



**Arbitration CAS 2014/A/3467 Guillermo Olaso de la Rica v. Tennis Integrity Unit (TIU), award of 30 September 2014**

Panel: Mr Luc Argand (Switzerland), President; Mr Ricardo de Buen Rodriguez (Mexico); His Honour James Robert Reid, QC (United Kingdom)

*Tennis*

*Match-fixing*

*Full power of review of a CAS Panel under Article R57 CAS Code*

*Admissibility of skype messages as evidence at CAS proceedings*

*De novo review and control of the sanction imposed by the disciplinary body of the previous instance*

1. The CAS appellate arbitration procedure under Article R57 of the CAS Code entails a trial *de novo* and such review by CAS, as repeatedly decided by well-established CAS jurisprudence, cures any procedural irregularities in the proceedings below.
2. Skype messages can be considered to be admissible means of evidence with probative value to the proceedings to the extent that the “chain of custody” of the laptop was intact.
3. Whilst a hearing before the CAS is a hearing *de novo*, the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules should be reviewed only when the sanction is evidently and grossly disproportionate to the offense.

**I. FACTUAL BACKGROUND**

**A. THE PARTIES**

1. Mr. Guillermo Olaso de la Rica (“the Appellant”, “Mr. Olaso”, “the Player” or “the Covered Person”) of Spanish citizenship has been a registered professional tennis player with the ATP since 2007.
2. The Tennis Integrity Unit (“the Respondent” or “TIU”) is charged with enforcing the sport’s zero tolerance policy towards gambling-related corruption worldwide in the sport of tennis.

The Professional Tennis Integrity Officers (“PTIOs”) are appointed by each four Governing Bodies [(ATP Tour Inc (“ATP”), International Tennis Federation (“ITF”), WTA Tour Inc

(“WTA”) and the Grand Slam Committee (“GSC”)] participating in the Uniform Tennis Anti-Corruption Program (“the Governing Bodies”)<sup>1</sup>.

## B. SUMMARY OF THE RELEVANT FACTS

3. The Uniform Tennis Anti-Corruption Program (“the Program”) was adopted effective 1 January 2009 by the Governing Bodies.

In 2010, the 2010 version of the Program applied (“the 2010 Program”). According to Rule A of the 2010 Program:

*“The purpose of the Uniform Tennis Anti-Corruption Program is to (i) maintain the integrity of tennis, (ii) protect against any efforts to impact improperly the results of any match and (iii) establish a uniform rule and consistent scheme of enforcement and sanctions applicable to all professional tennis events and to all governing bodies”.*

4. On 1 January 2010, Mr. Olosa signed the ATP “*Player’s consent and agreement to the ATP official rulebook, including the uniform tennis anti-corruption program & tennis anti-doping program*” for the year 2010 (“the 2010 Player’s agreement”) which provides the following<sup>2</sup>:

*“I, the undersigned player, acknowledge, consent and agree as follows:*

1. *I will comply with and be bound by all the provisions of the 2010 ATP OFFICIAL RULEBOOK and the ATP Tour, Inc’s (“ATP”) By-Laws (the “ATP Rules”), including, but not limited to, all amendments to the ATP Rules. I have received and had an opportunity to review the ATP Rules.*
2. *I acknowledge that the ATP has a Uniform Tennis Anti-Corruption Program and the program rules are included in the 2010 ATP OFFICIAL RULEBOOK. I accept that I must comply with and be bound by all provisions included in the Uniform Tennis Anti-Corruption Program. The Uniform Anti-Corruption Program prohibits certain conduct by me and my “related persons”, as defined in the rule, including but not limited to, (i) wagering on any tennis match, (ii) contriving or attempting to contrive the outcome of any tennis match, (iii) providing for consideration information concerning the condition or status of players, and (iv) the failure to report to the Professional Tennis Integrity Officer as soon as possible any knowledge I may have regarding potential violations of the Uniform Tennis Anti-Corruption Program. Nothing in this paragraph 2 shall modify or limit the full text of the Uniform Tennis Anti-Corruption Program.*
3. (...)
4. (...)

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<sup>1</sup> Reference to the PTIOs is made with respect to the exchange of correspondence between the Respondent and the CAS Court Office whereby the TIU sustains that the proper Respondent should be the PTIOs and the CAS Court office responds that it has taken into consideration the Appellant’s designation in this respect (see §§ 20 & 21 below).

<sup>2</sup> The Player also signed a Player’s agreement for 2008 and 2009, respectively.

5. *Any dispute between or among the ATP and me arising out of the application of any provision of the 2010 ATP Official Rulebook which is not finally resolved by applicable provisions of such Rulebook shall be submitted exclusively to CAS for final and binding arbitration in accordance with CAS's Code of Sports-Related Arbitration. The decision of CAS in the arbitration shall be final, non-reviewable and enforceable. No claim, arbitration, lawsuit or litigation concerning the dispute shall be brought in any other court or tribunal. Any request for CAS arbitration shall be filed with CAS within 21 days of any action by the ATP which is not subject of the dispute. In the event any provision of this clause is determined invalid or unenforceable, the remaining provisions shall not be affected. This clause shall not fail because any part of the rule is held invalid. (...)<sup>3</sup>*
5. On [...], the TIU received a suspicious match alert from the [...] Betting Operator [...] noted what they considered to be suspicious betting patterns on 3 matches, to be played at the ATP [...] tournament in [...] on [...] (two matches) and [...] (one match). The match to be played on [...] was to oppose Mr. Olaso to [...]. In each of these 3 matches, the lower ranked player (in the present case [...]) was being bet on to win in a triple combination. Eight bets in the amount of EUR 200.- were placed through betting shops in [...] and [...] and could return winnings of over EUR 65'000.- One bet was placed at a location in [...], in the amount of GBP 500.-.
6. On [...], both lower ranked players who played that day, won their matches. The then Director of the TIU Mr. Jeff Rees ("Mr. Rees") caused the [...] Tournament Supervisor, [...] to speak with [...] and Mr. Olaso prior to their match. Each player was given by hand a letter signed by Mr. Rees which set out various anti-corruption violations of the 2010 Program. Mr. Rees also advised them how to contact the TIU to report information about approaches and reminded them to play to the best of their ability in the next day's match.
7. On [...], the match between Mr. Olaso and [...] took place and Mr Olaso lost to [...]. [...] watched the match and submitted a report to the TIU on the same day.
8. On [...], Mr. Nigel Willerton ("Mr. Willerton"), who was at that time a TIU Investigator, sent a letter to Mr. Olaso informing him that the TIU was conducting an investigation. The letter requested Mr. Olaso to provide a variety of information and records pursuant to the Program. On [...], Mr. Olaso responded by providing phone billings for 2 phone numbers.
9. On [...], Mr. Olaso was interviewed a first time by Mr. Willerton in Barcelona. The interview was recorded.
10. On [...], Mr. Olaso was interviewed a second time by Mr. Willerton in Cesena, Italy. The interview was recorded.
11. On 29 August 2013, the PTIOs sent an Email to the Player alleging the following ("Notice of charge"):  
"(...)"

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<sup>3</sup> §§ 3 and 4 of the 2010 Player's agreement being related to anti-doping violations, they are not quoted in this award.

1. *During the period [...] through [...] you accepted an offer by [...] to contrive to lose your match scheduled for [...] in [...], against [...]. This is in violation of Article D.1.c [2010 Program].*
2. *You did not report this approach by [...] to the Tennis Integrity Unit in violation of Article D.2.a.i [2010 Program].*
3. *On or about [...], you tampered with or destroyed the messages contained on your mobile telephone which messages included evidence or other information related to Corruption Offenses in violation of Article F.2.b [2010 Program].*
4. *On or about [...], you tampered with or destroyed the SIM card used in your mobile telephone with SIM card contained evidence or other information related to Corruption Offenses in violation of Article F.2.b [2010 Program].*
5. *In [...] or [...], you were approached by an individual and offered payment if you would contrive the results of one or more tennis matches in exchange for payment. You did not report that approach to the Tennis Integrity Unit in violation of Article D.2.a.i. [2010 Program] (...)."*
12. Mr. Richard H. McLaren was appointed as Anti-Corruption Hearing Officer ("AHO") to hear the case.
13. On 24 September 2013, the AHO issued Procedural Order #1 which was executed by the PTIOs on 24 September 2013 and by the Player on 25 September 2013. By executing Procedural Order #1, the Parties acknowledged that the AHO was properly appointed and qualified to hear the case. However, subsequently to signing Procedural Order #1, the lawyers for the Player raised objections with respect to the jurisdiction and the status of the AHO to hear and determine the matter.
14. On 10 October 2013, the Appellant filed a submission with the AHO. He explained *inter alia* that he had been made aware that [...], thus calling into question the independence of Mr. McLaren. On 24 October 2013, the AHO reaffirmed in its Ruling n°1 the application of Procedural Order #1.
15. On 8 November 2013, the Appellant appealed to CAS against the AHO's Ruling n°1. On 23 November 2013, CAS sent a letter to the Appellant explaining *inter alia* that this appeal lay outside its competence and was therefore not admissible.
16. On 4 December 2013, a hearing took place before the AHO.
17. On 23 December 2013, the AHO rendered the following decision:  
"(...)"

1. *Olaso (a Covered Person) having been found to have committed a Corruption Offense under Article D.1.c<sup>4</sup> and two counts of violating the Reporting Obligation of Article D.2.a.i<sup>5</sup> is declared to be ineligible for participation in any event organized or sanctioned by any Governing Body for a period of five years from the date of this decision. During the foregoing period of ineligibility, the provisions of Article H.1.c of the 2010 Program will continue to apply.*
  2. *In accordance with Article H.1.a, having found the commission of a Corruption Offense, Olaso is ordered to pay a fine of \$25,000 US to the Governing Body. Such fine can be paid in three equal instalments due at the end of each full year of the period of ineligibility.*
  3. *The TIB [Tennis Integrity Board] may direct Olaso to attend any Governing Body authorized anti-gambling or anti-corruption education or rehabilitation programs held during the period of ineligibility. Subject to paragraph four (4) below, if Olaso attends such programs and has fully paid the fine imposed by paragraph number two (2), the last eighteen (18) months of the period of ineligibility will be suspended.*
  4. *During the eighteen month period of suspended ineligibility, if there is any infraction of the Anti-Corruption Program in place during that time the suspension will cease and the additional eighteen months of ineligibility will be required to be served irrespective of any new infraction of the Program which cause the re-introduction of the period of ineligibility.*
  5. *As prescribed in Article G.4.d, this Decision is a full, final and complete disposition of the matter before the AHO. The orders herein are binding on all parties and take effect from the date of this Decision.*
  6. *In accordance with Article G.4.d, the TIB are directed to publicly report this Decision.*
  7. *This Decision herein may be appealed in accordance with Article I.3 of the Program for a period of 'twenty business days from the date of receipt of the decision by the appealing party.' The appeal is to the Court of Arbitration for Sport in Lausanne, Switzerland".*
- ("the Decision").

### C. PROCEEDING BEFORE THE CAS

18. On 14 January 2014, the Appellant filed an appeal against the Respondent with respect to the Decision, requesting the "(...) non-enforceability of the decision of the AHO Mr. Richard Maclaren dated 23 December 2013 herein appealed (...)". Together with his appeal, the Appellant requested a stay

<sup>4</sup> Decision page 32 § 123: "I find on the preponderance of the evidence that Olaso did contrive or attempt to contrive the outcome of his match against [...] thereby committing the Corruption Offense set out in Article D.1.c. It is not required that money be paid to contrive or attempt to contrive a match. Olaso was never paid any money. At no point in the Skype transcripts does it appear that Olaso refused to accept the money because he did not throw the match. Rather, it would appear his sole reason for not accepting the offer of money form [...] was fear of detection".

<sup>5</sup> Decision page 32 § 125: "I find on the preponderance of evidence, that Olaso did not report the approach of [...] to the TIU in connection with the match fixing scheme of [...] thereby creating the Reporting Offense outlined in Article D.2.a.i." and page 32 § 132 (with respect to a separate approach "from a guy who offered him to fix a match at [...]") "(...) I find that despite not knowing who made this approach or the timing of it on the preponderance of the evidence based upon the Player's own conversation with [...] is sufficient to establish the Player did not report an approach to the TIU in connection with a match fixing scheme thereby creating the Reporting Offense found in Article D.2.a.i.".

of the Decision. He also requested that the proceedings be submitted to a sole arbitrator, for cost reasons.

19. On 16 January 2014, the Respondent was granted a period of 20 days to submit his response to CAS (art. R55 of the Code of Sports-related Arbitration ["CAS Code"]), 10 days to submit his position on the Appellant's request for a stay (art. R37 CAS Code) and 5 days to indicate whether he agrees to the appointment of a sole arbitrator.
20. On 21 January 2014, the Respondent informed the CAS Court office that "(...) *the proper Respondents in this proceedings are the Professional Tennis Integrity Officers, not the Tennis Integrity Unit. (...)*" and that the appeal be submitted to a panel of three arbitrators since this is an appeal submitted to art. R65 CAS Code.
21. In a letter sent on 22 January 2014 to the parties, the CAS Court office informed them that:  
*"(...) With respect to the Respondent in this matter, the parties are advised that the CAS Court Office has taken into consideration the Appellant's designation in this respect". and that "(...) In view of the fact that the present proceedings is indeed subject to art. R65 [CAS Code] the Appellant is invited to state (...) whether he would agree to submit the present matter to a Panel of three arbitrators. (...)"*
22. On 23 January 2014, the Respondent filed his answer to the Appellant's first request for a stay.
23. In a letter sent on 23 January 2014 to the CAS Court office, the Appellant objected to a Panel of three arbitrators, on the basis that he would not have the financial means to face arbitration costs. Accordingly, on 24 January 2014, the CAS Court office "*reminded (...) the Appellant that the present proceedings are subject to art. R65 [CAS Code], according to which the proceedings shall be free, as this matter is exclusively of a disciplinary nature rendered by an international body ruled in appeal. (...)*" and granted him a new deadline to state whether he would agree to submit the present matter to a Panel of three arbitrators.
24. On 24 January 2014, the Appellant filed his appeal brief, requesting the following in his prayers for relief: "*(...) to annul (...) [the] Decision on the basis expressed above. (...)*".
25. On 27 January 2014 and following receipt of the Appellant's appeal brief, the Respondent was granted 20 days to submit its response to CAS [art. R55 CAS Code].
26. On 28 January 2014, the Appellant agreed to submit the present matter to a Panel of three arbitrators.
27. On 6 February 2014, the first request for a stay was denied by way of an Order on Request for a Stay.
28. On 18 February 2014, the Respondent filed his answer, requesting the following in his prayers for relief:

*“The evidence is uncontroverted and establishes that Mr. Olaso violated the Program as set forth in the AHO’s Decision of 23 December 2013. The PTIOs respectfully request that the Panel uphold the determination of the AHO that Mr. Olaso committed Corruption Offenses and uphold the sanctions imposed by the AHO”.*

29. On same day, the parties were invited to inform the CAS Court Office whether they requested that a hearing be held in this matter. Both the Respondent, on 24 February 2014, and the Appellant, on 26 February 2014, requested a hearing.
30. On 12 March 2014, the Appellant filed a second request for a stay of the Decision.
31. On 27 March 2014, the Respondent filed his answer to the Appellant’s second request for a stay.
32. On 16 April 2014, the second request for a stay was denied by way of a second Order on Request for a Stay.
33. Each party designated an arbitrator. The third Arbitrator - the President - was in turn appointed by the CAS Appeals Arbitration Division. On 26 May 2014, the CAS Court office informed the parties that the Panel would sit in the following composition:  
President: Mr. Luc Argand, Attorney-at-law, Geneva, Switzerland  
Arbitrators: Mr. Ricardo de Buen Rodriguez, Attorney-at-law, Mexico, D.F., Mexico (designated by the Appellant)  
His Honour James Robert Reid, Q.C., West Liss, United Kingdom (designated by the Respondent)
34. On 13 June 2014, the Appellant filed a third request for a stay of the Decision.
35. On 19 June 2014, the CAS Court Office informed the parties that a hearing would be held on 19 June 2014 at 9.30 AM at the CAS headquarter in Lausanne.
36. On 23 June, the Respondent filed his comments to the Appellant’s application for a stay on 23 June 2014, requesting that such a request be denied.
37. On 20 June 2014, an Order of procedure was issued, which was subsequently accepted and countersigned by both parties. However, in his 25 June 2014 letter to the CAS Court office regarding the Order of procedure, the Appellant reminded that he *“(…) does not agree with them to implement the laws of the state of Florida. (...)”*.
38. On 25 June 2014, the Appellant and the Respondent sent letters to the CAS Court office submitting a list of the people who would attend the hearing on their behalf.
39. On 9 July 2014, the third request for a stay was denied by way of a third Order on Request for a Stay.

40. On 16 July 2014, the Respondent sent a letter to the CAS Court office, raising *inter alia* the following, with respect to the witnesses:  
*“(…) In our letter of June 25, 2014, we requested that the respondents be permitted to use the written statements of their six witnesses in lieu of direct examination by counsel (…). In the absence of any response (…), and in the absence of any objection from the petitioner’s counsel, we will prepare for the hearing, on the assumption that the witness statements will be used in place of direct examination. (…).”*
41. On 17 July 2014, the Appellant sent a letter to the CAS Court office, raising *inter alia* the following to that respect:  
*“We acknowledge receipt of (…), [the Respondent]’s communication dated on July 17, requesting the use of written statements instead of cross-examining the witnesses. This part objects to this request, (…).”*
42. On 17 July 2014, the Respondent sent a letter to the CAS Court office, replying to the following to that respect:  
*“(…) We (…) believe that the objection he [the Appellant] made is based on a misunderstanding on the Respondent’s suggested procedure with respect to witness statements. (…).”*
43. On 14 July 2014, the Appellant sent a letter to CAS with respect to the 9 July 2014 third request for a stay, expressing his *“serious concern about the impartiality of the Panel in this process”*.
44. On 18 July 2014, the CAS Court office sent a letter to the parties expressing the following:  
*“(…) on behalf of the Panel, I confirm that the written witness statements of the Respondent’s witnesses shall take the place of direct examination. The Respondent’s witnesses shall then be cross-examined by the Appellant, with a possible redirect examination and questions from the Panel. (…).”*
45. A hearing was held in Lausanne on 6 August 2014. The Arbitrators, the ad hoc clerk Mr. Sylvain Bogensberger as well as the CAS Counsel Mr. Antonio de Quesada were present.
46. The following people attended the hearing:
  - For the Appellant: Mr. Javier Tebas Medrano and Mr. Jevas Llana, Counsel; the Appellant; Mrs. Natalia Prio Platz, Interpreter.
  - For the Respondent: Mr. Stephen Busey and Mr. John MacLennan, Counsel, Mrs. Elli Weeks, Information Manager for the TIU; Mr. Stuart Miller, ITF PTIOs; Mr. Gayle David Bradshaw, ATP PTIOs; Nigel Willerton, Director of the TIU.
47. At the beginning of the hearing, each party confirmed that they had no objections with respect to the composition of the Panel.
48. Each party’s counsels made full oral presentations.



49. Mr. Nigel Willerton (“Mr. Willerton”), called by the Respondent, was questioned by both parties. He first confirmed that his witness statement, signed on 21 November 2013 and provided under exhibit “C” by the Respondent, is *“true and correct”*.  
[...].  
Mr. Willerton was in contact with Mr. Olaso at two occasions, in 2011 and 2013. In 2011, Mr. Olaso sent an email to a confidential email address, saying that he had been *“approached via Facebook”*, but did not provide any further information related to corruption.
50. Mrs. Elli Weeks (“Mrs. Weeks”), called by the Respondent, was questioned by both parties. She confirmed that her witness statement, signed on 20 November 2013 and provided under exhibit “D” by the Respondent, is *“true and correct”*.
51. [...], witness called by the Respondent, was questioned by both parties. He first confirmed that his witness statement, signed on 20 November 2013 and provided under exhibit “B” by the Respondent, is *“true and correct”*.  
[...] explained that he was in contact with [...] tennis players and former tennis players and that he gave their name to the TIU. [...]. He never paid any money to Mr. Olaso, but tried to give him EUR 2’000.- in an envelope in [...] in a hotel room at the beginning of 2011. However, Mr. Olaso refused to take it, because *“Mr. Willerton was around”*. He indicated that he would take the money *“when he has it all”*. [...] does not know if the TIU could have possibly found out about this.
52. Mr. Gayle David Bradshaw (“Mr. Bradshaw”), called by the Respondent, was questioned by both parties. He first confirmed that his witness statement, signed on 18 February 2014 and provided under exhibit “E” by the Respondent, is *“true and correct”*, except for a small typo on page 5 (“exhibit 24” must be replaced by “exhibit 25”).  
Mr. Bradshaw confirmed that at the beginning of each season, the players had to sign a document entitled *“player’s consent and agreement to the ATP official rulebook”*, including the *“uniform tennis anti-corruption program & tennis anti-doping program”*. For the 2010 season, this was done on 1 January 2010.  
Mr. Bradshaw further confirmed that the relevant entries taken from the history of Mr. Olaso’s ATP PlayerZone account confirm that the Player accessed his account several times in 2010. In particular, Mr. Olaso accessed the ATP Rulebook on [...].
53. Mr. Paul John Groninger (“Mr. Groninger”), called by the Respondent, was questioned per video conference by both parties. He confirmed that his witness statement, signed on 21 November 2013 and provided under exhibit “H” by the Respondent, is *“true and correct”*.
54. [...], supervisor for the ATP World Tour, called by the Respondent, was questioned per teleconference by both parties. He confirmed that his witness statement, signed on 20 November 2013 and provided under exhibit “F” by the Respondent, is *“true and correct”*.

55. At the end of the hearing, the parties did not raise any objections and confirmed their satisfaction with regard to their right to be heard, that they had been treated equally in these arbitral proceedings and that they had had a fair chance to present their position.

#### D. POSITION OF THE PARTIES

56. The following outline of the parties' positions is only for an illustrative purpose and does not necessarily contain every contention put forward by the parties. The Panel, indeed, carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

Mr. Guillermo Olaso de la Rica contended that he does not recognize the content or extension of the 2010 Program. When he signed the 2010 Player's agreement, he was not informed in any way about what he was signing, nor was he offered assistance. It was presented as a mere formality to be filled in before registering for the 2010 Challenger tournament of Sao Paolo, Brazil. Moreover, the Player did not submit to the jurisdiction and to the laws of Florida mentioned in the 2010 Program.

He did not recognize the jurisdiction of the AHO designated by the TIU. [...]. Thus, it is reasonable to infer the absence of impartiality of Mr. McLaren, who should have recused himself. As a consequence of such lack of impartiality, the case should be referred back to the previous instance.

The interrogations by the TIU investigators in [...] and [...] were not admissible, due to the breach of their duty to inform the Appellant about his right to remain silent, not to testify against himself and not to incriminate himself.

Records of alleged conversations on Skype were inadmissible due to alarming contradictions and vagueness in the statements regarding the way the evidence was obtained. Also, the "chain of custody" of the evidence was not proven.

[...].

With respect to the time limit, the text of Rule J.1 of the 2010 Program is "illogical" because of its very last sentence (i.e. "*whichever is later*"). The most favourable interpretation ("*in dubio pro reo*") should accordingly be applicable to the Player with respect to the statute of limitation, and only a two year time limit should be considered. Since the proceedings against the Appellant have exceeded the time limit of two years for bringing actions from the time of discovery of the alleged events, the procedure is time barred by the doctrine of limitation.

The efforts of the Governing Bodies failed to adequately inform the players about the Program until 2011, in particular about the duty to report corruption initiatives. Such educational failure excuses the Appellant's failure to report the corrupt approaches.

Without prejudice to the inadmissibility of the evidence, the Appellant submitted that the TIU failed to demonstrate that the Appellant lost his match on purpose, because:

- The Skype conversations with [...] do not determine that on [...], the Appellant deliberately lost his match against [...] in [...]. Indeed, the Skype messages do not show

all the conversations nor the entire sequences of facts and make no reference to the telephone conversations between Mr. Olaso and [...] in the evening of [...];

- While the Skype conversations mentioned the possibility of committing match fixing, it could be concluded that the Appellant finally decided to agree to [...]’s proposal and that he did not play to the best of his effort in order not to lose the [...] match. In other words, Mr. Olaso was “tempted” to contrive the result but there was no “attempt” to it, since he entered the tennis court with the intention of beating [...]. Also, Mr. Olaso did not accept the money, detached himself permanently from [...] and never entered with anyone associated with match fixing again.

The presence of a criminal organization, [...], was not taken into account by the AHO in the Decision. Rule E.4 of the 2010 Program should however be applicable at least by analogy, and the sanction reduced because:

- [...] mentioned [...]’<sup>6</sup>, that Mr. Olaso needed to lose the match because an agreement had been made with the [...] and that they would lose a lot of money otherwise. In other words, there was a threat against the Player;
- Mr. Olaso sent an email to the TIU confidential email address saying that he had been “*approached via Facebook*”.

In the Decision, the AHO refers to the aim of rehabilitating the Player. In this regard, five years of disqualification violates the principle of proportionality. Furthermore, the economic sanction did not take into account the fact that Mr. Olaso earns very little from tennis and that a disqualification is already an economic hardship for him.

57. The TIU submitted that the Appellant agreed in 2010 to be bound by the ATP Rules, including the 2010 Program, which provides that players such as Mr. Olaso have a duty to cooperate with investigations of the TIU and that Florida law is applicable to the Program.

Mr. Olaso’s challenge to the jurisdiction and impartiality of the AHO is cured by this *de novo* appeal, which cures any procedural irregularities.

The interrogations by TIU investigators did not violate the Appellant’s rights. The transcript of the interviews shows that the investigators informed Mr. Olaso that he was entitled to have legal counsel present for the interviews. Also, under Florida law - which is applicable to the Program - private parties may contract to waive constitutional rights and other protection(s) they might otherwise have.

The Skype messages are admissible. They were recovered from the hard drive of [...]’s laptop computer and placed on a disk: [...] confirmed that they were the messages exchanged between himself and Mr. Olaso. Moreover, at no time did the Appellant deny the accuracy of these messages, as read to him by the TIU investigators. Thus, the Skype messages are admissible.

[...].

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<sup>6</sup> Several references were made during the CAS hearing by the Appellant’s Counsel to the transcript of [...].

The proceedings have not exceeded the time limit set out in Rule J.1 of the 2010 Program. Indeed, according to the allegations against the Appellant, Mr. Olaso committed corruption offenses at the beginning of [...]. That date is less than 8 years before the commencement of this action in August 2013.

The Appellant's failure to report the corrupt approaches is not justified by the alleged failure of the governing body to inform players about the Program. The most telling rebuttal to Mr. Olaso's argument regarding the lack of access to, or knowledge of, the Program is the evidence of his frequent visiting of the ATP Rulebook on the ATP PlayerZone.

Even if it was assumed that Mr. Olaso ultimately played to win against [...] on [...], he still committed a Corruption Offense. The uncontroverted evidence establishes that Mr. Olaso and [...] reached an agreement according to which the Appellant would be paid money to lose his match against [...]. This agreement alone violated Rule D.1.c of the 2010 Program and constituted a corruption offense. Indeed, the Program provides that a corruption offense by a player may be proven without evidence that the player appeared to intentionally lose the match (Rule E.3 of the 2010 Program).

The Player did not establish the significant threat defense of Rule E.4 of the 2010 Program. Indeed, Mr. Olaso could not meet either of the requirements of this Rule: He never reported his conduct to the TIU and never demonstrated that such conduct was the result of a threat.

The five year period of ineligibility is not disproportionate to the offenses found to have been committed by Mr. Olaso. CAS has upheld sanctions of permanent ineligibility for match-fixing activities.

## II. IN LAW

### A. JURISDICTION OF CAS

58. In accordance with the Swiss Private International law (Article 186), the CAS has power to decide upon its own jurisdiction.

59. Article R47 of the CAS Code provides the following:

*"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".*

60. In the absence of a specific arbitration agreement and in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body, which decision is being appealed, must expressly recognize the CAS as an arbitral body of appeal.

61. The Panel observes that:

- Rule I.1 of the 2010 Program provides the following:

*“Any decision (i) that a Corruption Offense has been committed, (ii) that no Corruption Offense has been committed, (iii) imposing sanctions for a Corruption Offense, or (iv) that AHO lacks jurisdiction to rule on an alleged Corruption Offense or its sanctions, may be appealed exclusively to CAS in accordance with (...) [the CAS Code] and the special provisions applicable to the Arbitration Proceedings, by either the Covered Person who is the subject of the Decision being appealed, or the TIB”.*

- The Decision provides (page 38 § 7 Decision) the following:

*“The Decision herein may be appealed in accordance with Article I.3 of the [2010] Program for a period of ‘twenty business days from the date of receipt of the decision by the appealing party’. The appeal is to the Court of Arbitration for Sport in Lausanne, Switzerland”.*

- 62. Moreover, the jurisdiction of CAS is not disputed by either party and has been confirmed by the signature of the Order of Procedure.
- 63. Based on the foregoing, the Panel considers that CAS has jurisdiction in the present proceedings.

#### **B. ADMISSIBILITY OF THE APPEAL**

- 64. Article R49 of the CAS Code provides the following:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*

- 65. The Panel observes that Rule I.3 of the 2010 Program provides the following:

*“The deadline for filing an appeal with CAS shall be twenty business days from the date of receipt of the Decision by the appealing party”.*

- 66. The decision is dated 23 December 2013 and the statement of appeal was filed with CAS on 14 January 2014.
- 67. The Respondent does not contest the admissibility of the statement of appeal.
- 68. Based on the foregoing, the Panel considers that the appeal is admissible.

#### **C. SCOPE OF THE PANEL’S REVIEW**

- 69. With respect to its power of examination, the Panel observes that the present appeal proceeding is governed by the provisions of Art. R47 ff of the CAS Code.
- 70. Accordingly and in accordance with Art. R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which

replaces the challenged decision, or may annul the decision and refer the case back to the previous instance.

**D. APPLICABLE LAW**

71. Art. R58 of the CAS Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

72. The Appellant submits that he does not submit to the laws of the State of Florida, mentioned in the 2010 Program.

73. In that respect, the Panel observes that:

- On 1 January 2010, the Player signed the 2010 Players agreement which provides *inter alia* the following:

*“(...) I acknowledge that the ATP has a Uniform Tennis Anti-Corruption Program and the program rules are included in the 2010 ATP OFFICIAL RULEBOOK. I accept that I must comply with and be bound by all provisions included in the Uniform Tennis Anti-Corruption Program. (...)”*

In other words, the Player agreed to abide to all the rules contained in the 2010 Program.

- Rule J.3 of the 2010 Program specifically provides the following:

*“This program shall be governed in all respects (including, but not limited to, matters concerning the arbitrability of disputes) by the laws of the State of Florida, without reference to conflict of laws principles (...)”*

In other words, the 2010 Program, which the Player agreed to abide to, expressly provides for the applicability of the laws of the State of Florida.

74. Accordingly, the Panel holds – in accordance with Art. R58 CAS Code – that the present case is to be decided in accordance with the valid provisions of the 2010 Program and, complementarily, in accordance with the laws of the State of Florida.

**E. MERITS**

75. The following refers to the substance of the parties’ allegations and arguments, without listing them exhaustively. In its discussion of the case and its finding of the merits, the Panel nevertheless examined and took into account all of the parties’ allegations, arguments, and evidence on record, whether or not expressly referred to in what follows.

### **E.1 Jurisdiction and impartiality of the AHO (Mr. McLaren)**

76. Mr. Olaso complained that the AHO (Mr. McLaren) in charge of his case had no jurisdiction over this proceeding and that he should have recused himself [...] (alleged “lack of impartiality”).
77. The Respondent correctly submitted however that Mr. Olaso was subject to the jurisdiction of the AHO because he signed the 2010 Player’s agreement. This bound him to the 2010 Program. Moreover, Mr. McLaren was not disqualified from acting as AHO [...]<sup>7</sup>. There is no rule that an adjudicating officer is disqualified from hearing proceedings because he has [...].
78. The Panel further reminds itself that - as submitted by the Respondent - the CAS appellate arbitration procedure under Article R57 of the CAS Code entails a trial *de novo* and that such review by CAS, as repeatedly decided by well-established CAS jurisprudence, cures any procedural irregularities in the proceedings below.
79. Based on the foregoing, the Panel holds that the proceedings below were properly conducted under the 2010 Program and that Mr Olaso did not suffer any prejudice as a result of Mr McLaren [...], but that in any event if Mr Olaso had suffered any prejudice in this regard during the AHO procedure, any defect is cured by this *de novo* appeal. Accordingly, there is no need to examine further (i) the jurisdiction and impartiality of Mr. McLaren acting as AHO with respect to the Decision; (ii) whether Mr. McLaren should have recused himself or not in this capacity and (iii) whether the case should be referred back to the previous instance.

### **E.2 Mr. Willerton’s interviews of Mr. Olaso**

80. Mr. Olaso complains that he was not advised during his interviews by Mr. Willerton on [...] and [...] on his right to remain silent.
81. The Panel observes – as contended by the Respondent – that:

- Rule F.2.b of the 2010 Program provides the following:

*“All Covered Person must cooperate fully with investigations conducted by the TIU. No Covered person shall tamper with or destroy any evidence or other information related to any Corruption Offense”.*

In other words, the Player, who agreed to be bound by the 2010 Program, has a duty to cooperate with investigations led by the TIU. The Respondent reminds to that respect that this obligation is essential to the success of the Governing Bodies of professional tennis’ efforts against corruption in the sport of professional tennis, because they do not have the investigatory powers of a government law enforcement authority.

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<sup>7</sup> [...].

Moreover, the Player was advised at the beginning of each interview by Mr. Willerton that he had a right to have a legal counsel present for the interviews, representation that the Player did not request.

- Rule F.2.d of the 2010 Program provides the following:

*“By participating in any event, or accepting accreditation at any event, a Covered Person contractually agrees to waive and forfeit any rights, defense, and privileges provided by any law in any jurisdiction to withhold information requested by the TIU or the AHO. If a Covered Person fails to produce such information, the AHO may rule a Player ineligible to compete, and deny a Covered Person credentials and access to events, pending compliance with the Demand”.*

The Respondent reminds itself that under Florida law, private parties may contract in a way that waives constitutional protections and other protections they may otherwise have.

82. Accordingly, the Panel holds that the Player validly waived any right to remain silent that he may have had - issue which has not been demonstrated - in connection to this case, by signing the 2010 Player’s agreement. Consequently, the TIU did not commit any violation of the Player’s rights with respect to the interviews led by Mr. Willerton on [...] and [...].

### **E.3 [...]**

83. [...].

84. [...]:

- [...].
- [...].

85. The Panel reminds itself that, as submitted by the Respondent, the CAS appellate arbitration procedure under Article R57 CAS Code entails a trial *de novo* and that such review by CAS, as repeatedly decided by well-established CAS jurisprudence, cures any procedural irregularities.

86. Based on the foregoing, the Panel holds that any prejudice Mr. Olaso may have suffered in this regard during the AHO procedure is cured by this *de novo* appeal. Accordingly, there is no need to examine further whether the [...] rendered the AHO proceedings “illegitimate”.

### **E.4 Admissibility of the Skype messages**

87. Mr. Olaso argues that there is insufficient evidence regarding the origin of the Skype messages between himself and [...] and that, as such, the messages should not be considered in these proceedings because the “chain of custody” of the equipment, from which the transcripts were obtained is not established.



88. The Respondent submits otherwise.
89. The Panel shares the view of the Respondent that the “chain of custody” of [...]’ laptop is intact and that the transcripts created from the examination of the devices are reliable evidence.
90. Indeed, it has been proven by the Respondent, by means of the witness statements produced for Mr. Willerton<sup>8</sup>, Mr. Groninger<sup>9</sup>, Mrs. Weeks<sup>10</sup> and [...]’<sup>11</sup>, and each of these people’s testimony during the hearing, confirming that their signed witness statements were “*true and correct*” - the cross examination led by the Respondent did not suggest otherwise - and by the related exhibits produced by the Respondent<sup>12</sup>, that:
- Mr. Willerton seized, in November 2012, alongside with 2 phones, a laptop computer from [...], which he then brought back with him to the United Kingdom;
  - Upon his return, the electronic devices were deposited in a locked cabinet at the office of the TIU, where they remained until Mr. Willerton handed them over to Mr. Groninger;
  - Mr. Groninger was requested to perform an examination between 26 November 2012 and 6 December 2012 of two mobile phones and one notebook device belonging to [...]. He was also requested to extract any contact, email, messaging and Skype data present on the equipment. He then provided the TIU with a report and disks containing relevant information extracted from the devices;
  - Upon receipt of the report, Mr. Willerton transmitted it to Mrs. Weeks in December 2012, alongside with the disks containing the relevant extracted information;
  - Mrs Weeks extracted and compiled the data received and provided a final report to Mr. Willerton around 16 July 2013. The report summarized the Skype evidence, suggesting that Mr. Olaso committed offenses under the 2010 Program;
  - [...] confirmed that the laptop computer, which he provided to the TIU, was password protected and that he was the only person having access that computer. Also he confirmed that the transcript of the messages between himself and Mr. Olaso accurately shows the Skype messages he exchanged with Mr. Olaso.
91. Moreover, the Panel observes that at no time did Mr. Olaso deny the accuracy of the Skype messages as read to him by Mr. Willerton during his [...] interview. He acknowledged that his Skype user name was indeed – as reported by the transcripts – ‘*guillermo.olaso*’.

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<sup>8</sup> Mr. Willerton’s witness statement provided on 18 February 2014 to CAS under exhibit “C”.

<sup>9</sup> Mr. Groninger’s witness statement provided on 18 February 2014 to CAS under exhibit “H”.

<sup>10</sup> Mrs. Weeks’ witness statement provided on 18 February 2014 to CAS under exhibit “D”.

<sup>11</sup> [...]’ witness statement provided on 18 February 2014 to CAS under exhibit “B”.

<sup>12</sup> Respondent’s exhibits 13 (December 2012 report of Mr. Groninger regarding examination of mobile phones and a notebook computer), 14 (Full schedule of Skype messages exchanged between Mr. Olaso and [...] between [...]), 15 (Full schedule of Skype messages exchanged between Mr. Olaso and [...] between [...]), 16 (“Evidence of offenses committed under the Uniform Tennis Anti-Corruption Program” produced by Mrs. Weeks on 16 July 2013) and 17 (transcript of the 27 May interview of Mr. Olaso), provided on 18 February 2014 to CAS.

92. Accordingly, the Panel holds that the Skype messages extracted from [...]’ laptop are admissible and that they can be considered as having probative value in these proceedings.

#### **E.5 Statute of limitations**

93. Mr. Olaso contends in his appeal brief that the procedure is time-barred because the proceedings have exceeded the time limit established in Rule J.1 of the 2010 Program. This rule allows a period of 2 years to bring actions from the time of discovery of the alleged events. Moreover the text of Rule J.1 of the 2010 Program is “illogical” with its very last sentence (i.e. “*whichever is later*”). Accordingly the most favourable interpretation (“*in dubio pro reo*”) should be applicable to the Player with respect to the statute of limitations.
94. The Respondent disagrees.
95. The Panel observes that Rule J.1 of the 2010 Program provides the following:  
*“No action may be commenced under the Program against any Covered Person for any Corruption Offense unless such action is commenced within either (i) eight years from the date that the Corruption Offense allegedly occurred or (ii) two years after the discovery of such alleged Corruption Offense, whichever is later”.*
96. The Panel considers that the text of Rule J.1 of the 2010 Program is extremely clear and that the text leaves no place for interpretation, even if the text is, as admitted by the TIU, “unusual”. Indeed, the procedure is not time-barred unless the action has not been brought within either deadline “(i) eight years from the date the Corruption Offense allegedly occurred” or “(ii) two years after the discovery of such alleged Corruption Offense”, whichever is later.
97. The Respondent reminds itself that under Florida law, an action is commenced for purposes of the statute of limitations, when a complaint is filed and that in the present case, these proceedings started when the Notice of Charges was sent to the Player on 29 August 2013, alleging that he had committed Corruption Offenses beginning in [...].
98. The Panel observes that the 29 August 2013 date is less than 8 years after the Corruption Offense allegedly occurred.
99. Accordingly, the Panel holds that the charges against the Player are not barred by the 2010 Program’s statute of limitations.

#### **E.6 Knowledge of the rules concerning the Anti-corruption Program**

100. In the Decision, Mr. Olaso was found to have committed twice the reporting offense outlined in Rule D.2.a.i of the 2010 Program:

*“In the event any Player is approached by any person who offers or provides any type of money, benefit or consideration or a Player to (i) influence the outcome or any other aspect of any event, or (ii) provide inside information, it shall be the Player’s obligation to report such incident or the TIU as soon as possible”.*

101. Mr. Olos contends that the efforts of the Governing Bodies failed to adequately educate players about the Program until 2011, in particular with respect to the duty to report corruption initiatives, when the *“the Governing Bodies themselves made a radical change and a great effort to remedy their error, and significantly improved communications to provide information on the regulations to all players”*. Such educational failure excuses the Appellant’s failure to report the corrupt approaches.
102. The Respondent disagrees.
103. The Panel shares the view of the Respondent, that the Player was well aware of the Anti-corruption rules long before [...].
104. Indeed, it has been proven by the Respondent, by means of the witness statement of Mr. Bradshaw<sup>13</sup>, as well as by his testimony during the hearing, confirming that his signed witness statement was *“true and correct”* - the cross examination led by the Respondent did not suggest otherwise - and by the related exhibits produced by the Respondent<sup>14</sup>, that:
  - As a professional tennis player registered with the ATP since 2007, Mr. Olos has had continuous access to the ATP PlayerZone since 2007;
  - Prior to signing the 2010 Player’s agreement on 1 January 2010, Mr. Olos had also signed the Player’s agreement for the years 2008 and 2009, whereby he acknowledged that he had an opportunity to review the ATP Official Rulebook at each time;
  - The Program became effective on 1 January 2009. On 22 December 2008, an article was published on the PlayerZone website announcing the new rules;
  - The 2009 Rulebook, which contained the 2009 Program, was available on the ATP’s public website by January 2009. The 2010 Rulebook, which contained the 2010 Program, was available on the same public website by January 2010;
  - In 2009 and 2010, the only way Mr. Olos could enter an ATP tournament was by accessing the PlayerZone;
  - Mr. Olos frequently visited his PlayerZone between 2008 and 2010, with respect to the ATP Anti-corruption program:
    - On 1 January 2008, Mr. Olos accessed a news article concerning a player being disciplined for violation of the ATP Anti-corruption program;

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<sup>13</sup> Mr. Bradshaw’s witness statement provided on 18 February 2014 to CAS under exhibit “E”.

<sup>14</sup> Respondent’s exhibits 19 (22 December 2008 article on ATP Playerzone website and copies of documents linked to it in that article on the ATP Website regarding new Uniform Tennis Anti-Corruption Program) ; 31 (Relevant entries from the usage history of Mr. Olos’s PlayerZone account) provided on 18 February 2014 to CAS.

- On 29 February 2008, Mr. Olaso accessed a news article concerning a player being disciplined for violation of the ATP Anti-corruption program;
  - On 5 August 2008, Mr. Olaso accessed the “Officiating” section of the PlayerZone, which at that time contained a copy of the ATP Rulebook;
  - On [...], the day before Mr. Olaso’s [...] match against [...], Mr. Olaso accessed the ATP Rulebook;
  - On 28 March 2010, Mr. Olaso accessed the ATP Rulebook;
  - On four occasions on 3 December 2013, the day before Mr. Olaso’s hearing before the AHO, Mr. Olaso accessed the ATP Rulebook;
  - On four occasions on 4 December 2014, the day of his hearing before the AHO, Mr. Olaso accessed the Player Weekly;
  - Moreover, Mr. Olaso admitted that he had an obligation to report in the Skype message sent to [...] on [...]:  
*“(...) they offered them like 5 years ago when this agency anti-corruption wasn’t working so they were obligated to report. But since January 2008 it’s a rule that u have to report immediately. So they can fuck me up anyway. (...)”.*
105. The Panel observes accordingly that the Player was well educated in the Program in 2010 and that he was very well aware of his duty to report to the PTIOs any knowledge he may have regarding potential violations of the Program “*as soon as possible*” and that any failure to do so would be an offense.
106. Based on the foregoing, the Panel confirms that Mr. Olaso’s failure to report corruption initiatives at two occasions is not excusable and constitutes a violation of Rule D.2.a.i of the 2010 Program.

### **E.7 Did Mr. Olaso play to win against [...]?**

107. In the Decision, Mr. Olaso was found to have committed a corruption offense under Rule D.1.c of the 2010 Program by contriving<sup>15</sup> or attempting to contrive the outcome of his [...] match against [...]. This rule provides the following:  
*“No Covered Person shall, directly or indirectly, contrive or attempt to contrive the outcome or any other aspect of any event”.*
108. Mr. Olaso contends that he played to the best of his ability during the [...] match against [...] and that this constitutes a complete defence to the Corruption Offense of match fixing Under Rule D.1.c of the 2010 Program. If he ultimately lost, it was because he felt unwell that day.

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<sup>15</sup> To contrive: “*to arrange a situation or event, or arrange for something to happen, using clever planning*” (Cambridge dictionaries online).

109. The Respondent reminds itself that, even if we assume that Mr. Olaso ultimately played to win – what the Respondent does not admit – the mere fact that Mr. Olaso and [...] reached an agreement violates on its own Rule D.1.c of the 2010 Program.

Also, Rule E.3 of the 2010 Program provides that a Corruption Offense may be proven without evidence that the player appeared to intentionally lose the match:

*“Evidence of a player’s lack of efforts or poor performance during an event may be offered to support allegations that a Covered Person committed a Corruption Offense, but the absence of such evidence shall not preclude a Covered Person from being sanctioned for a Corruption Offense”.*

110. The Panel observes that the evidence that [...] and Mr. Olaso agreed that Mr. Olaso would be paid EUR 15’000.- to deliberately lose his match to [...] on [...] is corroborated by the witness statement produced by the TIU alongside with his file for [...] <sup>16</sup>, by [...]’ testimony during the hearing, confirming that his signed witness statement was “true and correct” - the cross examination led by the Respondent did not prove otherwise - and by the Skype messages exchanged between [...] and Mr. Olaso from [...], produced as exhibits by the Respondent <sup>17</sup>, confirming that:

- [...] first spoke with Mr. Olaso about the possibility of match fixing when they were together at a match in [...] in 2009. [...] said that such fixed matches were making a lot of money and that a player could earn money by deliberately losing a set or losing a match;
- On [...], Mr. Olaso and [...] discussed per Skype Mr. Olaso losing a match for money. In particular, Mr. Olaso asked [...] to tell him which tournament he should play and how he could make the most money. [...] indicated that it was better to play [...] and then went on to discuss how the money would be paid;
- On [...], Mr. Olaso and [...] discussed per Skype the match Mr. Olaso would be playing in [...]. When questioned by [...] as to what he would do in response to an offer to throw the match, Mr. Olaso replied “*I dnt wanna tank unless is very good money*”. In that same conversation, they also discussed the strategy as to how Mr. Olaso could lose the match: Mr. Olaso would throw his racquet and complain to the chair umpire about calls;
- On [...], Mr. Olaso and [...] discussed the next day’s match per Skype. Mr. Olaso confirmed to [...] that he had to lose [...] and acknowledged the risk he was taking for throwing the match for EUR 15’000.-. Also they discussed about how Mr. Olaso should behave in his match against [...] (break the racquet, fight with chair umpire).

111. The Panel furthermore observes that the evidence that Mr. Olaso willingly lost his match against [...] on [...] is corroborated by the witness statement produced by the TIU for [...] <sup>18</sup> and by

<sup>16</sup> [...]’ witness statement provided on 18 February 2014 to CAS under exhibit “B”.

<sup>17</sup> Respondent’s exhibits 14 (Full schedule of Skype Messages exchanged between Mr. Olaso and [...] between [...]); 15 (Full schedule of Skype Messages Exchanged Between Mr. Olaso and [...] between [...]) and 16 (Guillermo Olaso: “Evidence of Offences Committed Under the Uniform Tennis Anti-Corruption Program” produced by Elli Weeks on 16 July 2013) provided on 18 February 2014 to CAS.

<sup>18</sup> [...]’ witness statement provided on 18 February 2014 to CAS under exhibit “B”.

[...]' testimony during the hearing, confirming that his signed witness statement was "true and correct" - the cross examination led by the Respondent not suggesting otherwise - and by the exhibits produced by the Respondent<sup>19</sup>, confirming that:

- [...], employed by the TIU, invited him per email early [...] to observe two matches scheduled for [...] at the [...];
- He watched the [...] match between Mr. Olaso and [...] and reported that:
  - The match lasted [...] with [...] winning [...];
  - Based on their relative strength as players, he did not think that Mr. Olaso should have lost to [...] even if Mr. Olaso was not feeling well;
  - He found Mr. Olaso's behaviour inconsistent with his behaviour in the past as he had observed him play in many tournaments. While Mr. Olaso sometimes complained about calls of officials and occasionally threw his racquet, in his [...] match he complained much more than normal and threw his racquet much more frequently.

112. Based on the foregoing, the Panel is satisfied that Mr. Olaso committed a violation of Rule D.1c of the 2010 Program. It has been established by the above-mentioned evidence that Mr Olaso and [...] reached an agreement that Mr. Olaso would lose his [...] match in [...] against [...], which he did willingly.

## **E.8 Rule E4 of the 2010 Program**

113. Mr. Olaso contends that during a phone call with [...] the night before the [...] match on [...], during which he informed [...] that he had changed his mind and no longer wanted to lose the match, he was threatened by [...] had to lose the match of the following day and as a consequence put in fear. Accordingly, he submits that his penalty should be mitigated in accordance with Rule E4 of the 2010 Program.

114. The Respondent argued that none of the criteria of Rule E4 of the 2010 Program are met in this case.

115. Rule E4 of the 2010 Program provides the following:

*"A valid defense may be made to a charge of a Corruption Offense if the person alleged to have committed the Corruption Offense (a) promptly reports such conduct to the TIU and (b) demonstrates that such conduct was the result of an honest and reasonable belief that there was a significant threat to the life or safety of such person or any member of such person's family".*

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<sup>19</sup> Respondent's exhibits 4 ([...] email correspondence between the TIU and [...]) provided on 18 February 2014 to CAS.

116. The Panel shares the view of the Respondent that Mr. Olaso cannot meet either of the requirements of Rule E4 of the 2010 Program:

(a) Prompt report of such threatening conduct to the TIU:

The Panel observes that:

- The Appellant did not promptly report any alleged “threatening” conduct by [...] having occurred on [...] to the TIU. In particular, the mere fact of sending an email to the TIU’s confidential email address saying that he had been “*approached via Facebook*”, as discussed during the hearing does not constitute such report.
- Mr. Olaso repeatedly denied having received any corrupt approach during both interviews by Mr. Willerton on [...] and [...].

Based on the foregoing, the Panel holds that this first criteria is not met.

(b) Demonstration that such threatening conduct was the result of an honest and reasonable belief of a significant threat to the life or safety of such person or any members of his family:

Rule E4 of the 2010 Program requires that the conduct – which is this case is Mr. Olaso’s agreement with [...] to lose his [...] match against [...] – be the result of the threat.

The Panel observes however that [...]’ testimony during the [...] regarding the phone conversation on [...] makes it clear that this conversation occurred in the evening, after Mr. Olaso had reached an agreement that he would lose his [...] match against [...] in return for a payment of EUR 15’000.- (see section E7 above).

In other words the agreement was not made as the result of the subsequent discussion – be it qualified as a threat, which is not proven by the Appellant – and was under no circumstances the result of the alleged threat.

Based on the foregoing, the Panel holds that this second criteria is not met either.

117. Accordingly, the Panel holds that Rule E4 of the 2010 Program is not applicable in the present case since neither of the cumulative criteria is met and hence cannot serve to mitigate the penalty.

## E.9 Sanctions

118. The Appellant contends that five years of disqualification violate the principle of proportionality and that the USD 25’000.- does not take into consideration the fact that he earns very little from tennis.

119. The Respondent considers that the sanction is proportionate to the offenses found to have been committed by Mr. Olaso.

120. Rule H.1.a of the 2010 Program provides the following:

*“1. The penalty for any Corruption Offense shall be determined by the AHO in accordance with the procedures set forth in Article G, and may include:*

*a. With respect to any player, (i) a fine of up to \$250,000 plus an amount equal to the value of any winnings or other amounts received by such Covered Person in connection with any Corruption Offense, (ii) ineligibility for participation in any event organized or sanctioned by any Governing Body for a period of up to three years and (iii) with respect to any violation of clauses (c)-(i) of Article D.1, ineligibility for participation in any event organized or sanctioned by any Governing Body of a maximum period of permanent ineligibility”.*

121. The Panel subscribes to the CAS jurisprudence that whilst a hearing before the CAS is a hearing de novo the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules should be reviewed only when the sanction is evidently and grossly disproportionate to the offense (see TAS 2004/A/547, §§ 66, 124; CAS 2004/A/690, § 86; CAS 2005/A/830, § 10.26; CAS 2005/C/976 & 986, § 143; CAS 2006/A/1175, § 90; CAS 2007/A/1217, § 12.4; CAS 2010/A/2209, § 68).
122. In any event the Panel holds in this specific case - taking into account the totality of its circumstances and in particular the fact that the corruption offenses considered in the Decision were confirmed by this Panel - that the sanction imposed by the AHO is proportionate in the scale of sanctions contemplated by Rule H.1 of the 2010 Program, and appropriate to the level of guilt of Mr. Olosó and to the gravity of his infringement, namely that he deliberately proceeded to engage in what he knew fully well to be a violation of the 2010 Program on at least two counts, conduct of a type which undermines the basic premise of fairness upon which all sporting contests are premised. The Panel accepts that the period of ineligibility and the financial penalty will have serious consequences for Mr Olosó but is satisfied that they are appropriate to the seriousness of his offences.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Mr. Guillermo Olosó de la Rica on 14 January 2014 against the decision of the Anti-Corruption Hearing Officer dated 23 December 2013 is dismissed;
2. The decision of the Anti-Corruption Hearing Officer dated 23 December 2013 is upheld;
3. (...).
4. (...).
5. All other or further claims are dismissed.