

INTERNATIONAL COURT OF APPEAL (I.C.A.)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal lodged by the
Real Federación Española de Automovilismo (RFEA)
on behalf of its competitor SEAT SPORT
against a decision of the World Motor Sport Council of 24 June 2009
concerning the 2009 FIA World Touring Car Championship**

Case 17/2009

Hearing of Thursday 16 July 2009 in Paris

The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprised of Mr. Reginald Redmond (Ireland), who was elected President, Mr. Erich Sedelmayer (Austria), Mr. Jan Stovicek (Czech Republic), and Mr. Vassilis Koussis (Greece), met in Paris on Thursday 16 July 2009 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

The Court, ruling on the appeal purportedly lodged by the Real Federación Española de Automovilismo (RFEA) on behalf of its competitor SEAT SPORT (the “Appellant”) against a decision of the World Motor Sport Council dated 24 June 2009 concerning a request by SEAT Sport relating to the 2009 FIA World Touring Car Championship, heard presentations and considered arguments presented by RFEA and by the Fédération Internationale de l'Automobile (FIA), supported by BMW and by Chevrolet World Touring Car Team (Chevrolet).

Attending the above hearing were:

- for SEAT SPORT: Mr. Carlos Ferrandiz (Legal representative)
Mr. Jaime Puig Sans (Team Director)
Mr. Antonio Rodríguez Azorín (Team Manager)
Mr. Benoit Bagur (Technical Director)
- for the FIA: Mr. Pierre de Coninck (Secretary General FIA Sport)
Mr. Sébastien Bernard (Head of Legal Department)
- for Chevrolet: Mr Simon Taylor (Legal representative)
Eric Neave (Chevrolet Europe)
Mark Way (Head of Design, Chevrolet)
- for BMW: Mr Simon Taylor (Legal representative)
Mr Andreas Bellu (Touring Car Representative, BMW Motorsport)
- for the MSA: Mr Rob Jones (General Secretary, MSA)

The parties presented oral arguments at the hearing and answered questions put to them by the Court. The hearing took place in accordance with the applicable rules, with the aid of simultaneous translation; no objection to any element of the simultaneous translation was raised. During the discussions, the adversarial principle was respected.

REMINDER OF THE FACTS

1. This case concerns the 2009 FIA World Touring Car Championship (the “2009 WTCC”). The regulations relevant to this championship were adopted by the World Motor Sport Council (the “WMSC”) on 5 November 2008.
2. The WTCC Regulations set out the competences of a body called the Permanent Bureau of the Touring Car Commission (the “Bureau”). The prologue to Appendix 1 to the 2009 WTCC Regulations states that:

The Permanent Bureau of the Touring Car Commission, instituted by the World Motor Sport Council during its meeting of 13 October 2004, is a body whose essential mission is to maintain the balance of performance between the competitors entered in the FIA World Touring Car Championship (hereinafter the Championship) and to see to it that any new participation by a competitor and/or any new entry respects the Championship regulations and does not upset the balance of the Championship.

3. Article 83 of the 2009 WTCC Regulations confirms that:

In order to maximize equality of performance, the Bureau will make performance adjustments by means of technical waivers only in exceptional circumstances (see Appendix 1 to the present regulations).

4. Article 2 of Appendix 1 to the 2009 WTCC Regulations further sets out the competences of the Bureau:

Article 2 – Missions of the Bureau

The Permanent Bureau of the Touring Car Commission will have:

- 1) the right to make performance adjustments by means of technical waivers in exceptional circumstances – see Article 83.
- 2) the right to take any decision resulting from the application of Article 79.
- 3) the power to accept national cars – see also Article 10.
- 4) the power to accept applications for waivers coming from the FIA technical department.
- 5) the power to implement Article 263-4 of Appendix J.
- 6) the power to reject cars that are not within the spirit of the FIA Super 2000 regulations.
- 7) the right to schedule private testing sessions prior to an Event.

5. The said Bureau adopted a number of decisions relevant to the present case, namely:

- i.* Decision N° 29 of 11 November 2008, concerning an application for a waiver, and introducing a limit on the maximum supercharged air pressure of 2.5 bars relative for all diesel cars for the whole 2009 season (reason given: “balance of performance”);
- ii.* Decision N° 4 of 24 February 2009, concerning an application for a waiver, and renewing for the 2009 season a number of decisions taken during preceding WTCC seasons (not including the aforementioned Decision N° 29) from the event run in Brazil and until further notice;
- iii.* Decision N° 5 of 24 February 2009, concerning an application for a waiver, and limiting the maximum supercharged air pressure to 2.5 bars

APPLICATIONS BY AFFECTED PARTIES TO BE HEARD

10. Under Article 21 of the ICA Rules of Procedure, the Court may hear any competitor in a major FIA Championship who so requests and who could be directly and significantly affected by the decision to be taken. The WTCC is a major Championship.
11. Applications to be heard were received on 2 July 2009 from the Motor Sports Association on behalf of its licence holder Chevrolet, and on 3 July 2009 from the competitor BMW, both of whom submit that, as participants to the 2009 WTCC, they are directly and significantly affected by the decision to be taken in this case.

Findings of the Court

12. Considering that both applicants are competitors in the 2009 WTCC, and that no party has contested their right to intervene in the present case, the Court granted leave to intervene to Chevrolet and BMW.

ADMISSIBILITY AND JURISDICTION

a) Arguments of the parties

13. The Appellant argues that the appeal should be declared admissible considering that the present case concerns an appeal against a decision taken by a body of the FIA, pursuant to Article 23 of the FIA Statutes. In addition, the Appellant refers to an e-mail by Ms. Frédérique Trouvé (Touring Car, GT & Truck Racing Commissions Manager) of 26 June 2009 which states that “this matter could be submitted to the International Court of Appeal”.
14. The FIA claims that the Court should declare the appeal inadmissible on the grounds that Article 1 of the ICA Rules of Procedure only permits appeals against decisions of the WMSC which, by their nature, can be described as sanctions, and on the condition that this sanction is pronounced by the WMSC itself, neither of which is the case in the present instance. The intervening parties support this claim of the FIA.

b) Findings of the Court

15. Even prior to considering the arguments raised by the parties, the Court notes that the appeal submitted by the Appellant does not meet the formal and mandatory technical requirements clearly and explicitly set out in the ICA Rules of Procedure.
16. Article 14 of the ICA Rules of Procedure provides that “the appeal must be formally notified to the ICA Secretariat by the ASN, or the member affiliated to

the FIA, by fax or by email, and also subject to written confirmation by post of the same date”.

17. The Applicant’s appeal was sent to the Court by e-mail by the Marshalling Commission’s Secretary of RFEA, no indication being offered that this person had the authority to submit on behalf of that ASN. Furthermore, no written confirmation was received by the Court by post on the same day. Indeed, no written confirmation was received at all.
18. The Court offered the Applicant the opportunity at the hearing to produce evidence of the authority of the officer of the ASN to make the initial submission of the Notification of Appeal and evidence of compliance with the mandatory requirement to send written confirmation of that Notification by post of the same date. Despite being offered this opportunity, the relevant evidence was not produced. Instead of producing a letter from RFEA formally notifying the Appeal which had been sent by post of the same date as the Court had been alerted to the appeal, the Appellant produced at the hearing another letter submitting other documents (its Grounds of Appeal) to the Court which did not bear the same date as the Notification of Appeal.
19. The Applicant argued in Court that it was not aware of the relevant obligations. The Court cannot accept this argument as the obligation is plainly stated in the ICA Rules of Procedure as one of the few mandatory pre-requirements for submitting an appeal.
20. Furthermore, the ICA has published Practice Directions which do not have the force of rules but which nonetheless explain in some detail how appeals must be submitted. These Practice Directions were formally communicated to all ASNs by the Court, are available on the Court’s website and were specifically drawn to the attention of the Applicant in the ‘convening notice’ sent by the Court’s Secretariat to the Applicant some weeks before the hearing.
21. The Court’s practice directions state, in relevant part, as follows :

Article 1. In the cases described in the first four bullet points of Article 1 of the Rules of Procedure ,it is the National Sporting Authorities (ASNs) that submit the relevant cases to the ICA. In those cases the ASNs must conduct all communications with, and make all submissions to, the ICA.

Article 2. There can be no exception to this rule in relation to the submission of the ‘Notification of Appeal’ as described in Article 14 of the Rules of Procedure....

Article 4. The initial ‘Notification of Appeal’ must be submitted by the relevant ASN either by fax or e-mail and subject to written confirmation by post on the same day. The day on which the ICA first receives this Notification of Appeal (by fax or e-mail) shall be the day of receipt for the purposes of assessing compliance with the appeal deadlines set out in the Rules of Procedure, provided only that adequate proof

of posting on the same day is provided to the ICA. The burden of proving that a notification of appeal was sent by post, fax and/or e-mail, and the day of sending, in all cases rests only with the ASN submitting it. The Secretariat recommends the use of registered or recorded post in all cases and that proof of postage is retained as it may be required as evidence.

22. Article 14 of the Rules of Procedure cannot be regarded as optional and it exists to guarantee that the Court is properly seized of a case at the outset so that no injustice or misunderstanding can arise regarding what documents have been submitted and so that the Court can be satisfied that the ASN in fact submits the appeal. As a consequence, the Court must find the present appeal inadmissible.

ON THE SUBSTANCE

23. In view of the foregoing, it follows that there is no need to examine the arguments of the parties as to admissibility or the substance of the appeal submitted by the Applicant.

ON THOSE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL

Hereby:

- 1. Declares the appeal inadmissible;**
- 2. Orders the Appellant to pay the costs, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 16 July 2009

The President