

CAS 2019/A/6298 Manchester City FC v. UEFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Manfred **Nan**, Attorney-at-Law, Arnhem, the Netherlands
Arbitrators: Mr Andrew de Lotbinière **McDougall**, Attorney-at-Law, Paris, France
Mr Ulrich **Haas**, Professor of Law, Zurich, Switzerland
Ad hoc Clerk: Mr Dennis **Koolaard**, Attorney-at-Law, Arnhem, the Netherlands

in the arbitration between

Manchester City Football Club Limited, Manchester, United Kingdom

Represented by Mr Paul Harris QC, Barrister, Monckton Chambers, London, United Kingdom, Mr Rhodri Thomas and Ms Natalie Sheehan, Solicitors, Freshfields Bruckhaus Deringer LLP, London, United Kingdom, Mr Jean-Cédric Michel and Mr Massimiliano Maestretti, Attorneys-at-Law, Kellerhals Carrard, Lugano, Switzerland

as Appellant

and

Union des Associations Européennes de Football (UEFA), Nyon, Switzerland

Represented by Dr Jan Kleiner and Mr Luca Tarzia, Attorneys-at-Law, Bär & Karrer AG, Zurich, Switzerland

as Respondent

* * * * *

I. PARTIES

1. Manchester City Football Club Limited (the “Appellant” or “MCFC”) is a professional football club with its registered office in Manchester, United Kingdom. MCFC is registered with The Football Association (the “FA”), which in turn is affiliated to the Union des Associations Européennes de Football.
2. The Union des Associations Européennes de Football (the “Respondent” or “UEFA”) is an association under Swiss law and has its registered office in Nyon, Switzerland. UEFA is the governing body of football at the European level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.
3. MCFC and UEFA are hereinafter jointly referred to as the “Parties”.

II. INTRODUCTION

4. The present appeal arbitration proceedings concern a dispute between the Parties related to UEFA’s Club Licensing and Financial Fair Play Regulations (the “UEFA CL&FFPR”). The Chief Investigator of the Investigatory Chamber of the UEFA Club Financial Control Body (the “Investigatory Chamber” or “IC”) decided to “*refer the present case of Manchester City Football club to the [Adjudicatory Chamber of the UEFA Club Financial Control Body – the “Adjudicatory Chamber” or “AC”]*” (the “Referral Decision”). The Investigatory Chamber also refused to grant the Club’s request to suspend the investigation of the Club “*in order to conduct an enquiry into the repeated leaking of confidential information about the [investigation] to the media*” (referred to by MCFC as the “Leaks Decision”). The Appellant is challenging both the Referral Decision as well as the Leaks Decision.

III. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings including at the hearing. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Proceedings before the Investigatory Chamber as to the Referral Decision

6. On 16 May 2014, following an investigation opened on 11 February 2014 into perceived breaches by MCFC of the UEFA CL&FFPR, UEFA and MCFC entered into a settlement agreement (the “Settlement Agreement”), which, *inter alia*, specifies that MCFC did not admit to be in breach of the UEFA CL&FFPR.
7. Between 2 and 16 November 2018, several articles were published by *Der Spiegel*, *Reuters* and *Mediapart* about MCFC (the so-called “Football Leaks”).

8. On 10 December 2018, the Chief Investigator of the Investigatory Chamber wrote to MCFC about these “Football Leaks”, attaching extracts of publications and inviting MCFC to comment on the accuracy thereof.
9. On 7 March 2019, following the exchange of various correspondences between the Investigatory Chamber and MCFC, the Investigatory Chamber notified MCFC that “*further to our letters for your attention dated 14 and 19 February 2019, your club’s response dated 1st March 2019 and subsequent information and documents recently made public in various media outlets, an investigation is hereby formally opened in accordance with Article 12 (2) of the Procedural rules governing the UEFA Club Financial Control Body – Edition 2015 [the “CFCB Procedural Rules”]*” (the “Investigation”).
10. On 28 March and 11 April 2019 respectively, hearings took place before the Investigatory Chamber.
11. On 15 May 2019, the Investigatory Chamber issued the Referral Decision. The Referral Decision contains the following conclusions in respect of the recommended sanction and the following operative part:

“[...].”

B. Proceedings before the Investigatory Chamber as to the Leaks Decision

12. On 13 May 2019, before the Referral Decision was issued, the newspaper *The New York Times* published an article entitled “*UEFA Investigators Set to Seek Manchester City’s Ban From Champions League*”, [...].
13. On 14 May 2019, MCFC wrote to the Investigatory Chamber about the First Leak indicating, *inter alia*, that “*the processes of the [Investigatory Chamber] should be paused forthwith pending investigation given the process is now contaminated and the [Investigatory Chamber’s] independence compromised*”.
14. Also on 14 May 2019, the *Associated Press* published a further article entitled “*Man City facing 1-season ban from Champions League*”, which article, according to MCFC, contained more information than in *The New York Times* article, confirming that it was a separate and further leak (the “Second Leak”). [...].
15. On 15 May 2019, before the Referral Decision was issued, MCFC wrote to the Investigatory Chamber about the Second Leak, *inter alia*, requesting that the Investigatory Chamber pause the Investigation to investigate the leaking of information by the Investigatory Chamber.
16. The Investigatory Chamber did not respond to MCFC’s requests at that time and issued the Referral Decision in the evening of 15 May 2019.
17. On 16 May 2019, MCFC wrote to the Investigatory Chamber again about the First and Second Leaks.

18. On the same date, the newspaper *The New York Times* published a further article entitled “*What it means for furious Manchester City after Uefa moves case for judgment*”. According to MCFC, also this article contained details that were not included in either the *The New York Times* or the *Associated Press* articles, thus confirming that there had been a yet further leak (the “Third Leak”). [...].
19. On 20 May 2019, the CFCB Chief Investigator acknowledged receipt of MCFC’s letters dated 14, 15 and 16 May 2019 and informed MCFC as follows:

“I must vehemently reject your allegations of unlawful activities, either by myself or by any of the members of the UEFA CFCB, in particular of its Investigatory Chamber (IC).

Your allegations are groundless in the merits and unacceptable in tone. Please be advised that I will not continue such an exchange of correspondence and that I will not respond further to groundless accusations directed against me personally and/or against my fellow members of the IC.

I can assure you that at no time, myself or any of my fellow members of the IC have violated any rights of your club. As you are well aware, all procedural rights of your club have been respected and all requests, insofar as justified and relevant, have been granted. The proceedings before the IC were conducted in good faith and in an independent, objective and fair manner, as you know well.

Moreover, I confirm that there is no intention to publish the [Referral Decision] in whole or in part. I refer to Article 14 of the [CFCB Procedural Rules] which does not foresee the publication of a decision of the [Investigatory Chamber] to refer the case to the [Adjudicatory Chamber].

I also note that you continue to comment on issues that fall within the scope of the Referral Decision, which was rendered by the IC on 15 May 2019. You will be aware that these matters are now before the [Adjudicatory Chamber]. Your club will have all rights to defend itself before that chamber, in accordance with the applicable UEFA rules and I am not in a position to comment on such matters further.

For all issues that do not fall within the scope of the Referral Decision, and as far as these issues remain pending before the IC, I can again assure you that your club will be granted all the rights to defend its position. Insofar as this will be necessary and requested, your club will again be heard accordingly by the IC, in compliance with the applicable UEFA rules.

Your club will be informed, in due course and in line with the applicable rules, of any further procedural steps that may be taken in this respect.”

20. On 5 June 2019, after MCFC had already filed its appeal before the Court of Arbitration for Sport (“CAS”) referred to below, the *Associated Press* published another article entitled “*AP Sources: Man City asks court to block UEFA case*”. MCFC submits that it is clear that yet further confidential information contained in the Referral Decision was leaked and that it is clear that “*it is obvious that the ‘people with knowledge of the case... [who] spoke on condition of anonymity because details of the ongoing investigation are confidential...’ are UEFA personnel, whether from the IC or from the UEFA administration*” (the “Fourth Leak”).
21. Also on 5 June 2019, newspaper *The Sun* published a further article entitled “*GO TO THE LAW Man City Champions League ban fears grow as club launch appeal to CAS over FFP probe*”. The article expressly refers to an “*insider*” at UEFA disclosing information (the “Fifth Leak”).

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 24 May 2019, MCFC filed a Statement of Appeal with CAS against the Referral Decision and the so-called Leaks Decision, in accordance with Articles R47 and R48 of the 2019 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). MCFC named UEFA as the sole respondent. MCFC nominated Mr Andrew de Lotbinière McDougall, Attorney-at-Law in Paris, France, as arbitrator.
23. On 4 June 2019, further to a request of MCFC to confirm that Articles R43 and R59 CAS Code apply to the present appeal arbitration proceedings and that “*the content of the Referral Decision and all materials relating to the present appeal must be kept confidential by the parties, the arbitrators and CAS*”, the CAS Court Office replied that “[a]lthough Article R59 of the Code is crystal clear, the Parties are advised that it is not for the CAS Court Office to confirm whether the Parties’ understanding of the Code Rules is correct”.
24. On 11 June 2019, UEFA nominated Mr Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrator.
25. On the same date, in accordance with Article R51 CAS Code, MCFC filed its Appeal Brief.
26. On the same date, MCFC filed an application for provisional measures, with the following prayers for relief:
- “(a) a declaration that Article R43 and R59 of the CAS Code apply to the present proceedings;
- (b) an Order that the Respondent (including all of its servants and agents) keep strictly confidential the content of the Referral Decision and not disclose or allow to be disclosed its contents, in whole or in part, to any third party, including but not limited to media outlets;

- (c) *an Order that the Respondent (including all of its servants and agents) keep confidential all materials and their contents relating to the present arbitration and not disclose or allow to be disclosed those materials and their contents, in whole or in part, to any third party, including but not limited to media outlets;*
- (d) *an Order that the Respondent disclose the steps that it took on discovering the breaches of confidence relating to its Investigation of the Appellant and the present arbitration, including disclosing to the Appellant any internal or external communications in relation to such steps;*
- (e) *any further Order or other measure that the CAS considers necessary to prevent the disclosure by the parties and arbitrators to the present arbitration, or the CAS, of any information relating to the dispute or the proceedings, without the express prior written consent of the parties, the arbitrators and the CAS; and*
- (f) *an Order that UEFA pay the costs of this Application.”*

27. On 24 June 2019, UEFA filed a combined Answer to MCFC’s Application for Provisional Measures / Request for Bifurcation of the Proceedings, with the following joint prayers for relief:

“127. UEFA respectfully submits the following Prayers for Relief to CAS in relation to Appellant’s Request for Provisional Measures:

- 1. The Request for Provisional Measures shall be dismissed.*
- 2. All costs in relation to the Request for Provisional Measures shall be charged to Appellant.*

128. *Furthermore, UEFA respectfully submits the following Request for Bifurcation:*

- 1. The Proceedings CAS 2019/A/6298 shall be bifurcated.*
- 2. CAS shall render a Preliminary Award on Admissibility and it shall declare the Appellant’s Appeal inadmissible.*
- 3. All costs in relation to the Appeal shall be charged to Appellant.*

129. *UEFA respectfully requests that its deadline to submit its Answer to the Appeal be suspended, pending the determination on the above-mentioned Request for Bifurcation.*

130. *In any event, UEFA also requests that Appellant be ordered to pay a significant contribution to UEFA’s legal fees, which were triggered by*

this illegitimate Appeal and Request for Provisional Measures, at an amount of at least CHF 60'000.-

131. Finally, UEFA reserves the right to modify and amend its Prayers for Relief and to amend its factual and legal submissions, should UEFA surprisingly be forced to submit a full Answer to the Appeal.” (emphasis in original)
28. On 5 July 2019, in accordance with Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:
- Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as President;
 - Mr Andrew de Lotbinière McDougall, Attorney-at-Law in Paris, France; and
 - Mr Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrators.
29. On the same date, MCFC filed its reply to UEFA’s Request for Bifurcation of the Proceedings, requesting that such application be rejected.
30. On the same date, the CAS Court Office informed the Parties that Mr Dennis Koolgaard, Attorney-at-Law in Arnhem, the Netherlands, would act as *Ad hoc* Clerk.
31. On 15 July 2019, the CAS Court Office informed the Parties as follows:

“On behalf of the Panel, the Parties are informed that the Panel took note of the Appellant’s Application for Provisional Measures dated 11 June 2019 and the Respondent’s Answer thereto, dated 24 June 2019.

*Considering the nature of the requests made and the Respondent’s Answer to the Request for Provisional Measures, the Panel does not deem it necessary to issue a full-fledged procedural order at this stage. The Panel considers it sufficient to inform the parties that the Code of Sports-related Arbitration (2019 edition) was applicable to the present proceedings since the filing of the Statement of Appeal and that, at least as from receipt of the present letter, all aspects of this procedure are confidential, including “the content of the Referral Decision” and “all materials and their contents relating to the present arbitration”. The Parties are requested to refrain from commenting on this procedure to the media or any person or body not directly involved in the case, in any form. In light of this Panel’s determination, the Appellant is requested to inform the CAS Court Office by **22 July 2019** whether it wishes to maintain its Request for Provisional Measures, bearing in mind that such Request has been addressed by the Panel.*

As to the Appellant’s claim for damages on the basis of an alleged breach of confidentiality obligations by the Respondent, such claim may be addressed at a later stage, subject to the outcome of the Respondent’s objection to the admissibility of the present appeal.

In relation to the Appellant's request for relief d) in its Request for Provisional Measures, this request is denied given i) the lack of a legal basis for the Panel to issue such order and ii) because such finding would imply that the Panel is satisfied that information was leaked to the media by UEFA, which conclusion the Panel considers premature at this stage.

Further, having considered the Respondent's Request for Bifurcation dated 24 June 2019 and the Appellant's Response thereto dated 5 July 2019, the Parties are informed that the Respondent's request for bifurcation of the proceedings on admissibility is granted. The Respondent's deadline to file its Answer therefore remains suspended pending the issuance of an arbitral award on the bifurcated issue of the admissibility of the appeal.

Finally, considering that the Parties have already exchanged written submissions on the admissibility of the appeal, the Parties are informed that no further submissions shall be authorized to supplement or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely in relation to the admissibility of the appeal, without leave of the Panel.

[...]" (emphasis in original)

32. On 19 and 22 July 2019 respectively, further to an inquiry from the CAS Court Office, UEFA indicated that it did not consider it necessary to hold a hearing limited to the admissibility of the appeal, whereas MCFC requested a hearing to be held.

33. Also on 22 July 2019, MCFC informed the CAS Court Office as follows in respect of its request for provisional measures:

"The Appellant accepts the Panel's determination with respect to the confidentiality of the present proceedings and, accordingly, no longer requests the Panel to determine its Request for Provisional Measures at this stage. The Appellant reserves the right to renew its Request for Provisional Measures or make a further application for Provisional Measures should the Respondent commit any further breaches of confidentiality during the course of the present proceedings.

The Appellant also reserves the right to claim damages in respect of the Respondent's prior, and any future, breaches of confidentiality."

34. The same day, on 22 July 2019, the CAS Court Office informed the Parties that:

"[...] pursuant to Article R57 of the CAS Code, the Panel has decided to hold a hearing strictly limited to the admissibility of the appeal." (emphasis in original)

35. On 2 August 2019, following consultation of the Parties, the CAS Court Office confirmed that the hearing strictly limited to the admissibility of the appeal would be

held on 15 October 2019. In light of UEFA's request to issue a reasoned award by 15 November 2019, the CAS Court Office advised the Parties that the Panel would "*render the operative part of the preliminary award on admissibility within a month after the hearing*" and that the Panel would "*make their best efforts to issue the grounds of such preliminary award within the same timeframe, but at this stage the Panel is not in the position to assure it*".

36. On the same date, MCFC sought leave from the Panel to produce three new documents, enclosing such documents to its letter.
37. On 7 August 2019, UEFA objected to the production of new documents by MCFC.
38. On 8 August 2019, the CAS Court Office informed the Parties as follows:

"The President of the Panel, with the agreement of the co-arbitrators, has decided to admit into the file the new evidence filed by the Appellant on 2 August 2019, namely exhibits A-92, A93 and A94. The reasons of this decision will be communicated by the Panel in the preliminary award on the admissibility of the appeal."
39. On 7 October 2019, MCFC informed the CAS Court Office that both Parties preferred a professional transcriber to be present at the hearing to prepare a transcript.
40. On 9 October 2019, the CAS Court Office informed the Parties that the President of the Panel had approved the Parties' joint request for a professional transcriber to attend the hearing to prepare a transcript, subject to certain modalities.
41. On 15 October 2019, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the Panel.
42. In addition to the Panel, Mr Antonio De Quesada, CAS Head of Arbitration, Mr Dennis Koolaard, *Ad hoc* Clerk, and Ms Lisa Garforth, Stenographer, the following persons attended the hearing:

For MCFC:

- 1) Mr Simon Cliff, General Counsel, City Football Group;
- 2) Mr James Cranston, Head of Litigation, City Football Group;
- 3) Mr Josh Blake, Trainee Solicitor, City Football Group;
- 4) Mr Paul Harris QC, Barrister;
- 5) Mr Jean-Cédric Michel, Counsel;
- 6) Mr Massimiliano Maestretti, Counsel;
- 7) Mr Rhodri Thomas, Counsel;
- 8) Ms Natalie Sheehan, Counsel

For UEFA:

- 1) Dr Jan Kleiner, Counsel;
 - 2) Mr Luca Tarzia, Counsel
43. No witnesses or experts were heard. Both Parties had a full opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
 44. Before the hearing was concluded, both Parties expressly stated that they did not have any objection to the procedure adopted and that their right to be heard had been respected.
 45. On 21 October 2019, MCFC sent an unsolicited communication to the CAS Court Office, highlighting that during the hearing UEFA had for the first time suggested that breaches by the Investigatory Chamber of the UEFA CL&FFPR and the CFCB Procedural Rules could potentially be investigated and remedied by UEFA's Control, Ethics and Disciplinary Body (the "UEFA CEDB").
 46. On 23 October 2019, UEFA indicated that this was stated in response to a question of one of the members of the Panel as to which body within UEFA would be competent to investigate a breach by an individual member of the UEFA CFCB of his/her confidentiality obligations, which statement UEFA considered to be in line with the existing regulatory framework.
 47. On 31 October 2019, the CAS Court Office confirmed that MCFC's letter dated 21 October 2019 and UEFA's letter dated 23 October 2019 were admitted into the case file and that no further unsolicited submissions would be accepted by the Panel.
 48. The Panel confirms that it carefully took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES

A. The Appellant

49. MCFC provided the following summary of its written submissions:
 - *“MCFC submits this Appeal against the Referral Decision and Leaks Decision of the IC. In short:*
 - (a) *the Referral Decision and Leaks Decision are both final decisions of the IC and therefore within the scope of CAS's jurisdiction;*
 - (b) *the IC exceeded its jurisdiction in making the Referral Decision;*
 - (c) *UEFA has systematically breached, and continues to breach, its duty of confidence;*

- (d) *the Referral Decision was made improperly and prematurely, while the Investigation was still ongoing, despite the fact that the IC is only empowered to make a decision to refer a case at the end of an Investigation;*
- (e) *the Investigation and the Decision lacked procedural fairness and due process; and*
- (f) *the Decision and the Leaks have caused, and continue to cause, MCFC serious harm and loss.*
- *CAS has jurisdiction to hear this Appeal. In accordance with Article R47 of the CAS Code: (a) the Decisions are decisions of an association, namely, UEFA; (b) the statutes and regulations of UEFA provide for appeal to CAS against decisions taken by UEFA bodies; and (c) any internal remedies have been exhausted. The Statement of Appeal and this Appeal Brief have been filed within the applicable time limits, pursuant to Article R49 of the CAS Code. The present Appeal is, therefore, admissible.*
- *The IC exceeded its jurisdiction in making the Referral Decision. The Referral Decision makes no allegations concerning the reporting periods 2016-17 and 2017-18, which are the only periods that it had jurisdiction to review (and on which it stated that its Investigation was focused). The IC has no jurisdiction to make determinations on matters relating to any earlier point in time:*

 - (a) *breaches alleged against MCFC before the 2016-2017 reporting period are covered by the Settlement Agreement. The IC does not have jurisdiction in respect of the subject matter of the 2014 Settlement Agreement because:*

 - (i) *the Settlement Agreement created a bespoke “Settlement Regime” covering the entirety of the periods referred to in the Referral Decision, including to the end of the reporting period 2015-2016;*
 - (ii) *in any event, the IC has issued a decision through which MCFC has been formally released from the Settlement Agreement and the Settlement Regime;*
 - (b) *the IC is time-barred from reopening the proceedings that were concluded by the Settlement Agreement and letter of release;*
 - (c) *all breaches alleged against MCFC more than five years prior to the communication of the Referral Decision to the AC are time-barred by virtue of Article 37 of the Procedural Rules, which*

prohibits prosecution of any breach that took place more than five years ago; and

(d) in any event, the temporal jurisdiction of the IC is limited to the current “monitoring period” and, specifically, the “reporting periods” 2016-2017 and 2017-2018.

- *UEFA has systematically breached, and continues to breach, its express obligations of confidentiality, including under Article 10 of the [CFCB Procedural Rules], Article 53 of the [UEFA CL&FFPR], and Article R43 and R59(7) of the CAS Code with respect to proceedings before the IC, the [AC] and CAS. The breaches have been timed such that MCFC suffers serious prejudice in those proceedings, [...]. These ongoing and egregious breaches undermine the very integrity of UEFA’s adjudicatory process, which is a consensual dispute resolution mechanism with confidentiality at its core. They also fundamentally undermine UEFA’s “good faith” participation in the process, in breach of article 2(1) of the Swiss Civil Code [the “SCC”] and article 52 of the Swiss Code of Civil Procedure [the “SCCP”].*
- *Given UEFA’s express confidentiality obligations, which it has nominally confirmed in correspondence, MCFC had a legitimate expectation not just that UEFA would respect those obligations but also that, once confidentiality had been violated, particularly so seriously and repeatedly, UEFA would suspend its Investigation, conduct an inquiry into the breaches, including the removal from the process of anyone involved in the leaks, and take preventative or remedial action to seek to ensure that there could be confidence in the integrity of the process going forward.*
- *The failure of UEFA even to investigate these repeated breaches of confidentiality, let alone to take remedial and preventative measures, notwithstanding that the Investigation, adjudication and present arbitration continue (and despite MCFC’s repeated requests for such), casts grave doubt upon the fairness, impartiality and integrity of the IC’s approach.*
- *Furthermore, the IC’s Referral Decision was made improperly and prematurely, in breach of the Procedural Rules, MCFC’s legitimate expectations as to both the substance and procedure of the Investigation, and the IC’s obligations of good faith and due process:*
 - (a) pursuant to Article 14(1) of the Procedural Rules, the IC is empowered inter alia to issue a decision to refer the case to the AC expressly only “[a]t the end of the investigation”. The Referral Decision itself states that the Investigation is still ongoing. The IC acted in breach of the Procedural Rules by issuing the Referral Decision before concluding its Investigation;*

- (b) *MCFC had a legitimate expectation that the Investigation had not ended and was, in fact, ongoing when the IC made the Referral Decision;*
 - (i) *at the time of the Referral Decision on 15 May, MCFC was awaiting: (a) responses from the IC in relation to matters relevant to the Referral Decision; and (b) a hearing [...]. MCFC had not been given any prior notice by the IC that the Referral Decision was imminent. The IC frustrated MCFC's legitimate expectation that the Investigation was ongoing and MCFC has suffered prejudice as a result because, in breach of fundamental due process, it has been denied the opportunity fully to present its case. The obvious, unfinished nature of the Investigation is evidenced, inter alia, by the many issues and questions that the IC raises in the Referral Decision, which MCFC has not had the opportunity to address;*
 - (ii) *the IC had not concluded its Investigation [...] when it issued the Referral Decision. [...];*
- (c) *the IC breached its obligation to act in good faith pursuant to Article 2(1) of the [SCC] and Article 52 of the [SCCP], as well as Article 29 of the Swiss Federal Constitution inter alia by failing to present MCFC with the full case against it, and in failing to allow MCFC adequately to respond to that case;*
- (d) *the Referral Decision is based on a flawed Investigation, which was not conducted with procedural fairness or due process. In particular:*
 - (i) *the IC failed to comply with relevant Procedural Rules and ensure fairness in its treatment of MCFC;*
 - (ii) *the IC repeatedly failed to respond to requests for information by MCFC;*
 - (iii) *the IC made the Referral Decision prematurely and before its Investigation had concluded;*
 - (iv) *the IC did not afford MCFC equal treatment with other clubs which it has investigated, including by making allegations in respect of matters prior to the current monitoring period; and*
 - (v) *the IC breached MCFC's rights to a fair and impartial judicial process pursuant to Article 29 of the Swiss Federal Constitution and Articles 52-58 of the [SCCP].*

- *Accordingly, both the Referral Decision and the Leaks Decision should be annulled.*
- *[...].*
- *MCFC is applying separately for provisional measures pursuant to CAS Code Article R37 in respect of the serious and ongoing Leaks.*
- *MCFC is not seeking a determination on the substantive merits of the Referral Decision from the Tribunal, as that would be outside of the scope of this Appeal. Rather, MCFC is requesting that the Tribunal make orders to cure serious procedural defects brought about by the IC. Nonetheless, and for the avoidance of absolutely any doubt, MCFC vehemently denies the allegations made in the Referral Decision and wholly rejects the conclusions reached by the IC. In particular, there is simply no substantive evidence to support the IC’s serious allegations [...]. Instead, the Referral Decision repeatedly draws on unsupported adverse inferences and fails entirely to take into account the body of significant and tangible evidence produced by MCFC.”*

50. On this basis, MCFC submits the following prayers for relief:

- “(a) a declaration that the Investigation conducted by the Respondent was not conducted in accordance with procedural fairness and due process and was contrary to legitimate expectations;*
- (b) a declaration that the Respondent is not entitled to make any determination or to allege any breaches in respect of periods prior to the reporting period 2016-17, being periods covered by the 2014 Settlement Agreement;*
- (c) a declaration that the Respondent is not entitled to make any determination or to allege any breaches in respect of any time prior to 16 May 2014 being five years prior to the date of the Referral Decision;*
- (d) a declaration that the Respondent is not entitled to make any determination or to allege any breaches of the [UEFA CL&FFPR] in respect of periods prior to the reporting period 2016-17, being outside of the current monitoring period;*
- (e) a declaration that the Swiss law personality rights of the Appellant have been violated by the Leaks and that Respondent is responsible for such violation;*
- (f) an order that the Referral Decision is annulled;*
- (g) an order that the Leaks Decision is annulled;*

- (h) *an order that UEFA undertakes a full investigation into the sources of the Leaks in order to identify and take disciplinary measures against the identified sources, and takes full, appropriate remedial measures to ensure that strict confidentiality of both any process that may progress before the AC and of this arbitration;*
- (i) *an order that the question of damages is bifurcated to a later stage of the proceedings;*
- (j) *an order that the Respondent pay the Appellant damages to be assessed [...] for losses incurred as a result of the Respondent's conduct;*
- (k) *an order that the Respondent pay interest on the damages in an amount to be determined by the Tribunal; and*
- (l) *an order that the Respondent pay all costs and fees of the Appeal, including the administrative fees and costs of the Tribunal, CAS and the Appellant's legal costs and other costs incurred in connection with these proceedings."*

B. The Respondent

51. The submissions of UEFA in respect of the admissibility of the appeal in its combined Answer to the Request for Provisional Measures / Request for Bifurcation, in essence, may be summarised as follows:

- It is one of the most important features of the CAS appeal procedure that only once a final decision is rendered by a sports federation, this decision can be appealed before CAS. Article R47(1) CAS Code is crystal-clear in this regard and has been upheld by CAS over the years and is confirmed by the Swiss Federal Tribunal (the "SFT").

As to the Referral Decision

- MCFC's case is still pending before the Adjudicatory Chamber. Therefore, MCFC's appeal is premature and inadmissible.
- The Investigatory Chamber is responsible for the investigation stage of the proceedings, while the Adjudicatory Chamber is responsible for the judgment stage. If, at the end of an investigation, the Investigatory Chamber is of the view that a club has a case to answer, the case is referred to the Adjudicatory Chamber, i.e. the Investigatory Chamber presents the case "*to the adjudicatory chamber for decision*" (Article 18(1) CFCB Procedural Rules). Thus, any suggestion that the Investigatory Chamber could have rendered any type of final decision, which could be subject to an appeal before CAS, is simply wrong.

- Very recent case law of CAS (*CAS 2018/A/5808 AC Milan v. UEFA*) confirms that a referral decision of the Investigatory Chamber, which submits charges against a club to the Adjudicatory Chamber for a decision on the merits, is not appealable. The arguments of UEFA in *CAS 2018/A/5808*, in which UEFA submitted that AC Milan should have appealed the referral decision of the Investigatory Chamber, addressed the specific situation of that case: AC Milan had, before the Investigatory Chamber, requested that a settlement agreement should be concluded with it. The Chief Investigator then decided not to conclude a settlement agreement. UEFA argued that this specific aspect of the referral decision (the refusal to conclude a settlement agreement) should have been separately appealed before CAS.
- In its appeal to CAS, MCFC raises allegations that it also makes in the pending proceedings before the Adjudicatory Chamber. Even though these arguments are mistaken, it is formally correct to present them before the Adjudicatory Chamber. This confirms that it is impossible to present these very same arguments now, and at the same time, in a totally premature appeal before CAS.

As to the Leaks Decision

- MCFC is probably well aware that its case is still pending before the Adjudicatory Chamber and that any appeal concerning the merits of this case is premature and inadmissible. Therefore, MCFC tries – in a totally artificial and misleading way – to construe that the Investigatory Chamber had also rendered an additional decision, which MCFC calls the *Leaks Decision*.
- MCFC takes the view that the communication of the Chief Investigator of 20 May 2019, in which the Chief Investigator rejected the false accusations directed against him, should somehow constitute an appealable decision. This proposition is not only legally wrong, it is misleading.
- The letter of the Chief Investigator of 20 May 2019 does not decide anything: its sole content is to reject the unfounded and false accusations made by MCFC against the Chief Investigator and the members of the Investigatory Chamber. The letter lacks all the criteria of an appealable decision, as defined by the CAS Code and CAS jurisprudence.
- First of all, the Investigatory Chamber could not possibly have “*decided*” anything in relation to its investigation, because the investigation had already ended on 15 May 2019 with the rendering of the Referral Decision.
- Moreover, the communication of 20 May 2019 is obviously not based on an “*animus decidendi*”, i.e. on an intention to decide on a specific

legal matter. It does not contain any type of ruling, and it certainly does not contain any authoritative decision affecting the rights of MCFC.

- Finally, even if the letter of the Chief Investigator would be a decision “*not to suspend the procedure*”, which it is not, it is a procedural matter that will be cured by the procedure before the Adjudicatory Chamber and, possibly, in a CAS procedure against the last and final decision of the Adjudicatory Chamber. Therefore, it is again not a matter that can be put forward to CAS now.

Additional remarks

- MCFC brings forward erroneous and groundless arguments. All of these arguments are equally impossible to submit to CAS at this stage, while the proceedings are still pending before the Adjudicatory Chamber.
 - By way of example, MCFC brings forward that the Investigatory Chamber allegedly “*breached personality rights*” of MCFC, that the Referral Decision was made “*improperly and prematurely*”, that the Investigatory Chamber “*breached procedural rules*” or “*legitimate expectations of MCFC*” or that the Investigatory Chamber allegedly caused damage to MCFC.
 - These are arguments which MCFC must first present to the Adjudicatory Chamber, within the judgment stage of the UEFA CFCB proceedings. It is simply not possible to “skip” the judgment stage, as provided by the internal rules of UEFA, and directly bring such arguments to CAS.
 - For these reasons also, MCFC’s appeal is, and remains, inadmissible.
52. On this basis, as set out above already but repeated here for the sake of convenience, UEFA submits the following prayers for relief in its combined Answer to the Request for Provisional Measures / Request for Bifurcation:

“127. *UEFA respectfully submits the following Prayers for Relief to CAS in relation to Appellant’s Request for Provisional Measures:*

1. *The Request for Provisional Measures shall be dismissed.*
2. *All costs in relation to the Request for Provisional Measures shall be charged to Appellant.*

128. *Furthermore, UEFA respectfully submits the following Request for Bifurcation:*

1. *The Proceedings CAS 2019/A/6298 shall be bifurcated.*
2. *CAS shall render a Preliminary Award on Admissibility and it shall declare Appellant’s Appeal inadmissible.*

3. *All costs in relation to the Appeal shall be charged to Appellant.*

129. *UEFA respectfully requests that its deadline to submit its Answer to the Appeal be suspended, pending the determination on the above-mentioned Request for Bifurcation.*

130. *In any event, UEFA also requests that Appellant be ordered to pay a significant contribution to UEFA's legal fees, which were triggered by this illegitimate Appeal and Request for Provisional Measures, at an amount of at least CHF 60'000.-*

131. *Finally, UEFA reserves the right to modify and amend its Prayers for Relief and to amend its factual and legal submissions, should UEFA surprisingly be forced to submit a full Answer to the Appeal.” (emphasis in original)*

C. The Appellant's Response to UEFA's Objection to the Admissibility of the Appeal

53. MCFC makes, *inter alia*, the following submissions in “Response to Respondent's Request for Bifurcation”:

The Appeal is Admissible

➤ “[...] *The fact-specific reasons that the Appeal is admissible are explained in detail in paragraphs 55 to 89 of the Appeal Brief and so are not repeated here. Notably, however, CAS recently issued a Consent Award in [CAS 2019/A/6083 & 6261 AC Milan v. UEFA] (the AC Milan Award), shortly after MCFC filed its Appeal Brief. In the AC Milan Award, CAS accepted the admissibility of two consolidated appeals brought by AC Milan.*

➤ *The first appeal was of a decision of the AC and the second appeal was of a referral decision made by the IC to the AC. The AC Milan Award is highly relevant to the Bifurcation Request because:*

(a) *CAS held that a referral decision made by the IC to the AC was admissible on appeal to CAS. If it had not been admissible, then CAS would have been unable to make the AC Milan Award;*

(b) *CAS confirmed that UEFA supported the admissibility of AC Milan's appeals. As the AC Milan Award itself states “Their admissibility is not disputed by the Respondent” (emphasis added); and*

(c) *though it would be admissible in any event, MCFC's appeal of the Referral Decision appears identical to AC Milan's appeal of a referral decision made by the IC to the AC.*

- *Therefore, UEFA's central argument, that an appeal to CAS of a referral decision made by the IC to the AC is not admissible, is completely contradicted by the AC Milan Award and by its own behaviour.*
- *At the very least, the AC Milan Award – particularly when combined with the submission of UEFA in the prior case of [CAS 2018/A/5808 AC Milan v. UEFA] that the club should have appealed a referral decision from the IC to the AC, because it was a final decision – gives rise to an important issue of equal treatment between clubs that needs to be determined in the context of the entire facts of the Appeal.*

The Decisions are Final and as such Appealable to CAS

- *In the Bifurcation Request, UEFA claims that the Appeal is not admissible because “only the CFCB AC takes ‘final decisions’”, and that “any suggestion that the Investigatory Chamber could have rendered any type of final decision, which could be subject to an Appeal before CAS, is simply wrong”.*
- *Paragraphs 65 to 74 of the Appeal Brief explain why the IC is, in fact, fully capable of issuing final decisions. Furthermore, UEFA's recently published 2019 edition of its Procedural Rules states at Article 34 – which is the Article that deals with appeals of a “final decision of the CFCB” – as follows:*

“[...] the relevant reference date for the assessment of financial and economic data, facts and evidence submitted by the parties in proceedings before the CAS shall be no later than the date of the final decision of the CFCB investigatory or adjudicatory chamber, respectively.”
- *Hence the arguments UEFA has made to support its assertion that the Appeal is inadmissible are completely contradicted by express wording in UEFA's own Procedural Rules relating to appeals. Those rules confirm explicitly that the IC can render final decisions and, moreover, such final decisions are appealable to CAS.*
- *The fact that final decisions of the IC are appealable to CAS (as confirmed in the 2019 Procedural Rules) is entirely consistent with the fact that a final decision made by the IC is not capable of appeal to the AC. This is explained in paragraphs 70 to 71 of the Appeal Brief: the AC adjudicates allegations made by the IC, but there is no mechanism under the Procedural Rules for the AC to hear an appeal of a decision made by the IC. Given that there is no route of appeal of an IC decision within UEFA, it follows that a route of appeal must lie to CAS.*
- *Indeed, this was acknowledged by UEFA itself in [CAS 2018/A/5808 AC Milan v. UEFA], where it argued that “[s]uch decision [of the IC] [...]*

is final and binding. There are no internal appeal remedies against the Referral Decision. Consequently, the Appellant should have lodged its appeal against the Referral Decision.”

- *Further, in the Bifurcation Request, UEFA claims that there is “no ‘Leaks Decision’”. This submission has to be rejected. Clearly, MCFC requested on several occasions (including prior to the Referral Decision being issued) that the IC suspend its Investigation and conduct an inquiry into the source of the Leaks. However, the IC did not do so. There is no other way of construing this than that the IC took a decision not to suspend its Investigation or to investigate the Leaks. UEFA cannot assert that the IC’s failure to take any action does not amount to a decision not to take any action.*

MCFC is not Seeking to Bring the Same Requests Before the AC and CAS in Simultaneous Proceedings

- *In the Bifurcation Request, UEFA seeks to characterise MCFC’s appeal in the present proceedings as an attempt to run parallel legal proceedings before the AC and CAS and to make “the exact same requests” in both proceedings. However, this completely misrepresents the steps that MCFC has taken, as is readily apparent from the submissions MCFC has made to both the AC and CAS.*
- *UEFA’s Bifurcation Request notes that UEFA and MCFC have (at the AC’s request) recently made submissions to the AC on the procedural steps to be taken in the AC proceedings. However, the Bifurcation Request fails to explain that the position adopted by MCFC in that correspondence is that no substantive procedural steps should be taken in the AC proceedings precisely because the present CAS Appeal is pending and MCFC fully expects CAS to set aside the Referral Decision. Only if the Referral Decision is not set aside by CAS should the AC proceedings continue. [...]” (emphasis in original)*

VI. JURISDICTION

54. The jurisdiction of CAS, which is not disputed, derives from Article 34 CFCB Procedural Rules and Article 62(1) UEFA Statutes (2017 edition).

55. Article 34 CFCB Procedural Rules provides as follows:

- “1. A party directly affected has the right to appeal a final decision of the CFCB.
2. Final decisions of the CFCB may only be appealed before the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the UEFA Statutes.”

56. Article 62(1) UEFA Statutes provides that “[a]ny decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration”, which complies with the criteria set out in Article R47 CAS Code.
57. Although it is debatable whether the requirement of having exhausted the internal legal remedies before filing an appeal with CAS is an issue of jurisdiction or admissibility, as discussed in more detail below, the Panel finds that it is to be treated as an admissibility requirement. Given that UEFA did not object to and indeed accepted the jurisdiction of CAS in this matter, this Panel is competent to adjudicate and decide on the present dispute.

VII. PRELIMINARY PROCEDURAL ISSUES

A. Admissibility of newly presented evidence

58. On 8 August 2019, the CAS Court Office informed the Parties as follows:

“The President of the Panel, with the agreement of the co-arbitrators, has decided to admit into the file the new evidence filed by the Appellant on 2 August 2019, namely exhibits A-92, A93 and A94. The reasons of this decision will be communicated by the Panel in the preliminary award on the admissibility of the appeal.”

59. The Panel will therefore set out the reasons for its decision of 8 August 2019 here.
60. In deciding on the admissibility of the three new exhibits filed by MCFC on 2 August 2019, the Panel relied on Article R56 CAS Code, which provides as follows:

“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.”

61. The Panel noted that Exhibit A-92 is a publication in a newspaper and therefore a publicly accessible document that was not available at the time MCFC filed its Appeal Brief (i.e. 11 June 2019). The Panel also considered it appropriate for MCFC to keep the Panel updated on alleged further leaks to the media by UEFA considering the similar allegations already expressed in the Appeal Brief, which possibility was also expressly reserved by MCFC in its letter to the CAS Court Office dated 22 July 2019. The Panel therefore decided to admit this document on file based on exceptional circumstances.
62. Exhibit A-93 and A-94 are letters sent by UEFA to MCFC on 11 and 29 July 2019 that were not available at the time of filing the Appeal Brief. MCFC relied on these documents to corroborate its argument that the proceedings before the Investigatory Chamber were not fair and argued that it should not be prevented from relying on

these documents because UEFA chose not to disclose the existence of such evidence until after the deadlines for MCFC to file its submissions with the CAS had passed.

63. The Panel recognised the force of the last argument of MCFC and noted that it indeed appeared that MCFC had previously asked the Investigatory Chamber to be provided with the complete case file, which was confirmed by UEFA on 11 July 2019, but that it was later (on 29 July 2019) confirmed by UEFA for the first time that a “scope document” existed by means of which UEFA had set out the objective and scope of the compliance audit to be performed on MCFC by an accountancy firm. The Panel considered that these two documents together could be relevant for the Panel’s decision on the admissibility of the Referral Decision and/or the merits of the case, should the Panel decide that MCFC’s appeal was admissible. The Panel therefore decided to admit these documents on file based on these exceptional circumstances.

B. Provisional Measures

64. As noted in paragraphs 26 and 27 above, on 11 June 2019, MCFC filed an application for provisional measures, to which UEFA filed an answer on 24 June 2019.
65. As noted in paragraph 31 above, on 15 July 2019, the CAS Court Office informed the Parties that, “[c]onsidering the nature of the requests made and the Respondent’s Answer to the Request for Provisional Measures, the Panel does not deem it necessary at this stage to issue a full-fledged procedural order at this stage” and “[i]n light of this Panel’s determination, the Appellant is requested to inform the CAS Court Office [...] whether it wishes to maintain its Request for Provisional Measures, bearing in mind that such Request has been addressed by the Panel”.
66. And as noted in paragraph 33 above, on 22 July 2019, MCFC informed the CAS Court Office that “[t]he Appellant accepts the Panel’s determination with respect to the confidentiality of the present proceedings and, accordingly, no longer requests the Panel to determine its Request for Provisional Measures at this stage”.
67. In the light of MCFC’s confirmation, the Panel was satisfied that MCFC had withdrawn its request for provisional measures, insofar as the Panel had not already addressed it by CAS Court Office letter dated 15 July 2019.

C. Claims for Damages

68. Along with the appeal against the Referral Decision and the Leaks Decision, MCFC also filed a claim for damages and “an order that UEFA undertakes a full investigation into the sources of the Leaks in order to identify and take disciplinary measures against the identified sources, and takes full, appropriate remedial measures to ensure that strict confidentiality of both any process that may progress before the AC and of this arbitration”, which may be considered stand-alone claims. Whether an Appeals Arbitration Proceeding is the right forum to claim damages or seek an order in relation to the alleged leaks of UEFA appears debatable, since Articles R47 *et seq.* CAS Code are designed for appeals against “decisions”. The Panel takes note of Article S20 CAS Code, according to which arbitration

proceedings “submitted to CAS are assigned by the CAS Court Office to the appropriate Division. Such assignment may not be contested by the parties nor be raised by them as a cause of irregularity.” The Panel also notes that the claim for damages was submitted – together with appeals against the Referral Decision and the Leaks Decision – in the form of an objective application clustering against UEFA. According to standing CAS jurisprudence (cf. CAS 2014/A/3703, para. 55 of the abstract published on the CAS website) this is permissible under the Appeal Arbitration Procedure, since there are reasons of procedural efficiency to tackle along with the main claim (appeal against a decision) also subsidiary questions such as damages arising from the decision under appeal. However, in case the Panel were to determine that the appeal against the Referral Decision and the Leaks Decision are inadmissible, the claim for damages cannot proceed on a stand-alone basis under the Appeal Arbitration Procedure and, thus, would have to be rejected.

D. Decision to Bifurcate the Proceedings

69. In the present proceedings each party filed a different request for bifurcation: MCFC requested that the proceedings be bifurcated for the question of damages, whereas UEFA requested that the proceedings be bifurcated for the issue of admissibility.
70. As a starting point, the Panel notes that the question whether or not to bifurcate proceedings in order to decide on a preliminary question is a procedural issue that is, in principle, governed in Swiss-seated international arbitrations by Article 182 of Switzerland’s Private International Law Act (the “PILA”). The CAS Code, to which both Parties submitted, only deals with the question whether or not a Panel can bifurcate the proceedings in order to decide the preliminary question of its competence (Article R55(4) CAS Code). However, the CAS Code does not contain any provision on whether or not a Panel may bifurcate the proceedings in order to decide on other preliminary issues (be it on procedure or on the merits). In the absence of any specific provisions in the CAS Code, the Panel is entitled – according to Article 182(2) PILA – to apply the provisions and principles either directly or by reference to a law or rules of arbitration it deems fit.
71. The Panel is inspired by Article 125 lit. a of the SCCP. According thereto a court may “[i]n order to simplify the proceedings [...] limit the proceedings to individual issues or prayers for relief”. This power of the court is directly connected to Article 237 SCCP according to which a court “may issue an interim decision” (KuKo-ZPO/WEBER, 2nd ed. 2014, Article 125 no. 3). When exercising its discretion according to Article 125 lit. a SCCP, a court will take into account whether limiting the procedure to certain preliminary questions allows for a (substantial) saving of time or costs (CPC-HALDY, 2011, Article 125 no. 5). The view held here is that an arbitral tribunal is entitled to issue decisions on preliminary questions is also backed by the legal literature according to which in the absence of an agreement by the parties the panel is vested with the power to issue interim or final awards. Such power is a particular aspect of the mandate of an arbitral tribunal to organise the arbitral proceedings (POUDRET/BESSON, Comparative Law of International Arbitration, 2nd ed. 2007, no. 725).

72. In the case at hand the Panel finds that the issue whether or not the decisions at stake here are appealable is a preliminary (procedural) question that can be the object of a separate decision in this arbitration (depending on the outcome in the form of either a final or interim award). The Panel finds that reasons of procedural efficiency speak in favour of tackling the issue of admissibility separately. In addition the Panel considered UEFA's objection to the admissibility of the appeal to be relatively concise and sufficiently distinguishable from the merits of the case. Also, MCFC had already filed a response to UEFA's objection to the admissibility of the appeal, so that the Parties had completed their written submissions on the issue of admissibility. Accordingly, requiring UEFA to first file its Answer (the deadline for filing the Answer was suspended pending the Panel's decision on UEFA's request for bifurcation) on the merits of the case while MCFC's appeal could potentially be declared inadmissible based on the documents on file already, was considered inefficient. Also, on a *prima facie* basis, the Panel had doubts about whether MCFC had fully exhausted the legal remedies available to it prior to filing an appeal with CAS.
73. Because the Panel decided to grant UEFA's request for bifurcation, the Panel was not yet required to rule on MCFC's request for bifurcation. Were the Panel to rule that MCFC's appeal was inadmissible, MCFC's request for bifurcation would be immaterial.

VIII. ADMISSIBILITY

74. The appeal was filed within the deadline of ten days set by Article 62(3) UEFA Statutes and complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.
75. UEFA however submits that the requirements of Article R47 CAS Code have not been complied with, in particular that MCFC failed to exhaust the internal legal remedies available to it prior to the appeal.
76. Article R47 CAS Code provides as follows:

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

A. Issue of Admissibility and not of Jurisdiction

77. It is debated in legal doctrine whether exhausting internal legal remedies is an admissibility requirement (pro: RIGOZZI/HASLER, Article R47 CAS Code, in: Arroyo (Ed.), *Arbitration in Switzerland*, Vol. II, 2018, p. 1583) or a matter of jurisdiction (pro: MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport*, 2015, p.

391). According to Rigozzi/Hasler “[i]t must be emphasized that although the “exhaustion of internal remedies rule” constitutes a mere admissibility requirement, it is treated as a precondition for CAS jurisdiction in the context of actions to set aside CAS awards based on Art. 190(2) (b) PILS, meaning that the issue can be reviewed with unfettered powers by the Swiss Supreme Court.” (RIGOZZI/HASLER, Article R47 CAS Code, in: Arroyo (Ed.), Arbitration in Switzerland, Vol. II, 2018, p. 1584).

78. The Panel favours considering the issue as an admissibility requirement. First, this is in line with the Parties’ written and oral submissions that considered it to be an issue of admissibility. Second, because the requirement does not serve to distinguish the Panel’s mandate from the Parties’ access to justice before state courts. By submitting to CAS jurisdiction, the Parties wanted to exclude any kind of recourse to state courts. In particular, they did not want to enable a party to file an appeal before state courts in all matters, in which a CAS panel finds that the requirements for a “decision” within the meaning of Article R47 CAS Code are not fulfilled. Consequently, the issue whether or not a decision is appealable (within the meaning of Article R47 of the CAS Code) is not aimed at limiting the CAS jurisdiction vis-à-vis state courts. Instead, it is an admissibility issue, since – at the end of the day – the response to the question at stake is dictated by procedural principles such as procedural efficiency. This Panel finds itself comforted in its view by a comparison with the procedural rules regulating appeals before state courts. In such context whether or not a (preliminary) decision from a previous instance is appealable or not to a higher instance is a procedural matter of admissibility.

B. The Applicable Legal Framework

79. The starting point to determine whether or not a decision is appealable is the applicable internal regulations.
80. It is not in dispute that the various regulations of UEFA are primarily applicable to the dispute, in particular the UEFA CL&FFPR and the CFCB Procedural Rules.
81. As to the relevant editions of the UEFA CL&FFPR and the CFCB Procedural Rules, the Panel finds that, as the Parties submitted, the 2015 edition of the UEFA CL&FFPR and the 2015 edition of the CFCB Procedural Rules are applicable.
82. Article 34 CFCB Procedural Rules provides as follows:
- “1. A party directly affected has the right to appeal a final decision of the CFCB.
 2. Final decisions of the CFCB may only be appealed before the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the UEFA Statutes.”
83. The Panel derives from Article 34 CFCB Procedural Rules that not all decisions issued by the UEFA CFCB shall be appealed to CAS. Rather, only “final decisions”

that directly affect a party can be appealed before CAS. This does not mean that there is no legal remedy against all other decisions. It simply means that the legal remedy against such other decisions is only available in the context of an appeal against the “final decision”.

84. It is to be noted that Article 34 CFCB Procedural Rules refers to the CFCB and not specifically to the Adjudicatory Chamber, which suggests that also the Investigatory Chamber can hypothetically render final decisions that may be appealed to CAS directly. This is corroborated by Article 34(3) of the recently implemented 2019 edition of the CFCB Procedural Rules, which refers to “*the final decision of the CFCB investigatory or adjudicatory chamber, respectively*”.
85. In the proceedings in the matter at hand, MCFC appeals two decisions of the IC: the Referral Decision and the Leaks Decision. The Panel will assess whether one or both of these decisions can be appealed to CAS directly, i.e. without first having to go through the proceedings before the Adjudicatory Chamber.

C. The Referral Decision

86. The Panel observes that the CFCB Procedural Rules in general govern proceedings before UEFA’s CFCB, which is one body comprised of two chambers. The CFCB Procedural Rules have separate chapters governing the functioning of the Investigatory Chamber and the Adjudicatory Chamber.
87. Article 14(1) CFCB Procedural Rules (headed “*End of the investigation*” – incorporated in the chapter governing the functioning of the Investigatory Chamber) provides as follows:

“1. *At the end of the investigation, the CFCB chief investigator, after having consulted with the other members of the investigatory chamber, may decide to:*

- a) dismiss the case; or*
- b) conclude, with the consent of the defendant, a settlement agreement; or*
- c) apply, with the consent of the defendant, disciplinary measures limited to a warning, a reprimand or a fine of up to a maximum amount of €100,000; or*
- d) refer the case to the adjudicatory chamber.”*

88. Article 27 CFCB Procedural Rules (headed “*Final decision*” – incorporated in the chapter governing the functioning of the Adjudicatory Chamber) provides as follows:

“*The adjudicatory chamber may take the following final decisions:*

- a) To dismiss the case; or*
- b) to accept or reject the club’s admission to the UEFA club competition in question; or*
- c) to impose disciplinary measures in accordance with the present rules; or*

d) to uphold, reject, or modify a decision of the CFCB chief investigator.”

89. The Panel finds that, as emphasised by the heading of the provision, there can be no doubt that the types of decisions listed in Article 27 CFCB Procedural Rules are “final decisions” within the above meaning and can be appealed to CAS. This makes perfect sense, since no body within the UEFA administration can review these types of decisions, which legitimises an external appeal to CAS, because all internal legal remedies are exhausted.
90. As a corollary, a decision rendered by the Investigatory Chamber to refer a case to the Adjudicatory Chamber is not final and can therefore in principle not be appealed to CAS directly, because the Adjudicatory Chamber is competent to take any of the decisions listed in Article 27 CFCB Procedural Rules, that are described as being final. It follows from the above that a referral decision issued by the Investigatory Chamber, in principle, does not qualify as a final decision that can be appealed to CAS and that only once the Adjudicatory Chamber renders one of the decisions listed in Article 27 CFCB Procedural Rules has a final decision been rendered that can be appealed to CAS.

D. Final Decisions Rendered by the Investigatory Chamber

91. The above stated principle does not exclude that there are exceptions to the rules, i.e. that also the Investigatory Chamber may issue “final decisions” that cannot be reviewed by the Adjudicatory Chamber and, therefore, can be appealed to CAS directly.
92. Whether this is the case depends on the nature of the decision and needs to be examined on a case-by-case basis. Indeed, as held in legal doctrine: “*Unless the applicable regulations expressly state that the decision at hand is final, one must ascertain whether they provide for any further internal recourse against that decision*” (RIGOZZI/HASLER, Article R47 CAS Code, in: Arroyo (Ed.), Arbitration in Switzerland, Vol. II, 2018, p. 1581).
93. One could argue that the CFCB Procedural Rules could have been drafted more clearly in delineating between final decisions that can be appealed to CAS directly and decisions that are not final and cannot be appealed to CAS directly. However, at the same time, the Panel recognises that it is not uncommon for legislators not to categorise *ex ante* the types of decisions that are to be considered final, because there can be a myriad of intricacies affecting the desirability thereof.
94. Indeed, for instance, the PILA distinguishes between final awards and preliminary decisions in Article 190, without specifically categorising or determining which criteria are to be applied in distinguishing between the two, i.e. whether a decision is a final award or a preliminary decision is left to the discretion of the judge.
95. The bottom line as to the Referral Decision is that a decision of the Investigatory Chamber to refer a case to the Adjudicatory Chamber does not bring an end to the

matter in dispute wholly or partially. Instead the matter in dispute before the Adjudicatory Chamber remains identical to the one before the Investigatory Chamber that was referred to the Adjudicatory Chamber. Thus, the Adjudicatory Chamber may still decide to dismiss the entire case against MCFC, in which case MCFC would be exonerated. Therefore, until the Adjudicatory Chamber issues its final decision, the legal remedies of MCFC are not exhausted and an appeal to CAS is, in principle, premature.

96. Also, the distinction between the Investigatory Chamber and the Adjudicatory Chamber is not meaningfully different from a distinction between a first instance body and an appeals body. By comparison, if this were a typical disciplinary case before UEFA, the UEFA Appeals Body would be competent to deal with appeals filed against decisions of the UEFA CEDB, before an appeal to CAS could be admitted. Accordingly, the Panel finds that MCFC is not meaningfully prejudiced by the Referral Decision, certainly not more than a party that is convicted in an internal first instance would be.
97. The Panel therefore finds that, generally, a club can in principle not lodge an appeal against a referral decision of the Investigatory Chamber (Article 14(1)(d) CFCB Procedural Rules) to CAS directly.
98. Against the above legal framework, the Panel will now turn its attention to the specific arguments invoked by MCFC as to why it should be permitted to bring an appeal against the Referral Decision in this specific case.

E. The AC Milan Cases

99. MCFC relies on *CAS 2018/A/5808 AC Milan v. UEFA* and *CAS 2019/A/6083 & 6261 AC Milan v. UEFA* (the “AC Milan Cases”) to argue that because UEFA argued in those cases that AC Milan could or should have appealed the referral decisions issued by the Investigatory Chamber, MCFC should also be permitted to do so in the matter at hand.
100. Different from AC Milan, MCFC never requested the Investigatory Chamber to conclude a settlement agreement. The Referral Decision therefore does not contain a refusal to conclude a settlement agreement, whereas the referral decisions issued by the Investigatory Chamber in the cases concerning AC Milan did contain such refusal. This distinction is considered crucial by UEFA.
101. Indeed, in *CAS 2018/A/5808 AC Milan v. UEFA*, UEFA submitted that the refusal to conclude a settlement agreement within the referral decision of the Investigatory Chamber was final and that AC Milan should have challenged it to CAS directly, i.e. it could no longer challenge this decision in the context of an appeal against the final decision of the Adjudicatory Chamber. The CAS panel in *CAS 2018/A/5808 AC Milan v. UEFA* however disagreed with UEFA’s position and ruled that the refusal to conclude a settlement agreement did not prejudice AC Milan, because a decision by the Adjudicatory Chamber could – in principle – have the exact same contents as a settlement agreement. For this reason the panel in *CAS 2018/A/5808 AC Milan v.*

UEFA found that the decision of the Investigatory Chamber not to conclude a settlement agreement and to refer the case to the Adjudicatory Chamber instead was not appealable.

102. A similar issue apparently arose in *CAS 2019/A/6083 & 6261 AC Milan v. UEFA*, in which a Consent Award was issued. Although the insight into the factual background set out in this Consent Award is somewhat limited, it does transpire from it that UEFA maintained its view that AC Milan could challenge the Investigatory Chamber's refusal to conclude a settlement agreement within the context of the referral decision directly to CAS. Although the Panel is not cognisant of the intricacies of these proceedings, considering that UEFA had previously argued in *CAS 2018/A/5808 AC Milan v. UEFA* that a refusal of the Investigatory Chamber to conclude a settlement agreement must be appealed to CAS directly, the Sole Arbitrator in *CAS 2019/A/6083 & 6261 AC Milan v. UEFA* may well have considered that AC Milan could in good faith rely on UEFA's legal argument in *CAS 2018/A/5808 AC Milan v. UEFA* and therefore appeal the Investigatory Chamber's refusal to conclude a settlement agreement to CAS directly.
103. Whether this is entirely accurate is unknown, but the Panel finds that it cannot be inferred from the AC Milan Cases that UEFA was of the view that referral decisions issued by the Investigatory Chamber generally, as opposed to the specific situation of a referral decision containing a refusal to conclude a settlement agreement, can be appealed to CAS directly.
104. Finally, it may well have been that UEFA initially objected to the admissibility of AC Milan's appeal against the referral decision issued by the Investigatory Chamber in *CAS 2019/A/6261*, but that it ultimately waived such objection in order to permit CAS to ratify the settlement agreement reached. There is simply too little information available to afford more precedential value to the Consent Award in *CAS 2019/A/6083 & 6261 AC Milan v. UEFA* in this respect.
105. Be that as it may, the Panel finds that UEFA's behaviour in the case *CAS 2019/A/6261* cannot alter the contents of the rules analysed above. However, the Panel also finds that the fact that UEFA in *CAS 2019/A/6261* – for reasons unknown – did not follow previous CAS jurisprudence has created legal uncertainty for clubs subjected to proceedings before the CFCB, as a consequence of which any club assisted by prudent counsel would be well-advised to challenge referral decisions directly before CAS in order to exclude the possibility that UEFA will later argue that it should have appealed one or certain aspects of a referral decision. While this legal uncertainty created by a rather non-transparent internal policy of UEFA has no impact on the interpretation of the applicable rules, it does have an impact on whether or not MCFC filed its appeal in good faith, which is an important aspect to be taken into account when it comes to the allocation of the costs in these proceedings.

F. Exceptions to the General Rule that Internal Legal Remedies must be Exhausted Prior to Filing an Appeal with CAS

106. Legal doctrine recognises exceptions to the general rule that internal legal remedies must be exhausted before an appeal can be filed with CAS:

“According to fundamental principles of law, internal remedies must be exhausted only if, under the circumstances, this can reasonably be required of the appellant. [...] [T]he requirement that internal remedies must be exhausted does not apply in cases where, for instance, the internal hearing body deliberately delays the proceedings or refuses to deal with the case, or has made comments about the matter which make it clear that it will not be able to act with the necessary impartiality. Furthermore, it is submitted that, in accordance with fundamental principles of international law, the exhaustion of internal remedies can reasonably be required only if such remedies are adequate and effective, that is, if they are capable of redressing the alleged infringement of the legal right at stake. [...]”
(RIGOZZI/HASLER, Article R47 CAS Code, in: Arroyo (Ed.), Arbitration in Switzerland, Vol. II, 2018, p. 1582)

“[...] [T]he fulfilment [of] the exhaustion of legal remedies may be waived if the remedies do not exist or are illusory. Specifically for sporting disputes, the obligation to exhaust internal remedies does not apply in certain circumstances where it could not be reasonably requested. This could be the case when the internal remedy seized risks to excessively retard the procedure or refuses to hear the case or cannot hear the case with the necessary impartiality. Therefore, only if the association’s internal instances are willing and able to grant effective legal protection do the appellant have the right to impose the exhaustion of internal remedies prior to the appeal to the CAS. The appellant should show that he exhausted the legal remedies, their non-existence or their illusory character.”
(MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 391)

107. The Panel agrees that there can be exceptions to the general rule that internal legal remedies must be exhausted. An exception would be warranted in case irreparable harm would be incurred prior to the issuance of the final decision and in case the proceedings would be wholly unbearable or if the outcome would be clear from the very outset. In such cases procedural efficiency would dictate that an appeal can be filed with CAS directly.
108. The Panel, however, does not find that the proceedings in the present matter brought before the Adjudicatory Chamber are illusory, inadequate or ineffective for MCFC. The high threshold for an appeal to CAS set out in the above literature is not met here.
109. Although the Panel does not exclude the possibility that one or more of MCFC’s rights in the proceedings before the Investigatory Chamber may not have been fully respected, the Panel has confidence that, if such procedural violations were held to exist, the Adjudicatory Chamber will right such wrongs and/or take such alleged

violations into account in its decision, and if it does not, MCFC has the possibility of appealing the Adjudicatory Chamber's final decision to CAS.

110. The Panel does not consider it appropriate to enter into a detailed analysis of the alleged deficiencies in the Investigatory Chamber proceedings, so as not to prejudge issues that are currently pending before the appropriate forum, i.e. the Adjudicatory Chamber, and which could later be brought in an admissible proceeding before CAS. In addition, the present Award is limited to the question of admissibility only and, thus, cannot trespass into the merits of MCFC's appeal, i.e. whether or not its rights were violated by the Investigatory Chamber.
111. The Panel finds that it suffices to conclude that, on a *prima facie* basis, any procedural violations in the proceedings before the Investigatory Chamber were not of such a nature that MCFC legitimately lost all faith in fair proceedings and a fair decision by the Adjudicatory Chamber, entitling it to file an appeal against the Referral Decision to CAS directly.
112. However, this finding by the Panel also implies that the Adjudicatory Chamber will seriously address and assess MCFC's procedural complaints as promised by UEFA in its submissions before this Panel in these CAS proceedings. In any event, such alleged procedural deficiencies will be reviewable in the context of an admissible appeal to CAS against a decision of the Adjudicatory Chamber.

G. The Alleged Leaks and the Potential Impact Thereof on the Impartiality of the Members of the Investigatory Chamber

113. The alleged leaking of information by members of the Investigatory Chamber or the UEFA administration about the proceedings against MCFC is worrisome. Again, the Panel is mindful not to trespass into the authority of the Adjudicatory Chamber to address MCFC's procedural complaints in detail. However, it must be noted that MCFC's complaints as to the leaks do not, on a *prima facie basis*, appear to be entirely without merit, particularly concerning the First and Second Leak, [...], and the Fifth Leak, which refers to an "*insider*" at UEFA as the source.
114. It puzzles the Panel how the CFCB Chief Investigator could be so confident to "*vehemently reject [MCFC's] allegations of unlawful activities, either by myself or by any of the members of the UEFA CFCB, in particular of its Investigatory Chamber (IC)*", and to state that MCFC's allegations regarding the leaks were "*groundless in the merits*" and to "*assure [MCFC] that at no time, myself or any of my fellow members of the IC have violated any rights of your club*".
115. However, as already set out *supra*, the Panel finds that the general rule that internal legal remedies must be exhausted prior to an appeal with CAS may be deviated from only in case there is irreparable harm that would warrant an exception to the general rule. The Panel does not consider this to be established. First of all, there is no evidence at this *prima facie* stage of analysis as to where the leak occurred. In particular, it is not established before this Panel whether a member of the Investigatory Chamber or somebody from UEFA's administration leaked the

information. Even if a member of the Investigatory Chamber would have violated his/her duty of confidentiality (cf. Article 10 CFCB Procedural Rules), the Panel finds that this would not have an immediate impact on this individual's impartiality, which is the prerequisite for recusing a member of the CFCB (cf. Article 9 CFCB Procedural Rules). In addition, a violation of the duty of independence and/or impartiality does not necessarily demand that such breach be remedied with a direct appeal to the CAS. Instead, the appropriate remedy for such circumstances would be the removal of this individual from the Investigatory Chamber.

116. Similarly, the Panel finds that MCFC's argument that the members of the Investigatory Chamber could no longer decide impartially after the First and Second Leaks, because they would be pressured into taking the decision predicted by the media, must be dismissed as this is not established on the evidence before the Panel, nor can such a link be demonstrated on the evidence available at this *prima facie* stage of analysis.
117. MCFC's reasoning in making this particular argument presupposes that the Investigatory Chamber had not yet made its mind up regarding the substance of the Referral Decision at the time of the First and Second Leaks, which would contradict MCFC's other argument that information regarding the substance of such decision was leaked (the content of the Referral Decision could not be leaked if no decision had yet been taken). If this is what happened, the leak was not an actual leak, but rather speculation as to what the Investigatory Chamber was going to decide. Such speculation has no impact on the impartiality of the Investigatory Chamber or the Adjudicatory Chamber, as speculation regarding the outcome of legal proceedings in general is commonplace.
118. Insofar as information about the content of the Referral Decision was indeed leaked to the media, this would mean that the Investigatory Chamber had already taken its decision, but that such decision was not in final form for issuance or communicated to MCFC yet. Regardless of how regrettable such leaks may be, it would not affect the impartiality of the members of the Investigatory Chamber because necessarily they would have occurred after the Investigatory Chamber members had already made up their minds.
119. Accordingly, whatever the truth may be, the Panel finds that either way there is no justifiable doubt based on the *prima facie* analysis at this stage of the CFCB proceedings as to the impartiality of the members of the Investigatory Chamber which would allow MCFC to bring the matter directly before CAS before the Adjudicatory Chamber has considered the matter and rendered a decision.
120. This is not to say that the leaks, if existent, did not cause damage to MCFC. It merely means that no irreparable harm has occurred at this stage of the CFCB proceedings such that an exception is warranted to the general rule that internal legal remedies must be exhausted prior to an appeal to CAS, i.e. MCFC should first turn to the Adjudicatory Chamber for relief before appealing to CAS.

121. In any event, the alleged leaks may result in a claim for damages, but it has not been established at this stage that they have an impact on the proceedings before the CFCB, and as noted above any claims for damages by the Appellant do not fall to be determined by the present Panel.

H. Overall conclusion in respect of the Referral Decision

122. The Panel thus finds that MCFC's appeal against the Referral Decision is inadmissible because MCFC failed to exhaust the internal legal remedies at its disposal before turning to CAS and because it failed to prove that an exception to this general rule would be warranted in the matter at hand.

I. The Leaks Decision

123. The so-called Leaks Decision culminating in the letter to the Appellant from the CFCB Chief Investigator of 20 May 2019 was sent as a response to MCFC's requests of 14, 15 and 16 May 2019 that "*the processes of the [Investigatory Chamber] should be paused forthwith pending investigation given the process is now contaminated and the [Investigatory Chamber's] independence compromised*".
124. The Panel observes that the Leaks Decision does not contain any decision refusing to stay the proceedings. Rather, such decision was already implicitly rendered with the issuance of the Referral Decision on 15 May 2019. The Leaks Decision merely indicates that the CFCB Chief Investigator rejected MCFC's allegations that any member of the Investigatory Chamber leaked information about the proceedings to the media.
125. The Panel therefore finds that the letter of 20 May 2019 itself is not an actual decision, but merely a communication of information, namely a denial of responsibility for the leaks. It did not however dispose of the matter in dispute.
126. Be that as it may, the implicit decision of the Investigatory Chamber not to stay the proceedings is not a final decision that can be appealed to CAS directly. It is merely a procedural decision comparable to decisions on whether or not to hold a hearing, to hear witnesses, to admit documents on file after a given deadline, etc. Such types of decisions cannot all be considered final decisions that can be appealed separately, for otherwise an appeal could be brought against almost any procedural decision, which would not be desirable from an efficiency point-of-view and is not how the Panel interprets the applicable rules.
127. Also, MCFC can reiterate its request to stay the proceedings before the appropriate forum, i.e. the Adjudicatory Chamber, and if it is unsatisfied with the Adjudicatory Chamber's decision it may then bring an appeal about the matter to CAS. The Panel was not convinced that this process would not be appropriate to address the Appellant's concerns and why the refusal to stay the proceedings and start an investigation regarding the leaks would cause irreparable harm to the Appellant justifying an appeal directly with CAS before the matter is considered by the Adjudicatory Chamber.

128. Consequently, the Panel finds that also MCFC's appeal against the Leaks Letter is inadmissible.

J. Claims For Damages

129. As noted above, a claim for damages and a request for "*an order that UEFA undertakes a full investigation into the sources of the Leaks in order to identify and take disciplinary measures against the identified sources, and takes full, appropriate remedial measures to ensure that strict confidentiality of both any process that may progress before the AC and of this arbitration*" cannot be pursued solely, i.e. without an appeal against a decision, in an Appeal Arbitration Proceeding. The correct forum to pursue such a claim – absent any plurality of claims including an appeal against a decision – is the Ordinary Arbitration Proceeding. Thus, in view of the findings above, also the claim for damages must be rejected as inadmissible.

K. Conclusion

130. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that MCFC's appeal in the present matter is inadmissible.
131. All other and further motions or prayers for relief are dismissed.

IX. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 24 May 2019 by Manchester City Football Club Limited in the present matter is inadmissible.
2. (...).
3. (...).
4. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 15 November 2019

THE COURT OF ARBITRATION FOR SPORT

Manfred **Nan**
President of the Panel

Andrew de Lotbinière
McDougall
Arbitrator

Ulrich **Haas**
Arbitrator

Dennis **Koolgaard**
Ad hoc Clerk