

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

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeals brought by  
The Royal Automobile Club Motor Sports Association Ltd (MSA)  
on behalf of its licence-holder Chevrolet World Touring Car Team  
against Decisions No. 1 and 2 taken by the Panel of Stewards  
on 30 October 2010 concerning the event run at Okayama (Japan), and  
counting towards the FIA World Touring Car Championship 2010**

**Joined Cases 4/2010 and 5/2010**

**Hearing of Friday 12 November 2010 in Paris**

The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr Harry Duijm (Netherlands), who was elected President, Mr Vassilis Koussis (Greece), Mr Laurent Anselmi (Monaco), and Mr Patrick Raedersdorf (Switzerland), met in Paris on Friday 12 November 2010 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeals brought by The Royal Automobile Club Motor Sports Association Ltd (MSA) on behalf of its licence-holder Chevrolet World Touring Car Team (the “Appellant”) against Decisions No. 1 and 2 taken by the Panel of Stewards on 30 October 2010, confirming the eligibility of Cars No. 10 (driver Augusto Farfus) and No. 11 (driver Andy Priaulx), both of BMW Team RBM, to participate in the event run at Okayama (Japan) and counting towards the FIA World Touring Car Championship 2010 (the “WTCC”), the Court has heard the statements and examined the arguments of the MSA, Chevrolet World Touring Car Team, the Royal Automobile Club of Belgium (“RACB”), BMW Team RBM, Bamboo Engineering, SCT (SEAT), and the FIA.

Attending the above hearing were:

on behalf of the MSA/ Chevrolet World Touring Car Team:

Mr Simon Taylor (Legal representative)  
Mr Eric Neve (Manager Motorsports Chevrolet Europe)  
Mr Mark Way (Chief Designer Chevrolet WTCT)

on behalf of the FIA:

Mr Pierre Ketterer (Legal representative)  
Mr Jacques Berger (Head of Technical Department)

on behalf of RACB:

Mr Geoffroy Theunis (Director General, RACB Sport)  
Me Gérard Martin (Legal Rapporteur, RACB Sport)

on behalf of BMW Team RBM:

Mr Jamie Champkin (Legal representative)  
Mr Bart Mampaey (Team Manager)

on behalf of MSA/Bamboo Engineering:

Mr Simon Taylor (Legal representative)  
Mr Richard Coleman (Team Manager)

on behalf of SCT (SEAT):

Mr Antonio Rodriguez (Team Manager)  
Mr Jaime Puig (Sport Manager)

The parties presented written submissions and, at the hearing of 12 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 or any part of the conduct of the hearing was raised by anyone.

## **REMINDER OF THE FACTS**

1. Cars No. 10 and 11 belonging to competitor BMW Team RBM, which had previously been competing in the 2010 WTCC using a five-speed gearbox homologated under car model “BMW E90 320 Si (A-5969)”, participated in the event run at Okayama (the “Event”) using a six-speed sequential gearbox, referred to as model “BMW E90 320 Si GBS (A-5969)”.
2. At the Event, the FIA Technical Delegate issued Report No. 9 of 30 October 2010, finding that the gearboxes of cars No. 10 and 11 were not properly homologated.
3. The Stewards of the Meeting, having heard representations from BMW Team RBM and the FIA Technical Delegate, decided in Decisions No. 1 and No. 2 respectively on 30 October 2010 to confirm that cars No. 10 and 11 were eligible to take part in the Event (the “Contested Decisions”).

## **PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES**

4. The Appellant lodged an appeal with the Secretariat of the ICA on 2 November 2010.
5. In its Grounds of Appeal, the Appellant requests the Court to:
  - allow its appeal;
  - annul the Contested Decisions;
  - exclude cars No. 10 and 11 of BMW Team RBM from the Event;
  - amend the results of the Event accordingly and exclude the points scored by cars No. 10 and 11;
  - rule that no account must be given to the amended results for the Event for the purposes of calculating the compensation weight for the BMW Team RBM cars which are to be raced in the final event of the WTCC at Macau by drivers Farfus and Priaulx.

6. The FIA, in its Defence dated 10 November 2010, requests the Court to:
- allow the appeal as well-founded;
  - quash the Contested Decisions;
  - declare that cars No. 10 and 11 are not in compliance with the Technical Regulations applicable to the WTCC and exclude them from the Event.

## **ON THE PROCEDURE**

### **Admissibility**

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

### **Applications By Affected Parties To Be Heard**

8. Pursuant to Article 21 of the ICA Rules of Procedure, the Court may hear any competitor in a major FIA Championship who so requests and who could be directly and significantly affected by the decision to be taken. The 2010 WTCC is such a major Championship.
9. The Court received applications to be heard in the present case from BMW Team RBM (“RBM”), Bamboo Engineering and SCT (SEAT). As the Court’s decision is likely to directly and significantly affect the mentioned teams, they were granted the right to be heard.
10. Bamboo Engineering and SCT (SEAT) accordingly submitted memoranda in intervention in support of the Appellant. RBM submitted a memorandum in intervention opposing the Appellant’s submissions and requesting the Court to confirm the Contested Decisions.

### **Rights of the Parties**

11. The Court takes note of the fact that RBM did not receive formal service of the FIA’s Defence in due time before the hearing. RBM, however, acknowledged that it obtained this document through other means and had the opportunity to examine it before the hearing. The Court therefore finds that RBM’s rights were not materially prejudiced by the delay.

12. The Court, having obtained the agreement of all the parties and using its discretion under Article 21 ICA Rules of Procedure, granted a request by RBM to submit additional written evidence during the hearing and this evidence was duly taken into account in addition to the other pleadings and documents exchanged.

## **ON THE SUBSTANCE**

### **The homologation granted by the FIA was limited to driver Alex Zanardi only**

#### *13. Arguments of the parties*

14. The Appellant submits that the Stewards acted in error in deciding to overrule the Technical Delegate's Report of 30 October 2010 and in confirming the eligibility of cars No. 10 and 11.
15. The Appellant acknowledges that the sequential gearbox used by RBM features in the list of homologated models at Appendix 1(B) to the 2010 WTCC Sporting Regulations. This list serves as a basis for calculating the compensation weights to be applied to the cars competing in the 2010 WTCC, in accordance with Article 79 of the Sporting Regulations. The Appellant argues that this list must be understood in the context of a series of previous decisions by the TC Committee (formerly TC Bureau) dated 24 February 2009, 26 February 2009, 5 March 2009, and 24 February 2010, and in the context of the list of homologation renewals for 2010 drawn up by the TC Committee on 21 December 2009. The Appellant claims that these documents all demonstrate that "BMW E90 320 Si GBS (A-5969)" is not a general homologation, but is a limited homologation granted in respect of the disabled racing driver Alex Zanardi only, in order to enable him to participate in the WTCC. As a consequence, according to the Appellant, no other driver or team may use this model.
16. The Appellant supports this interpretation by referring, inter alia, to an explanatory e-mail sent on 26 October 2010 by Ms Trouvé from the TC Committee Secretariat, stating that the sequential gearbox "has been authorised in 2010 for the BMW 320si A5659, used for Zanardi only considering his disability" and referring to the afore-mentioned TC Committee decisions.
17. The Appellant also notes that a request submitted on 28 February 2010 by West Surrey Racing Ltd to the TC Committee to use the sequential gearbox was refused by the TC Committee on the basis that this gearbox was "not homologated by the manufacturer (except for Zanardi)".
18. The FIA, Bamboo Engineering and SCT (SEAT) support the interpretation of the Appellant.

19. The RACB and RBM, however, claim that Appendix 1(B) makes no mention of Mr Zanardi. It therefore does not create any limitation on the identity of the competitors who are authorised to race using this sequential gearbox model. Consequently, there was no reason for preventing RBM from using BMW E90 320 Si GBS (A-5969) for drivers Priaulx and Farfus. The RACB notes that one should not seek to interpret a regulation in the light of other documents, where the regulation is clear in and of itself.
20. RBM further notes that the TC Committee decisions which the Appellant refers to and which specifically mention Alex Zanardi, are of no relevance to the 2010 WTCC as they relate to previous years.
21. RBM also argues that the e-mail of 26 October 2010 by Ms Trouvé was not the result of a TC Committee meeting which had authorised this communication and therefore did not represent the official view of the TC Committee. Moreover, RBM claims that the content of this e-mail amounts to a breach of the ISC Articles 66 and 199(b)(i) and (d), as it contradicts the published 2010 WTCC Regulations.
22. With respect to the homologation request by West Surrey Racing Ltd, RBM responds that its refusal by the TC Committee is irrelevant to the present case, as the gear ratios and final drive ratios of the gearbox proposed by West Surrey Racing Ltd were very different from the Zanardi Variant Option.
23. The RACB and RBM therefore conclude that the Contested Decisions should be confirmed.

*b) Conclusions of the Court*

24. The Court notes that Art. 263-8.1 of Annexe J of the International Sporting Code identifies “authorised gearboxes” as gearboxes which have been homologated and therefore only homologated gearboxes could be used during the Event,
25. The Court finds that while Appendix 1(B) to the 2010 WTCC Sporting Regulations identifies “BMW E90 320 Si GBS (A-5969)” in the list of cars that have been homologated, without any mention of Mr. Zanardi, this list records homologation decisions, but is not itself an homologation decision. Homologation can only be granted by the TC Committee, which is a body mandated by the World Motor Sport Council to deal with the application of the sporting, technical and homologation regulations, and is evidenced by an homologation fiche. The list at Appendix 1 thus lists the decisions that have been taken, but –self evidently - does not itself define the terms or details of those decisions. The terms and details of those decisions may only be understood by reference to the actual homologation decision taken by the TC Committee.
26. In the case of “BMW E90 320 Si GBS (A-5969)”, the Court finds that actual homologation for the 2010 WTCC was granted by the TC Committee at its

meeting of 21 December 2009, which renewed for the year 2010 the homologation previously granted for this model by TC Committee Decision No. 13 of 5 March 2009. This renewal expressly refers to the “Zanardi car waiver”. Moreover, the Homologation Extension Form accompanying the original Decision No. 13 expressly states that it is given in response to an “application for Alex Zanardi”.

27. Therefore, the Court rules that the homologation on which RBM attempted to rely was not a general homologation, but was a special waiver granted for the benefit of one particular driver in view of his disability.
28. The Court finds that in order to lawfully use the sequential gearbox for any driver other than Mr Zanardi, RBM should have applied for homologation to the TC Committee. RBM did not adduce any evidence of such an homologation, and did not dispute at the hearing that it had not made such an homologation request. Consequently, the Court holds that the Technical Delegate was correct in finding that cars No. 10 and 11 were equipped with non-homologated gearboxes, and that the Stewards should have declared the cars to be ineligible for participation in the Event.

### **The powers of the Stewards of the Meeting**

#### *a) Arguments of the parties*

29. The Appellant argues that no provision or regulation permits gearboxes which are not homologated to be used in the WTCC. The Stewards of the Meeting do not have the power to set aside the Technical or Sporting Regulations, nor to grant or refuse homologation (which is the remit of the TC Committee only). The Appellant concludes that the Stewards therefore did not have the power to make the Contested Decisions, which allow non-homologated cars to participate in the Event.
30. The Appellant further refers to a letter sent by the Chairman of the Stewards (Mr Yves Bacquelaine) to RBM prior to the Event, appearing to confirm the right of RBM to use the sequential gearbox in the WTCC 2010. The Appellant submits that this correspondence could only constitute the personal opinion of Mr Bacquelaine, rather than a decision taken by him in his formal capacity of Steward under the ISC. The Appellant argues that the authority of the Stewards only arises in respect of the meeting for which they are appointed (in this case, the Okayama Event). Furthermore, formal Stewards’ decisions are recorded with a number, time and date, and are publicly posted for all competitors to see, in order to allow any protests or appeals. None of these criteria applied to this letter which appeared to be bilateral correspondence between RBM and the Chairman of the Stewards.

31. The FIA argued that this letter was sent by Mr Bacquelaine outside of the procedure established under the ISC and the WTCC Regulations, and therefore cannot have the legal value of a Steward's decision. The FIA therefore invites the Court not to take this document into account in deciding on the conformity of the cars.
32. SCT (SEAT) supports the Appellant's submissions and notes that the Stewards do not have the power to change the Regulations by taking a decision which purports to authorise the use of non-homologated car parts.
33. Bamboo Engineering expressed particular concern at the existence of informal communications between the Chairman of the Stewards and a competitor regarding the eligibility of a car outside the knowledge of other competitors and without giving others a possibility to protest or appeal.
34. The RACB and RBM, however, argue that by virtue of Article 141 of the ISC and Article 46 of the 2010 WTCC Regulations, the Stewards of the Meeting have supreme authority for the enforcement of the 2010 WTCC Regulations. The Stewards therefore had every right to overturn the Technical Delegate's report and even to overrule a decision by the TC Committee.
35. RBM further argues that it is entirely proper for any competitor to approach the Stewards for either clarification or confirmation of any situation arising under the Regulations, whether applicable to a Championship or to a particular event.
36. Finally, RBM argues that regard must be had to fairness. It notes that other teams, including Team Engstler, have been allowed to use a sequential gearbox at least at the last three events and during the Okayama Event. The fact that no appeal was made against these teams should not give rise to unequal treatment of RBM.

*b) Conclusions of the Court*

37. The Court confirms that the Stewards of a Meeting have broad powers to enforce the applicable Regulations during an event. However, they do not have the capacity to change the Regulations save in the exceptional circumstances described in Articles 66 and 141 of the ISC, which can otherwise only be amended by the World Motor Sport Council, or to take decisions contrary to the Regulations. Nor do they have the capacity to make decisions on homologation, which is the remit of the TC Committee which has been mandated by the World Motor Sport Council for this purpose.
38. As a consequence, the Stewards could not validly take a decision contrary to the rules set out in the ISC and the WTCC Regulations. By allowing cars No. 10 and 11 to participate in the Event with car parts that were not the subject of a proper homologation, the Contested Decisions were contrary to the ISC and the WTCC Regulations, and must therefore be overturned.



39. Furthermore, the Stewards' power of decision is limited to the decisions foreseen by the Regulations, and the Regulations do not provide for communications given outside of the formal decision-making processes to have any legal force. Therefore the Court takes no account of any advice that may have been issued by Mr Bacquelaine to RBM.
40. The Court further notes that it may rule only on the cases before it and therefore cannot rule on whether any other competitor may have used non-homologated gearboxes at the Event. Even if other breaches of the Regulations have occurred, this would provide no justification for further breaches.

**ON THESE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. Declares the appeal admissible;**
- 2. Annuls the Contested Decisions;**
- 3. Excludes cars No. 10 and 11 from the results of the Event;**
- 4. Orders that, with regard to the event to be held in Macau (China) on 21 November 2010, any compensation weight to be attributed to cars No. 10 and 11 in accordance with Article 79 of the WTCC Sporting Regulations, be calculated on the basis of their results during the three events preceding the Event run at Okayama;**
- 5. Orders the Defendant to pay the costs, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 12 November 2010

**The President**