



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by G-Drive Racing

against

**Decision No. 74 dated 18 June 2018 of the Stewards of the Meeting in
Le Mans counting towards the 2018-2019 FIA World Endurance Championship**

Cases ICA-2018-03

Appeal brought by TDS

against

**Decision No. 75 dated 18 June 2018 of the Stewards of the Meeting in
Le Mans counting towards the 2018-2019 FIA World Endurance Championship**

Case ICA-2018-04

Hearing of Tuesday, 18 September 2018 in Paris



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr Michael Grech (Malta), who was designated President, Mr André Bezuidenhout (South Africa), Mr Rui Botica Santos (Portugal) and Mr Philippe Roberti De Winghe (Belgium), met in Paris on Tuesday, 18 September 2018 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeals brought by G-Drive Racing (“G-Drive Racing”) and TDS Racing (“TDS Racing”) (who together are referred to as the “Appellants”) respectively against Decisions No. 74 and 75 issued on 18 June 2018 by the Stewards of the Meeting (the “Stewards”) in Le Mans counting towards the 2018-2019 FIA World Endurance Championship (WEC), under which the Stewards decided to disqualify G-Drive Racing’s LMP2 car No. 26 and TDS Racing’s LMP2 car No. 28 from the 2018 24 Hours of Le Mans event (the “Event”) for an alleged infringement of Appendix A of the Technical Regulations (2018) for LMP2 (the “Technical Regulations”), of Article 2.1.1 of the Technical Regulations, and of article 12.1.1.c of the International Sporting Code (“ISC”).

The following persons attended the hearing:

on behalf of G-Drive Racing:

Mr Xavier Combet (Team Manager of G-Drive Racing)
Mr Paul Harris, QC (Legal Counsel)
Ms Fiona Banks (Legal Counsel)
Mr Massimiliano Maestretti (Legal Counsel)
Mr Andrea Fioravanti (Legal Counsel)
Ms Maria Abramova (Chief Legal Officer of
Gazpromneft Center LLC)
Ms Ekaterina S. Kvaternyuk (Deputy Head of Division of
Gazpromneft PJSC)
Mr David Leach (Technical Director and Race Engineer
of G-Drive Racing, Witness)

on behalf of TDS:

Mr Xavier Combet (Team Principal of TDS Racing)
Mr Jacques Morello (Technical Director of TDS Racing)
Mr Paul Harris, QC (Legal Counsel)
Ms Fiona Banks (Legal Counsel)
Mr Massimiliano Maestretti (Legal Counsel)
Mr Andrea Fioravanti (Legal Counsel)
Mr David Leach (Technical Director and Race Engineer
of G-Drive Racing, Witness)
Mr Olivier Crespy (TDS, Witness)



on behalf of the FIA:

Mr Pierre Ketterer (Head of Regulatory, Governance and Legal Corporate Affairs)
Ms Delphine Lavanchy (Internal Legal Counsel)
Mr Jonathan Taylor, QC (Legal Counsel)
Ms Lauren Pagé (Legal Counsel)
Mr Thierry Bouvet (ACO Technical Delegate, Witness)
Mr Manuel Leal (FIA Technical Delegate, Witness)
Mr Dominique Besnard (ACO Volunteer, Witness)

Also present at the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA Courts)
Mr Nicolas Cottier (Clerk of the FIA Courts)
Ms Sandrine Gomez (Administrator of the FIA Courts)

The parties filed their written submissions and, at the hearing of 18 September 2018, set out oral arguments and addressed the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation. None of the Parties raised any objection either in relation to the composition of the Panel or to the manner in which the proceedings have been conducted, notably the simultaneous translation.

The Witnesses David Leach, Olivier Crespy, Dominique Besnard and Thierry Bouvet provided written testimony, attended the hearing and, save for Oliver Crespy, were cross-examined during the hearing and the Court posed questions to them. Other witnesses provided written testimony but no cross-examination was required of them.

REMINDER OF THE FACTS

1. G-Drive Racing is a motor sport endurance racing team licensed by the Russian Automobile Federation (“RAF”), which has been competing in the WEC LMP2 class since 2013. At the Event, its car, No. 26, was operated on its behalf by TDS Racing.
2. TDS Racing is a motor sport endurance racing team licenced by the Fédération Française du Sport Automobile (“FFSA”), which has been



competing in the WEC LMP2 class since 2017. Along with G-Drive Racing's car No. 26, TDS Racing entered its own LMP2 car in the Event, namely car No. 28,

3. During the Event, the Automobile Club de l'Ouest ("ACO") and FIA Technical Delegates, noticed that cars Nos. 26 and 28 were refuelling much faster than other cars. It was noted that the refuelling time of each car was about 25% faster on average than their competitors, which according to them represented a time saving of between 6 and 10 seconds per pit stop.
4. G-Drive Racing's car No. 26 finished first, with a lead of two laps over the car which finished second, while TDS Racing's car No. 28 finished fourth.
5. Having noticed during the Event the better refuelling times of those two cars, the ACO and FIA Technical Delegates inspected the refuelling assemblies of the Appellants' cars. They also inspected the assemblies of the team which finished second, namely Signatech, and of United Autosports, which finished fifth, and was the first different car model after the TDS car in the rankings.
6. After inspecting the cumulative refuelling times of each team during the Event, it appeared that the Appellants' cars had the same cumulative refuelling times. Compared to the cumulative refuelling time of Signatech's and United Autosports' cars, the cumulative refuelling times of the Appellants' cars were substantially lower. It indeed appeared and was assumed on the basis of the above facts, that the Appellants' cars refuelled around 242 seconds faster than the Signatech's car during the whole Event.
7. The fastest lap time during the Event was under 242 seconds [BERTHON Nathanael 3:27.200], while G-Drive Racing's car No. 26 finished the Event two laps ahead of Signatech's car and TDS Racing's car No. 28 finished one lap ahead of United Autosports' car.
8. During the inspection it resulted that the Appellants had inserted a new bespoke and removable machined part in their refuelling assembly, more precisely between the fuel flow restrictor (the "FFR") and the dead man valve (the "DMV"), two parts that are regulated by the Technical Regulations. This removable part consisted in a bespoke "fitting" (referred to by appellant as the "Dead Man Case or Top"), which fitted the DMV to the FFR, and on the inside of this fitting lay a second bespoke machined part (referred to by the appellant as the "Dead Man Cylinder"), which protruded in the FFR once the fitting was fixed to the FFR.
9. The first removable part, namely the fitting, is externally cylindrical. The second bespoke machined part is not cylindrical, as it is tapered inside,

thereby creating an internal cone. This Dead Man Cylinder starts with a diameter of 21.5 mm on the FFR side, and finishes off with a diameter of 38 mm, on the DMV side, all within the fitting/Dead Man Case.

10. As the narrower side of the Dead Man Cylinder fits tightly inside the FFR, when the fuel flows out of the supply tank, it ends up not touching the FFR sides, but flows directly through the Dead Man Cylinder and then into the DMV.
11. The Dead Man Cylinder's height is 124.5 mm, whereas the height of the FFR used by the Appellants is 30 mm compared with a maximum FFR height set at 50 mm by the Technical Regulations.
12. The angle of the FFR cone is at least 16.82 degrees according to the Technical Regulations, whereas the angle of the Dead Man Cylinder added by the Appellants is 4 degrees. With this additional part, the fuel flow is able to expand from 21.5 mm to 38 mm over a distance of 124.5 mm. Without this additional part, the fuel flow would expand in the FFR from 21.5 mm to 38 mm over a distance of not more than 50 mm.
13. The internal part of the Dead Man Cylinder added by the Appellants has also been rounded off, so that there is no straight line on the transition from the 21.5 mm hole on the fuel tank side, but a curved line.
14. The ACO and FIA Technical Delegates reported the outcome of their inspection to the Stewards stating that *"an additional machined part not featuring in the drawing is inserted into the flow restrictor, changing the wetted restrictor surface described by the regulatory drawing."*
15. The Stewards held a hearing on 18 June 2018. The Appellants were represented at the hearing by Mr Leach, G-Drive Racing's Technical Director and Race Engineer, Mr Jacques Morello, TDS Racing's Technical Director, and Mr Xavier Combet, Team Principal of both teams.
16. That same day, the Stewards issued the two contested Decisions, finding that:
 - (i) The Appellants breached Appendix A of the Technical Regulations, because the drawing number 252-7-2017 in Appendix A *"defines the negative/empty spaces of the part [the fuel flow restrictor], rather than the positive metallic part. Therefore any part that protrudes into these spaces are in violation of the drawing."*
 - (ii) The Appellants breached Article 2.1.1 of the Technical Regulations, because the use of the new part inserted by the Appellants in their



refuelling assemblies is not permitted in the Technical Regulations and, the article provides that *“what is not permitted by the present regulations is prohibited.”*

- (iii) Lastly, the Appellants breached Article 12.1.1.c of the International Sporting Code (“ISC”) as, according to the Stewards, the part added by the Appellants *“was designed to defeat, in part, the purpose of the fuel Flow Restrictor”* which was *“prejudicial to the interest of the Competition.”*
17. Based on the foregoing, the Stewards decided to disqualify the two cars from the Event.
18. Within the hour following the notification of the Decision, the Appellants notified their intention to appeal against the Decisions.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

19. The Appellants notified their respective appeals before the Court on 20 June 2018, namely within 96 hours of the notification of their intention to appeal against the Decisions.
20. In their combined Grounds for appeal, received by the Court on 26 July 2018, the Appellants invited the Court to:
- “ a) set aside the Decisions;*
 - b) order that the Classification of the Competitors in the Race be amended to reflect the position prior to entering into the Decisions;*
 - c) order that the awards or prizes won by the Competitors should be reissued to them;*
 - d) order the permanent release and return to the Competitors of both of the Dead Man Assemblies previously retained by the FIA;*
 - e) order the return of the appeal deposit paid by the Competitors; and*
 - f) refrain from making any order that the Competitors should pay any part of the ICA’s costs pursuant to Article 11.2 of the FIA Judicial and Disciplinary Rules.”*



21. The FIA, in its Grounds in response received by the Court on 31 August 2018, asked the Court to:

“dismiss in their entirety the Appellant Teams’ respective appeals against decisions 74 and 75 of the Stewards at Le Mans 2018, further to JDR Article 10.9; and

order the Appellant Teams to pay the ICA costs of the appeal referenced in JDR Article 11.2.”

22. During the course of the proceedings and prior to the Hearing, the President of the Hearing issued five preliminary Decisions, based upon requests of either the Appellants or the FIA concerning:
- (i) The return to the Appellants of one of the two identical parts of the refuelling system that were seized by the Stewards, which was granted by Decision No. 1 dated 11 July 2018;
 - (ii) The authorisation for submitting joint Grounds for appeal for both appeals, which was granted by Decision No. 2 dated 17 July 2018;
 - (iii) The authorisation for submitting only the English versions of the Grounds for appeal, which was denied by Decision No. 3 dated 17 July 2018;
 - (iv) The authorisation for submitting the second witness statement of Mr David Leach and the witness statement of Mr Olivier Crespy and for the latter to be added to the Appellants’ list of witnesses, which was granted by Decision No. 4 dated 12 September 2018;
 - (v) The authorisation for some witnesses to be allowed not to attend the hearing in person and to communicate via video conferencing, which was granted by Decision No. 5 dated 12 September 2018.

ADMISSIBILITY

23. The Court acknowledges that the Appellants filed their Appeals in conformity with the FIA Judicial and Disciplinary Rules (“JDR”).
24. The Court also finds that it has jurisdiction in the matter.
25. Therefore, the Court declares the appeal admissible, which is undisputed.



ON THE SUBSTANCE

a) *Arguments of the parties*

26. The Appellants claim in essence that:

- (i) There was no lawful basis for finding a breach of the Technical Regulations on the basis of the Dead Man Cylinder touching or protruding into the FFR, or into a negative/empty space – as designated by the Stewards – of the FFR. Both the FFR and the dead man assembly, namely the DMV, together with the so-called Dead Man Case and the Dead Man Cylinder used by each Appellant not only comply with the Technical Regulations, but are a “*commendable technical innovation*” of the Appellants.
- (ii) The Technical Regulations do not provide any reference or regulation regarding the fittings to be used between the FFR and the DMV, apart from the requirement that those fittings should have a maximum internal diameter of 38 mm, which is the case of the Appellants’ Dead Man Cylinder. The Technical Regulations do not provide that the FFR, the DMV and the overall dead man assembly must be purchased and cannot be custom-made. They also do not specify any rule on the so-called “*casing of a Dead Man Valve*”. According to the Appellants, the FIA admitted at the hearing that a fitting is required, and that this fitting is not shown in the drawings in Appendix A of the Technical Regulations. In the Appellants’ view, this means that the Appellants and other competitors are free to design any type of fitting, as long as it meets the 38 mm maximum diameter criterion, which according to the Appellants also explains why many competitors, as demonstrated by pictures shown to the Court, used dead man assemblies with an elongated fitting.
- (iii) While the Technical Regulations prohibit placing anything inside the fuel tank, it provides nothing similar in relation to the FFR.
- (iv) The LMP1 regulations provide for specific and very restrictive rules on fittings in relation to FFR and DMV, in particular on what can be inserted into the FFR. These restrictions have been omitted from the Technical Regulations which apply to LMP2 cars.
- (v) There was no lawful basis for finding a breach of Article 2.1.1 of the Technical Regulations in circumstances in which the Technical



Regulations required the use of a dead man valve (that forms part of a dead man assembly) but on the other hand the FIA has deliberately decided not to regulate the design or specifications of the fitting/Dead Man Case, including by not stipulating the shape and dimensions of all of its internal parts.

- (vi) There was no lawful basis for finding a breach of Article 12.1.1.c of the International Sporting Code in circumstances in which the Appellants had complied with the Technical Regulations. On the contrary, the Appellants had displayed commendable technical innovation, within the boundaries of the Technical Regulations, in the context of a highly technical sport.
- (vii) The FIA examined, on two occasions, both the cars of G-Drive Racing and TDS Racing before the Event. Specifically, they examined the fuel rig assembly, including the dead man assembly, and how it fitted together with the fuel flow restrictor, including with the Dead Man Cylinder in place. On the basis of those inspections, the FIA clearly and unequivocally indicated to the Appellants that both cars were fit to race and, specifically that the fuel rig assembly was compliant with the Technical Regulations. That indication was relied upon by the Appellants in competing in the Event without making any changes to their equipment. Otherwise, those changes could have been made before the Event. The FIA is thus estopped from claiming that the cars were, in fact, not fit to race.
- (viii) The Stewards wrongly directed themselves (at par. 6 of each of the Decisions) by reference to a supposed procedure for checking conformity with the Technical Regulations in advance of the Event and, thus, took into account an irrelevant and erroneous consideration when making the Decisions.
- (ix) It was disproportionate or unfair for the Appellants to be disqualified.
- (x) The Technical Regulations are in any event not clear and, in the circumstances, it was disproportionate or unfair for the Appellants to be disqualified. The appropriate course of action would have been for the FIA to identify its concerns and then prospectively issue a clarification rather than retrospectively purport to apply unclear rules.

27. The FIA states that:

- (i) The LMP2 class is a “customer racing” category intended to enable participation at a relatively controlled cost by standardising the equipment that can be used, so that the competition is based on the skill of the teams and drivers, rather than based on a technical advantage, which would be expensive to achieve. This is the reason why the Technical Regulations require that a LMP2 cars each have a homologated chassis, engine and electronics. The Technical Regulations are also designed so that teams can source the non-homologated parts they need from ordinary commercial sources, without suffering a competitive disadvantage.
- (ii) As far as the FFR is concerned, the FIA puts forward that the Technical Regulations require that all LMP2 teams fit a FFR, in line with the maximum measurements allowed, to the fuel supply tank. Those maximum dimensions mean that when the fuel comes out of the supply tank, it has to expand from a 21.5 mm diameter tube to a 38 mm diameter tube over a distance of no more than 50 mm, creating turbulence that significantly restricts the speed of the fuel flow, which limits the ability of a team to gain a competitive advantage over its rivals during the refuelling process.
- (iii) The effect of the new part inserted by the Appellants to their refuelling system was “*dramatic*”, as they were able to refuel approximately 25% faster than their competitors.
- (iv) The Appellants did not seek any guidance or clearance from the FIA as to the new part that they used prior to the Event.
- (v) This new part is not an essential part of the dead man valve assembly, which would be necessary to ensure compliance with the technical requirements applicable to that component. Indeed, this new part was not necessary to open or close the dead man valve, neither was it at all necessary, be it for compliance purposes or for any other reason.
- (vi) Having admitted at the hearing that a fitting is required to hold the FFR and DMV together, and this in response to the submission of the Appellants regarding the absence of any description of those fittings be it in words or in the diagram related to the Fuel Tank Assembly, the FIA however stresses that the only purpose of the fitting is to connect one part to another and certainly not to improve the fuel flow.



- (vii) The FIA further insists on the fact that none of the dead man assemblies available for purchase commercially have anything similar to the part added to it by the Appellants, namely the Dead Man Case and Dead Man Cylinder, and none of the other teams that participated in the Event felt the need to use anything like this part added by the Appellants to their own dead man valve assembly.
- (viii) The FIA expresses the view that the sole purpose of that additional part was to defeat the fuel flow restrictions set out in the Technical Regulations, by “*sitting inside*” the compliant FFR and effectively replacing it with a much longer and narrower conical angle that would decrease the internal turbulence, and therefore increase the speed of the fuel flow from the supply tank. According to the FIA, with the Dead Man Cylinder in place, the FFR merely becomes a holder rather than serve its purpose as a restrictor.
- (ix) Based on the foregoing, the FIA concludes that this additional part was not at all a “*commendable technical innovation*” but a “*clear and deliberate contravention of both the letter and the spirit of the LMP2 Technical Regulations*” and it contends therefore that the Decisions should be upheld.
- (x) Finally, the FIA stresses that the Appellants did not even bother to submit the litigious part to the FIA Technical Delegates in order to ensure that it complied with the Technical Regulations, be it pre-emptively or during the inspections performed by the Technical Delegates.
- (xi) The Technical Passport of the cars was not immediately updated by the Appellants and the picture of the Fuel Tank Assembly has never been updated, thus showing a different dead man assembly. According to the FIA, this clearly indicated that the Appellants knew that they were in breach of the Technical Regulations.

b) *Conclusions of the Court*

28. The Court notes first that the Appellants do not contest that the “*Dead Man Cylinder*” - as it is called by the Appellants - had the effect of reducing the turbulence of the fuel flow which should be created in the FFR while the fuel is flowing through the FFR into the DMV. At the outset of the hearing, while the Appellants were describing the functions of each element of their dead man assembly, notably the function and the impact

of the Dead Man Cylinder, the Appellants actually stressed that the Dead Man Cylinder was a removable part, which had been purposely designed to reduce turbulence and optimise the fuel flow during the refuelling of their cars, by perfecting a non-optimised design.

29. However, the Appellants argue that this is not prohibited by the Technical Regulations as the fitting/Dead Man Case designed by them together with the Dead Man Cylinder was merely a fitting and, as such, met the only criterion applicable to fittings in the Technical Regulations, namely an internal maximum diameter of 1.5 inches or 38 mm.
30. Having carefully listened to the explanations given by the parties and their witnesses, and having reviewed the applicable regulations and having examined *in situ* the contested parts, the Court finds that there is indeed no other criterion applicable to fittings other than the maximum internal diameter set at 1.5 inches or 38 mm under point 7 of Appendix A of the Technical Regulations which states that *“All Hoses and fittings which are used shall have a maximum inside diameter of 1.5 inch”*.
31. Furthermore, it finds that although the diagrams integrated into the Technical Regulations do not specifically indicate the fitting part which in turn should connect the FFR to the DMV, the competitors cannot deduce from those diagrams that these fitting parts can be fully integrated into one or the other of those two elements. In other words, the Court concludes that separate fitting parts can be added to connect the elements mentioned in those diagrams, but said fittings are to remain separate from the elements they connect.
32. This matter was confirmed to the Court by Mr Thierry Bouvet, who testified before the Court in his capacity of ACO Technical Delegate.
33. It appears therefore, that competitors can design or purchase on the market any type of fittings, as long as such fittings do not have an internal diameter greater than 38 mm.
34. However this conclusion can be drawn only with regard to fittings.
35. In the present case, it is undisputed that only the Dead Man Case/Top designed by the Appellants connects the Appellants' FFR to their DMV. The first bespoke and removable part, namely the Dead Man Cylinder, does not connect anything. It is therefore technically not a fitting.
36. The Appellants claim that the purpose of the Dead Man Cylinder was to meet the criterion of the maximum internal diameter of 38 mm in relation to a

fitting, and that it therefore forms a part of what they call, together with their second bespoke part: “*the Dead Man Top*”.

37. However, they could not explain at the hearing why they did not design the Dead Man Top in a way that would avoid having two elements, namely, as in the present case, one fitting element combined with a removable cylinder element. As a matter of fact it is to be noted that during the hearing the Appellants provided such a Dead Man Top made out of a single piece, which was paired with a flat FFR. They did not give reasons as to why such a part was not used instead of the contested part.
38. In any event, the Court is of the view that each of those two elements used by the Appellants must be analysed independently.
39. The external part of the Dead Man Top is a fitting, which, as such, does not meet the criteria set under Appendix A, point 7 of the Technical Regulations, because its internal diameter is greater than 38 mm, which fact is undisputed.
40. More importantly, the removable cylinder, namely the Dead Man Cylinder, which cannot be qualified as a fitting for the reasons mentioned above, protrudes into the compliant FFR and, in effect, replaces its purpose.
41. In other words, the Dead Man Cylinder ensures a less turbulent and therefore faster transition of the fuel flow into the DMV, operating as a new and less effective FFR.
42. It is evident that the Dead Man Cylinder designed by the Appellants does not meet the criteria of a FFR, as set out in the Technical Regulations. It is also undisputed that the Technical Regulations do not allow the competitors to add new elements to the refuelling system, apart from the necessary fittings which should hold those elements together.
43. Having found that the Dead Man Cylinder is not a fitting, the Court concludes that the use of this new element, which protrudes into and effectively replaces the Appellants’ FFR, constitutes a clear breach of the Technical Regulations, notably of their Appendix A and of Article 2.1.1.
44. The Appellants also present arguments regarding the scrutineering tests made by the FIA Technical Delegates before the Event, and the alleged indication made by the FIA that the cars were fit to participate in such Event.
45. The Court finds that those scrutineering tests were not primarily set to control and check the fitting put in place by the competitors between the FFR and the DMV. As a matter of fact this is not even on the check list submitted

to the Court and commented on by Mr Besnard, an ACO Volunteer, during his cross-examination before the Court.

46. The Appellants do not bring forward any evidence proving that the FIA would have approved the use of their Dead Man Cylinder and Dead Man Case/Top.
47. On the contrary, the Court concludes that the Appellants admit, notably through Mr David Leach being the Technical Director and Race Engineer of G-Drive Racing, that this cylinder had a substantial competitive effect and they did not check with the FIA or ACO whether this new element was admissible or not.
48. More importantly, Mr David Leach admitted that he had not immediately updated the technical passport of the cars and, after having eventually done so, that he had omitted to update the picture of the dead man assembly, which had materially changed in its external appearance since the previous race.
49. The Court finds that this is a serious shortcoming from the Appellants' side with regards to an important matter, which shortcoming can either be interpreted as a negligent act or a purposeful omission. However this shortcoming has to be confronted with the ill-founded reproaches made by the Appellants against the FIA Technical Delegates, who the Appellants alleged should have noticed by themselves the changes made to the Appellants' dead man assembly, while checking other aspects of the Appellants' cars and infrastructure.
50. In any event, the Court stresses that according to Article 2.4.1 of the Technical Regulations *"it is the duty of each Competitor to satisfy the Scrutineers and the Stewards of the Meeting that his car complies with these regulations in their entirety at all times during an event."*
51. This duty is reinforced by Article 9.15.1 of the ISC, which stipulates that *"the competitor shall be responsible for all acts or omissions on the part of any person taking part in, or providing a service in connection with, a Competition or a Championship on their behalf (...)."*
52. The Court further refers to its established precedents on issues related to cars' compliance with the applicable technical regulations, and emphasises that the obligation imposed on competitors to ensure that their cars comply with the relevant regulations is an absolute and objective one, and that the breach of that obligation does not even depend upon a fault being established (see ICA 2010-03, *RACB Prospeed ASBL*, dated 30 November 2010, no. 20; ICA 2013-03, *G-Drive Racing*, dated 10 September 2013).



53. The Court therefore rejects the Appellants' submissions as to the allegation that they had been misled by the FIA technical delegates.
54. The Court also rejects the Appellants' submissions on the alleged lack of clarity of the applicable regulations.
55. The Dead Man Cylinder or any similar element is not mentioned in the Technical Regulations, which are applicable to LMP2 cars, nor does it fall in the definition of a fitting. The purpose, as admitted by the Appellants, was to improve the fuel flow, by eliminating the sharp transition from 21.5mm to 38mm, thus rendering the FFR redundant. The Court fully agrees with the respondent's argument that it is not allowable to have a compliant part which is rendered redundant by another part.
56. The Court reiterates that not only are the Technical Regulations clear on this point, but it was up to the Appellants to seek all the necessary clarifications from the FIA and ACO.
57. The Court therefore considers that the Appellants committed a breach of Appendix A and of article 2.1.1 of the Technical Regulations, and should bear the sporting consequences that arise from the non-conformity of their cars.
58. Although there is no particular rule in the International Sporting Code, nor in other regulations, providing for a mandatory sanction of disqualification in case of a technical non-conformity discovered in a competitor's car, it is the established precedent of the Court, that to ensure fairness and sporting equity, to impose the sanction of disqualification in such situations.
59. In the ICA precedent 2013-03, the ICA already mentioned that the sanction of disqualification may appear severe, particularly in the context of such demanding events as a 24-hour endurance race. However, the ICA insisted on the fact that a technical non-conformity is widely considered as one of the most serious breaches of the regulations. When such non-conformity might possibly provide a competitive advantage - and in the present case, contrary to the ICA precedent 2013-03, it is not only proven, but fully admitted by the Appellants - the ICA stressed that it could not enter into theoretical speculative considerations in order to assess whether in fact, and to what extent, such an advantage influenced the outcome of the Event.
60. As already mentioned in the same ICA precedent, a strict approach is particularly appropriate when the technical irregularity concerns systems vital for sporting performance of the car as well as safety. The speed of the refuelling process is undisputedly an important factor in an endurance event.



61. The responsibility of the competitors to ensure technical conformity of their car is absolute and objective, as explained above. In the present case, the Appellants admitted that they had the objective to design a part which would not only allow another one to meet the 38 mm maximum diameter criterion applicable to fittings, but also to reduce or totally remove the effect of a compliant FFR. In that context, the Appellants do not put forward any extenuating and exceptional circumstances, which could be considered a good reason for the application of a less severe sanction than disqualification. Certainly such circumstances would be based on an absolute lack of any intention and negligence on the side of the competitor. Based on the clear facts of the present case, the Court reached the obvious conclusion that there are no such extenuating and exceptional circumstances in the present case.
62. Indeed, and with reference to previous decisions of the ICA (ICA 21/2009, *FFSA Hexis Racing AMR*, dated 14 October 2009; ICA 26/2009, *Pekaracing NV*, dated 23 February 2010; ICA 1/2010, *DMSB Young Driver AMR*, dated 18 May 2010), it is undisputed that the breach committed by the Appellants was not caused by a clerical error or a mistake on the official homologation documents as was the case in those ICA precedents, where the sanction of disqualification was converted into a fine.
63. The Court reiterates that it is appropriate to expect the competitors to make contact with the FIA or other regulating authority before any competition, in order to ensure that specific innovations comply with the applicable regulations, especially knowing that in the present case, the Dead Man Cylinder had such a decisive and clear impact on the refuelling time of the Appellants' cars.
64. Based on the foregoing, the Court finds that the penalty imposed on the Appellants is proportionate and that the Decisions must be upheld.
65. The Appeals are thus rejected.

COSTS

66. Considering that the Appeals were rejected, the Court leaves it to the Appellants to bear the costs in accordance with Article 11.2 JDR.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the Appeals admissible;**
- 2. Upholds Decisions No. 74 and 75 of the Stewards of the Meeting in Le Mans counting towards the 2018-2019 FIA World Endurance Championship (WEC);**
- 3. Confirms the exclusion of G-Drive Racing's car No. 26 and of TDS Racing's car No. 28 from the Meeting in Le Mans counting towards the 2018-2019 FIA World Endurance Championship (WEC);**
- 4. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 5. Leaves it to G-Drive Racing and TDS Racing to bear all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 6. Rejects all other and further conclusions.**

Paris, 18 September 2018

The President

Michael Grech