role splitting" (in French a "*dedoublement fonctionnel*") in the sense that, in his capacity as the FIFA Secretary General, he had two separate legal statuses or roles. On the one hand, he was an official (and even an organ) of FIFA on the basis of the association rules; on the other hand, he was a FIFA employee by virtue of an employment agreement under private law. The Appellant's dual legal relationship as both an official/organ and employee of FIFA is underscored by the fact that the moment he assumed the role of FIFA Secretary General on 27 June 2007, with his appointment by the FIFA Executive Committee upon proposal by the FIFA President (Article 31, para. 10 of the FIFA Statutes of 2007), was different from and earlier to the moment he became an employee by signing his employment contract on 2 July 2007 (see *supra* at para. 121).

154. The Panel concludes that these legal relationships, even if they are interrelated, are separate and independent of each other as bears on their inception, effects and termination. This was confirmed in ATF 130 III 213 at 2.1, where the Swiss Federal Tribunal held: "*it is disputed, if a leading officer of public limited company may have a labour relationship to it ... It is decisive, whether or not the person concerned is in such a dependent relationship that he or she receive instructions. In such case there is on the one hand an organ status that is governed by company law and on the other hand a contractual relationship. Both legal relationships must be treated independently with regard to their formation, legal effects and dissolution even though they are closely interrelated between them*" (free translation from the German original: "… *ist umstritten, ob ein leitendes Organ einer Aktiengesellschaft zur dieser in einem Arbeitsverhältnis stehen kann. ... Entscheidend ist dabei, ob die betroffene Partei in dem Sinne in einem Abhängigkeitsverhältnis steht, dass sie Weisungen empfängt. Ist das zu bejahen, liegt ein arbeits- und gesellschaftsrechtliches Doppelverhältnis vor ... Zum einen handelt es sich um eine vom Gesellschaftsrecht beherrschte Organstellung, zum anderen um eine vertragliche Bindung. Die beiden Rechtsverhältnisse sind in Bezug auf Entstehung, Wirkungen und Auflösung klar auseinander zu halten, selbst wenn sie in einer engen Wechselbeziehung zueinander stehen*").

155. The result of the Appellant's dual legal status is that his status as an official or organ of FIFA has been governed by Swiss association law, while his status as an employee of FIFA has been governed by Swiss employment law. This means that both the Appellant and the Respondent, symmetrically, have possessed rights and obligations vis-à-vis each other under two different sets of rules: (i) the FIFA Statutes and various FIFA regulations, including the FCE, in relation to the Appellant's status as an organ or official of the Respondent association, and (ii) the employment contract and Swiss labour law, in relation to the Appellant's status as an employee and the Respondent's status as an employer.

156. This also means that – as is commonplace for sports associations – FIFA had the power to sanction the Appellant, as it did, on the basis of association law, without being limited by employment law. This can happen in various other situations. For example, a professional coach hired by a national sports federation to be the national team coach has a dual role as a sport official and as an employee; such coach might receive a disciplinary sanction from the association (for instance because of a match-fixing or doping related offence) regardless of her or his employment relationship or, conversely,

may have an employment-related dispute (for instance on the right to receive a bonus linked to results) without any impact on his status as an official of that federation.

157. FIFA, as any other association incorporated under Swiss private law pursuant to Article 60 *et seq.* of the Swiss Civil Code ("CC"), has a legitimate interest in and is entitled to control and supervise the conduct of its organs and officials by implementing *inter alia* specific ethical standards of conduct in its rules. FIFA is also entitled to sanction persons bound by its ethical rules irrespective of whether they are also employees of FIFA. Certainly, the autonomy of FIFA in this regard is not absolute (CAS 2014/A/3776; CAS 2011/A/2422). In particular, its power to impose sanctions under association law is limited by public policy ("*ordre public*"), and in particular by the fundamental rules protecting personality rights under Article 27 *et seq.* CC and competition law. However, that power is not necessarily limited by the mandatory provisions of employment law.

158. The Panel acknowledges that, in principle, employment law could come into play in instances where the association law were to be used by an association to circumvent the specific protection mechanisms of labour law. However, in the present case, there is no evidence to indicate such an attempt at circumvention. FIFA has simply applied the FCE and imposed a ban in response to what it deemed to be serious unethical behaviour, as it has in other recent disciplinary proceedings against prominent members of the FIFA Executive Committee and even the former FIFA President (e.g. TAS 2016/A/4474; CAS 2016/A/4501; CAS 2017/A/5086).

159. In reaching its conclusion, the Panel finds it irrelevant that (i) the employment relationship no longer existed at the time of disciplinary sanctioning because that sanction was based on association law and could be imposed on conduct which occurred during the time which the Appellant served as FIFA Secretary General, and (ii) Swiss employment law (as most other employment laws around the world) cannot and does not provide for a world-wide ban as a sanction against an employee in an employment-related dispute, as such a ban may only be imposed within the framework of association law (as it was here). Indeed, during the period of the worldwide FIFA ban, the Appellant will still be able to seek employment in countless other sectors of the economy.

160. While the Panel finds it unnecessary to resort to the principles of *lex sportiva* to resolve the matter at hand, it is mindful that under the Appellant's approach – where mandatory provisions of Swiss law would automatically apply to all sanctions imposed by a sport governing body under association law – a FIFA official with an employment contract (such as the FIFA Secretary General) and a FIFA official without such contract (e.g. a FIFA Executive Committee member) would effectively be treated differently, in that only the former – due to mandatory labour law – would be exempt from sanctions, creating an imbalance and incoherence in the application of the FCE, which would be unacceptable for the protection of ethical standards and of equality of treatment within the association. Consequently, for this additional reason the mandatory provisions of Swiss employment law are inapplicable to the present case. Instead the disciplinary authority of FIFA is solely based on the FIFA regulations supplemented by association law.

c) No violation of the Swiss "ordre public"

161. Even though the disciplinary authority of FIFA is not limited by Swiss mandatory law, it is indeed restricted by the Swiss "*ordre public*" or "public policy". The Appellant, referring to the *Matuzalem* judgment rendered by the Swiss Federal Tribunal, argues that the ban on the Appellant is contrary to substantive Swiss public policy and, more specifically, to Article 27, para. 2 CC on personality rights. The Panel rejects this Appellant's argument for the reasons set out in the following paragraphs.

162. In the *Matuzelem* ruling (BGE 138 III 322), the Swiss Federal Tribunal partially annulled the underlying CAS award which had confirmed a ban of the player from any football-related activity if he failed to pay EUR 11,858,934 plus interest within a final time of 90 days. The Swiss supreme court reasoned that such ban was incompatible with substantive public policy because it would prevent him from exercising his profession as a footballer and from earning the money necessary to discharge his debt, thereby restricting his personality right to economic freedom enshrined in Article 27, para. 2 CC.

163. In contrast, in the present case, the ban imposed on the Appellant derives directly from a breach of the FCE, and not from the non-payment of a debt pursuant to Article 64 of the FIFA Disciplinary Code which established the consequences for not complying with a FIFA or CAS decision. Moreover, the ban imposed by FIFA does not deprive the Appellant of the material possibility of paying his debt of CHF 100,000 towards FIFA (which is a much smaller amount than that owed by Mr Matuzelem), as his ban does not extend to private or public activities outside of organized football, so that he is free to exercise his profession as a businessman or manager in any company worldwide (differently than a professional footballer, who cannot have the education and training to swiftly switch to another sector of the economy affording a sufficient income to pay a heavy fine).

164. The Panel thus concludes that there is no restriction to the Appellant's personality rights under Article 27, para. 2 CC.

d) The ban and fine have an adequate contractual basis

165. Pursuant to Article 5, para. 1 FCE, the FCE may pronounce the sanctions provided in the FCE, the FIFA Disciplinary Code (hereinafter the "FDC") and the FIFA Statutes. As a result, the FIFA Ethics Committee was entitled to apply the sanctions listed in Article 6 FCE, Article 10 *et seq.* FDC and Article 65 of the FIFA Statutes. The aforementioned provisions do not list specific sanctions for each and every ethical offense, but rather provide a range of sanctions that may be imposed on a natural person, including the following: a warning, a reprimand, a fine, a return of awards, a match suspension, a ban from dressing rooms and/or the substitutes' bench, a ban on entering a stadium, a ban on taking part in any football-related activity and social work. With regard to the fine, Article 15 FDC then stipulates that it "*shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than CHF 1,000,000*".

166. It is true that according to the principle of legal certainty, the offences and sanctions of a sports organization must be predictable to the extent that those subject to them must

be able to understand their meaning and circumstances in which they apply (CAS 2008/A/1545, at para. 30 *et seq.*; CAS 2004/A/725, at para. 20 *et seq.*). In the Panel's view, however, it is unnecessary and impractical for the FCE to list the specific sanction for each and every ethical offense, or to limit very narrowly the amount of a possible fine (CAS 2017/A/5155 at para 48).

167. A sport governing body must have a certain discretion to impose the sanction that it deems appropriate for the offense committed under the particular circumstances and context of that case. It is in this light that Article 9, para. 1 of the FCE calls for the FIFA Ethics Committee to "*take into account all relevant factors in the case, including the offender's assistance and cooperation, motive, the circumstances and the degree of the offender's guilt*". This is not to say, however, that the sport governing body is free, in applying a sanction, to ignore the principle of proportionality; indeed, it must impose a sanction that is proportionate to the offence, aa well as taking into account the sanctions – if themselves proportionate – imposed on others for similar offences.

168. In light of the foregoing, the Panel holds that Article 6 FCE and Article 15 FDC are sufficiently "*determinable*" (CAS 2017/A/5272, para. 64) and thus satisfy the predictability test. The Panel dismisses also the Appellant's argument related to the fact that FIFA rules on sanctions provide no limit to the ban, as the Panel deems it legitimate that an association includes a ban for life among the possible sanctions it can impose (some offences can indeed be so serious as to warrant exclusion for life of the guilty individual from that association).

e) No violation of the principle of ne bis in idem

169. By way of prologue, the Panel notes that while there may be a certain factual overlap in the scope of activities of the FIFA body in charge of overseeing employment-related matters and the FIFA Ethics Committee, from a legal angle those activities are wholly separated as each body applies a different set of rules and pursues its own functions with its own remedies. That is to say, while FIFA, in its capacity as an employer under Swiss labour law, may seek to sack an employee and/or to obtain compensation for damages where that employee commits a breach of contract, the FIFA Ethics Committee, in its capacity as a disciplinary body of a sports association incorporated in Switzerland, may seek to impose sporting sanctions on that same individual – if she or he is subject to the association rules – as a disciplinary measure to protect the integrity and credibility of the sport and of the association governing it.

170. With this in mind, the Panel holds that the principle of *ne bis in idem* is inapplicable to the present case since the Appellant's dismissal from his job related to his status as an employee and his contractual relationship with FIFA, whereas the sanctions imposed under the disciplinary proceedings were based on his status as an official (and even an organ) of FIFA and on violations of the ethical rules. Further, the purpose of the termination of the Appellant's employment contract with FIFA is not the same as the purpose of the disciplinary sanction. The first was to end the employment relationship, whereas the second was to prevent the Appellant from participating in football-related activities in order to protect the integrity and credibility of the sport and of the association governing it. Therefore, the Appellant cannot be said to have been punished twice for the same offense.

171. The Panel also dismisses the Appellant's related argument, that the termination of the employment relationship and the disciplinary sanction derive from the same Appellant's conduct. In fact, all legal systems experience situations where the same facts provide separate and parallel consequences under different sets of rules. For example, it is well known that the same individual conduct can result in an obligation to pay compensatory damages and the imposition of a criminal sanction. Both legal consequences can smoothly coexist.

X. MERITS

172. The Appellant requests the Panel to set aside the Appealed Decision, which sanctioned the Appellant with a ten-year ban from taking part in any football-related activity at national and international level and a fine of CHF 100,000 for various violations of the FCE or, subordinately, to reduce or otherwise limit the sanction imposed. The Respondent, for its part, seeks full confirmation of the Appealed Decision. In view of the Parties' different stances, the Panel must determine whether the Appellant violated Article 10 FCE (2009 edition), and Articles 13, 15, 17, 18, 19, and 41 FCE (2012 edition), and, if so, assess the appropriate sanction.

A. Burden and standard of proof

173. As a preliminarily step, the Panel must recall that FIFA bears the burden of proving the Appellant's violations pursuant to Article 52 FCE (2012 edition), which reads: "*[t]he burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee*".

174. That said, in accordance with Swiss law, each party shall bear the burden of proving the specific facts and allegations on which it relies. A party has discharged its burden of proof in case, if the Panel is personally convinced that a fact has been established. This follows from Article 51 FCE (2012 edition), according to which "*[t]he members of the Ethics Committee shall judge and decide on the basis of their personal conviction*".

175. The Panel notes that, although Article 51 FCE (2012 edition) is entitled "*Standard of proof*", this is a provision that seems to have less to do with the notion of standard of proof (as usually understood by arbitral tribunals, including CAS panels) than with the consistent approach of Swiss jurisprudence to adjudication, under which the judging body must not look for the objective truth but for the subjective truth, i.e. whether or not the judging body is personally convinced of a certain fact. The problematic characterization of "*personal conviction*" as an effective standard of proof, and the relative lacuna in FIFA rules, has led several CAS panels dealing with disciplinary cases involving FIFA officials to apply the flexible standard of proof of "*comfortable satisfaction*", i.e. less than the standard of "beyond a reasonable doubt" but more than the standard of "balance of probabilities", while bearing in mind the seriousness of the allegations made (CAS 2017/A/5086, at para. 136; CAS 2011/A/2426, at para. 88; CAS 2011/A/2625, at para. 153; CAS 2016/A/4501, at para. 122). It is a standard of proof which may be recognized, more than two decades after its adoption in CAS jurisprudence, as part of *lex sportiva*; the Panel will thus apply such standard of proof in conjunction with the criterion of personal conviction as provided by Article 51 FCE (2012 edition).

B. Violation of the FCE for involvement in the resale of FIFA World Cup Tickets

176. The Respondent claims that the Appellant violated the FCE because, in the course of 2013, (i) he helped one of his acquaintances, Mr. Alon, gain an advantage by authorizing JB to resell tickets in contravention of the JB Agreement and unilaterally altering JB's ticket inventory to the benefit that company, and (ii) he personally gained a personal advantage by accepting (or at least not refusing) an upfront payment of USD 500,000 and a 50 percent share on the expected profits from JB's resale of tickets to at least 12 games of the 2014 FIFA World Cup.

177. Both the Adjudicatory Chamber and the Appeal Committee of FIFA held that, with regard to the conduct summarized in the preceding paragraph, the Appellant violated Articles 19 ("*Conflict of Interest*"), 15 ("*Loyalty*") and 13 ("*General rules of conduct*" of the 2012 versions of the FCE.

178. It is not clear to the Panel why the Appellant's conduct here under scrutiny was not examined by FIFA disciplinary bodies under the angle, first and foremost, of Article 20 FCE (2012 edition) on "*Offering and accepting gifts and other benefits*" (see the text of this provision *supra* at para. 140) or, possibly, even under the angle of Article 21 FCE (2012 edition), proscribing "*Bribery and corruption*". Whatever the reason for this omission, the Panel may in any event consider this aspect in evaluating the proportionality of the overall sanction imposed on the Appellant.

a) Violation of Article 19 FCE

179. Article 19 FCE, para. 2 FCE (2012 edition) on "*Conflicts of Interest*" stipulates that "*Persons bound by this Code shall avoid any situation that could lead to conflicts of interest. Conflicts of interest arise if persons bound by this Code have, or appear to have, private or personal interests that detract from their ability to perform their duties with integrity in an independent and purposeful manner. Private or personal interests include gaining any possible advantage for the persons bound by this Code themselves, their family, relatives, friends and acquaintances*".

180. Accordingly, the Panel must determine whether the Appellant, in contravention of Article 19, para. 2 FCE, placed himself in a situation of conflict of interest, or in the appearance thereof. More specifically, the Panel must assess (i) whether the Appellant had or appeared to have any private or personal interests in JB's resale of FIFA World Cup tickets, which includes the gaining any possible advantages for himself or acquaintances, and (ii) whether those interests detracted him from the ability to perform his duties with integrity in an independent and purposeful manner.

181. Before doing so, in order correctly to apply Article 19, para. 2 FCE, the Panel must determine whether the Appellant and Mr. Alon were "*friends*" or at least "*acquaintances*" (as they surely were not "*family*" or "*relatives*"). The Panel finds that Mr. Alon and the Appellant can arguably be considered friends but, at the very minimum, they must in any event be considered acquaintances. As the FCE does not define "acquaintance", the Panel must turn to its common meaning in the English language (CAS 2007/A/1377, at para. 19 e*t seq.*). Under the Merriam-Webster, an acquaintance is "*a person whom one knows but who is not a particularly close friend*". Similarly, the Oxford Dictionary defines an acquaintance as "*a person one knows*

slightly, but who is not a close friend". In the Panel's view, the bar to become an acquaintance is thus set low. The Panel observes that the Appellant and Mr. Alon knew each other for some time (according to the Appellant's testimony since 2009, when Mr. Alon first blackmailed FIFA), interacted on a first-name basis, made personal references in their communications, and used private email accounts to communicate. For the Panel, this clearly surpasses the threshold of an acquaintance.

182. Having determined that Mr. Alon was an acquaintance under Article 19, para. 2 FCE, the Panel must decide whether he gained an advantage. The Panel is personally convinced to its comfortable satisfaction that he did gain such an advantage at the hands of the Appellant by profiting from the resale of the FIFA World Cup Tickets, which the Appellant authorized in violation of the JB Agreement.

183. As a starting point, the Panel notes that FIFA never explicitly nor implicitly granted JB the right to resell tickets on a stand-alone basis. This is confirmed by the totality of the following:

    (i) There is no language in the JB Agreement expressly or implicitly granting JB the right to resell tickets on a stand-alone basis. First, Article 5.1 of the JB Agreement only allows JB to "*allocate*" tickets to third parties (see *supra* at para. 10). However, this does not, as the Appellant suggest, imply that FIFA "*tolerated*" if not "*allowed*" the resale of tickets. In the Panel's view, the term "*allocate*" in Article 5.1 cannot be interpreted in such a broad way to extend to the reselling of tickets, particularly because that same article refers to the FIFA General Terms and Conditions ("GTC"), which strictly prohibit such reselling. Simply put, if the parties had intended to permit the actual resale of tickets, they would have explicitly so stated. However, in reviewing the negotiations between the Parties, it is clear to the Panel that the Parties had the opposite intention. During the negotiations of the JB Agreement, FIFA actually rejected JB's request that FIFA sign a side letter authorizing the resale of tickets on a stand-alone basis and also refused to add language in Clause 9 of the JB Agreement authorizing the same (see *supra* at para. 11). Second, the language in Article 5.3 of the JB Agreement – indicating that tickets should be printed with the name "*FIFA*" or any other neutral designation and if possible without price indication – does not implicitly grant JB the right to resell tickets. Such a provision would not be only applicable to the reselling of tickets on a stand-alone basis; it would also have purpose for the allocation of tickets through the inclusion in a package deal related to a golf tournament, to which the JB Agreement appears to point as explained below.

    (ii) The language in the JB Agreement unequivocally prohibits JB to resell tickets on a stand-alone basis. Article 5.1 required JB to comply with the GTC, which under 2010 edition stipulated: "*Ticket Holders may not sell, offer for sale, resell, donate or otherwise transfer their Ticket in any way, without the specific prior written approval of FIFA. Transfer requests will be considered in accordance with the Ticket Transfer Policy defined by FIFA and available on www.FIFA.com. The purposes for the rule limiting Ticket transfers include: (a) event security, (b) consumer protection, and (c) economic fairness as described in greater detail on www.FIFA.com*" (Article 4.1), and under the 2014 edition stated: "*TICKET HOLDERS MAY NOT SELL, OFFER FOR SALE, OFFER AT AUCTIONS,*

RESELL, DONATE, ACT AS COMMERCIAL AGENT FOR ANOTHER PARTY OR OTHERWISE TRANSFER THEIR TICKETS IN ANY WAY WITHOUT THE SPECIFIC PRIOR WRITTEN CONSENT OF FIFA. FIFA will only give such consent in case a Ticket Holder (i) wishes to transfer a Ticket to a privately invited guest or family member for free or for the price charged to the Ticket Holder by FIFA, (ii) is seriously ill or has died, or (iii) any other reason which may be defined by FIFA in the Ticket transfer and resale policy available on www.fifa.com" (majuscule in the original).

(iii) The Panel rejects the Appellant's argument that this provision of the GTC only applies to ticketholders and not to wholesale agents. Even assuming that FIFA viewed JB as a wholesale agent under the JB agreement (*quod non*) there is no denying the GTC applied to JB because, first, the agreement explicitly required under Article 5.1 that JB comply with the GTC and, second, the GTC did not explicitly or implicitly grant wholesale agents an exception to the non-resale provision. Instead, wholesale agents become entitled to resell tickets only upon prior written approval from FIFA, which could (but did not in this instance) come in the form of a contractual agreement. The Panel also finds it irrelevant whether or not FIFA delivered the GTC to JB upon signing the JB Agreement, since the GTC were expressly referenced in the JB Agreement and readily available online.

(iv) After signing the JB Agreement, Mr. Alon sought the Appellant's authorization to resell tickets on a stand-alone basis. If FIFA had in fact already approved such resale in the JB Agreement, then it would have been unnecessary for Mr. Alon to seek the Appellant's permission. When questioned at the hearing why, if FIFA understood that Mr. Alon could resell the tickets on a stand-alone basis, Mr. Alon felt compelled to approach the Appellant on several occasions to obtain express authorization, the Appellant failed to provide a convincing answer. The Appellant merely replied that, even though FIFA knew he would resell tickets, "*[Mr. Alon] wanted a confirmation in writing*" from the only contact person in the JB Agreement (i.e. the Appellant as FIFA Secretary General) and that – somewhat unconvincingly as regards his self-description – "*[Mr. Alon] is a smart guy and I'm not a smart guy*".

184. The Panel also notes that there is no evidence to support that FIFA knew that JB would be reselling the tickets on a stand-alone basis and that this was the true purpose behind the JB Agreement. In this respect, the Panel rejects the Appellant's arguments that FIFA must have known that the purpose of the JB Agreement was to resell tickets on a stand-alone basis. None of the reasons the Appellant puts forward can establish FIFA's alleged awareness of this fact:

(i) According to the Appellant, that agreement would only make sense if JB was allowed to resell tickets on a stand-alone basis and gain a profit. However, as Mr. Schild testified before the Swiss OAG, the purpose of the ticket inventory was to distribute them to guests of golf tournaments which JB could organize at its own costs: "*The idea was that JB SPORTS MARKETING AG would organize golf tournaments for FIFA for which FIFA would not have to pay anything. In return, we received an allocation of 8,750 tickets. To sell those tickets, we could invite*

participants of our choice to the golf tournaments. The participants paid a fee for the golf tournament, which also included a ticket".

(ii) It may be that Mr. Alon and the Appellant had agreed between themselves that JB did not need actually to organize a golf tournament at all (as could be implied by the email dated 29 July 2009 in which Mr. Alon told the Appellant: "*we can agree that the tickets we purchase are not really for the golf tournament, but to put the past to sleep. I think we can agree on a settlement that does not cost FIFA a single Euro this would be a good settlement. I suggested the golf tournament so there will be a 'reason' to sell us the tickets*"). However, the Panel finds no evidence that FIFA knew of any such arrangement, and this is corroborated by Mr. Alone's email of 27 July 2010, in which he stated: "*We are extremely excited about creating a golf event on behalf of FIFA. I can assure you that this golf event will be a huge success*". The Panel finds it irrelevant that (i) JB only organized golf tournaments during the 2010 and not the 2014 edition of the FIFA World Cup, as JB's choice to forego its right to organize the golf tournaments in 2014 and to resell directly to its customers was an independent decision which in no way constituted a waiver by FIFA of the prohibition on reselling tickets, and (ii) Article 1.5 of the JB Agreement stipulated that JB would provide 60 guests with an invitation for the organized golf tournaments, which in no way limited JB from distributing the thousands of FIFA World Cup tickets at its disposal to other non-FIFA guests.

(iii) According to the Appellant, everyone at FIFA must be taken to have known that JB was a wholesale reseller of tickets for sporting events. The Panel notes that the Commercial Register for JB provides a much broader purpose than wholesale reseller of sports tickets: "*promoting, consulting, and marketing of sporting events domestically and abroad and trade with goods of all kinds*". Therefore, it is conceivable that the parties could come to terms on an agreement that did not involve the mere resale of tickets, but rather some other (more sophisticated) form of allocation.

(iv) The fact that FIFA later agreed to reimburse Jaime Byrom for the payment of USD 8.3 million to JB "*for the loss of business opportunities [of JB] through being dependent on MH*", as declared in the Kattner memo (see *supra* at para. 43). In that very same memo, however, Mr. Kattner declared that FIFA did not know about JB's reselling activities until before the start of the 2014 FIFA World Cup.

185. The Panel finds that, notwithstanding the clear prohibition to resell tickets on a stand-alone basis in the JB Agreement, the Appellant authorized Mr. Alon and JB to do so. The Appellant not only knew that Mr. Alon and JB were reselling tickets on a stand-alone basis (see e.g. emails dated 27 February 2013, 5 March 2013, 23 April 2013, 16 July 2013, etc. *supra* at para. 13 *et seq.*), but he did nothing to stop them from doing so. Instead, the Appellant expressly authorized Mr. Alon and JB to resell tickets on a stand-alone basis. This happened on three separate occasions. The first occurred on 27 February 2013, when the Appellant agreed to send a sale authorization to JB (see *supra* at para. 13). The second occurred on 5 March 2013 when, in reply to Mr. Alon's request for approval of specific resale, the Appellant replied "*You can go ahead*", thereby approving that sale (see *supra* at para. 14). The third occurred on 17 July 2013, when the Appellant unequivocally told Mr. Alon that "*you can sell*" (see *supra* at para. 28).

Furthermore, the Appellant unilaterally agreed to adjust the allocation of tickets under the JB Agreement to allow JB to maximize its profits by: (i) at the request of Mr. Alon, extending the terms of the JB Agreement to grant JB 1,200 Category 1 tickets to Brazil's matches until the semi-finals and 200 Category 1 tickets to the final, and (ii) increasing JB's ticket inventory size under the JB Agreement by 2,282 tickets so that JB could enter into the "*Rossi Deal*" (see *supra* at para. 33). It is true that the JB Agreement called for Mr. Alon to liaise directly with the FIFA Secretary General, but there is nothing therein that entitled the FIFA Secretary General to act alone without the official backing of FIFA in decision-making related to the modification of the JB Agreement, or to authorize ticket resales on a stand-alone basis in contravention of that agreement.

186. The said Appellant's conduct happened without the knowledge and/or backing of FIFA. Indeed, there is no evidence on the record persuading the Panel that the Appellant kept FIFA (in particular, Mr. Villiger and Mr. Kattner, as the Appellant alleges) aware of the extension of the JB Agreement or JB's reselling of tickets on a stand-alone basis.

187. Also with respect to awareness, the Panel finds it irrelevant that FIFA knew about the JB Agreement and the underlying blackmail, as it does not relate to the subsequent dealings between the Appellant and Mr. Alon, which is the conduct under the Panel's scrutiny.

188. The Panel is personally convinced to its comfortable satisfaction that, based on the aforementioned, the Appellant helped Mr. Alon and JB gain an advantage and thus had private and personal interests involved in the matter within the meaning of Article 19, para. 2 FCE.

189. In addition to the advantages Mr. Alon and his company JB gained, the Panel finds that the Appellant also gained a personal advantage by accepting from JB a 50 percent kickback on the profit that JB would make on the tickets from the 12 games of the 2014 FIFA World Cup as reallocated by the Appellant. While the Appellant admits receiving and never expressly rejecting such an offer, the Appellant denies that he ever went so far as to accept it; however, the Panel considers there is compelling evidence to support that he did. In this respect, the Panel notes that:

(a) Mr. Alon repeatedly declared when he testified in the criminal proceedings before the Swiss OAG that he offered the Appellant a 50 percent kickback, and that he accepted it. Mr. Alon testified before the Swiss OAG *inter alia* that: "*In exchange, it was agreed to grant Mr VALCKE 50% of the profits from the sale of tickets concerned by the agreement*". Mr. Schild's corroborated Mr. Alon's account – although his evidence in this respect can be characterized as hearsay – testifying that, immediately after the meeting with the Appellant in March 2013 (see *supra* at para. 15), Mr. Alon told him that such deal was reached. The Panel finds no apparent interest why Messrs. Alon and Schild would want to implicate the Appellant at all costs, even to the extent of incriminating themselves.

(b) the Appellant never rebutted any of the messages sent by Mr. Alon about the 50 percent kickback. On the contrary, the Appellant showed absolutely no reaction and remained completely silent while Mr. Alon continually made references to the kickback and briefed the Appellant on how much his share of the profits was (see *supra* at para. 13 *et* seq.). The Appellant fails to provide a reasonable explanation

for his failure to notify FIFA about the improper offer, and simply testified unconvincingly that he kept quiet to protect FIFA (he claimed to believe that, if the FIFA Ethics Committee came to know of the offer, Mr. Alon would have affected the blackmail by releasing the damaging information related to alleged ticketing irregularities in the 2006 FIFA World Cup).

(c) On 3 April 2013, Mr. Alon attempted to give the Appellant an upfront payment of his eventual share in a suitcase in Zurich and, while the Appellant did not collect it that day, he replied "*ok perfect. Thanks Benny*" to Mr. Alon's indication that he would "*put the document back, whenever you need it you just have to let me know*" (see *supra* at paras. 21-22). The Panel is personally convinced to its comfortable satisfaction that the reference to "*document*" or "*documents*" meant cash. The Panel arrives at that conclusion from Messrs. Alon's and Schild's testimony before the Swiss OAG, where they confirmed that "*document*" was code for "*cash*". The Panel is not convinced by the Appellant's argument that the suitcase contained actual documents regarding the alleged ticket irregularities of the 2006 FIFA World Cup that served to blackmail FIFA in 2010. First of all, in an email of 3 April 2013, Mr. Alon made clear that the "*documents*" were "*growing*" as the matches of the FIFA World Cup approached (see *supra* at para. 21), an expression that would only make sense if the parties were referring to cash; indeed, the Panel notes that it would be unreasonable to believe that documents related to alleged ticketing irregularities occurred in 2006 could be "*growing*" in 2013 and 2014. Second, when questioned at the hearing why he did not attempt to retrieve the "*documents*" if they truly were those used for blackmailing FIFA, the Appellant failed to provide a credible answer. That "*document(s)*" referred to cash is further corroborated by the Appellant making reference to them in the same chain of emails as his "*pension fund*" (see *supra* at para. 26). The Panel is not convinced (and somewhat perturbed) by the Appellant's testimony that "*pension fund*" referred to documents that he could use as leverage against FIFA "*to get the best deal*" in the event he had to leave FIFA. The fact that there may be a discrepancy in the amount that Messrs. Alon and Schild packed into the briefcase does not cast any doubt in the Panel's mind on the fact that, for the aforementioned reasons, that briefcase contained cash and not actual documents.

(d) On 26 September 2013, Mr. Alon informed the Appellant that he would honour the deal with the Appellant (by sending his share to his wife) if he did not survive an upcoming surgery because "*a deal is a deal*" (see *supra* at para. 30). Mr. Alon confirmed before the Swiss OAG that in this email the "*deal*" he referred to was the "*50:50 agreement on profit sharing*".

190. Contrary to the Appellant's submission, the Panel is of the view that this is not an inadmissible "*new charge*". The Appeal Committee did hold that, apart from the advantages that Mr. Alon and JB obtained, the Appellant also had his own personal interests involved, as proven by his reference to "*documents*" and "*pension fund*" in his correspondence with Mr. Alon. Evidence emerged during the Swiss OAG's investigation has simply clarified the true meaning of those terms and the Appellant's acceptance of the 50 percent kickback.

191. The Panel is persuaded that the private or personal interests involved (i.e. the advantages gained for himself and his acquaintance Mr. Alon) detracted from the Appellant's ability

to perform his duties with integrity in an independent and purposeful manner. The Panel does not need to address the question whether the Appellant had FIFA's best interests in mind when he entered into the settlement negotiations with JB which resulted in the JB Agreement or the restructuring of the agreement in 2013. The Panel needs only be concerned with the fact that the Appellant did not act in FIFA's interests in dealing with Mr. Alon subsequent to the signing of the JB Agreement and before its restructuring, where (as mentioned) he gave an advantage to Mr. Alon by authorizing JB to resell tickets on a stand-alone basis in contravention of the JB Agreement and unilaterally extending the terms and ticket inventory size of that agreement, and gave himself at the same time such an advantage by accepting a 50 percent kickback on sales of tickets awarded to JB. Consequently, the Panel finds that the Appellant created a massive conflict of interest and, thus, very seriously violated Article 19, para. 2.

192. To conclude on Article 19, para. 2 FCE, the Panel considers it irrelevant whether others at FIFA were aware and/or participated in the Appellant's ethical misconduct. Such an awareness cannot exonerate the Appellant from his responsibilities. The Appellant was the second highest FIFA official and the chief executive of FIFA's administration and, as such, must be held responsible and accountable when involved in an unethical act, irrespective of whether others may have had knowledge thereof or participated therein. Awareness and/or participation by others would have simply inculpated those other FIFA officials but not exculpated the Appellant. The same is true even where his only superior – the FIFA President – knew and/or was involved in the unethical act (which is not the case here, as there is no evidence that Mr. Blatter was behind the Appellant's authorization of JB's resale of tickets).

193. Additionally, the Panel holds that the Appellant violated Article 19, paras. 1 and 3 FCE. Article 19, para. 1 provides that "*When performing an activity for FIFA or before being elected or appointed, persons bound by this Code shall disclose any personal interests that could be linked with their prospective activities*". Paragraph 3 of that provision adds that "*Persons bound by this Code may not perform their duties in cases with an existing or potential conflict of interest. Any such conflict shall be immediately disclosed and notified to the organisation for which the person bound by this Code performs his duties*". By failing to disclose his personal interests in JB's resale of FIFA World Cup tickets and continuing to perform his duties in the face of that conflict of interest, the Appellant violated said provisions.

194. In conclusion, the Panel finds that the Appellant's conduct here under scrutiny violated Article 19, paras. 1-3.

b) No violation of Articles 15 and 13, paras. 1-3 FCE

195. Article 15 FCE (2012 edition) on "*Loyalty*" provides:

> "*Persons bound by this Code shall have a fiduciary duty to FIFA, the confederations, associations, leagues and clubs*."

196. Article 13 FCE (2012 edition) on "*General rules of conduct*" stipulates:

> "*1. Persons bound by this Code are expected to be aware of the importance of their duties and concomitant obligations and responsibilities.*

2. Persons bound by this Code are obliged to respect all applicable laws and regulations as well as FIFA's regulatory framework to the extent applicable to them.

3. Persons bound by this Code shall show commitment to an ethical attitude. They shall behave in a dignified manner and act with complete credibility and integrity.

4. Persons bound by this Code may not abuse their position in any way, especially to take advantage of their position for private aims or gains."

197. The Panel notes that FIFA's accusation that the Appellant breached Articles 15 and 13, paras. 1-3 FCE is based on the same conduct that has already been sanctioned under Article 19 FCE. Indeed, neither the Appealed Decision nor the first instance decision of the Adjudicatory Chamber point to any separate conduct in finding him guilty under Articles 15 and 13 FCE; both FIFA decisions simply infer the Appellant's violation of those provisions from his violation of Article 19 FCE.

198. The Panel concurs with another CAS panel's view that, in principle, under "*disciplinary regulations it is in abstract possible that one act breaches at the same time more than one rule, and is therefore sanctioned under all those rules*" (CAS 2014/A/3665, 3666 & 3667 at para. 76).

199. However, as was stated by that same CAS panel (*Idem* at paras. 77-78) as well by others (TAS 2016/A/4474 at para. 321 *et seq.*), where a specific provision entirely covers the incriminated conduct, the accused may not be sanctioned again for that same conduct under a more general provision: "*lorsqu'un même comportement tombe sous le coup d'une disposition générale du CD (…), il n'y a lieu de retenir qu'une violation de la règle spécifique. En effet, en vertu du principe* lex specialis derogat generali*, si la disposition plus spécifique couvre l'entier du comportement incriminé et ne laisse plus aucune place à l'application de la disposition générale, alors cette dernière ne doit pas être appliquée*" (TAS 2016/A/4474 at para. 323).

200. This Panel also concurs with the panel in TAS 2016/A/4474 (at paras. 322 and 334) in finding that Articles 15 and 13 FCE are written in general terms and that the obligations of loyalty and ethical conduct set forth therein are by definition violated if a conduct squarely falls foul of Article 19 FCE.

201. Of course, the Panel is far from stating that the conduct of the Appellant was loyal to his "*fiduciary duty to FIFA*" or showed "*commitment to an ethical attitude*". On the contrary, the Panel finds that the Appellant's involvement with Mr. Alon and his conduct related to the resale of World Cup tickets was extremely disloyal to FIFA and terribly unethical (as mentioned, the nature of this Appellant's behaviour is so serious that should have led FIFA disciplinary bodies to indict and sanction him under Article 20 FCE, proscribing "*Offering and accepting gifts and other benefits*" or possibly even under Article 21 FCE, related to "*Bribery and corruption*"). At any rate, the violation of Article 19 FCE held by the Appealed Decision embraces in law the whole of its conduct on this count and is enough in itself to impose a just sanction on the Appellant, without leaving legal room to find a breach of Articles 15 and 13 FCE as well.

202. As a result, for the Appellant's involvement in the JB's resale of World Cup tickets, the Panel, on the one hand, holds that the Appellant severely violated Article 19 FCE and, on the other hand, holds that the Appellant did not violate Articles 15 and 13 FCE. The Panel notes that the Appeal Committee also applied the *lex specialis* principle, but only in reference to the sanction; in fact, the Appealed Decision, while finding that the Appellant did breach Articles 15 and 13 FCE, did not impose any sanction for such violations. As a result, the Panel's finding that the Appellant did not violate Articles 15 and 13 FCE only revises the legal reasoning of the Appealed Decision and has no practical or legal consequences in terms of the sanction.

C. Violation of the FCE for travel expenses

203. The Panel must determine whether the Appellant, as the Appealed Decision held, violated Article 19 FCE (see the text *supra* at paras. 179 and 193), Article 15 FCE (see the text *supra* at para. 195) and/or Article 13 FCE (see the text *supra* at para. 196), in relation to his travels to St. Petersburg in July 2015, India and the Taj Mahal in September 2012, Doha in September 2013, and Manchester in July 2012.

a) Conduct in breach of FIFA's travel regulations

204. Pursuant to the various FIFA travel regulations, the FIFA Secretary General:

- As a FIFA employee would not be "*reimbursed by FIFA for the costs associated with family members or associates accompanying them to official events, unless expressly permitted to do so by the appropriate director*" (see Article 3.2(e), para. 3 of the "*FIFA Internal Organisation Directives 2013*")

- Could be accompanied by one additional person on business trips (see the "*Service Level for FIFA officials Chart*", hereinafter the "Service Chart"). This Service Chart applied (i) not only to the FIFA World Cup and FIFA Congress but also to "*Other FIFA Events*" which in the Panel's view was a catch-all term for all other FIFA-related travels, since it would be unreasonable to interpret it as limiting the maximum number of guests to two in travels to the FIFA World Cup, Congress and other events, but to have no limitation for all other FIFA-related travels, and (ii) to private jet travel, since there is no indication in this Service Chart or in any other FIFA document exhibited in this proceeding that private jet travel and commercial travel should be treated differently in relation to the number of members allowed to accompany the FIFA Secretary General on business trips.

- Flew first class (See Article 3.1 of the "*Supplementary Expense regulations for members of the FIFA Management*", hereinafter the "Supplementary Expense Regulations").

- Could use a private jet if (i) "*security is not guaranteed by regular airline flights*", (ii) "*a clear time savings can be demonstrated compared to regular airline flights*", or (iii) "*the cost of special routing is much higher*" (See Article 3.2 of the Supplementary Expense Regulations), with reimbursement of expenses for use of private jets requiring the "*previous approval by the FIFA Secretary General or the FIFA Finance Director*".

205. The Panel finds that the Appellant breached said FIFA's travel regulations in four trips by using a private jet without an admissible business rationale, having multiple persons accompany him (thereby surpassing the limit of one established in the Service Chart), and not integrally reimbursing FIFA for the additional costs it incurred for the Appellant's incorrect use of a private jet and having additional accompanying persons. More specifically, the Panel finds that the Appellant contravened said regulations:

- In the trip to St. Petersburg in July 2015 by (i) using a private jet without an acceptable reason (according to the Appellant's testimony at CAS he was only following Mr. Blatter's directions to not travel on commercial flights to avoid arrest, which in itself is manifestly not a valid reason for a law-abiding individual), (ii) being accompanied, in addition to his wife, by his daughter, two sons, and even his children's nanny, and (iii) not having deducted from his salary or reimbursed the additional costs incurred for using the private jet instead of a commercial aircraft and for his son's feeder flight from São Paolo (Brazil) to Zurich.

- In the trip to India in September 2012 by (ii) being accompanied, in addition to his wife, by one of his sons, (ii) using the private jet to visit the Taj Mahal for sightseeing purposes (which is evidently not a valid reason), and (iii) not having deducted from his salary or reimbursed FIFA for the parking fee of the private jet in Agra or the two commercial return flight tickets to Zurich that FIFA had to purchase for the two FIFA employees who were with him. With respect to the tickets for the FIFA employees, the Panel is of the view that the Appellant is responsible for them as it was his decision to delay the return to Zurich and re-route the course of the private jet to visit the Taj Mahal.

- In the trips to Doha in September 2013 and Manchester in July 2012 by using the private jet without an acceptable reason and not having deducted from his salary or reimbursed FIFA for the additional costs incurred for taking a private jet instead of a commercial flight. For both trips, the Appellant did not contend that there were *no* direct flights available at the relevant time to the destinations but rather that from Zurich to Qatar only one commercial airline flew there non-stop with limited flight options and from Stansted to Manchester only a few direct commercial flights were available. Therefore, the Appellant has not proven that there was a time or cost-saving reason for the use of the private jet on those trips.

206. The Panel rejects the Appellant's argument that he did not breach the FIFA travel regulations since his acts were consistent with common practice deriving in part from Mr. Blatter's "*leadership style*". It is true that Swiss doctrine and jurisprudence recognizes the potential importance of customary law within an association (i.e. in German the so-called "*Vereinsübung*" or "*Observanz*" and in French the so-called "*droit coutumier*"; cf. RIEMER, Berner Kommentar, 1990, Syst. Teil, before Art. 60-79 Swiss Civil Code, N 321, 351 ff.; HEINI/SCHERRER, Basler Kommentar, 2006, Preface to Art. 60-79 Swiss Civil Code, N 23) and that CAS has recognized the relevance of customary law in an association in many decisions (e.g. CAS 2004/A/589). Nonetheless, under Swiss association law, customary law can only represent a valid set of rules of an association provided that (i) the applicable regulations contain a loophole which may be supplemented by customary law, (ii) there is a constantly and consistently applied practice of the association (*inveterata consuetudo*), and (iii) the members are convinced

that such practice is legally mandatory or necessary (*opinio juris sive necessitatis*) (cf. CAS 2008/A/1622, 1623 & 1624, at para. 32 *et seq.*). In the present case, the Appellant has failed to establish any of the three cumulative conditions to prove the existence of a customary rule in FIFA. As to the first condition, FIFA's travel regulations do not contain any loophole, rather clearly stipulate the circumstances under which the FIFA Secretary General could use a private jet, the number of family members that could accompany him on trips, and his responsibility to reimburse FIFA for costs associated with accompanying family members. As to the second and third conditions, the Appellant has not provided convincing proof that FIFA consistently applied the alleged practice or that FIFA members believed that such practice was legally required or needed. Therefore, no customary rule is applicable and the strict wording of the FIFA travel regulations must be applied.

207. In reaching its conclusion, the Panel finds that the following arguments the Appellant put forward in this context cannot exclude his responsibility, although some of them can be relevant in determining which rules of the FCE were violated or in assessing the appropriate sanction:

(i) That the Appellant had demanding responsibilities as FIFA Secretary General which allegedly required him to travel 120 days a year or that he arguably had, based on Article 3.2 of the Supplementary Expense Regulations, the self-discretion to decide whether to fly by private jet (i.e. that he needed no approval). This does not permit him to deviate from the applicable FIFA's travel regulations, in particular, from his obligations to only use the private jet for security, time and cost saving reasons and to only be accompanied by a maximum of one person – obligations with which he did not comply.

(ii) That the FIFA Investigatory Chamber, after reviewing all of the Appellant's travels in a four-year period, found only four travel expenditures to be improper, or that the Appellant allegedly ordered only ten percent of the total FIFA private jet flights. The fact that the Appellant might have infringed the FIFA's travel regulations more often than he did cannot serve to mitigate the infringements that did occur.

(iii) That the KPMG's report was allegedly "*incomplete*" as being a limited review in which there was a failure to interview the Appellant. The FIFA disciplinary bodies and this Panel have thoroughly analysed the travel expense allegations, which are factually undisputed, and questioned the Appellant about it, so granting him the opportunity to present his account.

(iv) That the Appellant's travel arrangement had been allegedly transparent and known by persons in charge at FIFA and its finances, and not disputed by them or in the audited financial statements prepared and approved by FIFA financial bodies and in the audit reports by KPMG between 2011 and 2014. This cannot serve as FIFA's acceptance without reservation of the Appellant's use of the private jets on the four contested trips, and, in turn, as the basis to trigger an estoppel, because the FIFA financial bodies and auditors did not have information about the nature of such trips and were not tasked with assessing their consistency with FIFA's travel regulations under the FCE.

(v) That no FIFA policy or procedure existed for Appellant to document the reason for traveling on private jet. This Panel has heard the Appellant's alleged reasons for traveling on private jets and is not convinced that, in any of the four relevant trips, there was an appropriate security or cost/time-saving justifiable rationale.

(vi) That Messrs. Blatter and Kattner both testified before the Appeal Committee and the Swiss OAG, respectively, that all of his travel expenses had been consistent with FIFA policies and that no irregularities existed; only FIFA disciplinary organs and CAS are the competent bodies to decide whether the Appellant complied with FIFA travel policies and regulations.

(vii) That some other high ranking officials of FIFA, most notably President Blatter, took the same approach on private jet use. The fact that others might also have violated FIFA's travel regulations do not exonerate the Appellant from his responsibility to comply with them. Moreover, the FIFA President's actions by themselves are insufficient to generate customary law within the association (see *supra* at para. 206).

(viii) That the Appellant has shown a willingness to reimburse FIFA for any of his private expenses and that FIFA has not retrieved or attempted to retrieve the missing amounts once it became known that they were not properly deducted. The standard procedure was for the Appellant to outline for FIFA's accounting and travel department, upon receipt of his monthly statement, which expenses were private and had to be deducted from his salary, and he had a duty to ensure that the proper amounts were integrally deducted from his salary.

208. The Panel also rejects the Appellant's contention that the Appeal Committee "*dropped*" the charge of improper use of a private jet in relation to three of the contested trips. It is true that the Appealed Decision declared in relation to the St. Petersburg trip that "*[i]t is therefore irrelevant, as it is submitted by the appellant, whether or not it was appropriate and necessary for him to use a private jet for the trip itself*", and to the India trip that "*the Panel reaches the same conclusion*". In neither of those statements does the Appeal Committee hold that the Appellant had a valid rationale for his trips to St. Petersburg, India and Doha. The Appeal Committee merely found it irrelevant to revisit the Adjudicatory Chamber's findings on that point since it considered the Appellant had clearly breached the FCE by having more than one family member accompany him in contravention of FIFA's travel regulations. As for the trip to Doha, the Appeal Committee declared that it agreed that "*additional costs were caused to FIFA by choosing a significantly bigger jet than actually necessary*". The Panel does not find implicit in this statement that the Appeal Committee found the use of the private jet appropriate and only took issue with the jet's size.

b) No violation of Articles 19 or 15 FCE

209. The Appealed Decision held that the Appellant violated Article 19, para. 2 FCE for his infringement of FIFA's travel regulations. As previously mentioned, under Article 19, para. 2 FCE the Appellant was prohibited from placing himself in a conflict of interest situation (see *supra* at para. 179). To find such a violation, the Appellant must, first, have (or appear to have) had private or personal interests involved and, second, be distracted by those interests the ability to perform his duties with integrity in an

independent and purposeful manner. The Panel agrees with the Appealed Decision that the first condition of Article 19, para. 2 FCE is satisfied, as the Appellant undoubtedly gained advantages for himself and others by using a private jet on four different occasions without a justified reason, by being accompanied (in two of those trips) by more than the permitted number of individuals, and by not completely reimbursing FIFA for any and all additional costs associated with the trips. However, the Panel does not see how such advantages were apt to distract the Appellant from the ability to perform his duties as Secretary General with integrity in an independent and purposeful manner. Failing to satisfy the second condition of Article 19, para. 2 FCE, the Panel finds that no violation of Article 19, para. 2 FCE occurred.

210. The Appealed Decision also held that the Appellant violated Article 19, paras. 1 and 3 FCE, which require persons bound by the FCE to disclose conflict of interests and discontinue his or her duties in the face of a conflict of interest (see full text *supra* at para. 193). However, since the Panel holds that no conflict of interest existed as defined in Article 19, para. 2 FCE, logically the Appellant could not be held to be in violation of Article 19, para. 1 and 3. In any case, the Panel takes note that the record reflects the fact that the Appellant booked all his flights – commercial and private – directly with the FIFA department responsible for arranging the travels of officials and employees. Therefore, even if a conflict of interest situation existed, the Appellant disclosed to FIFA the information related to that supposed conflict of interest.

211. The Panel also finds that the Appellant's infringements of FIFA's travel regulations do not violate Article 15 FCE. That provision calls for a person bound by the FCE to have a fiduciary duty and act loyally to FIFA. The Panel is not persuaded that the Appellant's infringements of the FIFA travel regulations could, in and by themselves, place his fiduciary duty or loyalty to FIFA into question.

212. In light of the foregoing the Panel finds that the Appellant did not violate Articles 19 and 15 FCE.

c) Violation of Article 13, paras. 1 to 4 FCE

213. Article 13, paras. 1 to 4 FCE are general rules of conduct that oblige persons bound by the FCE to "*be aware of the importance of their duties and concomitant obligations and responsibilities*" (para. 1), to respect all FIFA regulations (para. 2), to "*show commitment to an ethical attitude*" and "*behave in a dignified manner and act with complete credibility and integrity*" (para. 3), and not "*abuse their position in any way, especially to take advantage of their position for private aims or gains*" (para. 4).

214. The Panel finds that the Appellant violated all four sub-provisions of Article 13 in relation to his travel expenses.

215. First, the Appellant abused his position as the FIFA Secretary General in violation of Article 13, para. 4 FCE. As evidenced *supra* at para. 205, the FIFA Secretary General took advantage of his position for private aims or gains for himself, his family and, in the St. Petersburg trip, even his children's nanny. On four separate occasions, the Appellant, in violation of FIFA's travel regulations, used a private jet without a justifiable rationale (most strikingly to visit the Taj Mahal for purely sightseeing reasons), accompanied by more individuals than permitted, and without completely

reimbursing FIFA for the additional costs FIFA incurred as a result of the trips. In doing so, the Appellant undoubtedly increased his and others' comfort and convenience and saved costs at the expense of FIFA. By the same token, the Appellant showed a lack of dignity, credibility and integrity in violation of Article 13, para. 3 FCE.

216. Additionally, with his conduct the Appellant failed to respect the FIFA regulations in violation of Article 13, para. 2 FCE. As held above at para. 205, the Appellant infringed several provisions of the FIFA travel regulations in relation to the four trips in question, including (i) Article 3.2(e), para. 3 of the FIFA Internal Organisation Directives 2013 for not completely reimbursing FIFA for additional costs it incurred for the trips, (ii) the Service Chart for taking more than the maximum number of guests allowed on some of the trips, and (iii) Article 3.2 of the Supplementary Expense Regulations for using a private jet without clear security or time/cost-saving reasons.

217. By not completely reimbursing FIFA for the expenses it incurred due to the trips or verifying that the proper amounts had been deducted from his salary, the Appellant also showed a lack of awareness of his duties and concomitant obligations and responsibilities in violation of Article 13, para. 1 FCE.

218. In light of the foregoing, the Panel is personally convinced to its comfortable satisfaction that the Appellant violated Article 13, paras. 1 to 4 in relation to his travel expenses.

219. The Panel would only add that one of the Appellant's more striking observations in his evidence was that "there is the real world and there was the FIFA world". This assertion had particular resonance in the context of the extravagant travel expenses often incurred by high ranking FIFA officials during the so-called "Blatter era", which, to the extent that they were luxuries rather than necessaries, were unbecoming for an international governing body whose funds should more properly be spent to promote the sport which it governs.

D. Violation of the FCE for involvement in the FIFA-EON transaction

220. The Appealed Decision held that the Appellant violated Article 19, paras. 1-3 FCE and Article 13, paras. 1-4 FCE in relation to the FIFA-EON service agreement, because he was personally involved in the matter by (i) visiting EON's facilities together with his son Sebastian Valcke and the FIFA Marketing Director for the initial meeting between the parties in July 2013, (ii) counselling his son on how to obtain the maximum benefit as the facilitator of the transaction, and (iii) checking the progress of the negotiation between FIFA and EON through contacts with the FIFA Marketing Director. The Panel must determine whether the Appellant violated these provisions.

a) Violation of Article 19 FCE

221. First of all, the Panel must decide whether the Appellant violated Article 19 FCE in relation to the FIFA-EON transaction.

222. As previously mentioned, under Article 19, para. 2 FCE, the Appellant was prohibited from placing himself in a conflict of interest situation (see *supra* at para. 179). For such a violation, the Appellant must have (or appear to have) had private or personal interests

involved that would detract him from the ability to perform his duties with integrity in an independent and purposeful manner.

223. The Panel finds that the Appellant's involvement in the FIFA-EON transaction constituted a conflict of interest pursuant to Article 19, para. 2 FCE. Undoubtedly, the Appellant had a private and personal interest in the EON-FIFA transaction, as his son sought to and did obtain a material benefit (in the form of compensation) which directly resulted from FIFA signing a services agreement with EON and making a down payment pursuant to that agreement of $709,000 USD to EON. The Appellant created a conflict of interest situation when he participated in the transaction by:

   (i) connecting the parties by introducing the idea of meeting EON to the FIFA Marketing Director, Mr. Thierry Weil;

   (ii) subsequently, visiting EON's facilities on 8 July 2013 to attend an introductory meeting between his son, Mr. Weil and EON, at which the latter presented a product it wished FIFA to buy and use at its upcoming 2014 FIFA World Cup (see *supra* at paras. 51 and 52);

   (iii) advising his son on commission negotiations with EON related to the EON-FIFA deal (see *supra* at paras. 54, 56, 57 and 61). In this regard, the Panel rejects the Appellant's allegation that he merely gave his son "*general employment advice*". The Appellant's advice on how to negotiate a commission from EON which would be dependent on FIFA signing a services agreement with EON went far beyond simple "father's advice"; and

   (iv) following up with Mr. Weil on 14 November 2013 about whether FIFA had entered into the deal with EON and forwarding Mr. Weil's affirmative response to his son (see *supra* at para. 63).

224. By involving himself in the transaction, the Appellant detracted from his ability to perform his duties with integrity in an independent and purposeful manner. In this respect, the Panel rejects the Appellant's argument that the EON product was successful and that, accordingly, the interests of the parties were aligned, so that no conflict of interest could exist. On the one hand, the son sought to obtain from FIFA – the organization that the Appellant ran as FIFA Secretary General – the highest price for EON, for the benefit of both EON and himself as potential (and eventual) recipient of a commission on that price. On the other hand, FIFA's interest was to obtain the lowest possible price for EON's product (not to mention the possibility that there could be other products on the market more suitable to FIFA's interests but with the "defect" of not being endorsed by the FIFA Secretary General).

225. Even if one were to assume that the Appellant did not actually have private or personal interests in the FIFA-EON transaction, at minimum he appeared, based on his aforementioned actions, to have such interests. The appearance of conflict of interest is equally a violation of Article 19, para. 2 FCE.

226. The Panel is of the view that the Appellant, who as Secretary General held the second highest position at FIFA and was the chief executive of the FIFA administration – position which included, as part of his functional responsibilities, his authority under

the FIFA Statutes to appoint and dismiss FIFA staff –, had the duty under Article 19, para. 2 FCE to refrain from personally involving himself, or appearing to involve himself, in the FIFA-EON commercial affair given his son's involvement therein. The Appellant, however, did not do so. Instead, the Appellant influenced, or appeared to influence, the transaction by using his position as FIFA Secretary General to connect the parties and participate in the introductory meeting at EON headquarters, thereby jumpstarting the FIFA-EON transaction and ultimately obtaining for his son a financial advantage from EON connected to FIFA's acceptance of a deal. It would be naïve to believe that Mr. Sebastian Valcke's involvement in the deal was not linked to his father being the Secretary General of the international federation EON wished to conduct business with.

227. In assessing whether a conflict of interest exists, the Panel finds it irrelevant whether:

(i) everyone supposedly knew Mr. Sebastian Valcke was his son;

(ii) the deal ultimately was not unfair or disadvantageous to FIFA. Lack of harm does not evidence the non-existence of conflict of interest. What matters in determining conflict of interest is whether the individual was in a position or appeared to be in a position to disadvantage his principal to the benefit of someone else;

(iii) the Appellant neither participated in the negotiations between FIFA and EON, nor pressured Mr. Weil to sign an agreement with EON, nor signed the FIFA-EON services agreement. The Panel observes that the Appellant's involvement detailed *supra* at para. 69 is sufficient to establish that a conflict of interest existed, irrespective of whether he involved himself in the deal only partially; and

(iv) the Appellant did not personally benefit from the EON-FIFA deal. Evidently, his son, who qualifies as "*family*" or "*relative*" under Article 19, para. 2, gained an advantage from the Appellant's involvement and, thus, the Appellant had a private and personal interest involved.

228. In light of the foregoing, the Panel is personally convinced to its comfortable satisfaction that (i) the Appellant failed to avoid a situation of conflict of interest in relation to the FIFA-EON transaction and consequently violated Article 19, para. 2 FCE, and (ii) that the Appellant violated Articles 19, paras. 1 and 3 FCE for failing to disclose the aforementioned conflict of interest to FIFA and continuing to perform his duties in the face of said conflict.

b) Violation of Article 16 FCE

229. In response to the Appellant's email of 14 November 2013 asking if the contract with EON was eventually finalized ("*a tu finalis[é] avec Eon?*"), Mr. Weil informed the Appellant that FIFA would "*send out the service agreement today*". The next day, the Appellant forwarded this email to his son (see *supra* at para. 63). The question for the Panel is whether forwarding that internal email about the FIFA-EON deal to his son constitutes a breach of Article 16, para. 1 FCE.

230. According to Article 16, para. 1 FCE on "*Confidentiality*", confidential information may not be divulged by a party bound by the FCE. That article reads: "*Depending on their*

function, information of a confidential nature divulged to persons bound by this Code while performing their duties shall be treated as confidential or secret by them as an expression of loyalty, if the information is given with the understanding or communication of confidentiality and is consistent with the FIFA principles".

231. There is no question that the Appellant divulged the information to a third party; therefore, the only question left for the Panel is whether the email was confidential in nature.

232. The Panel observes that pursuant to Article 3.2 of the FIFA Employee Regulations (2012 edition), which applies to the Appellant as an employee of FIFA, "*[e]ach employee is bound to maintain absolute confidentiality regarding all facts, processes and information that comes to its attention during his work for FIFA… This duty of confidentiality shall apply, in particular, to trade secrets, which shall include but not be limited to all information on… clients… contractual agreements and transactions…. Employees may not disclose to any third parties – which shall include… family members… Any confidential business, operational or technical information regarding FIFA… that has been entrusted to them…*" (emphasis added).

233. The Panel has no doubt that, in the business world, an internal email between the Director of Marketing and the CEO of a corporation about the status of a contractual negotiation with another company is quintessentially a "*trade secret*" and must be presumed confidential. Accordingly, based on Article 3.2 of the FIFA Employee Regulations, the information emailed by Mr Weil to the Appellant about the finalization of the contract with EON was unquestionably confidential and could not be considered otherwise by an experienced executive such as the Appellant. The Panel finds it irrelevant that the email does not contain an explicit warning of confidentiality, as what is important in determining the existence of a duty of confidentiality is the content of the email and whether under FIFA's regulations such information is considered confidential in nature (which is the case under Article 3.2 of the FIFA Employee Regulations).

234. As a result, the Panel is personal convinced to the standard of comfortable satisfaction that, by forwarding the internal email with confidential information to his son, the Appellant breached Article 16, para. 1 FCE.

c) No violation of Article 13, paras. 1-4 FCE

235. Here the Panel applies *mutatis mutandis* its decision and reasoning expressed *supra* at paras. 197-202 on the application of the principle *lex specialis derogat generali*. The Panel notes that FIFA's accusation that the Appellant breached Article 13, paras. 1-4 FCE in relation to his involvement in the FIFA-EON transaction is based exactly on the same conduct that has already been sanctioned under Article 19 FCE. Indeed, both the Appealed Decision and the first instance decision, in finding the Appellant guilty under Article 13 FCE, failed to point to any part of his conduct that would not be caught by Article 19 FCE. In accordance with CAS jurisprudence, such an approach is impermissible since Article 13 FCE is more general than Article 19 FCE. The Panel thus holds that the Appellant did not violate Article 13, paras. 1-4 FCE.

236. However, as the Panel already noted (see *supra* at para. 202), the Appealed Decision, while finding that the Appellant did breach Articles 15 and 13 FCE, did not impose any distinct sanction for the violation of those provisions. Therefore, the Panel's holding that there was no violation of Articles 15 and 13 FCE only affects the legal reasoning of the Appealed Decision and has no practical or legal consequences in terms of the sanction.

E. Violation for offering an improper benefit to the CFU

237. The Panel must determine whether the Appellant offered of an undue benefit to Mr .Jack Warner and the CFU (see *supra* at paras. 65-69) in violation of the FCE, as the Appealed Decision held.

a) Violation of Article 10 FCE (2009 edition)

238. Article 10, paras. 1 and 2 FCE (2009 edition), entitled "*Accepting and giving gifts and other benefits*", so provides: "*1. Officials are not permitted to accept gifts and other benefits that exceed the average relative value of local cultural customs from any third parties. If in doubt, gifts shall be declined. Accepting gifts of cash in any amount or form is prohibited. 2. While performing their duties, officials may give gifts and other benefits in accordance with the average relative value of local cultural customs to third parties, provided no dishonest advantages are gained and there is no conflict of interest*".

239. As already explained, the Panel construes para. 2 of this provision in the sense that it prohibits the offer of a gift, regardless of whether the offer is eventually accepted (see supra at para. 142).

240. On 7 March 2011, following Mr. Warner's email to extend CFU's purchase of Caribbean media rights to the 2018 and 2022 FIFA World Cups, the Appellant replied that he would "*bring to the next M & TV Board meeting the extension of [CFU's media] rights. We put a value of USD 1,000,000 for 18/22. It is not even fair. It is a gift and you know it. We got some proposals but never written, because I don't want to open a negotiation, for USD 4 mio*".

241. The Respondent argues that with this email the Appellant offered an undue benefit to Mr. Warner and the CFU in violation of Article 20 (2012 edition) or its predecessor Article 10 FCE (2009). The Appellant, on the other hand, denies that he made an offer or even an attempt to offer (claiming that, at most, he "*expressed an intent*") and that, in any case, Article 10 FCE (2009 edition) – which he considers to be applicable over Article 20 FCE (2012 edition) – only prohibited the "*giving*" and not "*offering*" or "*attempt to offer*" of gifts.

242. In light of the Parties' dispute, the Panel must decide (i) from a factual standpoint, whether the Appellant with this email to Mr. Warner actually "*offered*" or "*attempted to offer*" the CFU an undue benefit or only "*expressed his intent*" to take the matter to the Marketing and TV Board Committee, and (ii) if so, what are the legal consequences of that offer.

i. The Appellant's offer of an undue gift to Mr. Warner and the CFU

243. There is no question that, ultimately, Mr. Warner and the CFU did not receive an undue benefit, since FIFA eventually awarded the Caribbean media rights for the FIFA World Cups of 2018 and 2022 to another company, Direct DirectTV Latin America LLC (for an amount of USD 20 million).

244. That said, the Panel is personally convinced to the standard of comfortable satisfaction that, when viewed under the totality of the circumstances, the Appellant's email of 7 March 2011 constituted an offer of an undue benefit and more than a mere "expression of his intent" as the Appellant claims. The Panel observes that:

- A FIFA election was fast-approaching on 1 June 2011, at which it was highly expected that Mr. Mohamed bin Hammam would challenge the incumbent Mr. Blatter for the FIFA presidency. In this election, Mr. Warner would have a significant influence since the CFU traditionally used a "block vote system", meaning that the 25 CFU national federations would vote in unison to strengthen their influence on an election race. This is a significant number of votes and constituted about 12 percent of the 209 FIFA member votes.

- The Appellant showed a disposition, during the same time frame, to let politics play a role in deciding to whom to sell media rights. For example, on 19 March 2011 (only 12 days after the contested email to Mr Warner) the Appellant emailed Mr. Nicolas Ericsson of the FIFA TV Division about media rights negotiations for Thailand with Mr. Worawi Makudi, then FIFA Executive Committee member and President of the Football Association of Thailand, and declared that he did not believe FIFA should sell the media rights at a discount to Thailand since Mr. Worawi would support Mr. Mohamed bin Hammam (referred to as "MbH") in the upcoming election: "*...For Thailand the value within the 800 is 80. Regarding Makudi, as agreed Thailand is a key market and may I sayn [sic] <u>knowing his support to MbH there is even less reason at all to make any special favor, meaning to sell under value the rights</u>*" (emphasis added).

- The Appellant understood, as proven by his testimony at CAS, that his position as FIFA Secretary General was dependent on Mr. Blatter retaining the FIFA presidency: "*I mean, I have been with Blatter, and I was his Secretary General, which means that if Mohamed bin Hammam – because he was the one running against Blatter – would have been elected, I'm sure I would have been out of FIFA*".

- In the contested email, the Appellant explicitly makes reference to a "*gift*" and declares that he would take the matter of the extension of the CFU's media rights for the 2018 and 2022 FIFA World Cups to the next FIFA Marketing and TV Board Committee meeting. The Panel finds it irrelevant whether the Appellant, as he claims, did so merely to "*silence*" Mr. Warner from being "*pushy*" and pressuring FIFA and that he allegedly neither intended to nor did take the offer to the FIFA Marketing and TV Board Committee meeting. Nor does it matter whether the Appellant had the actual authority to make that offer. In the Panel's view, this does not change the fact that the Appellant promised Mr. Warner a gift in the email, being well aware of his obvious influence – as Secretary General and former Director of Marketing and TV – on the FIFA Marketing and TV Board Committee.

- The awarding of the media rights to the CFU was an undue benefit, because the value of USD 1 million reflected a discounted price. This is supported by the fact that (i) the Appellant himself referred to it as a "*gift*", and that, (ii) as stated by the Appellant himself, there was another offer on the table of USD 4 million for the same broadcasting rights.

ii. Legal consequences of the Appellant's offer

245. The Panel must determine whether its finding that the Appellant offered an undue benefit to Mr. Warner and the CFU with a view to securing the Caribbean federation's support for the then incumbent administration in the upcoming FIFA elections entails as a legal consequence that he violated Article 10 FCE (2009 edition) or its equivalent successor Article 20 FCE (2012 edition). The Appellant argues that his conduct does not entail a violation of Article 10 since, in his view, that article does not prohibit the "offering" of an undue gift like Article 20 FCE (2012 edition). However, the Panel has already held that, despite the different language used by Articles 20 FCE (2012 edition) and Article 10 FCE (2009 edition), both rules do in fact prohibit not only the actual delivery of a gift but also the mere "offering" of gifts (see *supra* at para. 142). There is thus a legal basis under both editions of the FCE to condemn individuals for offering gifts. The Panel is persuaded to the required standard that the Appellant's conduct was indeed a violation of both Articles 10 FCE (2009 edition) and 20 FCE (2012 edition).

F. Violations of the FCE for failing to cooperate with the FIFA investigation

246. The Appealed Decision found that the Appellant violated: Article 13, paras. 1-3 FCE (sees *supra* at para. 196), Article 15 FCE (see *supra* at para. 195), Article 18, para. 2 FCE and Article 41, paras. 1 and 2 FCE (2012 edition).

247. Articles 18, para. 2, and 41, paras. 1 and 2 FCE read as follows:

- Article 18, para. 2 FCE ("*Duty of Disclosure, Cooperation and Reporting*"): "*At the request of the Ethics Committee, persons bound by this Code are obliged to contribute to clarifying the facts of the case or clarifying possible breaches and, in particular, to declare details of their income and provide the evidence requested for inspection*."

- Article 41 FCE, paras. 1 and 2 ("*Obligation of the parties to collaborate*"): "*1. The parties shall be obligated to act in good faith during the whole proceedings. 2 The parties shall be obligated to collaborate to establish the facts of the case. In particular, they shall comply with requests for information from the investigatory chamber and the adjudicatory chamber of the Ethics Committee and with an order to appear in person*."

248. The Respondent submits that the Appellant violated his duty to cooperate under the FCE by (i) destroying evidence in contravention of the Document Preservation Notice and failing to comply with requests to produce documents, and (ii) failing to make himself available for an interview with the Investigatory Chamber. In light of the Respondent's contention, the Panel must assess whether the Appellant violated his duty of cooperation under the FCE. The Panel will address each of the Respondent's allegations separately.

a) Destruction of evidence and failure to comply with requests

249. The Panel finds that the Appellant destroyed evidence in contravention of the Document Preservation Notice.

250. The Appellant admits that he deleted from his work computer (owned by FIFA) a total of 1,034 files or folders, two of which were FIFA-related. It is also confirmed in the forensic expert report of 11 December 2015, and not denied by the Appellant, that he attempted (but failed) to install a data destruction software used to delete files beyond forensic recovery. The Appellant argues, however, that he did not breach Articles 18 and 41 FCE because the files were either (i) private and thus not falling under the scope of the Document Preservation Notice, or (ii) with regard to the FIFA-related files, deleted accidentally and irrelevant to the investigation against the Appellant. The Panel rejects the Appellant's position.

251. It is undisputed that at the time the Appellant deleted the files (and attempted to install a data destruction software) between 22 September and 11 October 2015, FIFA's Legal Affairs Division had already distributed to him the Document Preservation Notice on 2 June 2015 (see *supra* at para. 70). The Panel finds that this Document Preservation Notice was very expansive, and unequivocally required that FIFA employees, including the Appellant, preserve and refrain from altering or destroying "*all information and documents*" starting from 1 January 2002. FIFA did not limit this phrase elsewhere in the notice. The Document Preservation Notice provided *examples* of what type of documents would constitute a "*Relevant Document*" (including, internal and external email correspondence, documentation supporting all FIFA-related activities, and accounting and bank records). However, in the Panel's view, this did not limit the scope of the Document Preservation Notice to "*FIFA related information only*", as suggested by the Appellant in a way that would allow the deletion of allegedly private information or documents voluntarily saved on the work laptop.

252. The Panel's conclusion is not affected by the fact that the Document Preservation Notice opens with the explanation that FIFA was conducting a review of "*selected business*" in connection with the Swiss and U.S. investigations. The notice explicitly demanded that the employees err on the side of caution and, therefore, the Appellant should have understood the expansive breadth of that notice. Nor is the scope of the Document Preservation Notice limited by the letters of Quinn Emmanuel, in which that law firm requested information and documents "*relating to any FIFA business*". Those letters were separate from the Document Preservation Notice and, moreover, make no mention or reference thereto.

253. The Panel does not consider that such broad interpretation of the Document Preservation Notice is illegal under Swiss employment, personal rights and data protection laws, since the Appellant voluntarily uploaded and saved the files and documents in question onto a work laptop owned by FIFA.

254. In any case, even if the Panel interpreted the Document Preservation Notice more narrowly in a way where it would permit the deletion of private files and only require the preservation/non-deletion of FIFA-related documents (*quod non*), the Appellant still deleted two files that were FIFA-related, as he admits. For the Panel the deletion of even

one email is sufficient to constitute a breach of the Document Preservation Notice and, in turn, of the duty under the FCE to cooperate.

255. The Panel finds it irrelevant whether the Appellant "*unintentionally*" deleted said FIFA-related files because they were inadvertently placed in private folders. It is without question that the Appellant selectively chose and intentionally deleted the folders which contained the FIFA-related files. Considering that the Appellant was fully aware that he had a duty to preserve and not delete files under the Document Preservation Notice, and that there was an ongoing investigation against him, the Appellant should have carefully reviewed the contents within each folder and file before deleting them, instead of deleting in "*batches*".

256. The Panel also finds it irrelevant that the deleted FIFA-related files ultimately were unrelated to the FIFA investigation against the Appellant. The Document Preservation Notice did not demand only the preservation of files linked to the subject of an investigation; rather it demanded that "*all*" files be preserved or at the very least, under the narrow approach, that all FIFA-related files (not necessarily investigation-related files) be preserved. The Panel also dismisses the Appellant's argument that, since the FIFA-related documents were ultimately unrelated to the investigation, this did not impact the investigation and thus could not be considered a failure to clarify the "*facts of the case*" under Article 18, para. 2 and Article 41, para. 2 FCE. In this regard, the Panel is of the view that (i) the conduct of the Appellant must be evaluated at the time he committed it, when it was yet unknown which documents would be eventually considered by the FIFA disciplinary bodies in order to "*establish the facts of the case*", and (ii) the reference to the "*facts of the case*" must be interpreted broadly as to encompass all disciplinary cases (including those against other defendants).

257. Nor is it relevant that the Appellant preserved the two FIFA-related documents and disclosed them at some point during the FIFA ethics proceedings. It is the initial deletion of said documents which constituted an infringement of the Document Preservation Notice and, in turn, of his duty to cooperate under the FCE. Rectifying that breach does not erase its occurrence.

258. The Panel also finds that the Appellant failed to reply to communications of 22 September 2015 and 15 October 2015 from FIFA's external counsel, Quinn Emmanuel, in which it requested confirmation from the Appellant that he had preserved and would continue to preserve, and that he would produce, all information and documents relating to any FIFA business, to which neither the Appellant nor his counsel answered (see *supra* at paras. 71 and 73). In this connection, the Panel finds it irrelevant, and dismisses the related Appellant's submission, that Articles 18 and 41 FCE specifically mention only the FIFA Ethics Committee, and not an external counsel, as the body which may request persons bound by the FCE to cooperate in establishing the facts. In the Panel's view, the external counsel was explicitly acting on behalf of FIFA and, thus, on behalf of its disciplinary bodies as well. Accordingly, failure to comply with FIFA's external counsel also constitutes an ethical breach.

259. In view of the foregoing, the Panel concludes that the Appellant – in destroying evidence and failing to reply to communications of 22 September 2015 and 15 October 2015 –

failed to comply with his obligation to cooperate under Article 18, para. 2 FCE and Article 41, paras. 1 and 2 FCE.

b) Failure to agree to an in-person interview with the Investigatory Chamber

260. The Appellant admits that he refused to agree to an interview with the Investigatory Chamber. Nevertheless, the Appellant does not believe that this was a violation of his duty to cooperate under Article 18, para. 2 and Article 41, paras. 1-2 FCE because he was entitled under the European Convention on Human Rights ("ECHR") to exercise his right against self-incrimination before the Investigatory Chamber, given the on-going investigations by the U.S. and Swiss criminal prosecution authorities. The Appellant stresses that he was at all times willing to cooperate with the Investigatory Chamber but that FIFA had to grant him prior access to the investigation file before attending any in-person interview. The Panel rejects the Appellant's position.

261. On the issue of whether the ECHR applies in disciplinary proceedings before sports governing bodies, the CAS has previously held that CAS panels must not apply the rules of criminal procedure *per se*, but may account for their content within the framework of Swiss procedural public policy (CAS 2015/A/4304, at para. 46 *et seq.*; CAS 2011/A/2426 at para. 62 *et seq.*; TAS 2011/A/2433, at para. 57 *et seq.*). The panel in the *Adamu* case, for instance, reasoned:

> "*With specific regard to the European Convention on Human Rights ("ECHR"), which was invoked by the Appellant, the Panel remarks that international treaties on human rights are meant to protect the individuals' fundamental rights vis-à-vis governmental authorities and, in principle, they are inapplicable per se in disciplinary matters carried out by sports governing bodies, which are legally characterized as purely private entities. This view is consistent with the prevailing approach of the Swiss Federal Tribunal. In a decision concerning a sport governing body's decision to suspend an athlete, the Supreme Court held that "The Appellant invokes Article 27 of the [Swiss] Constitution and 8 ECHR. However, he was not the subject of a measure taken by the State, with the result that these provisions are, as a matter of principle, inapplicable" (translation of Swiss Federal Judgement of 11 June 2001, Abel Xavier v. UEFA, consid. 2 d, reproduced in Bull. ASA, 2001, p. 566; partially published in ATF 127 III 429).*
>
> *However, the Panel is mindful that some guarantees afforded in relation to civil law proceedings by article 6.1 of the ECHR are indirectly applicable even before an arbitral tribunal – all the more so in disciplinary matters – because the Swiss Confederation, as a contracting party to the ECHR, must ensure that its judges, when checking arbitral awards (at the enforcement stage or on the occasion of an appeal to set aside the award), verify that parties to an arbitration are guaranteed a fair proceeding within a reasonable time by an independent and impartial arbitral tribunal. These procedural principles thus form part of the Swiss procedural public policy*" (emphasis added).

262. The Panel notes that the privilege against self-incrimination, although not explicitly included in Article 6 of the ECHR, has been recognized as an implied right under Article 6 by the European Court of Human Rights in various judgments on the fairness of criminal trials (e.g. in the judgements *Funke v. France* of 25 February 1993, *John*

Murray v. United Kingdom of 8 February 1996, *Saunders v The United Kingdom* of 17 December 1996).

263. However, based on CAS jurisprudence, the Panel observes that the guarantees recognized in a criminal trial are inapplicable *per se* in a disciplinary proceeding before the CAS, since FIFA is a private entity and the sanction imposed on the Appellant is based purely on private (Swiss association) law. The question for the Panel remains, however, whether the privilege of self-incrimination may still be *indirectly* applicable. This is all the more true considering that elements of the privilege against self-incrimination may be found also in civil matters.

264. The privilege against self-incrimination is the result of a balance of interest and, thus, must be assessed in light of the respective procedural and factual framework. In this respect the Panel considers it important to first recall that sports bodies have the autonomy to establish – within limits – certain rules of conduct that deviate from normally applicable rules of conduct in ordinary society. Such right is protected by the autonomy of associations. However, it is equally true that the right to set standards of conduct is of little worth, if such standards cannot be enforced. Enacting and enforcing rules of specific conduct are two sides of the same coin.

265. It must be taken into account that the means of a sports organisation to detect wrongdoings of an individual that has – voluntarily – submitted to these standards are limited. Sports governing bodies do not have the same legal tools available to state authorities. Sports governing bodies must thus be permitted to establish rules in their ethical and disciplinary regulations that oblige those that are subject to those regulations – either witnesses or parties – to cooperate in investigations and proceedings and that provide sanctions for those who fail to do so. A paradigm of this is, for example, the duty of an athlete to submit to sample collection in the context of a doping control. It is universally accepted that evading or refusing sample collection, i.e. not cooperating in a disciplinary investigation, constitutes a disciplinary offense. However, it is equally true that – in light of the balancing of the interests involved – other duties of cooperation (body search, disclosure of financial information, disclosure of private correspondence, etc.) maybe excessive. Thus, there is no general rule according to which a duty of cooperation is forbidden or allowed in all and every circumstance. Instead, the balancing of interests depends on the individual circumstances. Since – differently from criminal law – the Appellant has voluntarily submitted to the rules and regulations of FIFA and considering that, unlike public authorities, sports governing bodies have limited investigative powers, compulsory cooperation for fact-finding is in principle permissible. Establishing and applying such rules is, in principle, essential to maintaining the image and integrity of sports. For this reason, there is no contradiction in the FCE placing the burden of proving an infringement on FIFA, while imposing on parties an obligation to cooperate in fact-finding, as the Appellant suggests.

266. Against this backdrop, the Panel is of the view that, in the context of sport, the privilege against self-incrimination may not be easily invoked in a disciplinary proceeding. The question is whether the balancing of the interests involved tips in favour of the privilege against self-incrimination if a parallel criminal proceeding is pending or anticipated. Sports disciplinary proceedings are held in the context of associations in which an official such as the Appellant has voluntarily chosen to enter and whose ethics rules has

deliberately chosen to accept. The cooperation of the individuals subject to the ethics or disciplinary rules of a sports association is necessary if the integrity of sport is to be protected; for example, a fatal blow would be stricken to the fight against doping if an athlete asked to undergo a surprise doping control were able to invoke the privilege against self-incrimination to avoid delivering a urine or blood sample, simply because in the country where the sample is collected there is an ongoing or expected criminal investigation on doping which could implicate that athlete (something by now usual in countries with criminal anti-doping legislation). Thus, the danger that the result of such cooperation in fact-finding may at a later point trigger a criminal proceeding is – *per se* – not a valid justification to invoke the privilege of self-incrimination. However, whether the same applies in a case where there are concurrent disciplinary and criminal proceedings, appears debatable. This is even more so where it is obvious that the sports organisation will pass on the information obtained to the public authorities which have opened proceedings against the same individual in the same matter. In such case there is a real danger that the sports organisation will be (mis-)used by public authorities to collect information that they could be otherwise unable to obtain. In such circumstances there may be – in the view of the Panel – a valid claim by the party or witness concerned to refrain from delivering self-incriminating information (e.g. by interposing attorneys that may invoke the attorney-client privilege also vis-à-vis public authorities).

267. The Panel need not however explore this issue any further. The Appellant has submitted that U.S. and Swiss prosecutors were conducting an investigation on FIFA and FIFA officials at the time the Investigatory Chamber requested to interview the Appellant in September 2015. These submissions by the Appellant are unsubstantiated. It is unclear what were the object and the target of such investigations. Only where there is a clear and imminent danger that the privilege against self-incrimination (applicable before public authorities) would be circumvented, could such privilege perhaps also extend to investigations conducted by sports organisation. To conclude, therefore, based on the limited evidence before it, the Panel finds that the Appellant's non-cooperation, i.e. his non-appearance in the disciplinary investigation is not justified (even more so in the present case, given that there is no evidence before this Panel confirming that a criminal investigation against the Appellant had been initiated at the time). Of course, the fact that the privilege against self-incrimination may not be invoked in this sports disciplinary proceeding by the Appellant does not mean that there is a duty on someone in his position to confess to his own disciplinary wrongdoing, but merely that there is a duty to cooperate and, in particular, to attend interviews with disciplinary bodies if so requested.

268. The Panel also finds it an insufficient ground to justify the Appellant's refusal to attend (i) that his counsel had advised him not to interview with the Investigatory Chamber, or (ii) that the FCE enshrines certain guarantees of due process in its proceedings, such as the right to be heard under Article 39 FCE and the right to representation and assistance by a legal counsel or other person under Article 40 FCE.

269. Additionally, the Panel is of the view that the duty to cooperate by interviewing with the Investigatory Chamber is unconditional. The Appellant could not, as he attempted to do, condition his acceptance to be interviewed on whether he received prior access the investigation file. This is especially true considering that FIFA was not obligated to grant him access to such file prior to his first interview with the Investigatory Chamber.

Article 39 FCE ("*Right to be heard*") stipulates that: "*1. The parties shall be granted the right to be heard, the right to present evidence, the right for evidence leading to a decision to be inspected, the right to access files and the right to a reasoned decision. 2. The right to be heard may be restricted in exceptional circumstances, such as when confidential matters need to be safeguarded, witnesses need to be protected or if it is required to establish the elements of the proceedings*". The Panel recognizes that under this provision of the FCE a party in an ethics proceeding has the "*right to access the files*"; however, there is no requirement therein that such access be granted prior to the first interview. Further, no such requirement has been established at CAS as suggested by the Appellant. The Panel notes that in CAS 2014/A/3630 at para. 109 *et seq.*, the panel there held that a person charged with a disciplinary offense is entitled to "*full disclosure of all material in the possession of the prosecution which may be of assistance*" to him or her, without specifying that this occur before the initial interview. In this connection, the Panel takes judicial notice of the fact that, even in the criminal proceedings of several countries adhering to due process principles, the first interview with a person under investigation may occur without the investigators' disclosure of the evidence in their possession. *A fortiori*, this may also occur in the disciplinary proceedings of a private association.

270. Moreover, under Article 39 FCE, the right to access files may (as it was here) be restricted in exceptional circumstances such as for confidentiality reasons (see letters of 21, 24 and 25 September 2015 from the Investigatory Chamber to the Appellant, *supra* at para. 79 *et seq.*). The Appellant contends that FIFA mentioned no "*exceptional circumstances*" that required confidentiality. However, the Panel is of the opinion that, in this case, the exceptional circumstances warranting special confidentiality needs were inherent in the fact itself that the investigated individual was the FIFA Secretary General, who had not been sacked yet – although suspended from his duties as of 17 September 2015 (see *supra* at para. 3) – and who, after being the CEO for more than eight years (with the authority under the FIFA Statutes to hire and fire personnel), undoubtedly still enjoyed a significant degree of influence within the FIFA administration.

271. The Panel is of the view that, in any event, the Appellant's right to be heard was protected by his eventually receiving on 7 January 2016 the final investigation report with its exhibits.

272. In light of the foregoing, the Panel holds that the Appellant violated Article 18, para. 2 and Article 41, paras 1-2 FCE for his failure to accept to interview with the Investigatory Chamber.

c) No violation of Articles 15 and 13, paras. 1-3 FCE

273. Here the Panel applies *mutatis mutandis* its decision and reasoning made *supra* at paras. 195-202 on *lex specialis derogat generali*. The Panel views Articles 18 and 41 FCE as a *lex specialis* of Articles 15 and 13. Since FIFA's accusation that the Appellant breached Articles 15 and 13, paras. 1 to 3 FCE for his failure to cooperate in the investigation is based on the same conduct that has already been sanctioned under Articles 18 and 41 FCE, in accordance with CAS jurisprudence, the Panel holds that the Appellant did not breach also Articles 15 and 13, paras. 1 to 3 FCE. However this has

only bearing on the legal reasoning of the Appealed Decision and no bearing on the sanction because, as already remarked (*supra* at paras. 202 and 236), the Appealed Decision refrained from imposing on the Appellant any sanction for his violation of Articles 15 and 13 FCE.

G. Applicable sanction

274. There is well-recognized CAS jurisprudence to the effect that whenever an association uses its discretion to impose a sanction, CAS will have regard to that association's expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its *de novo* powers of review, be free to say so and apply the appropriate sanction (see CAS 2015/A/4338, at para. 51).

275. The Panel observes that the Appeal Committee sanctioned the Appellant with a fine of CHF 100,000 and a ban from taking part in any football-related activity (administrative, sport or any other) at the national and international level for a period of ten years, six of them for violating Article 20 FCE (2012 edition), i.e. the successor of Article 10 FCE (2009 edition), and four years for the remaining violations of Articles 16, 18, 19 and 41 FCE (2012 edition). It must be noted that the Appeal Committee explicitly stated in the Appealed Decision (at para. 202) that, although it found that the Appellant had breached Articles 13 and 15 FCE, it would not impose any additional sanction on that basis because such violations were not "*isolated but in relation to other violations of the FIFA Code of Ethics*".

276. The Appellant requests the Panel to impose no sanction or, alternatively, to reduce the sanction appropriately.

277. The Panel has essentially confirmed the ruling of the Appealed Decision. Indeed, the Panel has confirmed that the Appellant violated:

- Article 19, paras. 1 to 3 FCE in relation his involvement in the resale of FIFA World Cup Tickets;

- Article 10 FCE (2009 edition) and Article 20 FCE (2012 edition) in relation to the offer of an undue benefit to the CFU, since both catch the conduct consisting in the offer of an undue benefit or gift as well as the actual giving thereof.

- Article 13, paras. 1 to 4 FCE in relation to his travel expenses;

- Article 19, paras. 1 to 3, and Article 16, para. 1 FCE in relation to his involvement in the FIFA-EON transaction; and

- Article 18, para. 2 and Article 41, paras. 1 and 2 for his failure to cooperate in the investigation.

278. The Panel has only held, differently from the Appealed Decision, that:

- the Appellant did not violate Article 19 and 15 FCE in relation to his travel expenses; nevertheless, the Panel still held the underlying conduct to be a serious violation of Article 13 FCE; and

- the Appellant did not violate Articles 15 and 13 FCE in relation to his involvement in JB's resale of FIFA World Cup Tickets, his involvement in the FIFA-EON transaction, and his failure to cooperate in the investigation; nevertheless, the Panel held that those rules were not violated only because the Appellant's seriously unethical conduct was already sanctioned by more specific provisions (in application of *lex specialis derogat generalis*) and, as already noted, this has no actual bearing on the sanction because the Appealed Decision did not impose any distinct sanction for the violations of Articles 15 and 13 FCE.

279. In any case, the Panel is of the view that it must determine whether the overall sanction imposed on the Appellant is proportionate, within the limits of the above indicated CAS jurisprudence, to the offenses found by the Panel.

280. Prior to deciding the measure of the applicable sanction, the Panel must turn its attention to the legal framework for assessing the proportionality of a sanction based on the FCE (2012 edition). According to Article 5, para. 1 FCE, the Ethics Committee may pronounce the sanctions described in the FIFA Disciplinary Code (hereinafter the "FDC") and the FIFA Statutes to any person bound by the FCE, which includes the Appellant. Under Article 6 FCE and Article 10 *et seq.* FDC (2012 edition), the Ethics Committee could impose various sanctions on an official, the most serious being a ban on taking part in football-related activity. Pursuant to Article 9, para. 1 FCE, when determining a sanction, the adjudicator must take into account "*all relevant factors in the case, including the offender's assistance and cooperation, the motive, the circumstances and the degree of the offender's guilt*".

281. With this legal framework in mind, the Panel finds a six-year ban for the violation of Article 20 FCE, plus a four-year ban for the infringements of Articles 16, 18, 19 and 41 FCE, to be proportionate. The Panel is persuaded that the Appellant's conduct in relation to various matters denotes a high degree of guilt, considering the totality of the circumstances and, particularly, the fact that the Appellant (i) provided little assistance and cooperation, if any, to the investigators, and (ii) appeared to have reprehensible personal and financial motives behind his actions.

282. The Panel notes that the CAS imposed the following lesser bans on other FIFA officials:

- A six-year ban on Mr. Blatter, four for violating Article 20 FCE (2012 edition), as well as a CHF 50,000 fine, for authorizing and directing an undue gift, i.e. a CHF 2 million payment to Mr. Platini without any contractual basis or other valid justification (CAS 2016/A/4501).

- A four-year ban on Mr. Platini, three for violating Article 20 FCE (2012 edition), as well as a fine of CHF 60,000, for receiving an undue gift of CHF 2 million (CAS 2016/A/4474).

- A three-year ban with a fine of CHF 10,000 on Mr. Adamu (CAS 2011/A/2426), and a two-year ban with a fine of CHF 7,500 on Messrs. Ahongalu Fusimalohi and Amadou Diakite (CAS 2011/A/2425; TAS 2011/A/2433), for failing to refuse an improper offer made by apparent lobbyists in contravention of Articles 3 ("*General Rules*"), 9 ("*Loyalty and confidentiality*") and 11 ("*Bribery*") of the 2009 FCE; it being noted that in those three cases (i) the CAS panels observed that the confirmed

FIFA sanctions could be considered "*relatively mild*", and the three officials had, by far, less important positions than that that of the Appellant within the FIFA framework.

283. However, the Panel is of the view that the offences found to have been committed by the Appellant were cumulatively of a markedly more serious degree of gravity than those mentioned in the previous paragraph and that, therefore, a ten-year ban is wholly proportionate.

284. In fact, the Panel finds that the Article 19 FCE infringement committed in relation to his involvement in the resale of FIFA World Cup tickets – i.e., his *pactum sceleris* with Mr. Alon aimed at receiving a kickback – is on its own severe enough to warrant a ten-year ban from football. In particular, as already noted (see *supra* at para. 178), the Panel is of the view that FIFA could have even pursued, with solid factual and legal grounds, an Article 20 or 21 FCE violation for that grave misconduct.

285. The Panel's conclusion that a ten-year ban is proportionate is not affected by the fact that it found that the Appellant did not breach one count of Article 19 FCE (the one related to travel expenses) and several counts of Articles 15 and 13. As previously mentioned, these Panel's findings only revise the legal reasoning of the Appealed Decision but do not affect the Panel's general concurrence with the Appeal Committee in determining that all the Appellant's actions under scrutiny gravely breached the FCE.

286. Furthermore, this ten-year ban must stand even if the Panel were to take into account the Appellant's alleged commendable services to football. The Panel observes that the Appealed Decision only took into account the Appellant's clean disciplinary and criminal record as a mitigating circumstance. The Appellant wishes the Panel to also take into account his commendable services to football. It is true that the CAS has considered an individual's commendable services to football as a mitigating circumstance in the past (e.g. CAS 2016/A/4501, TAS 2016/A/4474, CAS 2017/A/5086). However, even considering the Appellant's alleged commendable services, in the present case they would not affect the length of the ban due to the severity of the Appellant's misconducts, which, as explained above, the Panel believes should warrant a sanction of no less than ten years. Therefore, even taking into account the mitigating circumstance of commendable services, a ten-year ban is in the eyes of the Panel wholly appropriate.

287. For the same foregoing reasons, considering that Article 6, para. 1 FCE allows to add a pecuniary sanction and that the Appealed Decision did not specifically link the fine of CHF 100,000 to a given infraction, the Panel finds no reason to reduce it. In particular, the fact that the Appellant (i) agreed with Mr. Alon to receive a kickback deriving from the resale of World Cup tickets, and (ii) used his position within FIFA to help his son obtaining remuneration from a FIFA's business partner, shows that he also had financial motives and leads the Panel to conclude that the imposition of a pecuniary fine is appropriate. In light of this circumstance, and considering that, under Articles 6, para 2 FCE and 15 para. 2 FDC, FIFA disciplinary bodies can impose a fine of up to CHF 1 million, the Panel finds a fine of CHF 100,000 to be proportionate and hereby confirms it.

H. Further or different motions

288. All further or different motions or requests of the Parties are rejected.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Jérôme Valcke on 23 February 2017 against the FIFA Appeal Committee's decision dated 24 June 2016 is dismissed.
2. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr. Jérôme Valcke, which is retained by the CAS.
3. (…).
4. All further or different motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 27 July 2018

THE COURT OF ARBITRATION FOR SPORT

Massimo Coccia
President of the Panel

Michael J. Beloff QC
Arbitrator

Ulrich Haas
Arbitrator

Francisco A. Larios
Ad hoc Clerk