



2<sup>nd</sup> January 2013

**JURY CASE AC20**

**JURY NOTICE JN061**

**PROTEST by LUNA ROSSA CHALLENGE 2013  
against  
THE DEFENDER – GOLDEN GATE YACHT CLUB,  
THE EVENT AUTHORITY & THE REGATTA DIRECTOR**

**DECISION**

**APPLICATION**

1. On 26<sup>th</sup> November 2012, the Jury received, via the 'jurycomms' distribution system, an Application from Luna Rossa Challenge 2013 (LR) behalf of the Circolo della Vela Sicilia protesting the Defender, the Golden Gate Yacht Club (GGYC), the Event Authority (EA) and the Regatta Director (RD), for the cancellation of the ACWS Venice regatta in 2013 and the inclusion of two events in the USA at the end of May 2013 as published in the official press release on 12<sup>th</sup> November 2012.

**DIRECTIONS (JN055)**

2. Jury Directions were issued on 28<sup>th</sup> November 2012 inviting Parties to submit a Response by 14<sup>th</sup> December 2012, and inviting LR to submit a Reply by 21<sup>st</sup> December 2012.

**APPLICATION BY LUNA ROSSA CHALLENGE 2013 (LR)**

3. LR noted in their Application (which it referred to as a protest) the responsibilities of GGYC, including "to organise and manage the Event" under Protocol Article 4.1(a), and the separate responsibilities of the Event Authority (EA) and ACRM under Protocol Article 4.2 and 4.3.
4. LR claimed that before publication of the press release on 12<sup>th</sup> November 2012 of the 2012-13 America's Cup World Series (ACWS) season and subsequent publication on the official America's Cup web site, only two ACWS published events (both in Italy - Naples and Venice) were on the America's Cup web site.
5. LR submitted that Regatta Notice 2012/163, which included provision for two regattas in New York and which was sent confidentially to Competitors on 31<sup>st</sup> October 2012, does not constitute publication as required by Protocol Article 22.1. LR noted that such Regatta Notice said, "All regattas are still in the process of further negotiation and this notice may require amendment." LR submitted that such Regatta Notice does not constitute publication, with the press release of 12<sup>th</sup> November 2012 also omitting

prescribed elements required by Protocol Article 22.1, such as the Venues, schedule, format and scoring.

6. LR further submitted that the division of New York into two events was arbitrary and the reason for it was to enable the RD to apply the penalties in Protocol Article 21.2 twice if a Competitor failed to race in New York. LR submitted that by providing for such matters GGYC and the EA had breached the neutral management provisions of Protocol Article 3.
7. LR also submitted that such press release had extremely negative consequences on their sponsorship campaign, and that the cancelation of Venice meant they lost possible sponsorship. LR further submitted that because Competitors are prohibited from sailing their AC72 Yachts during ACWS regattas their program would be severely prejudiced.

#### RESPONSE BY THE AMERICA'S CUP EVENT AUTHORITY (ACEA)

8. ACEA submitted a Response on 13<sup>th</sup> December 2012. ACEA submitted that the LR Application was not timely. They submitted that LR "by its own admission became aware of this matter on October 31 2012 by the issuance of RN163." ACEA submitted that LR did not file their Application (protest) until 26<sup>th</sup> November 2012, which was well outside the 14-day time limit under Protocol Article 15.10. ACEA noted that LR had not requested any extension of this time limit.
9. ACEA also submitted that their officials plus the RD had met and consulted with Competitors during the August and October ACWS regattas well in advance of issuing RN163. When such Regatta Notice was issued ACEA submitted they were in the middle of complex and sensitive commercial negotiations with Venues and it was necessary to request that Venue details be kept confidential in RN163.
10. ACEA further submitted that they have sole right and responsibility under the Protocol to select Venues, and to postpone or cancel or re-schedule any ACWS regattas. Venues could not be decided on locations that better suited the nationality of a particular team. ACEA provided reasons why in their view the Venice regatta had been cancelled and Naples re-scheduled, and gave their views on the advantages of racing in New York.

#### RESPONSE BY AMERICA'S CUP RACE MANAGEMENT (ACRM) AND THE REGATTA DIRECTOR (RD)

11. ACRM and the RD provided a joint Response on 14<sup>th</sup> December 2012. They submitted that as RN163 was published on 31<sup>st</sup> October 2012, LR had filed their protest well outside the time limit for protests contained in Protocol Article 15.10. No application to extend such time limit had been made and if made there were no good reasons to extend.
12. ACRM and the RD further submitted that RN163 complied with the requirements of Protocol Article 22.1, with it having being distributed in the same manner as all other Regatta Notices including RN73, where they noted no protest had been filed. They submitted that RN163 provided the best information available at that time and that there had been no requests since for further details from any Competitor. They noted that in the consultation process not all Competitors could agree but they had to get on and make decisions.

#### RESPONSE BY GOLDEN GATE YACHT CLUB (GGYC)

13. GGYC filed a Response on 14<sup>th</sup> December 2012. They submitted that they should not have been included in the protest, as they had appointed ACEA as the EA under Protocol Article 4.2.

14. GGYC also submitted that they fully supported the submissions of ACRM and ACEA.

#### RESPONSE BY EMIRATES TEAM NEW ZEALAND (ETNZ)

15. ETNZ filed a Response on 14<sup>th</sup> December 2012. ETNZ submitted that the timing of the proposed New York regattas was inappropriate given the proximity to the Louis Vuitton Cup, which clashed with the AC72 Yachts' preparation in San Francisco. They also noted that they were prohibited from sailing their AC72 Yacht while an ACWS regatta was on.
16. ETNZ submitted that to display Events on the America's Cup web site was to publish under Protocol Article 22.1. They questioned whether keeping a matter confidential was publication.
17. ETNZ also submitted that their preferred resolution of the matter was for the RD to give prior approval under Protocol Article 28.2 for all Competitors to sail their AC72 Yachts during the New York regatta period.

#### RESPONSE BY ARTEMIS RACING (AR)

18. AR filed a Response on 14<sup>th</sup> December 2012. They submitted that they agreed with LR and ETNZ on the disruption to their respective AC72 Yacht programmes.
19. AR also submitted that permitting the teams to sail their AC72 Yachts during ACWS regattas in 2013 would mitigate disruption to training and would be more equitable.

#### REPLY BY LUNA ROSSA (LR)

20. LR filed a Reply on 20<sup>th</sup> December 2012. LR reaffirmed the contents of their Application. They did not agree they were aware of the New York regattas on 31<sup>st</sup> October 2012 as a result of RN163, which did not comply with Protocol Article 22.1.
21. They submitted they were also protesting against the cancellation of the Venice regatta, which they were not aware of until 12<sup>th</sup> December 2012. LR submitted that they are not a party to the contractual agreements with Venice and "we have no possibility to ascertain if it's true, or not" that Venice could "not fulfil its obligations." Amongst other orders sought, LR requested an order that Venice "has not been properly cancelled."
22. LR also submitted they did not agree with ACEA's conclusions. They submitted they did not agree with ACRM, who claimed that the protest was not timely and that the RD did publish RN163 and comply with the requirements of Protocol Article 22.1 and 22.4.

#### DISCUSSION

23. Protocol Article 22.1 provides that by 31<sup>st</sup> October in each year the Regatta Director "will publish the format, schedule, scoring, Venues ... of the followings year's AC World Series."
24. To "publish" is to make public, but that does not necessarily mean "to the whole world". For good reasons of commercial sensitivity RN163 was issued on a confidential basis to Competitors (including LR), the group affected by the RN. There is nothing in the Protocol that prevents the RD from issuing a confidential Regatta Notice.
25. RN163 was clear in advising Competitors that there would be one, not two, regattas in Italy and two in New York in 2013. In paragraph 1, in describing 2013 regatta Venues, RN163 stated "Venice, Italy or Naples, Italy." No Competitor asked the RD any questions.

26. RN164 was issued on 12<sup>th</sup> December 2012, which was the first time formal notification was provided that there would not be a regatta in Venice in 2013. It stated that the ACWS “in Italy will be held in Naples, not Venice.” The Jury has not received any evidence regarding the contents of the contractual arrangements with Venice. ACEA in their Response advised they had cancelled whatever contract they had. LR acknowledged they did not have any knowledge of such arrangements but still requested the Jury to rule that the Venice regatta had not been properly cancelled. Under Protocol Article 15.5 the Jury’s jurisdiction to resolve disputes does not extend to “...Venue authorities, sponsors or suppliers.”
27. Protocol Article 15.10 provides that “A protest alleging non-compliance with any Rule shall be filed within fourteen days of when the protestor was or could reasonably have been aware of the circumstances justifying the protest...” LR did not request any extension of time to file their Application or protest. It is difficult to see how LR could not have been reasonably aware on 31<sup>st</sup> October 2012 that two regattas in New York were then scheduled for 2013, as stated in RN163.

## DECISION

### *New York*

28. RN163 was issued by the Regatta Director on 31<sup>st</sup> October 2012 and was published to Competitors as required under Protocol Article 22.1. The Application filed by LR on 26<sup>th</sup> November 2012 in respect of all matters relating to the two regattas in New York in 2013 was not filed within 14 days of when they were or could reasonably have been aware of such regattas. The part of the Application that relates to the New York regattas is out of time and is dismissed. As such, any other matters concerning the New York regattas will not be considered by the Jury.

### *Venice*

29. The part of the Application that relates to the Venice regatta was filed in time in compliance with Protocol Article 15.10. The first time that LR could have become reasonably aware that the regatta scheduled for Tuesday 16<sup>th</sup> April to Sunday 21<sup>st</sup> April 2012 in Italy would be held in Naples, not Venice, was 12<sup>th</sup> December 2012.
30. LR requested that the Jury determine that the Venice regatta “has not been properly cancelled.” The Jury has no knowledge of the contractual arrangements between the EA and the Venice authorities. It is possible that this may be subject to a separate dispute over which the Jury has no jurisdiction. The EA is the body appointed under Protocol Article 4.2 with the power to select regatta Venues and deal with all the related contractual rights and obligations. The Jury will not interfere with whatever the contractual arrangements may be or have been for Venice at the request of a Competitor who is not a party to those arrangements and who has no knowledge of them other than that a regatta on certain dates was proposed to be held in Venice. The part of the Application that relates to the Venice regatta is accordingly dismissed.

## AWARD OF COSTS SUBMISSIONS

31. In accordance with Protocol Article 15.3(a) the Jury may award costs to be paid by one or more Parties. Submissions regarding the award of costs should be sent to the Jury via [jurycomms@americascup.com](mailto:jurycomms@americascup.com) by no later than 1800 UT on 9<sup>th</sup> January 2013.



David Tillett

JURY: David Tillett (Chairman), John Doerr, Josje Hofland, Graham McKenzie, Bryan Willis.