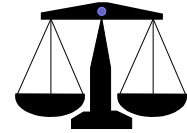




AMERICA'S CUP 32

AMERICA'S CUP JURY
JURY NOTICE JN051
22nd September 2006



Jury Decision ACJ020
Appointment of 5th Jury Member

To: Challengers and Defender, ACM, Chief Measurer ("Parties")

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

AND

IN THE MATTER of the appointment of a 5th Member of the Jury pursuant to Article 21.1(c)(iii) of the Protocol.

Appointment of a 5th Jury Member

[1] Article 21.1(c)(iii) amendment number 11 of the Protocol provides that:

11. *"If on 31st July 2006 there are less than five appointed members of the Jury, and the Defender and Challenger Commission have not agreed on the appointment of the required additional members, the Jury shall appoint the required additional members so that the Jury will then be comprised of five appointed members by applying as far as possible the following criteria:*

- (A) *they are a resident of Europe;*
- (B) *they have a legal background;*
- (C) *they can attend the remaining Pre-regattas and the Regatta;*
- (D) *have no real or perceived conflict of interest;*
- (E) *meet the requirements listed in Article 21.2."*

[2] Prior to 31st July 2006 the Defender and the Challenger Commission advised the Jury that they had not been able to reach agreement on the appointment of a 5th Jury Member. They requested the Jury to commence the process of appointment as provided for in Article 21.1(c)(iii) of the Protocol.

Jury Notice JN046

[3] On 17th July, the Jury issued Jury Notice JN046 which provided for a proposed selection and appointment process, directions and a timetable by which Parties could respond if they so wished. Jury Notice JN046 provided:

"Appointment of 5th Jury Member

[1] *Team Alinghi SA as the appointed representative of Société Nautique de Genève ("Alinghi"), the Defender of the America's Cup and the Challenger Commission has advised the Jury that they have not been able to reach agreement on the appointment of a 5th Member of the Jury pursuant to the provisions of the Protocol. They have requested*

the Jury to commence the process of appointment of a 5th Jury Member as provided for in Article 21.1(c)(iii) of the Protocol (amendment number 11 to the Protocol).

- [2] *The Jury does not intend to make an appointment of a 5th Jury Member until after the 31st July 2006. However, in accordance with the request from Alinghi and the Challenger Commission, the Jury is willing to commence the process of selecting a 5th Jury Member prior to the 31st July 2006.*

Proposed selection and appointment process

- [3] *The selection process of a 5th Jury Member proposed by the Jury is, after having provided the opportunity for all Parties to Respond to this Jury Notice, subject to consideration of any such Responses, to then commence the selection process followed by an appointment.*
- [4] *The process of selection including identification of any proposed 5th Jury Member, would all be subject to an order for confidentiality and remain confidential as between the Jury, Alinghi and the Challenger Commission. Only representatives of Alinghi and the Challenger Commission and the Jury will be able to propose names of 5th Jury Members and make submissions. The process would be conducted outside ECAF.*
- [5] *The selection process would otherwise be as directed by the Jury. It will involve a combination of written and oral submissions by Alinghi and the Challenger Commission.*
- [6] *When a 5th Jury Member is appointed by the Jury in accordance with the criteria provided for in Article 21.1(c) (iii) of the Protocol, the decision regarding such appointment would be posted on ECAF.*

Directions and timetable

- [7] *Parties who may wish to respond to the proposed process to appoint a 5th Jury Member including proposed orders for confidentiality must do so via ECAF by the 19th July 2006."*

No Responses to JN046

- [4] No Parties filed a formal Response to JN046.

Jury Notice JN048

- [5] On 20th July, the Jury issued Jury Notice JN048 which invited the Defender and the Challenger Commission to submit names of prospective 5th Jury Members together with directions, a timetable and an order for confidentiality. Jury Notice JN048 provided:

*"[1] On the 17th July 2006 the Jury issued Jury Notice JN046** concerning a proposed selection and appointment process of a 5th Jury Member as provided for in Article 21.1(c)(iii) of the Protocol (amendment number 11 to the Protocol).*

No Responses to JN046**

- [2] *The Chairman of the Challenger Commission advised the Jury Chairman by email that the Challenger Commission would not file a submission in Response to Jury Notice JN046** as it did not have any comment and supports the proposed process.*
- [3] *Hamish Ross representing Alinghi advised the Jury Chairman by email that Alinghi has no comment on the suggested process and hopes the Jury will proceed.*

- [4] *No Parties filed a Response on ECAF to Jury Notice JN046** by the required time of the 19th July 2006.*

Proposals for a 5th Jury Member

- [5] *Alinghi and the Challenger Commission are now invited to submit to the Chairman of the Jury, the names of prospective 5th Jury Members. Such Submissions should include the reasons why, applying as far as possible the criteria contained in Article 21.1(c)(iii) of the Protocol, the persons meet such criteria.*
- [6] *The Jury may also suggest names of prospective 5th Jury Members to Alinghi and the Challenger Commission. If so, they will be provided after names have been submitted by Alinghi and the Challenger Commission, by the earlier of their providing Responses or the time provided in paragraph [9] for Response has expired.*

Directions and timetable

- [7] *Until otherwise directed by the Jury, all future communications by Alinghi and the Challenger Commission concerning the appointment of the 5th Jury Member shall not be conducted on ECAF, but shall occur directly to the Jury Chairman in writing (bryanwillis@gmail.com).*
- [8] *Any names of prospective 5th Jury Members submitted by Alinghi and the Challenger Commission, together with any supporting information including why such persons meet the criteria contained in Article 21.1(c)(iii) of the Protocol shall be copied to each other at their respective email addresses as soon as possible and by no later than the 27th July 2006.*
- [9] *If they wish to Respond, Alinghi and the Challenger Commission are requested to respond to any 5th Jury Member names that may be submitted in terms of paragraph [5] of this Jury Notice by the 31st July 2006.*
- [10] *The Jury will provide further directions to Alinghi and the Challenger Commission concerning the process of selection and appointment of a 5th Jury Member as the Jury sees fit. This may include the provision of additional time for Alinghi and the Challenger Commission to Respond to any 5th Jury Member names the Jury may have suggested in terms of paragraph [6].*

Order for Confidentiality

- [11] *Pursuant to Rule 8.1 of the Rules of Procedure, the identity of any proposed 5th Jury Member submitted to or by the Jury, any information relating to them and any submissions made by Alinghi or the Challenger Commission concerning such persons shall remain confidential as between the Jury, Alinghi and the Challenger Commission.*

***Previously JN045 was quoted in error and corrected to JN046 on 26th July 2006."*

Submission in respect of prospective fifth Jury Members

- [6] *Written submissions were provided by Alinghi and the Challenger Commission with candidates' names and reasons why the candidate met the criteria contained in Article 21.1(c) (iii). The Jury also provided names for consideration by Alinghi and the Challenger Commission.*
- [7] *Alinghi and the Challenger Commission provided further submissions in Response with regard to each of the prospective fifth Jury Members.*

- [8] The Jury, with the knowledge of Alinghi and the Challenger Commission, separately carried out its own enquiries in respect of the proposed persons, including in some cases contacting them directly. Such enquiries included assessing their meeting the criteria of Article 21.1(c)(iii) of the Protocol, including their availability and their disclosure of any conflicts of interest they might have.

Mediation

- [9] On the 15th of September, the Chairman of the Jury held a conference call with Alinghi General Counsel (Hamish Ross) and the Challenger Commission Chairman (Alessandra Pandarese) and sought by way of mediation to find a mutually acceptable resolution. The mediation was not successful.

Particulars confidential

- [10] The Jury ordered in JN048 that any information relating to any proposed fifth Jury Member and any submissions made are to be kept and remain confidential. Accordingly, no further details will be provided in this decision.

Request for a Hearing

- [11] Alinghi requested a hearing before the Jury to be given the opportunity to make oral submissions and present witnesses. The Challenger Commission opposed holding such a hearing. The Challenger Commission submitted that all appropriate submissions had been made and the Jury should proceed to appoint a fifth Jury Member as required by the Protocol.

Decision

- [12] Rules of Procedure clause 5.2 provides the Jury with discretion as to whether an oral hearing be held. The Jury considers it is not necessary or appropriate to hold a hearing in this case. Where a party for good reasons requests the right to be heard at an oral hearing the Jury would normally give favourable consideration to such a request. In this case, as the Jury considered it had sufficient information to make its decision which was not adverse to the party seeking the oral hearing, the Jury was satisfied it should proceed with its decision without an oral hearing. In addition, the Jury members are not on site in Valencia and are located in different parts of the World. To bring them together for an oral hearing, would incur substantial travel and time costs which would have been an unnecessary cost in light of the Jury's decision that they have sufficient information to make the appointment.
- [13] Henry Peter was the only candidate that had been approved by both Alinghi and the Challenger Commission. After such approval, it was ascertained that Henry Peter was not able to be in Valencia during all parts of the Pre-regatta and the Regatta in 2007 and the Challenger Commission then withdrew its approval. When Alinghi and the Challenger Commission were subsequently unable to reach agreement on the appointment of a fifth Jury member, Amendment No 11 to the Protocol followed. During the course of the appointment process Henry Peter confirmed that he was able to be on site in Valencia on a more practical basis during the scheduled racing periods in 2007 than he had previously indicated.
- [14] Having carefully considered the submissions received from Alinghi and the Challenger Commission and having evaluated each of the proposed candidates against the

respective criteria provided for in Article 21.1(c)(iii) of the Protocol, the Jury is satisfied that Henry Peter best meets the criteria.

- [15] Effective from the date of this decision pursuant to the provisions of Article 21.1(c)(iii) of the Protocol the Jury hereby appoints Henry Peter as a member of the Jury.

Appointment of an additional Jury Member for hearings under the Racing Rules

- [16] The Jury recognises the Challenger Commission's concerns with regard to all Jury members not being able to be present in Valencia for all of the Pre-Regatta and stages of the Regatta in 2007. After the Jury reached its decision the Chairman of the Jury discussed with representatives of Alinghi and the Challenger Commission the possibility of appointing an additional sixth Jury member with experience at judging high level sailing events. Such an appointment is permitted by agreement between SNG (Société Nautique de Genève) and the Challenger Commission in terms of establishing the pool of jurors in accordance with the provided for in Article 21.1(b) of the Protocol. Alinghi has indicated its willingness to agree to appoint such a person to be present in Valencia and sit as a member of the Jury for hearings under the Racing Rules of Sailing during the two periods that a member of the Jury with experience of judging high level sailing events is scheduled not to be in Valencia. The Challenger Commission Chairman indicated her intention to recommend to the Challenger Commission that it makes this appointment.

Costs

- [17] With reference to clause 12 of the Jury Rules of Procedure and the Jury Guidelines for the Award of Costs, the Jury considers that this decision is of "universal application or for the benefit of a significant number of competitors" and no costs will be awarded.

Summary of the decision

- [18] Henry Peter best meets the criteria provided for in Article 21.1(c)(iii) of the Protocol and is appointed as a fifth member of the Jury effective from the date of this decision.
- [19] No costs are awarded as the decision is of universal application.
- [20] Alinghi has indicated its willingness to agree to the appointment a sixth Jury member to be present in Valencia to serve on the Jury for hearings under the Racing Rules of Sailing when a full complement of the Jury is not available.



Bryan Willis

Americas Cup Jury;
Graham McKenzie, Henry Menin, David Tillet, Bryan Willis (Chairman).