

**IN THE COURT OF ARBITRATION FOR SPORT
APPEALS DIVISION**

No. /2021

BETWEEN

Air Sport Australia Confederation

Applicant / Appellant

AND

Fédération Aéronautique Internationale

Respondent

AND

The Royal Aero Club of United Kingdom

Affected Party

AND

The Deutscher Aero Club e.V.

Affected Party

APPEAL BRIEF

In accordance with the requirements of Rule 51 of the Code of Sports-related Arbitration 2020 (**CAS Code**), the Applicant/Appellant's (**ASAC**) Appeal Brief is as follows:

RESPONDENT

1. The Respondent to this Application/Appeal is the Fédération Aéronautique Internationale (**FAI**). The FAI's formal details (including its address) are set out in paragraph 3 of the Application to the CAS dated 22 December 2021 (**CAS Application**).

AFFECTED PARTIES

2. The Royal Aero Club of United Kingdom (**GBR**) has been named in the accompanying Application and Statement of Appeal as an 'Affected party'.
3. The Deutscher Aero Club e.V. (**GER**) has been named in the accompanying Application and Statement of Appeal as an 'Affected party'.

APPEAL

4. The Appellant appeals the decision of the FAI International Appeals Tribunal Report and Decision AUS, GBR & GER Appeals 10th FAI Women World Gliding Championships dated 1 December 2021 and delivered 2 December 2021 (**the FAI Decision**)¹ on the grounds of appeal set out in Annexure B to the CAS Application. The FAI Decision arises from the participation of the Appellant and the Affected Parties in the 10th FAI Women World Gliding

¹ A1

Championships held at Lake Keepit Soaring Club, New South Wales, Australia from 4 – 17 January 2020 (**WWGC 2019**).

MATERIAL ACCOMPANYING APPELLANT’S RULE 51 APPEAL BRIEF

5. The Appellant relies on the following material which accompanies this Appeal Brief:
- (a) Annexure A: annexes a copy of the Decision and details the Rules and Regulations applicable to the WWGC 2019;
 - (b) Annexure B: annexes the Statement of Appeal; and
 - (c) Annexure C: annexes the evidence which was before the International Tribunal.

WITNESSES

6. At the present stage of the proceedings the Applicant does not propose to call any witnesses to give oral evidence at the proceeding and is content to proceed on the documentary evidence (including the transcripts) which was before the International Tribunal.

EXPERTS

7. The Applicant does not propose to call any experts in its case in-chief.

RULES AND REGULATIONS APPLICABLE AS AT THE DATE OF THE WWGC 2019

8. **Annexure ‘A’** to the CAS Appeal annexes a copy of the Decision and details the Rules and Regulations applicable to the undertaking of and participation in the WWGC 2019.
9. In its regulation of the WWGC 2019 (and also in the determination of the FAI Decision), the Respondent was required to apply such Rules and Regulations to the WWGC 2019.
10. The Applicant relies on the Rules and Regulations detailed in Annexure A as follows:

FAI Sporting Code **General Section** (Jan 2020)²

FAI Sporting Code – **Section 3: Gliding** (Oct 2019)³

FAI Sporting Code – Section 3: Gliding - **Annex A** – (Oct 2019)⁴

Local procedures – WWGC 2019 v9.1⁵

Local procedural changes

² A2 – “FAI GS” [6.2.2]

³ A3 – “FAI SC3”

⁴ A4 – “FAI SC3 Annex A” [1.4.2.1] [1.4.5.1] [Part 11] [5.4.2] [8.6.5] [4.1.1]

⁵ A5 – “LP” [4.1.1.c] [4.1.1.c.d]

Amendments to Local Procedures

11. The Local Procedures describe the operational procedures relevant to the site and complement FAI Sporting Code – Section 3: Gliding - Annex A (the **FAI SC3 Annex A**).⁶ The FAI International Tribunal correctly identified that the Local Procedures are used to implement, amend or alter the existing regulations for a particular championship.⁷
12. The WWGC 2019 organisers may issue additional rules regarding safety in the Local Procedures.⁸ In this respect, the Local Procedures specified:
 - (a) at 4.1.1.c,d additional equipment required to be carried which included FLARM, Oxygen and Emergency Locator Beacons; and
 - (b) at 4.1.2.b that gimballed compasses, turn indicators and artificial horizon devices must be removed from the sailplanes.
13. The Local Procedures also specified, at r.4.1.1.c, that the competitors would be required to carry a GNSS data transmitter for public displays.
14. Local Procedures must be approved by the IGC Bureau⁹ [r. 1.4.5.1 of FAI SC3 Annex A]¹⁰.
15. Approval of Local Procedures is a twostep process:
 - (a) The Local Procedures must be submitted to the Chief Steward (with a copy to the “Annex A Committee”) as a stand-alone document for preliminary vetting at least six months prior to the opening ceremony¹¹.
 - (b) Once preliminary vetting has been received, the Local Procedures are then sent to the IGC Bureau for approval at least 90 days before the first scheduled day of competition¹².
16. The Local Procedures were published by the WWGC 2019 organisers in October 2019 prior to commencement of the WWGC 2019 in January 2020.¹³
17. The Local Procedures may be changed during the competition. Such changes must be approved by the Chief Steward, announced at Briefing, and published on the official notice board.¹⁴
18. No changes to Local Procedures were published on the official notice board in accordance with FAI SC Annex A [r. 1.4.5.1] during the WWGC 2019.

⁶ A4 at p.77 [(a)]

⁷ A1 at p.8

⁸ A4 at p.79 [r. 1.4.2.1]

⁹ The FAI International Gliding Committee Bureau

¹⁰ A4 at p.80

¹¹ A4 at p.116 [Part 11]

¹² A4 at p.80 [r. 1.4.5.1]

¹³ C4 at p.558 [22]

¹⁴ A4 at p.80 [r. 1.4.5.1]

DOCUMENTS RELEVANT TO THE APPEAL

19. The Applicant relies on the documents included at **Annexure 'C'** in support of its Appeal.
20. No new evidence is being presented and the Applicant proposes to rely upon the evidence adduced and tendered before the FAI International Appeals Tribunal on 1 December 2021 (which was relied upon by the FAI International Appeals Tribunal in making the FAI Decision).

FACTS

21. The Applicant to this appeal is the ASAC being the Australian National Airsport Control (NAC) which is the Australian representative to the Fédération Aéronautique Internationale (FAI). The appeal is made on behalf of the Australian Team at the WWGC 2019.
22. The Applicant relies upon the evidence addressed below (in chronological order), which has been extracted from the material before the FAI International Tribunal and contained in Annexure 'C' to this Appeal.

Procedural Chronology

23. On 16 January 2020 at 1503hrs, the Competition Director notified the participants that they were aware that someone had accessed live tracking data from the official tracking system.¹⁵

16/1/20, 3:03 pm - Mandy Temple: We have just become aware that someone has accessed live tracking data from the official tracking system - during the tasks. If we discover that it was a competition team we will consider it unsporting behaviour per Section 6 of FAI Sporting Code General Section. We will continue our investigations and advise once we have identified those involved. CD

24. On 17 January 2020 at:

- (a) 0957 hrs, the Competition Director made public its initial decision.¹⁶

17/1/20, 9:57 am - Anita Taylor: The Decision

The use of the data gained illicitly is considered by us to be unsporting behaviour.

We believe the pilots were not aware of the illicit nature of the data and so will not be sanctioning the Australian Pilots. The actions available to us is to require the Australian Team Captain to make a public apology to the Organisation, the Team Captains and the IGC. Further to refer the matter to the IGC and GFA.

As discussed you have until 2pm to appeal/protest this decision.

- (b) 1127 hrs, USA, Germany, Poland, Italy, Luxembourg, Japan, UK, France and Czech Republic, lodged a complaint about the decision of the Competition Director.¹⁷

17/1/20, 11:27 am - +1 (814) 207-9014: To: Mandy Temple, WWGC Championship Director

¹⁵ C1 at p.7 [11.2] and C2 at p. 473 [Appendix 29]

¹⁶ C1 at p.9 [14] and C2 at p.474 [Appendix 29]

¹⁷ C2 at p.474 [Appendix 29]

From: Team Captains for USA, Germany, Poland, Italy, Luxembourg, Japan, UK, France, Czech Republic

Subject: Complaint regarding your decision of 17 Jan 2020 at 09:57, regarding the matter of the Australian team using GFA tracking data.

We concur with your decision that the use of data gained illicitly is unsporting behavior.

We disagree that the pilots who benefited from this information should escape sanction. The reason given for this is that you believe the pilots were not aware of the illicit nature of the data. We believe the pilots must necessarily have known that they were receiving real-time tracking data of considerable tactical value, information almost certainly not available to other teams. We further believe that a lack of knowledge of the exact sources of this data is not sufficient to avoid sanction for its use.

The use of the competitions own data by the home team in a manner and with knowledge that was not available to other teams is both unsporting behavior (as you have stated) and unquestionably brings the FAI into disrepute (reference Sporting Code General Section 6.2.2), therefore the penalties given do not reflect the gravity and scale of the offence, and the damage this has done to our sport.

- (c) 1242 hrs, the Competition Director having considered the complaint, imposed a penalty of 25 points per competition day per Australian Team Pilot.¹⁸

17/1/20, 12:42 pm - Mandy Temple: We have considered the complaint received and new information this morning and reviewed our decision. We issue a penalty of 250pts to each Australian team pilot . CD

- (d) 1433 hrs, the Australian team lodged its protest against the Competition Directors decision.¹⁹

25. On 20 January 2020, the International Jury delivered its decision in writing to uphold the decision of the Competition Director.²⁰ This International Jury decision relied on the following rules and regulations:

FAI Sporting Code General 6.2.2

Serious Infringements (including, but not limited to, dangerous or hazardous behaviour or actions) and Unsporting Behaviour (including, but not limited to, cheating or unsporting behaviour, including deliberate attempts to deceive ...

Annex A 8.6.5

The Championship Director will issue a penalty for unsporting behaviour, the size of the penalty dependent on the level of aggression and/or abuse demonstrated. The penalty imposed may be a warning, issuing of championship penalty points, day disqualification or event disqualification.

Annex A 5.4.2

Penalties may be imposed by the Organisers for unauthorized interference with the GNSS equipment, data or internal program, or Tracking equipment.

¹⁸ C2 at p.475 [Appendix 29]

¹⁹ C2 at p.179 (time note) and protest material at p.444 [Appendix 28]

²⁰ C2 at p.178 [Appendix 8]

26. On 3 April 2020, the Australian team lodged an appeal against both the Competition Directors decision and the International Jury decision, pursuant to FAI Sporting Code General Section 6.5, to the FAI Air Sports General Commission (CASI).²¹ The Applicant argued:
- (a) No published rules or Local Procedures were broken by the Australian Team members;
 - (b) Data was not gained illicitly from the G-Track Live system;
 - (c) There was no deliberate attempt to deceive, and the actions were not “unsporting”;
 - (d) No additional advantage was gained from the use of the GNSS data.
27. On 24 April 2020, the British and German teams lodged a joint appeal against both the Competition Directors decision and the International Jury decision, pursuant FAI Sporting Code General Section 6.5, to the CASI.²²
28. On 18 June 2020, the CASI appointed the International Appeals Tribunal in accordance with FAI Sporting Code General Section 6.6.2, to handle the three appeals filed against the decisions made by the International Jury of the WWGC 2019:
- (a) Appeal from AUS submitted by the Air Sport Australia Confederation (ASAC) and based on a Notice of Appeal of the Australian Team Pilots.
 - (b) Two identical appeals from GBR and GER submitted by The Royal Aero Club of United Kingdom and the Deutscher Aero Club e.V. with a common Notice of Appeal.
29. On 2 December 2021, the FAI International Appeals Tribunal delivered its Report and Decision AUS, GBR & GER Appeals 10th FAI Women World Gliding Championships dated 1 December 2021.²³
30. The FAI Decision concludes:

...

An intentional breach of the rules as outlined in the regulations in place has occurred. If there was any room for interpretation of the LP section 4.1.1.c, given the way it was written, the repeated clarification by the CD dispelled any ambiguity regarding the access to non-time delayed data from the official G-Track Live system prior to the official start of the WWGC.²⁴

The consequence of the AUS Team’s use of non-time delayed data from the official GTrack Live system during the WWGC competition flights was that the AUS Team competed in irregular conditions, which contravened the spirit of a fair competition. While all other teams competed in regular conditions the AUS Team competed under circumstances that objectively provided a potential competitive advantage in comparison to other teams, which violates the sporting principles of fair play and equal opportunities.²⁵

²¹ C2 at p.111

²² Note: the British team paid their appeal fee on 17 April 2020 and the German team paid their appeal fee on 24 April 2020.

²³ A1 at p.2

²⁴ A1 at p.9

²⁵ A1 at p.9

...

*The International Appeals Tribunal's decision is to regard all competition results of the AUS Team as ineligible because they were gained under irregular conditions, and consequently to invalidate the respective results of all Australian Team Pilots and to disqualify the latter from the WWGC 2019.*²⁶

Summary of Facts

31. The Applicant relies on the Summary of Facts version 1.1 produced by the Respondent (**the SoF**)²⁷, and used by it as the basis of its deliberations in reaching the FAI Decision, subject to the clarifications advanced below:
- (a) As to paragraphs 5.1, 5.2 and 6.1: there is no record of the meetings referred to therein and the Applicant's recollection is that the request referred to was for the continued display of un-delayed tracking not for an explanation as to why access to live tracking through G-Track Live was not possible during the competition.
 - (b) As to paragraph 8.1: when the Applicant was asked about the source of the data, the team answered honestly and was not "vague" about it.
 - (c) As to paragraph 11.3.3: the Australian Team Captain advised the CD, CDC and Steward that the G-Track Live data was displayed with weather and other information via their proprietary software.
 - (d) As to paragraph 13.2.1: this is an incorrect representation of the actual meeting referred to therein. The DCD alleged that the AUS team had "illicitly gained access" and the CD said that "hacking" had been reported. The Applicant denies both allegations.
 - (e) As to paragraph 21.4: the AUS TC was misquoted and in fact said, "*Here in Lake Keepit the other Teams use OGN and are allowed to use Private OGN*".
 - (f) As to paragraph 23.7.1: the JP did not contact NZL Jury member after his email which disagreed with the penalty that was sent to her three hours prior to the award ceremony, prior to the results being announced. The NZL Jury member did not get confirmation of the penalty decision for a further two days. He made a request to record his dissenting view.
 - (g) As to paragraph 24.4: the map referred to therein is representative of a "desired coverage area" not "actual coverage area" and a more accurate indication of coverage can be gathered by taking into account black spots as mapped by the Australian Government. The implication inherent in this statement is that the AUS pilots had access to data for the complete competition area is simply untrue.

²⁶ A1 at p.12

²⁷ C1

- (h) As to paragraph 24.7.1.1: because there are two interfaces, it is important to note that the time delay was only applicable to the public interface. The administrator interface was not time delayed.
- (i) As to paragraph 25.3.2: the Applicant objects to the use of the word “rogue” as it is incorrect, suggestive of illegality, and misleading.
- (j) As to paragraph 25.4 and all of its subparagraphs: what was discussed at IGC Plenary meetings prior to the WWGC 2019 is irrelevant to the proper interpretation of the Rules and Regulations applicable at the WWGC 2019. Furthermore, had the IGC intended to adopt those matters particularised in the SoF, then the IGC would have included same in the FAI SC3 Annex A or similar.
- (k) As to paragraph 27.6: the ground crew did not “direct” the pilots but rather provided tactical advice which is permitted under the rules.
- (l) As to paragraph 27.6.1: the matter was not raised at an AUS team briefing until there was a concern expressed by the organisers at the end of the competition.
- (m) As to paragraph 27.6.4: the matter referred to at 27.6.4.2 and 27.6.4.3 is not relevant to either the FAI Decision or the current Appeal.
- (n) As to paragraph 28.6: no evidence was placed before the Respondent to support the assertions made by TC LUX regarding the provision of information where OGN coverage was said to be zero.

Tracking in General

- 32. All competition gliders are required to have FLARM fitted and in use.²⁸ For safety reasons International Gliding Competitions require the use of FLARM in their respective Local Procedures.²⁹ Local Procedure 4.1.1.c,d (**LP 4.1.1.c.d**) mandates the installation and use of FLARM at the WWGC 2019.
- 33. FLARM is a device fitted into a glider to provide traffic awareness and collision avoidance technology. With FLARM installed, the instrument alerts the pilot of both traffic and imminent collisions with other aircraft, to enable the pilot to take action before it is too late.³⁰
- 34. FLARM was invented in 2004 following many fatal mid-air collisions between gliders to arrest the high number of mid-air collisions which represented the most common cause of fatal accidents in gliding. Now, there are over 40,000 aircraft equipped with FLARM. FLARM can

²⁸ C2 at p.191 [2]. FLARM is an anti-collision avoidance system developed for use in the sport of gliding (See: <https://flarm.com/about-us/history/>).

²⁹ C1 at p.17 [25.4.1]

³⁰ C2 at p.191 [2]

be detected by other aircraft and ground stations.³¹ Although, its primary purpose is for safety, it is increasingly used for tracking by ground stations, and advanced GPS instruments and software that displays gliders on screen for up to 30km.³²

35. FLARM allows pilots to check on 3D position and climb rate of competitors in their immediate surroundings.³³
36. Internet connected ground based FLARM receivers connected to the Open Glider Network (OGN) also allow ground crews to monitor progress of competitors and pass information to their pilots.³⁴
37. Customarily, the tactical use of tracking data obtained through OGN at International Gliding Competitions has been considered as within the rules applicable at the time of the WWGC 2019.³⁵
38. The tactical use of tracking data obtained through “Private OGN” stations (i.e. ground-based FLARM receivers not connected to the public OGN) is also considered to be within the rules.³⁶ Private OGN stations can also transmit where no or only patchy coverage is available through Public OGN.³⁷
39. During the WWGC 2019 the public information from OGN (**Public OGN**) was accessible for everyone via different web sites, including “live.glidernet.org”, “gliderradar.com” and “glideandseek.com”.³⁸ The Public OGN had a real time data range of 50-90 kms radius from the event airfield.³⁹ Daily task courses at the WWGC 2019 were set by the organisers and depending on the weather, range from 300 – 600 kilometres or more.⁴⁰ This was the evidence before the International Tribunal.
40. It is possible to set the FLARM to “no tracking” and avoid detection on the Public OGN, but even if a glider chooses not to be tracked using FLARM, it is possible that websites do not respect this option and still display the glider in question⁴¹, which is permitted under the rules.
41. The option to set “no tracking” on the OGN was only taken up by the German Team. There is also an option to set random FLARM ID which was taken up by about 50% of the pilots in

³¹ C2 at p.191 [2]

³² C1 at p.118

³³ C1 at p.16 [25.1]

³⁴ C1 at p.16 [25.2]

³⁵ C1 at p.16 [25.2.1]

³⁶ C1 at p.16 [25.3] & [26.5.2]

³⁷ C1 at p.16 [25.3.1]

³⁸ C1 at p.18 [26.1]

³⁹ C2 at p.116

⁴⁰ C2 at p.117

⁴¹ C1 at p.18 [26.3.2 & 26.3.2.3]

some classes and less in other classes (though these can be monitored and recorded manually).⁴²

GNSS

42. Global Navigation Satellite System (GNSS) Flight Recorders (FR) must be provided by competitors and installed in the competing sailplanes⁴³. The GNSS FRs mandated by FAI SC3 Annex A r.4.1.1 collect data which is used for determining the position, distance, time, and altitude of a competitor compared to the task at hand, specifically for scoring.⁴⁴
43. For scoring purposes, each pilot will designate a maximum of two GNSS FRs, by submitting a Flight Log from each FR to be used. The Flight Log must be submitted after the beginning of the training period and before 20:00 on the day before the FR will be used.⁴⁵
44. Competitors must submit a Flight Log for evaluation on each Championship Day on which a launch was made, regardless of the outcome of the flight(s). If the submitted Flight Log does not provide data from all flights made during the day, the submission of additional Flight Logs is required, for the purpose of covering all the flights made that day.⁴⁶
45. Penalties may be imposed by the Organisers for unauthorized interference with the GNSS equipment, data or internal program, or Tracking equipment.⁴⁷

G-Track Live

46. The SysAd nominated for the WWGC 2019 was Jaques Graell, the developer of the G-Track Live system.⁴⁸
47. LP 4.1.1.c required participants to carry an additional GNSS transmitter for public displays.
48. The G-Track Live system uses the on-board GNSS data receivers to obtain information of each glider equipped, and the GSM mobile telephone 3G and 4G networks for transmission of the data to a server. The data is received and available for display with very little delay, essentially in real time.⁴⁹ The GNSS transmitters do not provide 100% availability of data due to signal limitations, shielding in cockpits and battery failures⁵⁰
49. The G-Track Live system had two interfaces:

⁴² C2 at p.142

⁴³ A4 at p.88 [4.1.1] and A4 at p.92 [5.4]

⁴⁴ A2 at p.50 [8.1.2/8.1.3]

⁴⁵ A4 at p.92 [5.4(b)]

⁴⁶ A4 at p.92 [5.4(f)]

⁴⁷ A4 at p.93 [5.4.2]

⁴⁸ C1 at p.15 [24.6]

⁴⁹ C1 at p.13 [24.3]

⁵⁰ C2 at p.117

- (a) A general interface via the web address “gtracklive.com” for the public display of the data with open access (no login / password).⁵¹
- (b) An administrator interface via the web address “admin.gtracklive.com” which would typically have had restricted access requiring a login and a password.⁵² Where one is not logged in, typically a redirection to the login web page takes place in order to enter the admin credentials (username and password).⁵³
50. The password to log-on to the administrator interface had been changed for the WWGC 2019 following the advice from Matthew Gage (an Australian Team Coach and the developer of the Australian proprietary software)⁵⁴ who had also previously acted as a G-Track Live system administrator at the AUS Nationals a few weeks prior to the WWGC 2019.⁵⁵
51. The developer and WWGC 2019 SysAd (Mr Jacques Graell) failed to apply the password protection to the administrator interface during the WWGC 2019, causing the administrator site to be public.⁵⁶
52. The general interface included a monitoring page accessible at “gtracklive.com/monitor.php” which was also not password protected. This site provided the same un-delayed glider positions as accessible on the administrator interface. This page was also accessible to the public.⁵⁷
53. The Access by the AUS team was made through the administrator interface⁵⁸ but could equally have been accessed through the open public monitoring page.
54. Although G-Track Live could obtain its data from a greater distance than the Lake Keepit Club OGN, as it used the cellular telephone 3G system, the transmission of that data to the pilots was nevertheless limited by the radio range which did not cover the whole task area. The Collection of the G-Track data from the GNSS receivers was also limited by “Black (no service) spots” – see map showing this in the SoF comments.⁵⁹
55. The only evidence presented about radio range coverage is that proffered by the Applicant as being 90 kms at best (depending on heights of gliders and limited more so to the north where terrain was a greater obstruction to radio coverage).⁶⁰ Accordingly, the maximum range for any tactical advice via the VHF (which was used by the AUS Team) was necessarily limited. In

⁵¹ C1 at p.15 [24.7.1]

⁵² C1 at p.15 [24.7.2]

⁵³ C1 at p.15 [24.7.2.4]

⁵⁴ C1 at p.15 [24.7.2.1]

⁵⁵ C1 at p.16 [24.9.2.3]

⁵⁶ C1 at p.15/16 [24.8 & 24.8.1]

⁵⁷ C1 at p.16 [24.9]

⁵⁸ C1 at p.16 [24.9.2]

⁵⁹ C1 at p.42 [6]

⁶⁰ C1 at p.42 [7] and C2 at p.141 & Appendix 23 at p.387

context, the task courses were up to 600 km in total distance⁶¹ and the available task area extended approximately 350 km from Lake Keepit.⁶²

AUS Proprietary Software

56. Matthew Gage, AUS TCo, developed proprietary software to monitor the location and progress of competing gliders (including altitude and climb rates) together with continuously updated weather information (forecast and actual development) and terrain, airspace etc. for the AUS ground crew. The system allowed the viewing of all three classes of gliders on a single map. Data was extracted from various sources like Google Earth, various weather sites, Lake Keepit OGN, FlightRadar24, and the G-Track Live system.⁶³
57. The proprietary software collected tracking data from both the public OGN and the G-track trackers and maintained a database of all known tracking points. Using these, the OGN data was compared with the G-track data to identify which OGN FLARM IDs corresponded to which official trackers to identify glider, pilot and team for OGN without doing extra work. This was possible with both the live tracking and the 15 minutes delayed tracking.⁶⁴ The combination of such data and use to aid pilots during competition was not prohibited at the time.⁶⁵
58. When using the Australian visualization display during racing, the Australian coaches did not know whether the information displayed was coming from G-Track or from OGN.⁶⁶
59. A unique feature of the Australian visualization display were that it allowed all information (and classes) to be shown on a single screen and for the coaches to measure distances between gliders.⁶⁷
60. Another unique feature was a measuring device which allowed the team to accurately determine the distance between gliders and to provide a compass heading from one glider to another. What Australia had invented was a new method of displaying the publicly available data to its benefit. It was not intended to be for commercial use. For this reason, it didn't have a user manual as a commercial product would have. The way the data was sourced and interpreted was all within the rules.⁶⁸

⁶¹ C2 at p.117

⁶² A1 at p.123 [1.4.5.2]

⁶³ C1 at p.20 [27, 27.1, 27.2]

⁶⁴ C1 at p.20 [27.2.1] and C2 at Appendix 11 p.189

⁶⁵ C1 at p.20 [27.3]

⁶⁶ C1 at p.42 [8]

⁶⁷ C1 at p.42 [9]

⁶⁸ C1 at p.43 [9]

61. The Australian visualisation display used data from a number of sources. It filtered out any OGN signal that didn't also have tracking info to comply with the rule that prevents competitors using lift sources from other gliders.⁶⁹
62. The Australian visualisation display was highly accurate as it took a large quantity of data and processed it for the team's use.⁷⁰
63. During each flight, the Australian Team server collected tracking data from both the public OGN and the trackers and maintained a database of all known tracking points.⁷¹
64. The server then calculated the tactical information the team thought was useful. The monitoring display was optimised for the team's use.⁷²
65. The tactical information was compared with the various weather predictions as well as reported weather observations to more accurately predict the likely weather for the rest of the task. Ultimately, this weather element proved to be the most useful of all.⁷³
66. All of this meant that when the coaches relayed information to pilots via radio, it was accurate, useful and concise. Also, instead of what had been observed at previous competitions, the goal was to provide pilots with information from which to make their own decisions.⁷⁴
67. Data for the system came from more than one source. The server constantly looked at all of the available sources to update the database. Due to the unreliability of the organisation's trackers, the data in use was regularly supplied by the public OGN. Once out of radio range, the information from the Australian visualisation program was of no use to the pilots⁷⁵ as it could not be conveyed to the pilots.
68. One of the core pieces of information that provided a tactical advantage to the Australian team was the weather information collected and analysed by the Team Coaches (Matthew Gage was one of the Team Coaches) and integrated into the visualisation system. The team's weather data was better than that provided by the organisers due to the model that they were using. The team had analysed data from many different weather models leading up to the competition and identified the one that was more consistent during this period. This meant that they could give better advice on the impacts of sea breeze, end of day predictions and storms. This was unrelated to live tracking and was permitted under the rules.⁷⁶

⁶⁹ C2 at p.196 [Appendix 11]

⁷⁰ C2 at p.196 [Appendix 11]

⁷¹ C2 at p.196 [Appendix 11]

⁷² C2 at p.196 [Appendix 11]

⁷³ C2 at p.196 [Appendix 11]

⁷⁴ C2 at p.196 [Appendix 11]

⁷⁵ C2 at p.196 [Appendix 11]

⁷⁶ C2 at p.196 [Appendix 11]

69. Similarly, the measuring device (“the ruler”) which had been developed and used in the visualization system, proved highly effective and again the Applicant comments that it was this particular piece of technology that caused all of the “chatter” amongst other teams. This however needed no data from G Track or other OGN to operate⁷⁷ as it was based on google earth and other software inputs.
70. Use by the AUS team of weather data and the innovative measuring device was not prohibited by the applicable rules and regulations governing the operation of the WWGC 2019.

Tactical Advantage

71. The only tactical difference in usable tracking information between Lake Keepit OGN and G-Track Live tracking data is the identification information displayed.⁷⁸
72. The Australian Team ground crew were able to offer the Australian Team Pilots information from a program which brought together a mix of data from G-Track Live, OGN and weather models. The mix of this information and the coach/crew analysis of the information yielded the benefit rather than the raw data itself.
73. In addition, the pilots of all Teams had a substantial amount of valuable information available to them from their cockpit, to which the ground crew does not have access. For example:
 - (a) They can see the sky ahead, and where the energy lines (lifting air) are, where storms have been (no thermals), where storms are ahead;
 - (b) They can see where gliders ahead are climbing;
 - (c) And the FLARM display in the cockpit, originally intended for collision avoidance, is now capable of showing gliders 20-30 kilometres ahead, along with their individual climb rates;
 - (d) Once out of radio range from the Team base radio, the pilots used the more valuable information available from the cockpit as described above. The main value given by the Team base was for tactics pre-start and the Lake Keepit OGN real time tracking was the source of data for this information. Also, the Lake Keepit OGN range was almost identical to the range of the team base radio.⁷⁹

LEGAL ARGUMENTS GIVING RISE TO THE APPEAL

74. The Applicant relies on the Details of Claim found at paragraph [11] of the Statement of Appeal⁸⁰ filed on 22 December 2021.

⁷⁷ C6 at p.570 [27]

⁷⁸ C2 at p.142 – no evidence to the contrary was submitted to the FAI International Tribunal

⁷⁹ C2 at p.142/143

⁸⁰ Annexure ‘B’

75. The FAI International Tribunal was required to consider the WWGC 2019 Competition Directors (CD) decision and the International Jury (IJ) decision, each of which relied on the interpretation of Local Procedure r. 4.1.1.c (LP r.4.1.1.c) as a means of determining that the AUS team had accessed and used the GNSS data “illicitly”.

76. It is relevant to note that:

(a) the CD did not, at any stage, specify in writing the basis on which her decision was made nor justify the penalty calculation or identify the rule under which such penalty was being imposed;

(b) the IJ relied on FAI SC3 Annex A r.6.2.2 and the reference to “deliberate attempt to deceive” as the foundation of its decision, despite the dissension by one of the international jurors Mr Max Stevens who correctly informed the IJ that:

“I think the Australian Team Captain is quite correct. The inevitable result is that there can be no sanctions at all this time. This should serve as a wake-up call for the IGC to properly consider the matter of live tracking and tactical use by competitors and, if agreed by IGC delegates, change the rules via the normal plenary process.”⁸¹

...

“I think the Australian TC’s protest document contains many technically correct points that cannot be dismissed so easily by us as the Jury; particularly the definition of “unsporting behaviour” in a rules context, the alleged actions of other teams with respect to live tracking, and precedents from previous Class 1 events.”⁸²

(c) the IJ decision extracted the following statement as being attributable to Mr Stevens:

most of the points made by the Australian Team Captain were technically correct, so there should be no sanctions at all and the best outcome for future events would be for the IGC to urgently deal with the matter of competitor’s tactical use of live tracking data.⁸³

(d) the IJ decision finds that:

(i) the “monitor” page was publicly accessible but not the G-Track Live system;

(ii) the real time tracking data taken from the official tracking system with a delay of 15 minutes used for the WWGC gave the Australian Team an advantage;

(iii) the sporting issue not to share the data with the other Teams is an unfair situation and unsporting behaviour.

(e) the IJ did not conduct an investigation and did not find that the AUS team had “deliberately attempt to deceive” but did state that “Jury Members Wojciech Scigala and the Jury President believe that AUS Pilots have to take responsibility.” And the means by which it chose to cause the AUS team to take such responsibility was to find that the

⁸¹ C1 at p.45 [email from Max Stevens to the International Jury President]

⁸² C1 at p.46

⁸³ C2 at p.179

AUS conduct of not sharing its data (derived from its proprietary software) was “unsporting behaviour” pursuant to FAI SC3 r. 6.2.2 and implement the penalty pursuant to FAI SC3 r.5.4.2.

77. Based on the CD and IJ decisions and the AUS Notice of Appeal to the International Tribunal the correct questions for the FAI International Tribunal were:
- (a) whether the AUS team access and use of the GNSS data via a public website was prohibited under any of the rules and regulations applicable to the WWGC 2019;
 - (b) whether the AUS team had engaged in a “deliberate attempt to deceive”;
 - (c) whether FAI SC3 r.6.2.2 or r.5.4.2 were enlivened; and
 - (d) whether the penalty imposed was commensurate with the alleged infringement.
78. As there are no rules or regulations that prohibit the use of publicly available data for tactical advantage, the development and use of a proprietary software, or the provision of tactical advice over open air source, the AUS team can not have been found to have broken any such rules. Furthermore, as the AUS team coaches were providing such tactical advice over their designated VHF station, which was shared and monitored by multiple other competing countries, there can be no question as to the team engaging in conduct that was a “deliberate attempt to deceive”.

FIRST GROUND OF APPEAL: GNSS DATA - LOCAL PROCEDURE (4.1.1.C)

79. The Details of Claim⁸⁴ at paragraph [11(a)] erroneously refer to Local Procedure⁸⁵ section 4.2.2.c; the correct reference is Local Procedure r. 4.1.1.c.

80. Local Procedure r. 4.1.1.c (**LP 4.1.1.c**) provides as follows:

4.1.1.c Carriage of GNSS data transmitters for public displays

The organizers will require competing sailplanes to carry GNSS data transmitters to enable the public display of GNSS flight records during competition flights. Such display will not begin before the start line is opened and the actual positions of the sailplanes shall be displayed with a time delay of at least 15 minutes. This delay may be reduced to zero prior the finish.

81. LP r.4.1.1.c requires the competitors to carry a GNSS data transmitter and permits the organisers to transmit the GNSS data received, for public display purposes during competition flights. Furthermore, LP r.4.1.1.c makes it clear that such public display of the GNSS data is intended to be delayed by the organisers by 15 minutes.

82. LP r.4.1.1.c can not be read in any other way. It does not contain any prohibitions on the competitors and indeed the only obligation on the competitors is the carrying of the device that

⁸⁴ Annexure ‘B’ – Statement of Appeal

⁸⁵ A5 at p.126

the organiser requires for the purpose of publicly displaying where the gliders are located during a competition.

83. In the present circumstances, the GNSS data transmitter transmitted the GPS coordinates of a glider via 3G towers. This GNSS GPS data was then transmitted to a server and collected by the G-Track Live software. The G-Track Live software then interprets the data received and publishes it via two websites.⁸⁶
84. LP r.4.1.1.c does not regulate the G-Track Live website nor the use of the GNSS data which is publicly available.
85. If it was the case that the WWGC 2019 Organiser, the Chief Stewart of the WWGC 2019, the Annex A Committee or the IGC Bureau⁸⁷ intended that LP r.4.1.1.c should also regulate the G-Track Live website or access to and use of the publicly available GNSS data, then they had ample opportunity to amend the rule to ensure such meaning was clear. This did not occur. Accordingly, the only rational interpretation of this rule is that the organisers will have permission to publicly display the GNSS data received from the gliders in competitions and the organisers intend that the publicly displayed data shall be delayed by at least 15 minutes.
86. Crucially, what the rule does not do is prohibit the use of the GNSS data by competitors whether on a live basis or delayed basis. Indeed, no such rule or regulation exists regarding any flight tracking data whether it be GNSS, FLARM or OGN.
87. During the WWGC 2019, real time GNSS data was publicly available to all competitors in the event through the *G-Track Live* webpage (in that the real time data was at no time secured behind a password protected barrier during the currency of the event);⁸⁸
88. The Gliding Federation of Australia *G-Track Live* system developer was administering the *G-Track Live* website and access to the GNSS data at the WWGC 2019 and failed to reapply the username and password requirement to access the administrator interface “monitoring” page for this WWGC 2019. The monitoring page was also available through the general interface, again with no username or password required.
89. The Applicant had access to and did rely upon this publicly available GNSS data along with other publicly available data from OGN, FLARM and meteorological sources.
90. While multiple sources were identified as having accessed the GNSS data, it is not known which other competitors had such access. It is however clear that other teams did have access to specific tracking information. In this respect, it is worth noting that one of the Australian Team Pilots spent three days on the US Team frequency (by invitation) and heard radio

⁸⁶ See above at paragraphs [47-55]

⁸⁷ Each of which were required to consider and approve the Local Procedure prior to publication.

⁸⁸ C1 at p 11 [21.4]

announcements from the US Team base regarding the start and on-track movements of other teams without any time delay.⁸⁹ Such information can only have been provided by accessing one of GNSS, FLARM, OGN data or via transponder.

91. The Applicant was not accused of, and nor did it, interfere with the GNSS equipment, GNSS data signal or GNSS internal program. The Applicant did not unlawfully access the GNSS data through the *G-Track Live* webpage which was being publicly transmitted in real time during the WWGC 2019.
92. For the Respondent to suggest that the Applicant had in some way contravened the applicable Rules and Regulations governing the operation of the WWGC 2019 (or their ‘spirit’), which is not readily apparent on plain reading of the Rules and Regulations relied upon by the Respondent and their proper meaning, is to offend the *Quigley* principle, which has been consistently affirmed and followed by the Court of Arbitration for Sport.
93. In *Quigley v International Shooting Union (UIT)* CAS 1994/129 (23 May 1995), a case which turned on the proper construction or meaning of anti-doping rules, the CAS Panel (Mr Jan Paullson [President] and Messrs Denis Oswald and Luc Argand) stated:

‘The fight against doping is arduous, and it may require strict rules. But the rule-makers and rule appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorized bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders’.

94. The *Quigley* principle was subsequently affirmed by the CAS in *United States Olympic Committee v International Olympic Committee and Another* CAS 2004/A/725 (20 July 2005), where the CAS Panel (Mr Kaj Hober [President] and Messrs Yves Fortier CC QC and David Williams QC) declared at [72]-[73]:

‘... the principles underlying the approach adopted by the CAS in Quigley and similar cases cannot be ignored, ...

...

The rationale for requiring clarity of rules extends beyond enabling athletes in given cases to determine their conduct in such cases by reference to understandable rules. As argued by the Appellants at the hearing, clarity and predictability are required so that the entire sport community are informed of the normative system in which they live, work and compete, which requires at the very least that they be able to understand the meaning of rules and the circumstances in which those rules apply’.

95. Here, the Applicants have not breached any express rule which places a prohibition on the use of data to which they referred in the course of their participation in the WWGC 2019 or the manner in which they did so. Overall, for the Respondent to hold otherwise on the basis of

⁸⁹ C2 at p.142

certain ‘conventions’ or ‘customs’ in the sport (which are not fully articulated or proven) as being not within the ‘spirit’ of a rule or directly offending an existing rule where no such express prohibition exists, is to invite a conclusion that that the Respondent’s application of the existing rules and regulations to the Applicant’s participation in the WWGC 2019, was arbitrary, subjective or incorrect

96. The Applicants access to and use of the GNSS data, did not breach LP r.4.1.1.c or any rule or regulation applicable to the WWGC 2019 and for this reason the Appeal should be upheld and the earlier decision overturned with all points being remitted to the AUS team, which as a consequence requires a medals re-allocated as follows:
- (a) Standard Class
 - (i) 1st Sarah Arnold, USA, 7,998 points
 - (ii) 2nd Aude Grangeray, France, 7,932 points
 - (iii) 3rd Lisa Trotter, Australia, 7,643 points
 - (b) Club Class
 - (i) 1st Jo Davis, Australia, 7,928 points
 - (ii) 2nd Elena Fergnani, Italy, 7,859 points
 - (iii) 3rd Christine Grote, Germany, 7,735 points

SECOND GROUND OF APPEAL: UNSPORTING BEHAVIOUR – SECTION 3 (8.6.5)

97. The FAI International Tribunal based its decision regarding unsporting behaviour on FAI SC3 Annex A r.8.6.5⁹⁰.
98. FAI SC3 Annex A r.8.6.5 states as follows:

8.6.5 Unsporting Behaviour

a. Championship pilots and team members who demonstrate aggressive and abusive behaviour to championships Organisers and/or FAI/IGC officials will be sanctioned for unsporting behaviour.

b. The Championship Director will issue a penalty for unsporting behaviour, the size of the penalty dependent on the level of aggression and/or abuse demonstrated. The penalty imposed may be a warning, issuing of championship penalty points, day disqualification or event disqualification.

c. Other team members (Team Captains, crew and other members) who demonstrate unsporting behaviour may incur a penalty ranging from being required to make a public apology to removal from the event.

d. Very serious examples will be referred to the NAC involved and/or IGC/FAI.

[emphasis added]

99. The FAI SC3 Annex A may be amended pursuant to the FAI Sporting Code General Section (the **FAI – GS**) section 1.4⁹¹. The process for amendment is clearly specified and requires

⁹⁰ A4 at p.110

approval of the appropriate Air Sport Commission at the IGC Plenary meeting⁹². Crucially, it should be noted that the FAI SC3 Annex A cannot be amended by an event organizer, international jury or the FAI International Tribunal hearing an appeal.

100. The FAI SC3 Annex A r. 8.6.5 exclusively addresses aggressive and abusive behaviour and does not address any other form of behaviour or conduct.

101. The FAI Decision provides:

Note: FAI Sporting Code Annex A to Section 3 - Gliding (Rules for World and Continental Gliding Championships) states in 8.6.5 (Unsporting Behaviour): "Championship pilots and team members who demonstrate aggressive and abusive behaviour to championships Organisers and/or FAI/IGC officials will be sanctioned for unsporting behaviour. "The AUS appellant argued that this defines "unsporting" exclusively as aggressive and abusive behaviour. The IAT disagrees and interprets above section merely as an example of unsporting behaviour to which said section specifically applies."⁹³

102. The Applicant was not accused of, nor did it engage in, aggressive and/or abusive behaviour to the WWGC 2019 organizers and/or the FAI or International Gliding Council officials.

103. The FAI International Tribunal correctly identified that there was no specific offence covered in any of the rules referred to by the Jury President (namely, FAI SC3 Annex A sections 8.6 and 8.7 as well as FAI GS section 6.2.2).⁹⁴ Accordingly, the FAI International Tribunal has exposed its own impermissible process of reasoning which contravenes the *Quigley* principle, by attempting to stretch the operation of a rule beyond its permissible boundary of interpretation to accommodate conduct on the part of the Applicant, which the FAI International Tribunal considered to be 'unsporting' (in the general sense – presumably in breach of some unarticulated convention or custom observed in the sport), even though there is no specific provision in the applicable rules or regulations which renders the use of the data in the manner done so by the Applicants to be contrary to any specific rule or regulation or to be 'unsporting'.

104. The Applicant cannot be penalized under FAI SC3 Annex A r. 8.6.5 for unsporting behaviour and the decision must be overturned.

105. The Applicant also notes that the Jury Decision⁹⁵ relies on FAI SC3 Annex A r.5.4.2 as a means of applying the penalty, such penalty having been upheld by the FAI International Tribunal.

106. FAI SC3 Annex A r.5.4.2 provides as follows:

⁹¹ A2 at p.23 (1.4)

⁹² A3 at p.57 (1.0.3)

⁹³ A1 at p.10

⁹⁴ C1 at p.10 [21.8.1 & 21.8.2]

⁹⁵ C2 at p. 179 [Appendix 8]

5.4.2 Penalties may be imposed by the Organisers for unauthorized interference with the GNSS equipment, data or internal program, or Tracking equipment.

107. The GNSS equipment to which FAI SC3 Annex A r.5.4.2 applies is that equipment specifically provided for in FAI SC3 Annex A r.4.1.1 for the purpose of scoring. The Applicant was not accused of, nor did it interfere with the GNSS flight recorders to which r.5.4.2 applies.
108. The FAI International Tribunal has misdirected itself as to the interpretation and application of FAI SC3 Annex A r. 8.6.5 and r5.4.2 in its findings regarding unsporting behaviour of the Applicant and imposition of the penalty.
109. For the reasons outlined herein, the Appeal should be upheld and the earlier decision overturned with all points being remitted to the AUS team and medals re-allocated as outlined at paragraph [96] above.

THIRD GROUND OF APPEAL: DELIBERATE INFRINGEMENT OF FAIR-PLAY

110. The FAI International Tribunal based its decision regarding fair-play on FAI SC3 Annex A r.8.6.5⁹⁶.
111. As detailed in paragraphs [98-100] herein, FAI SC3 Annex A r.8.6.5 exclusively addresses aggressive and abusive behaviour and does not address any other form of behaviour or conduct.
112. None of the applicable Rules or Regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] contain a definition or reference to fair play, except in respect of ‘doping’. This Appeal is not a ‘doping’ case and has no similarity to such cases. Again, the *Quigley* principle is apposite under this ground of appeal, Accordingly, the principle of fair-play in the context of the WWGC 2019 are vague, arbitrary and vulnerable to the caveat of moral relativism.
113. The Australian Team was not accused of and nor did it attempt to deceive or mislead officials as to the use of the publicly available data.
114. The Australian Coaches and Captains conveyed information to the Australian Pilots via the VHF radio frequency allocated to the Australian Team as described by the Local procedures – WWGC 2019 v9.1 sections 5.3.1, such VHF frequency was accessible by, and used by, other competitors as well as the WWGC 2019 organizers.⁹⁷ To this end, both TC LUX (George SCHUIT) and TC JPN (Makoto ICHIKAWA) asked to be allowed operate on the AUS radio

⁹⁶ A4 at p.110

⁹⁷ C1 at p.6 [7.3] GBR and C1 at p.21 [28] LUX and JPN

channel, which TC AUS approved.⁹⁸ Furthermore, ground team GBR monitored the AUS radio channel from time to time throughout the whole event.⁹⁹

115. When asked by officials, the AUS team answered correctly that the data was obtained legally from a public source.
116. The Applicant submits that for the reasons outlined herein, the Appeal should be upheld and the earlier decision overturned with all points being remitted to the AUS team and medals re-allocated as outlined at paragraph [96] above.

FOURTH GROUND OF APPEAL: UNETHICAL BEHAVIOUR

117. The FAI Decision finds that the Applicants engaged in behaviour that was unethical based on a perceived infringement of the basic principle of fair-play in sports which was said to be a deliberate attempt to get a competitive advantage in a manner contrary to the best sporting ethics principles.¹⁰⁰
118. It is relevant to note that:
 - (a) there was no evidence before the FAI International Tribunal as to what constitutes ethical conduct.
 - (b) there was no specific standard as to applicable ethical conduct in the context of the WWGC 2019 expressly articulated in the rules and regulations; and
 - (c) no specific ethical standard to which competitors in the WWGC 2019 were obliged to adhere to, was expressly declared by the WWGC 2019 organizers prior to, or during, the currency of the WWGC 2019.
119. Consequently, the only reference for competitors, organisers and the FAI International Tribunal is the FAI Code of Ethics¹⁰¹ which it is submitted was in the circumstances unhelpfully general and insufficiently specific and as such, in its application to the WWGC 2019 (in the circumstances surrounding the allegations made against the Applicant) was vague, arbitrary and vulnerable to the caveat of moral relativism. Again, such findings on the part of the Respondent are offensive to the *Quigley* principle.
120. As is detailed in paragraphs [56]-[69] the Applicant used a combination of public OGN data, publicly available GNSS data, publicly available meteorological data and independently entered data in a proprietary software program designed and built by one of the Australian Team Coaches to provide tactical advice, via a public VHF radio frequency specified in the Local procedures – WWGC 2019 v9.1 sections 5.3.1, to the Australian Pilots.

⁹⁸ C1 at p.20 [28]

⁹⁹ C1 at p.6 [7.3]

¹⁰⁰ C1 at p.9

¹⁰¹ C11

121. This VHF radio frequency was regularly monitored by other teams throughout the whole event.¹⁰²
122. The provision of tactical advice by Coaches to Pilots is not prohibited under the rules and regulations applicable to the WWGC 2019.
123. The use of proprietary software for the analysis of publicly available source data is not prohibited under the rules and regulations applicable to the WWGC 2019.
124. The Applicant did not engage in any unethical conduct.
125. For the reasons outlined herein, the Appeal should be upheld and the earlier decision overturned with all points being remitted to the AUS team and medals re-allocated as outlined at paragraph [96] above.

FIFTH GROUND OF APPEAL: IRREGULAR CONDITIONS

126. The FAI Decision found that the Applicants competed in irregular conditions which contravened the spirit of a fair competition on the basis that it had accessed publicly available data and used it within their proprietary system.
127. The applicable rules and regulations governing participation at the WWGC 2019 do not prevent the Applicant from relying upon publicly available data or creating proprietary software to interpret such data to optimize the tactical advice provided to the AUS pilots.
128. The Applicant's use of the publicly available GNSS data did not cause or create irregular conditions which contravened the spirit of a fair competition because such data was collected and combined with other open source public data in the proprietary software such that it was but one data source.
129. Further and once more, the *Quigley* problem confronts the Respondent. Nowhere in the applicable rules and regulations is the 'spirit of a fair competition' defined. The arbitrary nature in which this provision was engaged by the Respondent is apparent by posing the rhetorical question "What is 'fair competition'?" Answers amongst competitors are likely to produce a result which reveals a relativism or grey area between gamesmanship/competitive conduct or advantage and cheating. Undefined, the search for meaning of the term 'fair competition' is highly likely to produce an answer of the Quigley kind, that being, a 'thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders'.
130. For the reasons outlined herein, the Appeal should be upheld and the earlier decision overturned with all points being remitted to the AUS team and medals re-allocated as outlined at paragraph [96] above.

¹⁰² *Ibid* at paragraph [114] and *Supra notes*. [97,98,99]

SIXTH GROUND OF APPEAL: COMPETITIVE ADVANTAGE

131. The FAI Decision found that the Applicant gained a competitive advantage over other competitors through the use of the publicly available GNSS data which was fed into the proprietary software.
132. There is no specific rule applicable to the operation of the WWGC 2019 which prevents competitors from obtaining a competitive advantage. Unless the competitive advantage is unfair and the unfairness is defined with precision within the applicable rules and regulations, the concept that a competitor is not permitted to obtain a competitive advantage in a sporting competition is non-sensical.
133. The FAI International Tribunal erred in finding that such (presumably unfair) competitive advantage exists from access to the GNSS data because once the data is fed into the proprietary software, it is not possible for the operator to determine the source of such data. The publicly available GNSS data is only one source of data used in the proprietary software and is harmonized with other publicly available data.
134. The Applicant used a combination of public OGN data, publicly available GNSS data, publicly available meteorological data and independently entered data in a proprietary software program designed and built by one of the Australian Team Coaches.
135. The Australian Team did not gain an unfair competitive advantage from the use of the publicly available GNSS data. The tactical advantage came from having the foresight to develop proprietary software that was able to provide highly accurate tactical information, which would also have been able to operate on the time delayed data.
136. For the Respondent to hold that the Applicant obtained an unfair competitive advantage (which is not precisely defined under its rules and regulations as at the time of the WWGC 2019), based on the arbitrary determination of what is 'unfair' in the circumstances, once more highlights the Respondent's problematic engagement with the *Quigley* principle.
137. For the reasons outlined herein, the Appeal should be upheld and the earlier decision overturned with all points being remitted to the AUS team and medals re-allocated as outlined at paragraph [96] above.

SEVENTH GROUND OF APPEAL: BAD FAITH

138. The FAI Decision found that the Applicant acted in bad faith by accessing the publicly available GNSS data.
139. The allegation that a competitor acted in bad faith is a particularly serious one and is an allegation which should be approached and considered with caution.
140. No properly particularised allegation (ie. specific facts alleged and how this specific conduct contravened a specific rule or regulation) was ever put to the Applicant. The Applicant never had a fair or proper opportunity to respond to such an allegation because it was never properly

put to the Applicant and furthermore, there is no specific rule or regulation which describes what ‘bad faith’ is. Again, the Respondent’s finding that the Applicant acted in ‘bad faith’ in such circumstances reveals an impermissible application of its rules and regulations of the *Quigley* kind.

141. For the reasons outlined herein, the Appeal also should be upheld and the earlier decision overturned with all points being remitted to the AUS team and medals re-allocated as outlined at paragraph [96] above.

EIGHTH GROUND OF APPEAL: WHETHER THE AUSTRALIAN TEAM WAS ACTING WITHIN THE RULES

142. In the FAI Decision, the International Tribunal failed to properly consider whether the Australian Team was acting within the rules.

143. The applicable rules and regulations governing participation at the WWGC 2019 do not prevent the Applicant from relying upon:

- (a) the GNSS data;
- (b) the OGN data;
- (c) the FLARM data;
- (d) publicly available meteorological data;
- (e) proprietary software to consolidate and interpret the data obtained from public sources.

144. The applicable rules and regulations do not prevent Team Coaches from providing tactical advice based on any and all publicly available data.

145. The applicable rules and regulations governing participation at the WWGC 2019 were not varied or altered at the WWGC 2019.

146. Had the International Tribunal properly considered whether or not the Applicant was acting in accordance with the rules and regulations applicable to the operation of the WWGC 2019, it would have found that on a proper construction and application of such rules and regulations that the Applicant had in fact done so and as such would not have found that the Applicant had breached the rules and regulations applicable to the operation of the WWGC 2019, in the manner in which it did.

147. Accordingly, the Appeal should be upheld and the earlier decision overturned with all points being remitted to the AUS team and medals re-allocated as outlined at paragraph [96] above.

NINTH GROUND OF APPEAL: USE OF PUBLICLY AVAILABLE DATA

148. The FAI Decision found that there was a rule (LP r.4.1.1.c) which prevented competitors using real time GNSS data when it was publicly available.

149. The Applicant refers to and relies on paragraphs [79]-[116] herein.

150. The applicable rules and regulations governing participation at the WWGC 2019 do not prevent the Applicant from relying upon:
- (a) the GNSS data;
 - (b) the OGN data;
 - (c) the FLARM data;
 - (d) publicly available meteorological data;
 - (e) proprietary software to consolidate and interpret the data obtained from public sources.
151. For the reasons outlined herein, the Appeal should be upheld and the earlier decision overturned with all points being remitted to the AUS team and medals re-allocated as outlined at paragraph [96] above.

TENTH GROUND OF APPEAL: ERROR OF LAW

152. In the FAI Decision, the International Tribunal erred in relation to the method and mode of clarification or variation to the Local Procedures during the competition.
153. The FAI International Tribunal relied on purported oral clarification by the Competition Director at two Team Captains meetings at the WWGC 2019 as justification for interpretation of LP r.4.1.1.c regarding GNSS data.
154. The applicable rules and regulations governing participation at the WWGC 2019 do not permit oral clarifications at official briefings or Team Captains meetings as a means of varying the Local Procedure, specifically [FAI Sporting Code Section 3 – Gliding - Annex A sections 1.4.5.1 and 5.2(c)].
155. The Respondent's Competition Director did not publish a written variation of the Local procedures – WWGC 2019 v9.1, which clearly expressed the precise terms of the variation together with consequences for non-compliance, which permitted all competitors to participate in the WWGC 2019 with a clear understanding of the variation. Accordingly, no changes were made to the Local Procedure.
156. On this ground too, the Appeal should be upheld and the earlier decision overturned with all points being remitted to the AUS team and medals re-allocated as outlined at paragraph [96] above.

ELEVENTH GROUND OF APPEAL: COMPARISON TO DOPING

157. The International Tribunal misdirected themselves that the perceived advantage gained by the Australian Team was comparable to doping.
158. First, there is no express provision under the rules and regulations applicable to the WWGC 2019 which permits such a comparison. And second, there was no evidence led before the panel

as to nature of doping so as to compare doping behaviour to the use of publicly available data (available to all competitors) in the course of participating in the WWGC 2019.

159. There are no comparisons in the current case to those of doping cases and the FAI International Tribunal was misguided in thinking that there were any such comparisons.
160. Such a comparison suggests that the FAI International Tribunal took into account an irrelevant consideration in reaching the findings it did in the FAI Decision (and in doing so, impaired such findings).
161. for the reasons outlined herein, the Appeal should be upheld and the earlier decision overturned with all points being remitted to the AUS team and medals re-allocated as outlined at paragraph [96] above.

PENALTY

162. In the event that the Applicant is not successful in the Appeal, it says that the penalty imposed was manifestly excessive and not commensurate with the infringement alleged.
163. The IGC Steward Report identifies the penalty issues as follows:

The problem which occurred was that the current rules were not sufficient enough to punish according [to] specific unsportive behaviour rules.¹⁰³

164. Whilst no reasoning was provided by the CD to the Applicants regarding calculation of the penalty, the CD and CS is said to have reasoned that *“if on average the technology had gained each pilot information about one extra thermal per day it would equate to 25 points of performance.”¹⁰⁴*
165. By way of comparison, the penalty for dangerous flying is less than half of what was imposed for the alleged unsporting behaviour being the failure to share the data accessed with other teams.
166. Dangerous flying is an action by a pilot that is reasonably expected to increase the risk of, or result in, a fatality:
 - (a) 11th JWGC, Szeged/Hungary, competition pilot received 100pt penalty after being convicted of dangerous flying. Verified evidence of cloud flying (which is prohibited) was submitted;¹⁰⁵ and

¹⁰³ C2 at p. 152 [Appendix 1]

¹⁰⁴ C1 at p10 [18.2] and at 22.2.2 there is an expansion of this explanation by the FAI International Tribunal to refer to penalties for airspace infringements. Neither of these explanations feature in any of the prior or subsequent decisions including the decision herein appealed.

¹⁰⁵ https://www.soaringspot.com/en_gb/11th-fajunior-world-gliding-championships-szeged-2019/results/club/task-4-on-2019-08-01/daily

- (b) 10th FAI Women's World Gliding Championship, competing pilot received 100pt penalty after being convicted of dangerous flying. Verified evidence of intentional close proximity incursion requiring evasive action was submitted.¹⁰⁶
167. A search of all known penalties, competition reports and results indicate that the penalty of Unsporting Behaviour has not been issued in gliding prior to this event.
168. Penalties issued of the scale and magnitude applied to the Australian Team Pilots are typically for variable actions of dangerous flying. In each case, the penalty resulted is less than half of that applied to each Australian Pilot.
169. Access to tracking data has been available since the adoption of FLARM (circa 2004). The access and adoption of this technology has not been consistent between International teams during this history. At no point in the past has an International team been penalised for having access to a perceived technological advantage.
170. A considerable number of penalties have been issued in recent competitions for pilots turning off, or not having their trackers available and visible. This penalty has typically been a warning and up to 10 points per occurrence.
171. Therefore, the penalty of 225 points applied for the use of tactical tracking data is substantially more than was imposed at the same competition for dangerous flying. Further, at no point has a penalty been imposed for the use of technology to date.
172. In the event that the Appeal is not upheld, the Applicant seeks a review of the penalty and reduction in same to 25 points in total for each member of the AUS team.

P. J. HAYES

K. J. McINTYRE

Counsel for the Applicant / Appellant

Dated: 22 December 2021

Mullins Lawyers

Solicitors for the Applicant / Appellant

¹⁰⁶ https://www.soaringspot.com/en_gb/10th-fai-womens-world-glidingchampionship-lake-keepit-2020/results/standard/task-1-on-2020-01-04/daily