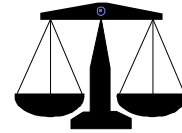




AMERICA'S CUP 32

AMERICA'S CUP JURY JURY NOTICE JN006 DECISION ACJ004 Alinghi's interactive model



1st March 2005

To: Challengers and Defender

Copies: ACM, Chief Measurer, Jury, Umpires, Media Centre

Applicant: Société Nautique de Genève represented by Team Alinghi SA ("Alinghi")

Jury Members:	<i>Chairman</i>	Bryan Willis
	<i>Members</i>	Professor Gabrielle Kaufmann-Kohler Graham A McKenzie Henry L Menin David Tillett

IN THE MATTER of the Protocol governing the 32nd America's Cup

AND

IN THE MATTER of an interpretation of Article 13.10 of the Protocol concerning an interactive scale model of an ACC yacht.

A. The Application – Jury Notice JN005

- [1] An application and submissions were received from Alinghi on 28 January 2005 concerning an interpretation of Article 13.10 of the Protocol.
- [2] On 29 January by way of Jury Notice JN005, the Jury provided a copy of Alinghi's application and submissions to Competitors and other parties in terms of the Protocol and Jury Rules of Procedure.
- [3] The Jury set a timetable of 14 February for responses from Competitors and other parties and 20 February for Alinghi to file a reply to any responses.

B. Alinghi's Application

- [1] Alinghi's application concerned an interpretation of Article 13.10 of the Protocol being:

"As part of one interactive activity it proposes to build an interactive exhibit, which has a hull similar to, and approximately the size of an ACC yacht to provide a replica sailing experience. Alinghi seeks from the Jury an interpretation that in completing such hull for its interactive activities, the hull will not constitute a scale model for the purposes of Article 13.10 of the Protocol and be deemed to be a New ACC yacht for the purposes of Article 13.3 of the Protocol, and that it will not otherwise constitute a New ACC yacht under the Protocol".

C. Confidentiality

- [1] Alinghi requested the provision to the Jury of the drawings and further information regarding their proposal on a confidential basis. It sought confidentiality to protect its commercial and marketing interests.
- [2] Alinghi in its submission consented to the Technical Director and any member of the Measurement Committee being provided with the drawings and further information.
- [3] The Jury did not make any initial orders concerning confidentiality pending the responses from the various parties.
- [4] No party opposed confidentiality. The Jury accepted that in terms of Rules of Procedure clause 8.1, the drawings and related information regarding the proposed interactive activity would be kept confidential.
- [5] The Drawings were provided to the Technical Director and subsequently the Jury.

D. Submissions in response

- [1] The Jury received submissions in response from two Competitors namely, K Challenge and BMW Oracle.
- [2] The representative of le Cercle de la Voile de Paris, represented by K-Challenge (“K-Challenge”) submitted that Alinghi’s proposal should be permitted to proceed with a number of safeguards. Alinghi should be required to provide the confidential drawings to the Jury and when the interactive exhibit opened at the AC Base, those documents should be made available to all Competitors. In addition, K-Challenge submitted that Alinghi should be required to provide the undertakings as offered and those undertakings should be distributed to all Challengers who should in turn be given the opportunity to comment.
- [3] The Golden Gate Yacht Club represented by BMW Oracle Racing (“BMW Oracle”) submitted that the Jury and Measurement Committee should first be required to be satisfied that before and after construction, Alinghi will not derive any design advantage and the entire yacht should be constructed of wood and fibreglass and not carbon fibre.
- [4] Both K-Challenge and BMW Oracle submitted that the failure by Alinghi to comply with any undertakings given should result in the interactive exhibit boat being deemed to have allocated a sail number under Protocol 13.10.

E. Alinghi’s response

- [1] On 18 February Alinghi responded to the submissions from K-Challenge and BMW Oracle.
- [2] Alinghi opposed in particular, K-Challenge’s submission that when opened to the public the interactive exhibit plans and specifications should be made available to the Designers of other Competitors. Alinghi submitted that the Jury assisted by the Technical Director and the Measurement Committee were the only appropriate parties to view the plans and

specifications and that the distribution of a range of undertakings for comment by Challengers sought by K-Challenge was not appropriate.

- [3] Alinghi also submitted that it accepted that the hull and deck of the exhibit should be made from wood and fibreglass but that they should be free to install other fittings and equipment made from whatever materials they considered appropriate.

F. Technical Report

- [1] The Jury sought and obtained a report from the Technical Director. The Technical Director was provided access by Alinghi to the plans and drawings of the proposed interactive exhibit and was given the opportunity to ask questions of the Alinghi personnel.
- [2] The Jury was also provided with copies of the same data provided to the Technical Director.
- [3] The Technical Director provided a report on 21 February to the Jury. The Technical Director advised that in his opinion, the proposal could not provide any meaningful advantage to Alinghi, provided certain safeguards were met.

G. Jury's Decision

- [1] Article 13.10 of the Protocol provides:

*"13.10 **Size limitation for models:** Any scale model or scaled down version of an ACC Yacht (or other yacht, other than an ACC Yacht, which could be measured as an ACC Yacht without significant modification) which is greater than one-third of the size of an actual ACC Yacht (or such other yacht) is deemed to be a New ACC Yacht for the purposes of this Article and shall be deemed to have been allocated a sail number under the ACC Rules."*

- [2] With reference in particular to the submissions contained in clause 6.1 of Alinghi's submissions of 26 January, the Jury accepts that the proposed interactive exhibit would not constitute a "scale model or scaled down version of an ACC Yacht" in terms of Article 13.10 of the Protocol.
- [3] The purpose of the Protocol is set out in Article 2 which includes 'to promote a competitive sporting regatta for all Competitors, to realise the sporting and commercial potential of the Americas Cup...' The Jury accepts that the interactive scale model in terms of Article 2 of the Protocol will assist with the promotion and commercial potential of the America's Cup in terms of Article 2 of the Protocol consistent with the Deed of Gift without breaching Article 13.10 of the Protocol.
- [4] In order to ensure that the provisions of Article 13.10 of the Protocol are and continue to be satisfied, Alinghi is required to provide prior to the commencement of construction, written undertakings to the Jury providing for the following:
- [a] that the entire hull and deck (as defined in the ACC Rules) is constructed of fibreglass and/or wood. Fibreglass shall be limited to glass fibre in a resin matrix and may include fillers and other normal "low-tech" boat building materials as may

be approved through the Technical Director on behalf of the Jury. No carbon fibre shall be used in the construction of the hull and deck.

- [b] the final working drawings to be used for the construction of the hull and deck shall be reviewed and approved on behalf of the Jury by the Measurement Committee prior to commencement of the construction in order to ensure compliance with [4][a].
 - [c] that any significant or material change in the currently provided drawings during construction or such subsequent change to the as constructed interactive scale model prior to completion of the sailing of the last match of the 32nd Americas Cup shall first be notified to the Jury and the Measurement Committee with the approval of the Jury to first be obtained before any such changes are effected.
 - [d] representatives of the Measurement Committee on behalf of the Jury shall be granted access to inspect the hull and deck at any time during the course of construction and upon completion to enable them to be satisfied that it has been built in accordance with the final working drawings and specifications as already provided.
 - [e] that the interactive scale model nor any part of it will be used for any form of testing including, but not limited to, towing, tank towing or wind tunnel testing.
- [5] The exact wording of the undertaking shall otherwise be as agreed with the Jury in consultation with the Technical Director prior to any construction commencing of the interactive scale model. A copy of the completed undertaking will then be circulated to all Competitors for their information.
- [6] Mechanisms normally used for simulators including materials relevant to such mechanisms, shall otherwise be permitted as also will be permitted are typical ACC Yacht fittings and equipment installed on the deck, provided they are bona fide and where applicable, do not contribute to the stiffness of the scale model.
- [7] Provided the above undertakings are given and are continued to be met, the proposed interactive scale model yacht will not constitute a scale model for the purposes of Article 13.10 of the Protocol and will not be deemed to be a New ACC Yacht for the purposes of Article 13.10 of the Protocol and shall not be deemed to have been allocated a sail number under the ACC Rules.

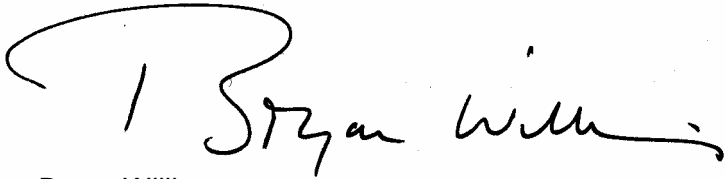
H. Costs

Taking into consideration the circumstances of the case, including the technical aspects and commercial relevance, the costs of the Jury are fixed at €10,000. Such costs are to be paid by Alinghi within 21 days or the earlier of the date that they provide their written undertaking which must be prior to commencement of any construction of the proposed interactive model.

I. Ruling Summary

- [1] The proposed interactive scale model does not constitute a scale model or scaled down version of an ACC Yacht in terms of Article 13.10 of the Protocol.

- [2] Alinghi, prior to commencement of construction, must provide a number of written undertakings to the Jury, a completed copy of which will be provided to all Competitors.
- [3] The plans, drawings and related information of the proposed interactive activity are to remain confidential.
- [4] The costs of the Jury are fixed at €10,000. Such costs are to be paid to America's Cup Management.

A handwritten signature in black ink that reads "Bryan Willis". The signature is fluid and cursive, with a large, sweeping initial "B" that loops back under the first part of the name.

Bryan Willis

America's Cup Jury:

Gabrielle Kaufmann-Kohler, Graham McKenzie, Henry Menin, David Tillett, Bryan Willis (chairman)