**INTERNATIONAL COURT OF APPEAL (I.C.A.)**

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal brought by the**
**Royal Automobile Club of Belgium (RACB)**
**on behalf of its licence-holder Prospeed Competition ASBL**
**against Decision No. 18 taken by the Panel of Stewards**
**on 10 October 2010 concerning the FIA GT3 European Championship event run at Zolder (Belgium) on 10 October 2010**

**Case 03/2010**

**Hearing of Tuesday 30 November 2010 in Paris**

The FIA INTERNATIONAL COURT OF APPEAL ("the Court"), comprised of Mr Edwin Glasgow (United Kingdom), who was elected President, Mr Jean Luisi (France), Mr Reginald Redmond (Ireland), and Mr José Macedo e Cunha (Portugal), met in Paris on Tuesday 30 November 2010 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by Royal Automobile Club of Belgium (RACB) on behalf of its licence-holder Prospeed Competition ASBL (the "Appellant") against Decision No. 18 taken by the Panel of Stewards on 10 October 2010, excluding car No.61 of the Appellant from race No. 6 held at Zolder (Belgium) on 10 October 2010, counting towards the FIA GT3 European Championship 2010, the Court has heard the statements and examined the arguments of the RACB and the FIA.

Attending the above hearing were:

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| on behalf of the RACB/Prospeed: | Mr Pascal Nelissen Grade (Lawyer for Prospeed Competition)<br>Mr Rudi Penders (Team Manager Prospeed Competition)<br>Mr Gérard Martin (Legal Rapporteur, RACB Sport)<br>Mr Geoffroy Theunis (Director General, RACB Sport) |
| on behalf of the FIA: | Mr Sébastien Bernard (Legal Director)<br>Mr Pierre Ketterer (Legal Counsel)<br>Mr Jacques Berger (Head of Technical Department) |

The parties presented written submissions and, at the hearing on 30 November 2010, set out oral arguments and replied to the questions put to them by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation; no objection to any element of the simultaneous translation was raised by anyone.

**SUMMARY OF THE FACTS**

1. Following a post-competition vehicle check, the FIA Technical Delegate on 10 October 2010 found that the rear brake discs of car No. 61 of the Appellant were not in compliance with the current homologation forms for the car, as "the weight was measured at 7,991g and 8,028g respectively whilst the current homologation form gives a minimum weight of 8,500g".

2. Article 257A-2.5 of Appendix J to the ISC provides that that "[t]he car entered by a competitor must conform strictly to its Homologation Form as well as to any additional notification from the FIA GT Committee".

3. On the basis of the FIA Technical Delegate's report, the Stewards took Decision No. 18 dated 10 October 2010 (the "Contested Decision"), excluding car No. 61 from the results of race No. 2.

## PROCEDURE AND DECISIONS REQUESTED BY THE PARTIES

4. The Appellant lodged an appeal with the Secretariat of the ICA on 12 October 2010.

5. In its Grounds of Appeal, the Appellant contends that the Court should:

   – declare the appeal admissible and well-founded;

   – set aside the Contested Decision insofar as it pronounces a penalty of exclusion, and pronounce a penalty of a fine in the amount of Euros 5,000;

   – make an order of costs against the FIA;

   – order the reimbursement of Euros 6,000 paid by the Appellant as appeal fee.

6. The FIA, in its Defence dated 23 November 2010, invites the Court to:

   – declare the appeal admissible;

   – confirm the Contested Decision with regard to the conclusions according to which the Appellant infringed Article 257A(2)(5) of Appendix J to the Code;

   – amend the decision of the Stewards of the Meeting, and quash the sanction of exclusion on account of its disproportionate nature;

   – replace that sanction with a fine in the amount of Euros 10,000; and

   – order the Appellant to pay the costs.

## ADMISSIBILITY

7. The Court acknowledges that this appeal was filed in conformity with the Rules of Procedure of the FIA International Court of Appeal. The Court also accepts that it has jurisdiction in the matter. Therefore, the Court declares the appeal admissible.

8. The Court regrets that due to his exceptional unavailability, this hearing had to be conducted in the absence of the Counsel to the ICA. The Court is always indebted to Mr Loitron for his wisdom and experience, but is satisfied that his absence could

not, in this case, prejudice anyone or affect the validity of this hearing, in keeping with Article 6 of the ICA Rules of Procedure.

**ON THE SUBSTANCE**

*a) Arguments of the parties*

9. The Appellant does not dispute the Stewards' finding that its rear brake discs did not correspond to the car's homologation form. However, the Appellant argues that the penalty of exclusion imposed by the Stewards can now be seen to have been disproportionate in respect of this violation, given that the breach was due wholly to the fault of Porsche Motorsport in having mistakenly transcribed the minimum weight of the rear brake discs on the homologation form. The Appellant relies on the fact that Porsche recognised its sole responsibility in this matter in a letter dated 14 October 2010 addressed to FIA, in which Porsche had stated: "*we would like to strongly point to the fact that this most unfortunate mistake happened without our customers having any influence whatsoever on it….*" The Appellant accordingly submits that no fault should be found against it.

10. The Appellant further contends that it had no intention to violate the FIA rules or to seek to obtain any performance advantage; and that the difference between the weight of the discs as fitted to the vehicle and as mistakenly homologated could not, as a matter of fact and regardless of intention, produce any increase in performance.

11. The Appellant argues that it could not reasonably have been expected to strip down a vehicle that had been delivered to it, and to weigh and measure every part in it in order to verify that it corresponds to the relevant homologation documents. Further, the Appellant had no means of knowing that a mistake had been made in the homologation process.

12. The Appellant further refers to the Decision of this Court of 14 October 2009 in Case 21/2009 which held that the FIA Regulations, must be interpreted reasonably and should not be construed as imposing an impossibility on the competitor, such as an obligation to correct an error in the homologation documentation which it could not known of.

13. In light of the above, the Appellant seeks an order that the Court should set aside the Contested Decision insofar as it pronounces a penalty of exclusion and substitutes this penalty with a financial penalty, which it submits should be in the amount of €5,000.

14. The FIA affirms that the Appellant should be held responsible for an infringement committed by its equipment manufacturer in accordance with Article 257 A of Appendix J and submits that the Court should confirm the Contested Decision in this respect.

15. However, notwithstanding its submission that the court should "strictly and firmly" have regard to that requirement, the FIA observes that the principle enshrined in this requirement "has limits imposed by common sense" and that "nobody can be required to perform the impossible."

*b) Conclusions of the Court*

16. It is common ground between the parties that the Appellant did not intentionally breach the regulations in this case and that it could not reasonably have known that it was in breach. The Appellant did not know that anything wrong had been done by anyone and it could not, as a matter of fact, therefore have done anything to put it right. The Court recognises those facts.

17. It is not suggested that the Appellant was seeking to obtain any competitive advantage. The FIA assured the Court that the measures imposed to ensure "balance of performance" for the Championship had in fact been assessed on the basis of use of the lighter discs actually used throughout the Championship season, rather than the heavier disks described on the homologation form but never in fact used, and therefore any notional performance advantage derived from having lighter disks would have been compensated for. Therefore the FIA was satisfied that no performance advantage could have arisen. The Court accordingly accepts that assurance. In response to questions asked by the Court, the FIA also offered assurances that no safety issue was at stake in this matter.

18. It is a matter of some concern to the Court that Porsche has candidly stated in its letter that the mistake which was made in the wrong weight being entered into the homologation form "cannot be explained satisfactorily". Indeed, it seems to the Court that it cannot be explained at all, although it accepts that "one possible explanation" as offered by Porsche is that an inexperienced engineer "grabbed the wrong" disc. In so far as that explanation implies that this was done in haste, and in any event with insufficient care, the Court finds that this is to be seriously regretted and should not be permitted to occur again.

19. Both parties to the appeal emphasised the need for those responsible for homologation to be reminded of the seriousness of their responsibilities. We endorse that view, but acknowledge that, as the Court's rules presently stand, it is no part of the Court's function to take any action in that regard.

20. The Court acknowledges the fairness with which the FIA has responded to this appeal. The Court also has sympathy for the submission made by the Appellant that Article 257A to Appendix J imposes in effect an absolute liability, regardless of fault. We must, however, stress that the function of this Court is to apply the rules as they are presented to us, and not to attempt to rewrite them. For the avoidance of doubt, we must emphasise that the obligation imposed on competitors to ensure that their cars comply with the relevant regulations is an absolute one. Breach of that obligation does not depend upon fault being established.

21. In the light of the history of this case, FIA accepted the explanation offered by Porsche and published what it described as an "Erratum". We believe that it was mistaken in doing so. An erratum is appropriate where it is accepted that a mistake can be corrected retrospectively. That was not appropriate in this case, where a mistake had been made but the homologation was binding until that mistake was corrected.

22. The Court is accordingly satisfied that the Stewards were correct in making the Contested Decision. Insofar as we think it right to review the penalty which they imposed, we stress that we do so in the light of information that was not, and could not have been, available to the Stewards.

23. The Court has been referred to two earlier decisions of this Court. While not strictly bound by precedent, the Court considers that it is of the essence of fairness that any sporting tribunal should be consistent in its decisions.

24. The first decision to which the Court's attention has been directed by the FIA is the decision in case ICA 21/2009 *FFSA/ Hexis Racing AMR*, dated 14 October 2009. The undisputed finding in that case was that the non-conformity with the car's homologation form had been due to failings in the homologation process for which the supplier of the Appellant in that case accepted responsibility. The competitor in that case also accepted legal responsibility for the non-compliance but contended that it was not culpable – or at fault.

25. In that case, the FIA had contended that, *"…even though it is ultimately the responsibility of the competitor to ensure that his car corresponds to the homologation form, errors in transcribing technical figures onto a form alone should not justify exclusion… where the (competitor) did not modify the parts…"*. Accordingly the Court in that case decided that the sanction of exclusion had been disproportionate and substituted a financial penalty of € 10,000.

26. The second decision to which we were referred is that in case ICA 26/2009 *Pekaracing NV*, in which the Court followed a similar approach.

27. Adopting a similar approach to the present case, as we are invited to do by both parties, this Court concludes that the sanction of exclusion should be annulled and substituted by a financial penalty.

**COSTS**

28. The Appellant having accepted its responsibility for the infringement and the fact that the Stewards' Decision was correct on the information available to them, it must be a matter for the Appellant to decide whether to seek an indemnity from Porsche for the financial consequences, including the costs. The Court considers that the Appellant should pay the costs in accordance with Article 24 of the Rules of the International Court of Appeal.

**ON THESE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL:**

1. **Declares the appeal admissible;**

2. **Confirms the Contested Decision with respect to the finding that car No. 61 of Prospeed Competition ASBL did not comply with its homologation form;**

3. **Annuls the sanction of exclusion imposed by the Contested Decision and substitutes it with a fine in the amount of 10,000 Euros upon the Appellant in accordance with Article 153 of the International Sporting Code;**

4. **Leaves it to the Sporting Authority to draw the consequences of the present decision.**

5. **Orders the Appellant to pay the costs, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 30 November 2010

**The President**