



**TAS / CAS**

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# Sports justice and competition law: The role of the CAS

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## Introducing remarks

- ▶ Very few cases dealing with competition law
- ▶ CAS might not be perceived as the adequate institution
- ▶ Competition law is perceived as reserved to State authorities
- ▶ The trend to challenge the rules and/or decisions of the federations based on competition law has not been very successful until now
- ▶ Even Financial Fairplay (and online betting) cases have not (yet?) changed these findings



TAS / CAS

# Case law

- ▶ TAS 96/160 Chiaudani c. FEI, of 09.09.1997
- ▶ TAS 96/166 Kierkegaard c. FEI, of 18.11.1997
- ▶ CAS 98/200 AEK Athens & Slavia Prague v. UEFA, of 20.08.1999 (“ENIC”)
- ▶ TAS 2006/A/1154 FC Locarno c. SFL, of 28.03.2007
  
- ▶ CAS 2000/A/270 Meca Medina & Majcen v. FINA, of 23.05.2001 (= ECJ, 18.07.2006, aff. C-519/04 P, Rec. p. I-7006)



## CAS 98/200 & TAS 2006/A/1154

- ▶ “Classical” cases
- ▶ Do (EU or Swiss) competition law rules apply?
- ▶ What is the effect of the rule?
- ▶ Does it pursue a legitimate aim?
- ▶ Is it proportional?



# Application of Art. 15 CartA

- ▶ TAS 96/160 Chiaudani c. FEI
- ▶ TAS 96/166 Kierkegaard c. FEI



## TAS 96/166 Kierkegaard c. FEI

- ▶ Jump competition at the Olympic Games of Atlanta
- ▶ Legal Commission of the FEI is informed of a case of horse abuse
- ▶ Decision of 7 October 1996 sanctioning K. and 3 other riders
- ▶ K. files an appeal with CAS on 5 November 1996
  - ✓ Was the FEI competent to issue the decision?
  - ✓ Petition to refer the file to the ComCo



# TAS 96/166 Kierkegaard c. FEI

- ▶ Admissibility, CAS Jurisdiction, Applicable law
- ▶ Jurisdiction of the Legal Commission of the FEI
- ▶ Referral of the file to the ComCo
  - ✓ Art. 15 para. 1 CartA
  - ✓ The unlawful restraint of competition (Art. 5 CartA)
  - ✓ 3 questions to answer



# TAS 96/166 Kierkegaard c. FEI

- ▶ 3 questions to answer:
  - ✓ Scope of the Cartel Act
  - ✓ Is Art. 15 CartA applicable to arbitration?
  - ✓ Are the substantive conditions of application fulfilled *in casu*?



# Scope of the CartA

- ▶ The double criterion of Art. 2 CartA
- ▶ “Personal” criterion: Can the FEI be considered as an undertaking “which exercises market power” ?
- ▶ “Territorial” criterion: does the disciplinary sanction have an effect in Switzerland ?



## Application of Art. 15 CartA to arbitration

- ▶ Is the Panel bound by Art. 15 CartA ?
- ▶ The procedural nature of this provision is not disputed
  - ✓ Therefore the Panel is free to apply it or not
  - ✓ The Panel would have applied this provision had it considered that a serious question of competition law was at stake *in casu*



## Substantive conditions of application of Art. 15 CartA

- ▶ Is it civil proceedings ? Yes: the relationship between a federation and its members, even indirect, are private in nature
- ▶ Is there a question regarding the legality of a restraint of competition ?
  - ✓ It is doubtful that the sanction of rules protecting both sporting equity and health of horses is a restraint of competition
  - ✓ Admitting this was the case, the restraint would not be illegal



## Conclusions of the Panel

- ▶ The application of Art. 15 CartA requires the objective existence of a question regarding competition law. *In casu*, there is none
- ▶ There is no justification for a referral of the case to the ComCo
- ▶ However:
  - ✓ This is not a decision on the merits of the case
  - ✓ K. can file a claim with the ComCo if he deems it necessary



**Thank you for your attention !**

