



Advisory opinion CAS 2000/C/255 Comitato Olimpico Nazionale Italiano (CONI), 16 June 2000

Panel: Mr. Peter Leaver QC (England), President; Prof. Michael Geistlinger (Austria); Prof. Vittorio De Sanctis (Italy)

Cycling

Direct affiliation of trade teams to the UCI

Compatibility of the UCI rules with the Olympic Charter and the law

Introduction

1. This request for an Advisory Opinion arises out of a number of changes, made by the Management Committee of the Union Cycliste Internationale (UCI), to the Rules of UCI at a meeting in Treviso on the 3rd October 1999. In summary, Comitato Olimpico Nazionale Italiano (CONI) contends that the changes substantially alter the structure of professional cycling, and may be incompatible with the Olympic Charter, UCI's Constitution, Swiss civil law, Swiss and EC competition law, and Italian law (collectively referred to as "the legal framework").
2. CONI, therefore, requests this Advisory Opinion so that the Court of Arbitration for Sport ("the CAS") can state its opinion as to the compatibility of the new rules of UCI with the legal framework.
3. The request for an Advisory Opinion was made by CONI to the President of the CAS by letter dated the 22nd December 1999. The request was made pursuant to Articles S12 (c) and R60-R62 of the Code of Sports-related Arbitration ("the Code"). Pursuant to the provisions of Article R60 of the Code, CONI had to request the Advisory Opinion on behalf of the Italian Cycling Federation.
4. In accordance with Article R61, the request was reviewed by the President of the CAS. The President decided that the request was admissible, and that all questions raised by CONI should be submitted to the Panel for opinion.
5. By letter dated the 8th March 2000 CONI was informed that the Panel had been appointed.
6. In the request for an Advisory Opinion, CONI requested an oral hearing. Although such hearings are unusual when an Advisory Opinion is sought, the CAS agreed that such a hearing would be arranged. UCI was invited to attend, and both parties were informed that the hearing would be limited to oral argument, and that no factual evidence would be received by

the Panel. The hearing duly took place in Lausanne on the 29th May 2000. Both CONI and the UCI participated in the hearing.

The sport of Cycling

7. For most people who cycle, cycling is a recreational sport. For many of those, cycling is one of the methods by which fitness is obtained or maintained. It is a sport which many carry on by themselves: equally, many carry it on in the company of friends. Some may cycle competitively, but the vast majority of those who cycle do not do so.
8. It follows, therefore, that cycling does not easily lend itself to the description of a “team sport”. It is essentially an individual activity, but one which can be carried out alone or in the company of others. It is for that reason that the front line regulation of cycling is carried out by means of individual registration. That registration is effected by individuals with their national federation. A cyclist cannot be registered as an individual with UCI. When competitive races are held, it is individuals who win those races. That is so even when teams are formed which compete in the race. The winner may be a member of a team, but the victory is first and foremost an individual victory. During the hearing, the Panel was informed that road races, whether on the international or national calendar, were usually competed in as team races for Trade Teams. A parallel can be drawn with motor racing and motorcycle racing. Every successful motor racing driver and motorcycle racing rider has a support team, which works with and for the driver or rider, but it is the driver or rider, and the driver or rider alone, who wins the races. It is, perhaps, for that reason that in Formula 1 motor and motorcycle racing there are two competitions, one for individual drivers and one for constructors: the latter is, effectively, the team competition.

UCI's Constitution

9. UCI was founded on the 14th April 1900. The latest revision to the Constitution of UCI was made on the 7th October 1997. References in the remainder of this Advisory Opinion are references to the Constitution after that revision. By Article 1 of its Constitution UCI is stated to be “the association of national cycling federations”. UCI has legal personality pursuant to Articles 60 ff. of the Swiss Civil Code, and its registered office is in Switzerland, at the place fixed by the Management Committee, which at present is 37 Route de Chavannes, Lausanne.
10. The purposes of UCI are stated in Article 2 of the Constitution. They are:
 - a. *to direct, develop, regulate, control and discipline cycling under all forms worldwide;*
 - b. *to promote cycling in all the countries of the world and at all levels;*
 - c. *to organize, for all cycling sport disciplines, world championships of which it is the sole holder and owner;*
 - d. *to encourage friendship between all members of the cycling world;*

- e. *to promote sportsmanship and fair play;*
 - f. *to represent the sport of cycling and defend its interests before the International Olympic Committee and all national and international authorities;*
 - g. *to co-operate with the International Olympic Committee, in particular as regards the participation of cyclists in the Olympic Games.*
11. By Article 4 of the Constitution the members of UCI are the national federations accepted by the Congress as being the representative organization for the sport of cycling in general in the country of that national federation. By Article 6 of the Constitution the federations, as members of UCI, are obliged to comply with the Constitution and Regulations of UCI, as well as with all decisions taken in accordance therewith. However, if there is no specific regulation contained in UCI's Regulations, a National Federation is free to adopt any rule which is consistent with UCI's Constitution and Regulations. In that way, the autonomy of the National Federations is maintained and respected by UCI.
12. Chapter IV of the Constitution is entitled "Congress". By Article 27 the Congress is the general meeting of members and the highest authority of UCI. Article 29 sets out the "exclusive powers and duties" of Congress. They include the alteration of the Constitution and dissolution of UCI, and the admission, expulsion and suspension of federations.
13. Chapter V of the Constitution is entitled "Management Committee". By Article 45 it is provided that UCI shall be managed by its Management Committee under the authority of Congress, and that the Management Committee "*shall be vested with the most extensive powers as regards the management of the UCI and the regulation of cycling sports. It shall decide all matters not otherwise reserved to another policy body by this Constitution*". By Article 46 it is provided that the Management Committee should, in particular:
- "(l) establish the Drug Test Regulations and all other Regulations relating the sport of cycling in general; ..."*

UCI's Cycling Regulations

14. UCI has established and published Cycling Regulations in accordance with the authority given to it by Article 46. It is those Regulations ("the Regulations") that were amended at the Management Committee meeting in Treviso. Before identifying the particular amendment which gave rise to the request for an Advisory Opinion, it is necessary to consider a number of the Regulations to which no objection is taken by CONI.
15. Article 2.1.005 of the Regulations stipulates that road races with a participation of teams from more than 4 different countries have to be entered on the international calendar, which could be either the world calendar or a continental calendar. Articles 2.1.002 and 2.1.003 of the Regulations respectively define those races which are on the world calendar and those which are on the continental calendar.

16. Chapter XVI of the Regulations is entitled “Trade Teams”. By Article 2.16.001 a Trade Team is an entity constituted to participate in road races open to Trade Teams “*as defined in articles 2.1.002 and 2.1.003*”. The same Article provides, in the second paragraph, that a Trade Team “*shall comprise all riders employed by the same employer and registered with the UCI as forming part of the Trade Team, the employer itself, the sponsors and all the other persons contracted by the employer and/ or the sponsors for the functioning of the team (Administrator, Team Manager, coach, attendant, mechanic etc.)*”.
17. By the third paragraph of Article 2.16.001 the Trade Team must be designated by a special name and be registered with UCI. Trade Teams must be registered with UCI by the 20th December if they want to be in the first category of Trade Teams during the following year.
18. Before the 3rd October 1999, Article 2.16.008 provided that a Trade Team “*shall join the UCI-affiliated National Federation of the country whose nationality the majority of its riders hold*”. Article 2.16.015 required Trade Teams to register with their national federations by the 31st October. That registration was effective for the following year. However, in certain circumstances Trade Teams could be directly registered with UCI. It is to be noted that the amendment, which permitted such direct registration, came into force on the 17th July 1998. So far as the Panel is aware, there was no complaint, after the establishment and publication of that amendment, that the amendment was in any way incompatible with the legal framework, or any part of it, or was *ultra vires* the Management Committee.
19. The circumstances in which a Trade Team could ask to be directly registered with UCI were if (a) the Trade Team was refused registration with its National Federation for reasons not based on the current regulations or (b) the National Federation failed to request the registration with UCI within the time limit, which is stated to be by the 10th December “at the latest”.
20. The remainder of Chapter XVI of the Regulations set out the administrative and other details which needed to be complied with by every Trade Team. It is not necessary for the Panel to refer extensively to those other Regulations in this Advisory Opinion. There is, however, one important provision to be noted, and that is Article 2.16.019 which entitled UCI to refuse registration of a Trade Team, even if that Trade Team had been registered with its national federation. It would seem to follow from this provision that, prior to the 3rd October 1999, it was only the registration with UCI which gave life to the Trade Team as an entity able to take part in competitive races, and that registration with the national federation did not have that effect.
21. Thus, prior to the amendments to which CONI objects, the position was that, under the Regulations, Trade Teams were recognized, and had been recognized since at least July 1998, as entities which were entitled to participate in those road races organized by UCI which were open to Trade Teams. Such Trade Teams were required to join the UCI-affiliated national federation of the country whose nationality the majority of its riders held, had to register with that national federation by a stipulated date if they wished to participate in road races during the following year. In the two situations to which we have referred above, however, a Trade Team could be registered directly with UCI.

The amendments to UCI's Regulations

22. At the Management Committee meeting in Treviso amendments to the Regulations were approved for calendar year 2000 and thereafter. In particular, there were amendments to Article 2.16.008; Article 2.16.015 (which required Trade Teams to register with their national federations for the following year) was deleted; a new Article 2.16.017 was inserted; and Article 2.16.018 (which permitted the direct registration of a Trade Team with UCI) was deleted.
23. It is the new Article 2.16.017 to which CONI takes its principal objection. That Article (“the Amended Regulation”) now provides that each year Trade Teams must request registration from UCI. The amendments, including the Amended Regulation, were communicated to the Italian Cycling Federation, and to the other National Federations, on the 18th October 1999. CONI was subsequently informed of the Amended Regulation by the Italian Cycling Federation. Thereafter, as has been stated in Paragraph 3 above, CONI, on behalf of the Italian Cycling Federation, requested this Advisory Opinion.

CONI's complaint

24. CONI complains that the Amended Regulation has consequences at both the international level and the national level. At the international level, Trade Teams become members of UCI instead of (“besides”) national federations, and at the national level, national federations “*are deprived of any possibility of controlling Trade Teams and their riders*”.
25. It is in these circumstances that CONI requests the CAS to express its opinion on 5 questions, which it formulates in the following terms:
 - a. Are the new UCI rules providing for direct affiliation of Trade Teams to the UCI, skipping affiliation to national federations, compatible with the spirit and language of the Olympic Charter?
 - b. Is the adoption of the said new UCI rules by the UCI Management Committee compatible with the UCI Constitution and with the Swiss Civil Code?
 - c. Is the content of the said new UCI rules compatible with the UCI constitution?
 - d. Are the said new UCI rules compatible with Swiss and EC competition law?
 - e. Are the said new UCI rules compatible with Italian law?

The Panel will consider these questions in the order in which they are stated above.

A. Are the new UCI rules providing for direct affiliation of trade teams to the UCI, skipping affiliation to national federations, compatible with the spirit and the language of the Olympic Charter?

26. CONI's principal submission in relation to this question is that the Amended Regulation infringes the pyramidal structure envisaged by the Olympic Charter for international sports whereby international federations, such as UCI, are composed only of national federations, and that individual membership, whether of clubs or other legal persons or entities, can only be with national federations. CONI submits that Trade Teams are to be treated as clubs, and as such, must be affiliated to a national federation, so that the Amended Regulation, which requires Trade Teams to be registered with UCI, significantly alters the pyramidal structure and is incompatible with the spirit and language of the Olympic Charter. It is CONI's concern that the effect of the Amended Regulation will be to deprive National Federations of the ability to discipline and control Trade Teams and their members.
27. UCI's response to this submission is that each international sporting federation, of which it is one, is the association of a number of national federations and that it has the right to determine (subject to and in accordance with the wishes of its member national federations) which aspects of the sport are organized and regulated on a national level and which aspects are organized and regulated on an international level. UCI points out that Trade Teams are only permitted to participate in races which are on either the world or the continental calendars, and cannot compete in a national race. Unlike teams in specific team sports, such as football and basketball, cycling Trade Teams only compete on the international level: there is no national competition for them, and cycling Trade Teams have no home base, such as a stadium or hall. UCI, therefore, submits that the Amended Regulation is consistent with the Olympic Charter and that it has the exclusive right to determine with whom Trade Teams should be registered. It also submits that a National Olympic Committee, like CONI, has no *locus standi* to seek this Advisory Opinion.
28. In the Panel's opinion, the answer to this question depends upon an analysis of UCI's Constitution, the Regulations and the Amended Regulation, as much as upon the spirit and language of the Olympic Charter. It is true that Article 29 of the Olympic Charter envisages a pyramidal structure for sports, and that international federations are at the top of the pyramid, immediately beneath the International Olympic Committee, but immediately above the national federations. Equally, it is true that affiliation and registration of clubs and individuals and other legal persons or entities is normally to be made by the club or individual or other legal person or entity with the national federation. However, it should not be forgotten that Article 29 also states that international federations, whose statutes, practice and activities are in conformity with the Olympic Charter, maintain their independence and autonomy in the administration of their sport.
29. It follows, therefore, that the real issue for the Panel's opinion in relation to this question is whether a Trade Team is truly to be equated with a club, so that its affiliation and registration should be with a national federation rather than with UCI. Put another way, is the Amended Regulation of such a nature as to mean that UCI's "*statutes, practice and activities?*" are not in

conformity with the Olympic Charter? If the answer to this latter question is in the negative, it follows that UCI maintains its independence and autonomy in the administration and organisation of cycling.

30. The Panel has already noted that a Trade Team is an entity which is, and can only be, constituted and organised to participate in road races of a particular standard and at a particular level, and that it has to be registered on an annual basis. It has to be designated by a special name. It has no independent legal personality, so that, for example, unless it acquires legal status by some system of national law, it cannot sue or be sued. No doubt, however, even if it had no legal status, it would be possible for the individual members of the Trade Team, or possibly their employer, to sue or be sued. During the hearing, the Panel was informed that Trade Teams are normally given some domestic status by the entity which forms the Team. But even if a Trade Team were to acquire legal status, that would be a matter simply of its internal administration, and would not entitle it to membership of UCI, nor it would seem of any national federation. Furthermore, as UCI points out, the riders are employees of the entity which forms the Trade Team, and their relationship with their employer is regulated by the terms of their contract, and not by UCI's Regulations. It remains the position that the cyclist members of a Trade Team will normally be registered with a national federation.
31. Whatever may be the precise legal status of a Trade Team, it cannot be a member of UCI, membership of which is available only to national federations. Prior to the coming into force of the Amended Regulation, those members of a Trade Team who were not cyclists, such as the Administrator and Team Manager, could have been licensed by national federations, but whether or not they were licensed would have depended upon the terms of the licence granted to the Trade Team by the particular national federation. If such persons were not licensed, there would be no means by which they could have been disciplined by those responsible for regulating the sport. So, for example, if a cyclist were supplied with drugs by a Team Manager who was not licensed and, therefore, not amenable to the (a) disciplinary code of a national federation, there would be a serious gap in the disciplinary provisions governing the sport of cycling. That possibility has been removed by the Amended Regulation, pursuant to which the registration of a Trade Team includes all members of that Team who will, in principle, therefore, be amenable to UCI's disciplinary code. However, notwithstanding the Amended Regulation, Trade Teams, and their members, can still be licensed by a national federation, in which case they will be amenable also to the disciplinary code of that national federation. But in no circumstances should Trade Teams, and their members, be at risk of being punished by both UCI and the national federation in respect of the same misconduct.
32. A further consideration is that most cyclists who ride in a Trade Team will themselves be members of a cycling club. Thus, the members of a Trade Team may each be a member of a different club. If those clubs are located in different countries, those members will be affiliated with different national federations. In addition, it is possible that the members of a Trade Team may themselves form a club, which the cyclist members may join. Such a club may have members who are not themselves members of the Trade Team.

33. UCI further points out, and this is not disputed, that there are professional road cyclists who are not members of a Trade Team. It is also to be noted that for the year 2000 there are about 1200 cyclists who are members of Trade Teams, while the number of cyclists who ride in competition cycling can be numbered in hundreds of thousands. Thus, the Regulations concerning Trade Teams can be seen to affect only a very small proportion of cyclists as a whole, and are not fundamental to the structure either of UCI or of the national federations. This fact may have a considerable impact on a number of the later questions on which the Panel has been asked to express a view. In particular, it may have an impact on those questions which raise the issue of abuse of a dominant position and cartels. However, it will not, by itself, be decisive. It seems to the Panel that a more important consideration than a simple arithmetical calculation is the quality of the cyclists in the Trade Teams as compared with the quality of those who are not members of Trade Teams. Inevitably, a large proportion of the best cyclists will be members of Trade Teams.
34. In the Panel's view, a Trade Team does not bear the hallmarks of a club. There is no continuity either of existence or of membership; no constitution; no rules for membership or participation; no disciplinary code; and a Trade Team has no home base. In contrast with a club, a Trade Team is put together for the purpose solely of the annual adventure of the following year's Trade Team races on the world and continental calendars. The employer may decide not to participate and, therefore, not to form a Trade Team for the following year's Trade Team races. That would be a commercial decision of the employer. However, if a Trade Team is formed, the individual cyclists will, as has been pointed out, be registered with a national federation. Despite the fact that a Trade Team does not bear the hallmarks of a club, the Panel is of the opinion that a club is the nearest comparable organisation, and a relevant yardstick by which to judge the status of Trade Teams.
35. It is further to be noted that registration of a Trade Team does not make the Trade Team a member of UCI. For example, under UCI's Constitution registration does not give a Trade Team a right to participate in the General Assembly; nor does it give a right to vote. Indeed, Trade Teams have none of the rights which UCI's Constitution grants to members of UCI. These matters would seem to indicate that registration is to be treated principally as an administrative formality, required in order for a Trade Team to be permitted to compete in races for Trade Teams. Although, as has been pointed out in Paragraph 31 above, registration of a Trade Team with UCI makes the Trade Team, and its members amenable to UCI's disciplinary code, the mischief at which the Amended Regulation was directed was to prevent differential treatment of Trade Teams, depending upon which national federation was responsible, so as to ensure a uniform and common economic and administrative framework in which Trade Teams could operate.
36. In the Panel's opinion, it is significant that it has been possible for a Trade Team to be directly registered with UCI since at least July 1998, and that there was no protest at the amendment to the Regulations which made possible such direct registration. If it had been thought that registration direct with UCI was incompatible with the Olympic Charter, it is, at the very least as a matter of comment, surprising that no challenge was made to the amendment to the Regulations that made such registration possible.

37. In the light of the matters set out above, it is the Panel's opinion that the Amended Regulation is compatible with the spirit and language of the Olympic Charter. The registration of Trade Teams direct with UCI does not strike at the root of the pyramidal structure of international sport envisaged by Article 29 of the Charter.

B. Is the adoption of the said new UCI rules by the UCI Management Committee compatible with the UCI constitution and with the Swiss Civil Code?

38. The submission that is made by CONI, and which gives rise to this question, is that the Amended Regulation was *ultra vires* the Management Committee and in consequence can be challenged and annulled under the Swiss Civil Code.

39. CONI submits that the Amended Regulation, in effect, creates a new category of UCI membership. It further submits that under Swiss law creation of categories of member with an association can only be derived from the statutes of the association itself, and that under the UCI's Constitution (Article 4), only national federations accepted by UCI's Congress as being the representative organisation for the sport of cycling in general in the country of the national federation can become members of UCI. CONI goes on to submit that the only body in UCI which can alter the Constitution is Congress (Article 29), and that the Management Committee's role is limited to management of UCI "under the authority of the Congress" (Article 45). Thus, CONI submits, that the Management Committee has no power to amend the Constitution or to enact rules which contradict it. In promulgating the Amended Regulation and creating a new category of member, the Management Committee was acting *ultra vires*. CONI goes on to submit that the Amended Regulation interferes with the internal affairs of national federations, which is itself contrary to the provisions of Article 3 (b) of UCI's Constitution. In conclusion, CONI submits that under Swiss law any resolution by a Swiss association must be in compliance with its own Constitution and by-laws, and that any act by the Management Committee which is incompatible with the Constitution is subject to an annulment under Swiss law.

40. UCI takes a preliminary objection to this question. It submits that the question of whether a decision taken by a body of an international federation was taken by the competent body, or should have been taken by some other body of that international federation, is an internal affair of that international federation, and that it is a matter for UCI's Congress and the members of UCI to judge. CONI is not a member of UCI, and UCI's Constitution and Regulations do not apply to CONI. In any event, UCI refers to Article 46 (1) (l), the text of which has been set out in Paragraph 13 above.

41. The Panel is of the view that UCI's objection is well-founded. It cannot be open to bodies which are not members of an organisation to object to the rule-making of that organisation. If objection is to be made, it is the members who should make that objection. If that were not the case, any outsider could object to the rules of any organisation. At the end of such a road lies anarchy, and the paralysis of organisations. One only has to think of the impact that

permitting outsiders to object to the internal rule-making powers of an ordinary company would have to realise that such objections cannot be permitted.

42. However, the Panel does not think that is satisfactory to resolve this question on that narrow ground. That is particularly so when the question has been referred to the Panel by the President of the CAS. The Panel, therefore, proceeds to consider this question as if the preliminary objection were not well-founded.
43. The Panel has already expressed the view that the Amended Regulation does not create a new category of membership of UCI. It follows, therefore, that the complaint that the Management Committee of UCI has acted *ultra vires* and has usurped the exclusive power and duty of UCI's Congress to alter the Constitution by creating such a category of member fails. Further, if the Amended Regulation does not create a new category of membership, it is the Panel's opinion that it was within the powers of the Management Committee to pass and promulgate the Amended Regulation. In these circumstances, there is no breach of Swiss law, as the Amended Regulation was passed and promulgated in accordance with UCI's Constitution. The Panel is also of the view that the Amended Regulation does not interfere in the internal affairs of national federations, and so does not infringe UCI's Constitution in that regard.
44. Finally, in relation to the issues raised by CONI on this question, the Panel would wish to make it clear that, for the reasons stated above, it does not accept that the Amended Regulation has the effect that UCI "*directly manage(s) professional sports without any regard to the competence of national sports institutions...*".

C. Is the content of the said new UCI rules compatible with the UCI constitution?

45. The Panel has already indicated that it is of the view that the Amended Regulation was not *ultra vires* the Management Committee, and that it was passed and promulgated in accordance with UCI's Constitution. In these circumstances, the answer to this question is in the affirmative.

D. Are the said new UCI rules compatible with Swiss and EC competition law?

46. CONI's submission in relation to this question starts from the premise that the Amended Regulation places UCI "*at the same level as national federations, competing with them for the affiliation of trade teams*". Thus, CONI submits, UCI is, at one and the same time, both the regulator of international professional cycling and one of the actors in the professional cycling market. As UCI is the only body which has the power to regulate international cycling competitions, it holds a dominant position in the international professional cycling market. CONI draws the attention of the Panel to the provisions of Article 7.1 of the Swiss Cartel Act and to Article 82 (ex 86) of the Treaty of Rome and seeks its opinion as to whether the Amended Regulation is compatible either with the Swiss Cartel Act or with the Treaty of Rome.

47. UCI's answer to CONI's submission is that it is implicit in that submission that the national federations have a monopoly in relation to the organisation of cycling in their respective countries, and that, in essence, the complaint is by monopolists that competition is being introduced against them. Thus, answers UCI, CONI's submission must fail because it is not an abuse of a dominant position to create competition, which is what, if CONI's submission were accepted, UCI would be doing.
48. The Panel's view is that UCI's answer is too simplistic. If the true analysis of the effect of the Amended Regulation were that it created a new category of membership of UCI, it might be the case that UCI was acting both as regulator and competitor in relation to Trade Teams.
49. In considering this issue, the Panel proceeds on the assumption (without deciding the point) that the organisation of cycling races on the world and intercontinental calendar is properly described as a "market". Furthermore, the Panel also assumes (again without deciding the point) that the organisation of such races is properly described as "trade", and that UCI and the national federations are properly described as "trading partners". In the Panel's view, however, on a true analysis it is the cyclists who are the competitors in races, either individually or as members of Trade Teams. The national federations do not compete, nor does UCI.
50. It seems to the Panel that CONI's submission in relation to this issue is, in reality, a submission that it is anti-competitive for UCI to be responsible for the organisation of international cycle races. If such a submission were correct, it would have an impact not only on sports cycling, but out on every other sport which had an international federation, such as UCI. The cycling international calendar is, because cycling is essentially an individual sport rather than a team sport, cycling's equivalent of an international competition, such as FIFA's World Cup. So far as the Panel is aware, it has not been suggested that it is anti-competitive for FIFA to organise that competition, nor could it be. Other organisations could try to organise a rival World Cup, but would find it difficult to do so. Equally, other organisations could try to organise an international cycling calendar. They would probably also find it difficult to do so. In the light of these considerations, the Panel would answer this question in the affirmative.

E. Are the said new UCI rules compatible with Italian law?

51. CONI submits that under Italian law, professional athletes and Italian-based clubs must be affiliated to the relevant Italian Federation in order to perform in their activities in compliance with Italian law. The effect of the Amended Regulation would be that Italian professional cyclists, who are members of a Trade Team, would not be affiliated to the Italian Cycling Federation but to UCI. In consequence, therefore, the most important Italian cycling athletes and coaches would lose their rights to vote and to be elected in the new governing sports bodies in Italy.

52. The Panel has noted the provisions of Article 6, Paragraph 4, of UCI's Constitution which require that members should observe the mandatory legal provisions in force in the country of the federation concerned. UCI's Constitution, therefore, makes it mandatory for Italian cyclists and Italian Trade Teams to comply with Italian law. If there is a requirement of Italian law, or of the Italian Cycling Federation, that Italian cyclists and Italian Trade Teams must register with the Italian Cycling Federation, UCI's Constitution would require that they did so register. Furthermore, Italian cyclists could not become members of UCI.
53. The Panel can, therefore, see no basis upon which it could be argued that the Amended Regulation was not compatible with Italian law.

Conclusion

54. In the event, all of the questions upon which the Panel was asked to express an opinion have been answered in the affirmative. However, as we stated in Paragraph 6 above, the CAS took the unusual course, when an Advisory Opinion is sought, of agreeing that an oral hearing should take place. It was extremely useful to the Panel to have a hearing, because during the hearing two matters became clear to the Panel: first, that a specific provision of Italian law has caused a particular problem to the Italian Cycling Federation, and, secondly, that a fundamental issue concerning the relationships between different parts of the sporting pyramid was involved in this matter which had not been apparent from CONI's Request and UCI's observations. The first matter causes particular difficulty to the Italian Cycling Federation, but the second issue has relevance for all sports. The Panel proposes to say a few words about each of those matters.
55. One of the consequences of the Amended Regulation appears to be that a number of Trade Teams, which would normally have registered with the Italian Cycling Federation, have opted not to do so. The particular concern of those Teams, and the reason for not registering with the Italian Cycling Federation, appears to be the strict application of Italian tax and social security legislation (anti-doping rules, where it is feared that UCI's rules may not comply with Italian law). Trade Teams which have the nationality of other countries do not suffer such a rigorous regime. Italian cyclists, who are licensed outside Italy to ride for non-Italian Trade Teams, and those Trade Teams, can try to organise their affairs so as to avoid liability for Italian tax and social security. This differential treatment creates an extremely unfortunate state of affairs, but it is not one upon which the Panel can offer any assistance.
56. Another factor leading to Trade Teams (the Italian members of which would, in the normal way, have been licensed by the Italian Cycling Federation) being licensed by other national federations may be the application of Italian anti-doping rules, where it is feared that UCI's rules may not comply with Italian law. In the Panel's opinion it would be extremely unfortunate if this fear were to lead to a rift between the Italian Cycling Federation and UCI. The Panel would wish to encourage both CONI and the Italian Cycling Federation to bear in mind that doping is the enemy of society as a whole, and of sport in particular. It is in the interests of all that doping should be removed from sport (and society), and that those who

participate in sport should know that if they are caught cheating, for that is what doping is, severe punishment will be meted out to them. This should be the case at every level of sport, but it should be particularly true in international sport which attracts the attention of so many, where the rewards are so great, and whose participants are imitated by young and old alike. International rules, against doping as well as in other areas of sport, are made for those who participate at the international level. If such rules are duly made by an international federation they should be respected within the sport as being for the benefit of all. They should not be liable to be eroded by the domestic law of any country. The Panel is firmly of the view that CONI, the Italian Cycling Federation and UCI should make strenuous efforts to ensure that the present problem is eradicated, so that the Italian Cycling Federation should be able to grant licences to, and to discipline, Italian riders and those under its jurisdiction, including Trade Teams (and their officials), whose nationality, under UCI's Regulations, is Italian, so that UCI can organise international cycling without having to be troubled with the purely domestic concerns of its members.

57. The second issue is closely allied to the first. It relates to the necessity in every sport, and particularly to those sports which subscribe to the Olympic Charter, for there to be discussion, consultation and explanation at every level in relation to making of rules and regulations. Although we have decided that each of the Questions which were referred to us should be answered in the affirmative, what those Questions seemed to make clear was that there may have been a failure to discuss, consult and explain the Amended Regulation so that its ambit and purpose were clear to the Italian Cycling Federation in whose interest CONI requested the Advisory Opinion. The Panel does not seek to attribute blame for any failure (if failure there was) to either party: there was no evidence which would entitle the Panel to do so.
58. The Panel does, however, think that this Advisory Opinion provides an opportunity to make a number of observations about the process which should be undertaken when sporting bodies wish to amend their rules. We take the example of an International Federation, but our observations are equally apt at every level of the sporting pyramid. If an International Federation proposes to make changes to its rules, those rules should, if possible, be made after discussion, consultation and explanation with the constituent bodies of that International Federation so that everyone at the National Federations understands clearly what is permitted and what is not permitted. A similar process should be undertaken if National Federations wish to change their rules so as to ensure that their constituent members of clubs have that understanding. The Panel accepts that there must in every sport be occasions on which discussion, consultation and explanation cannot take place before rule changes are made, but, hopefully, such occasions will be rare. If they do occur, great care must be taken, after the changes have been made, to explain the consequences and ramifications of the changes.
59. Nothing that we have said should be understood as suggesting that the Management Committee of the UCI was not the appropriate body to discuss and pass the Amended Regulation. The Panel has found that it was the appropriate body. However, the Panel does not know the membership of the Management Committee, nor does it know what information was given to National Federations about the proposed Amended Regulation (as

opposed to information given to members of the Management Committee), or what discussion and consultation took place amongst the National Federations after the rule change. Nor does the Panel know what explanation was given to National Federations about the Amended Regulation after it was passed. It is, however, likely that, if CONI had been given the explanation that it was given by UCI during the hearing, it would not have felt it necessary to make the Request for an Advisory Opinion or for an oral hearing.

60. The Panel wishes to emphasise that it does not criticise CONI or the UCI in relation to this matter. It does not know whether CONI, on behalf of the Italian Cycling Federation, or the Italian Cycling Federation itself, sought an explanation from UCI before making the Request for an Advisory Opinion. However, it was obvious to the Panel during the hearing, which at times resembled a mediation more than anything else, that it would have been better for all if an attempt had been made to discuss the perceived problem caused by the Amended Regulation rather than take what was, in the Panel's opinion, incorrectly, thought to be the hostile step of making the Request for an Advisory Opinion.
61. In the Panel's opinion, all of those involved in the governance of sport, and in rule-making in sport would do well to remember Churchill's words: "Jaw-Jaw is better than War-War".

Answers to the questions

On the basis of the foregoing considerations, the Panel decides to reply as follows to the questions submitted to it:

Question (a):

Are the new UCI rules providing for direct affiliation of Trade Teams to the UCI, skipping affiliation to national federations, compatible with the spirit and language of the Olympic Charter?

In the light of the matters set out above, it is the Panel's opinion that the Amended Regulation is compatible with the spirit and language of the Olympic Charter. The registration of Trade Teams directly by UCI does not strike at the root of the pyramidal structure of international sport envisaged by Article 29 of the Charter (see Paragraphs 26-37 above).

Question (b):

Is the adoption of the said new UCI rules by the UCI Management Committee compatible with the UCI constitution and with the Swiss Civil Code?

In the Panel's opinion, the adoption of the new UCI rules by the UCI Management Committee was compatible with the UCI Constitution and with the Swiss Civil Code (see Paragraphs 38-43 above).

Question (c):

Is the content of the said new UCI rules compatible with the UCI constitution?

In the Panel's opinion, the new UCI rules are compatible with the UCI constitution (see Paragraph 45 above).

Question (d):

Are the said new UCI rules compatible with Swiss and EC competition law?

In the Panel's opinion, the new UCI rules are compatible with Swiss and EC competition law (see Paragraphs 46-50 above).

Question (e):

Are the said new UCI rules compatible with Italian law?

In the Panel's opinion, the new UCI rules are compatible with Italian law (see Paragraphs 51-53 above).