



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeals brought by Leopard Racing Team Audi Sport

against

**Decisions Nos. 18 and 39, dated 6 July 2019 and 7 July 2019 respectively, taken
by the Stewards of the Race of Portugal counting towards the 2019 FIA World
Touring Car Cup (WTCR)**

Cases ICA-2019-03 and ICA-2019-04

and

Appeal brought by Comtoy Team Audi Sport

against

**Decision No. 17 dated 6 July 2019, taken by the Stewards of the Race of Portugal
counting towards the 2019 FIA World Touring Car Cup (WTCR)**

Case ICA-2019-05

Hearing of Wednesday, 4 September 2019 in Paris

Decision of 24 September 2019



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), composed of Mr Rui Botica Santos (Portugal), who was designated President, Mr Riccardo La Cognata (Italy), Mr Dieter Roskopf (Germany) and Mr Felipe Zeraik (Brazil), met in Paris on Wednesday, 4 September 2019 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeals brought by Leopard Racing Team Audi Sport (“LRT”) and Comtoyout Team Audi Sport (“CT” or, together with LRT, “the Competitors” or “the Appellants”) against Decisions Nos. 17, 18 and 39, the first two dated 6 July 2019 and the last one dated 7 July 2019, taken by the Stewards of the Race of Portugal (“the Race”) counting towards the 2019 FIA World Touring Car Cup (WTCR) (the “Cup”), under which the Stewards decided to disqualify Car No. 22 of CT (Decision No. 17) and Car No. 69 of LRT (Decision No. 18) from Race 1 and the same Car No. 69 (Decision No. 39) from Race 3 for a breach of Appendix 1 to the 2019 WTCR Sporting Regulations (the “WTCR SR”).

The following persons attended the hearing:

on behalf of Leopard Racing Team and Comtoyout Team Audi Sport:

Mr Pierre Dieudonné (Sporting Director, Leopard Racing Team)

Mr François Verbist (Team Manager, Comtoyout Team Audi Sport)

Mr Massimiliano Maestretti (Attorney at law)

Mr Andrea Fioravanti (Attorney at law)

Mr Alexander Hecker (Project Manager RS 3 LMS, Audi sport customer racing)

Mr Michael Willmer (in house counsel, Audi Motorsport)

Mr Andrea Milocco (Head of WTCR Operations, Audi Motorsport)

Mr Xavier Serra (Technical Director, Cupra Racing)

on behalf of the FIA:

Mr Barry Lysaght (Senior Legal Counsel)

Ms Delphine Lavanchy (Legal Counsel)

Mr Carlos Barros (Technical Consultant)

Mr Benjamin Caron (Electronics Team Leader)

Also present at the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA Courts)

Mr Nicolas Cottier (Clerk of the FIA Courts)

Ms Sandrine Gomez (Administrator of the FIA Courts)



The parties filed their written submissions and, at the hearing of 4 September 2019, set out oral arguments and addressed the questions asked by the Court. The parties and the Court could put questions to all the witnesses brought to the hearing. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation. None of the Parties raised any objection, in relation either to the composition of the Panel or to the manner in which the proceedings have been conducted, notably the simultaneous translation.

REMINDER OF THE FACTS

1. After Race 1 in Portugal, which took place on 6 July 2019, the Stewards determined, on the basis of Technical Report No. 3 issued by the FIA Technical Delegate (“Technical Report 3”), that during the post-Race 1 Scrutineering, Cars No. 22 of CT and No. 69 of LRT were “*found to be disrespecting the maximum boost pressure published in the BoP chart for the event (TC-R2019/11)*” as the “% low Overboosts point” was 0.44% for Car No. 22 and 0.45% for Car No. 69 instead of 0.30%.
2. As a consequence, the Stewards decided to disqualify Car No. 22 (Decision No. 17) and Car No. 69 (Decision No. 18) from Race 1 on the grounds that “*the technical checks showed that Car 22 [respectively Car No. 69] failed to comply with the BoP [Balance of Performance] technical limits.*”
3. The Competitors having informed the Stewards in due time of their intention to lodge an appeal against those two Decisions, seals were affixed on the ECU, the FIA Logger, the WSC P boost sensor and the manufacturer’s P boost sensor of both Cars, which then competed in the subsequent sessions of the Race, namely the Qualifying races for Race 2 and Race 3, then Race 2 and Race 3.
4. After Race 3, which took place the following day, namely 7 July 2019, the Stewards determined, on the basis of Technical Report No. 6 issued by the FIA Technical Delegate (“Technical Report 6”), that during the post-Race 3 Scrutineering LRT’s Car No. 69 was “*found to be disrespecting the maximum boost pressure published in the BoP chart for the event (TC-R2019/11)*” as the “% low Overboosts point” was 0.43% instead of 0.30%.
5. The Stewards thus decided to disqualify Car No. 69 (Decision No. 39) from Race 3 on the grounds that “*the technical checks showed that Car 69 failed to comply with the BoP technical limits.*”
6. The ECU, the FIA logger, the WSC P boost sensor and the manufacturer’s P boost sensor of Cars Nos. 22 and 69 were unsealed after Race 3 and placed in a sealed box.



7. Within the hour following the publication of the Decisions, the Competitors notified the Stewards of their intention to appeal against the Decisions, and within 96 hours of the notification of their intention to appeal, the Competitors confirmed their appeals before the Court.
8. On 27 July 2019, the Competitors asked the FIA for access to the data stored in the data acquisition system approved by the FIA and to evidence on the Boost Pressure Monitoring Method applied by the FIA. The FIA gave its response to the Competitors' request on 6 August 2019.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

9. At the beginning of the proceedings it was decided that, given the close connection between these three cases (appeals lodged by both Competitors for the very same reasons in the very same context), they would be consolidated and jointly examined during the same hearing.
10. During the course of the proceedings and prior to the hearing, the President of the Hearing issued one preliminary Decision concerning the calendar of the procedure (Decision No. 1 of the President of the Hearing, dated 30 July 2019).
11. In their joint Grounds for appeal, presented on 9 August 2019, the Appellants filed the following requests for relief from the Court:

“(a) To set aside the Appealed Decisions;

In the alternative:

(b) should the Court decide that the Appellants must nevertheless be sanctioned, the penalty of exclusion shall be replaced by a less severe sanction

In any case:

(c) Order the return of the appeal deposit paid by the Appellants;

(d) Refrain from making any order that the Appellants should pay any part of the ICA's costs pursuant to Article 11.2 of the FIA Judicial and Disciplinary Rules

(e) Order the return of the sealed items deposited with the FIA and the removal of any additional seals placed by the FIA in relation to these Appeals.”



12. The FIA, in its Grounds in response received by the Court on 26 August 2019, asked the Court to:

"1. Dismiss the Appellants' appeals and confirm the stewards' Decisions n°17, 18 and 39 in their entirety, in application of article 10.9 of the FIA Judicial and Disciplinary Rules; and

2. to order the Appellants to pay the costs of the appeals referenced in accordance with article 11.2 of the FIA Judicial and Disciplinary Rules."

13. The RACB, as the Appellants' parent FIA member, neither provided written observations nor took part in the hearing.

ADMISSIBILITY

14. The Court acknowledges that the Appellants lodged their Appeals in conformity with the FIA Judicial and Disciplinary Rules ("JDR").
15. The Court also finds that it has jurisdiction in the matter.
16. Therefore, the Court declares the appeal admissible, which is undisputed.

ON THE SUBSTANCE

a) Submissions of the parties

17. The Appellants put forward in essence the following 8 grounds of appeal:
1. The FIA has not proven any breach of the maximum boost pressure by the Competitors during the Race in Portugal.
 2. The Competitors have always met the maximum boost pressure during that Race.
 3. The Boost Pressure Monitoring Method does not meet the required standards of a World Cup and, as such, shall be considered as void and inapplicable.
 4. The Cars' manufacturer made its participation in the Cup in the 2018 and 2019 seasons conditional on the agreement of the WSC and of the FIA to allow it to compete using the production car Engine Control Unit (ECU), which is not designed to control the boost pressure in particular



situations encountered in competition and in the event of higher heat, rather than having to design, develop and manufacture a specific race ECU, and was legitimately relying on this assurance.

5. The setting of the boost pressure level is done by WSC at the beginning of the season and such setting was not performed in the correct manner.
 6. The Competitors had no possibility of monitoring and/or adjusting the boost pressure of their cars.
 7. Compliance with the parameters on maximum boost pressure foreseen in the BoP Chart would have required an intervention on the cars by the manufacturer, which would have resulted in the cars no longer being compliant with their certifications.
 8. If the Court decides that the Competitors breached the regulations and that the Decisions should be upheld, the penalty for the breach of the FIA Sporting Regulations should then be mitigated and no sanction, or a more proportionate sanction, should be issued.
18. Addressing each of the Appellants' grounds, the FIA, notified on 26 August 2019, contends in essence that:
1. In relation to the Appellants' Ground 1, the FIA clarifies that the Stewards took their Decisions on the basis of the FIA Technical Delegate's reports and submissions, on the basis of the submissions made by the Competitors and by the FIA trackside electronics engineer, and on the basis of data evidence, notably the FIA Electronics Report.
 2. In response to the Appellants' Grounds 2 and 3, the FIA puts forward that the latter did not respect the maximum boost pressure during the relevant races although the Boost Pressure Monitoring Method (BPM) was clearly set out in the applicable TCR Bulletin No. 4/2019 and delivered accurate measurements.
 3. Concerning the Appellants' Ground 4, the FIA states that the use by the Competitors of a "production car ECU" was not based on an agreement with the FIA, and the Competitors freely chose to use it as provided under Article 6.4 of the FIA WTCR TR, hence at their own risk.
 4. With respect to the Appellants' Grounds 5 and 6, the FIA explains that the setting of the boost pressure level was correct and that the Appellants were solely responsible for their decision to choose an ECU



which appeared not to be appropriate to control the boost pressure, considering in particular that they could have asked for technical amendments to their cars until 15 days before the start of the Race and that the drivers can monitor and influence the boost pressure anyway.

5. As to the Appellants' Ground 7, the FIA stresses that the Maximum Boost Pressure Limits set in the 2019 BoP Chart could be met without breaching the FIA WTCR TR, and notes that other cars entered by the Appellants' manufacturer did not breach the regulations.
 6. Finally, and in relation to the Appellants' Ground 8, the FIA states that the penalty imposed by the Stewards is fair and proportionate.
19. After the hearing, the Court received an email from the Appellants on 12 September 2019. Attached to that email was a TC Committee Decision, TC-R 2019/12, issued by the FIA on 12 September 2019, which contains (i) a new BoP Chart and (ii) refers to the newly issued TCR Bulletin No. 13/2019 (also attached to that email), which deals with the "TCR Turbocharger Boost Pressure Monitoring Method" and replaces TCR Bulletin No. 4/2019. In that email, the Appellants consider that the TC Decision TC-R 2019/12 and, by reference, TCR Bulletin No. 13/2019:
1. confirm that the main equation as written in TCR Bulletin No. 4/2019, to which the previous TC Decision TC-R 2019/11 was referring, was not correct; indeed, the new TCR Bulletin No. 13/2019 correctly adds brackets where required to make the equation correct;
 2. confirm that the diagram included in TCR Bulletin No. 4/2019 was inaccurate; indeed, in the diagram included in the new TCR Bulletin No. 13/2019 the values now correspond (unlike in TCR Bulletin No. 4/2019) to those referred to in the text of the TCR Turbocharger Boost Pressure Monitoring Method;
 3. provides a significant increase of the correction of the boost pressure with the increasing of the air intake temperature applied to the Audi cars, as expressly requested by Audi to the FIA/WSC prior to the Portugal Race (see BoP Chart); the correction factor has been indeed increased from 5mbar/°C to 9mbar/°C.
20. As a consequence, the Appellants requested the Court to take these new elements into account when taking its decision.
21. Having considered the JDR, and in particular article 10.8-(v) which provides that *"At the end of the hearing, the hearing will be declared closed, and no*



further submissions or evidence will be permitted, unless requested by the ICA after the hearing has been re-opened which the ICA may decide for instance if it becomes aware of any new fact”, the Court has decided the following:

1. the email sent by the Appellants appears, *prima facie*, to contain new facts or elements;
 2. as a consequence, before issuing its decision and in respect of the adversarial principle, to shortly re-open the contradictory exchanges between the parties;
 3. having taken note of the Appellants’ position, expressed in their email of 12 September 2019, to ask the FIA to briefly notify to the Court its opinion by Wednesday 18 September 2019, 17.00 (CET).
22. The position of the FIA, notified to the Court on 17 September 2019, stresses that:
1. the issue of the brackets to be changed in the main equations has been discussed during the hearing and the FIA had already confirmed during the same hearing that brackets indeed had to be added. This element is therefore not new;
 2. as already confirmed in the response and at the hearing, the diagram provided in the TCR Bulletin No. 4/2019 and No. 13/2019 is provided for visual aid purposes and to explain the method, not to set the specific values of the BoP. The amendments to the diagram put forward by the Appellants are therefore irrelevant in the present case;
 3. the increase of the Max Boost Pressure values in the FIA TC Committee Decision R-2019/12 is based on a written request from Mr Xavier Serra dated 11 September 2019, namely one week after the hearing and not “*prior to the Portugal Race*” as the Appellants claim in their last email, without providing any evidence. This change of the Max Boost Pressure values is therefore irrelevant in the present case.
23. After having reviewed the submissions of both parties expressed in their last emails, the Court decided that the new submissions filed by the Appellants could not be considered as “new facts” within the meaning of Article 10.8-(v) and that they were therefore not admissible.



b) Conclusions of the Court

24. The Court carefully considered the various submissions made by the parties in their written proceedings and at the hearing, as well as the statements which were made at the hearing by the technical experts called by the Appellants and the FIA.
25. The Court notes first that it is undisputed that the Cup is governed by the following regulations:
 1. The FIA International Sporting Code (“ISC”);
 2. The 2019 FIA WTCR Sporting Regulations (“WTCR SR”);
 3. The 2019 FIA WTCR Technical Regulations (“WTCR TR”).
26. Article 3.2 TR provides that *“all vehicles must be conformed to these [TR], FIA WTCR Technical Passport and to all FIA Notification and Technical bulletins. (...)”*
27. According to Articles 30.1 and 30.2 of the WTCR SR, the FIA Touring Car Committee may take decisions concerning the adjustment of performance and control any adjustment of performance and technical specification.
28. It is undisputed that the Balance of Performance Chart (“BoP Chart”) issued by the FIA Touring Car Committee in its Decision TC-R2019/11 is part of the Sporting Regulations, more precisely of Appendix 1 to the WTCR SR, and therefore forms part of the regulations applicable to the present case.
29. The Court notes further that in the absence of any provision to the contrary in the applicable regulations, it is the FIA’s duty in the present case to prove that the Appellants breached the applicable regulations, and it is undisputed that the standard of proof applicable to this case requires that the Court be “comfortably satisfied” by the proof provided by the party which bears the burden of proof.
30. This being stated, the Court now comes to the question of the alleged breach of the regulations by the Appellants.
31. It is stated in Technical Report 3 that *“all the cars were found in compliance with the regulations of the Cup with regards to the items checked”*. At the end, this report states further that *“Car number: 22 and 69 have been found not respecting the maximum boost pressure values published in the BoP chart for the event (TC Committee decision TC-R2019/11, breach of the Appendix 1 of the Sporting Regulations [author’s emphasis] of the Cup.”*



32. The Court concludes that the Decisions are not based on the breach of the Technical Regulations but on the breach of the Sporting Regulations, more precisely of the BoP Chart, which imposes that competitors respect a certain sporting performance by not exceeding the limits of the established “boost pressure” for the Race.
33. Both the Appellants and the FIA actually confirmed this during the hearing.
34. The nature of the breach having been determined, the Court then finds that, having duly heard the Appellants’ arguments, the Stewards exercised the competences which are granted to them by Article 11.9 of the Code, on the basis of the reports issued by the FIA Technical Delegates, and of the evidence and data provided by those same FIA Technical Delegates during the hearings that took place before the Stewards.
35. Having considered the evidence made available to the Stewards, the Court finds that the Appellants did not put forward any argument that could lead to the conclusion that the Stewards did not have in their possession adequate, sufficient and satisfactory evidence in order to issue the Decisions.
36. The Appellants claim that they did not have access to the “raw data” gathered in the “data logger” of the FIA Data Acquisition System.
37. The Court notes that the Appellants failed to request from the ICA the “raw data” that they claimed to be crucial, or at least were not clear in requesting the “raw data”. The ECU (or other system) registers, stores and transmits to the FIA the full data “generated” by the car. In this respect, the Appellants could simply have asked for this batch of data, which could have been provided on a simple USB key.
38. In addition, the FIA also sent live during the Race all data through the FIA Data Acquisition System – through this system the FIA sends to competitors the boost pressure measurement by an on-board vehicle communication line – a so-called “Can Bus”. The Appellants thus had live access to the data referring to the boost pressure readings.
39. Further to the Appellants’ request on 6 August 2019, the FIA also provided a data report from the FIA Data Acquisition System, in Microsoft Excel format, of the data concerning the two cars, at a frequency of 100hz. In addition the FIA provided a heading in each of the respective columns of the Excel spreadsheets to denote the relevant values referred to. The Panel acknowledges that the Appellants have not raised any queries, concerns or requests for additional clarification or missing information, except – at the hearing – the complaint that the FIA had not provided the “raw data”.



40. In any event, the information provided by the parties in their written proceedings and during the hearing leads the Court to be comfortably satisfied by the results provided in the Technical Reports. In other words, the Court finds that the fact that the Appellants did not obtain the raw data collected by the FIA does not call into question the quality of the evidence that served as a basis for the Stewards' Decisions.
41. The Panel acknowledges also that the FIA monitored the boost pressure by using equipment that processes and assesses the data at 1000hz, when TCR Technical Bulletin No. 4/2019 establishes the use of equipment that processes and assesses the data at 100hz.
42. It is the Panel's perception that the FIA's equipment has the ability to process and assess the data on a level of 1000hz, but also has the ability to provide the assessment of the data on a lower hz level, e.g. 100hz. This is why the FIA delivered the data to the Appellants on a 100hz basis.
43. The use of 1000hz to process the data is indeed not in accordance with the FIA Technical Regulations, namely Bulletin No. 4/2019 which states 100hz, but this ability does not have any negative impact on the establishment of the breach of the imposed boost pressure limit. While it would be expected that the FIA, which issues the regulations, would make sure that it updates those regulations if not before but at least at the same time as it updates its measurement tools, it remains that such a technical update was profitable to the Appellants as a 1000hz tool is more powerful and accurate than a 100hz tool. The Appellants cannot, therefore, take advantage of the fact that the regulations are in this respect outdated.
44. The Court draws the same conclusion concerning the typing mistake put forward by the Appellants and which has been admitted by the FIA regarding the BPMM equation, namely the omission of brackets around the pBoost limit and the intake temperature compensation.
45. Firstly, the Appellants could easily detect this mistake, given the purpose of the equation, namely to calculate if the actual boost measurement was above the limit, and the purpose of the intake temperature compensation, namely to further reduce the actual boost measurement, given the negative impact of the outside temperature.
46. Secondly, the outcome of the data process proves that the equation has been properly applied, otherwise this would have led to a much higher rate of negative measurements to the detriment of the Appellants, which was not disputed.



47. In other words this typing mistake does not call into question the conclusions of the Technical Reports. However, the Court draws the FIA's attention to the fact that one expects from the regulator that it ensures that the regulations do not contain this type of mistake.
48. Based on all the above, the Court finds that the FIA has discharged the burden of proof imposed on it, and the Court concludes that the collected and processed data show – to the comfortable satisfaction of the Court – that the Appellants' cars exceeded the boost limits for Race 1, and LRT's Car No. 69 for Race 3, and therefore breached the relevant sporting regulations.
49. Coming now to the issue of the sanction imposed on the Appellants, the Court notes that the Stewards refer in their Decisions to a breach of the "*technical limits*" which led them apparently to consider that there had been a breach of the Technical Regulations and that they had no other choice but to impose a sanction of disqualification.
50. However, the breach committed by the Appellants is in fact a breach of the sporting regulations, which therefore does not lead to an automatic disqualification of the Appellants' cars.
51. The sanction to be imposed on the Appellants must therefore reflect the circumstances of the case and may be chosen from among the catalogue of sanctions provided under Article 12 of the Code.
52. In these cases, the Court finds that a disqualification of the cars would be clearly disproportionate and that the sanction imposed in the Decisions therefore needs to be mitigated, for the following reasons:
53. This is a first time offence for both Appellants.
54. As the present cases are about the breach of the sporting regulations and not of the technical regulations, the fact that the Appellants did not gain any sporting advantage from this breach – or at least the FIA failed to prove that any sporting advantage was gained – should also be considered.
55. Although the Court admits that the Appellants used the ECU at their own risk, it remains that all parties confirmed that the boost pressure could increase under adverse weather conditions – especially hot weather – and that those adverse weather conditions, namely external conditions which were beyond the Appellants' control, caused the breach of the regulations.
56. Besides, it has been admitted at the hearing that the FIA would have admitted to amend the boost pressure limit or at least the intake temperature compensation as it did for other cars.



57. During the 2018 Cup, the FIA had had a more flexible and open attitude regarding this type of issue and was indeed very tolerant, giving the competitors legitimate expectations that this was not a major issue for the FIA that could even lead to sanctions.
58. Indeed, the correspondence on this topic which was exchanged between the FIA and the Appellants suggests that the FIA was flexible in accepting adjustments to the boost pressure.
59. Based on all the above, the Court therefore decides that the sanction to be imposed on the Appellants should be a fine in the amount of €15,000 per car and per race.
60. This fine is to be suspended for a period of two years from the date of the Court's decision, during which the Appellants shall not commit the same type of breach, namely a breach of the BoP Chart with regard to the overboost limits. If the same type of breach is committed during that period, the suspensive effect of the sanction shall be lifted and the fine will be due, without prejudice to another sanction to be imposed on any of the Appellants who has committed the new breach.

COSTS

61. Considering the outcome of the Appeals, the Court decides that the Appellants shall bear 60% of the costs (40% for Leopard Racing Team and 20% for Comtoyoud Team Audi) and that the FIA shall bear the remaining 40%, in accordance with Article 11.2 JDR.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the Appeals admissible;**
- 2. Sets aside Decisions Nos. 17, 18 and 39 of the Stewards of the Race of Portugal counting towards the 2019 FIA World Touring Car Cup (WTCR);**
- 3. Imposes a suspended fine of 30,000 euros on Leopard Racing Team Audi Sport;**
- 4. Declares that the payment of this fine shall become due if, within a period of two years from the date of the Court's decision, Leopard Racing Team Audi Sport commits a breach of the overboost limits set in the Balance of Performance Chart applicable at that time, during an event of the FIA World Touring Car Cup (WTCR);**
- 5. Imposes a suspended fine of 15,000 euros on Comtoyout Team Audi Sport;**
- 6. Declares that the payment of this fine shall become due if, within a period of two years from the date of the Court's decision, Comtoyout Team Audi Sport commits a breach of the overboost limits set in the Balance of Performance Chart applicable at that time, during an event of the FIA World Touring Car Cup (WTCR);**
- 7. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 8. Orders the return to Leopard Racing Team Audi Sport and to Comtoyout Team Audi Sport of the items of their cars which were sealed and deposited with the FIA, and the removal of any additional seal placed on Cars Nos. 22 and 69;**
- 9. Decides that Leopard Racing Team Audi Sport and Comtoyout Team Audi Sport shall bear 40% and 20% respectively of the costs and that the FIA shall bear the remaining 40%, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 10. Rejects all other and further conclusions.**

Paris, 24 September 2019

The President

Rui Botica Santos