



36TH AMERICA'S CUP

AMERICA'S CUP ARBITRATION PANEL

ACAP36/12-02

IN THE MATTER

of the Protocol
governing the 36th America's Cup

IN THE MATTER

of an Application by
Circolo della Vela Sicilia ("**CVS**")
Luna Rossa Challenge Srl ("**Luna Rossa**")
Challenger of Record 36 Srl ("**COR36**")

*hereinafter altogether the "**Applicant**"*

against

Royal New Zealand Yacht Squadron ("**RNZYS**")
Team New Zealand Limited trading as Emirates Team New Zealand ("**ETNZ**")
America's Cup Event Limited ("**ACE**")

*hereinafter altogether the "**Respondent**"*

regarding an alleged breach committed by the Defender in respect of Courses

27 October 2020

AMERICA'S CUP ARBITRATION PANEL

Case No. ACAP36/12 Decision 02

DECISION ON COSTS

1. On 21 October 2020, the Arbitration Panel has issued a first Decision (on the merits) regarding Case ACAP36/12.
2. In such Decision on the merits, the Panel stated that:

“20. The Panel is mindful to decide that costs are to be shared equally between all Competitors, unless one or more of them submit otherwise within 5 days of this Decision. A final decision on costs will be taken by the Panel once this time limit has passed”.
3. By “*all Competitors*” the Panel meant all Competitors having expressed views in these proceedings. None of them have filed any submission about the suggested allocation of costs.
4. Pursuant to Article 53.4(k) of the Protocol and Art. 14.3 of the RoP the Panel is “*empowered [...] to fix and determine costs*” of an application “*as it considers just and equitable*”. In doing so the Panel shall have “*regard to all relevant matters which may include*:
 - a) *the outcome of the Application;*
 - b) *the reasons for the decision;*
 - c) *whether the decision is of universal application or for the benefit of a significant number of competitors or the event and, if so, it would normally result in a minimal or no award of costs;*
 - d) *the conduct of the Parties prior to and during the Application or any hearing, including procedural conduct which may include obstructive or delaying conduct;*
 - e) *whether the application related solely to the Racing Rules and only required a relatively straightforward application of the Racing Rules, and if so it would normally result in no award of costs; and*
 - f) *whether the decision has the effect of providing an interpretation or compliance with the documents referred to in Article 16.1 of the Protocol”.*
5. Pursuant to Art. 53.3 of the Protocol the fees and expenses of the Panel are to be “*recovered on a user pay basis from the Parties involved*”. Pursuant to Art. 14.3 of the RoP, the Arbitration Panel shall fix and determine the costs of an application, “*including imposing the costs to the losing party*”.
6. The Panels’ fees relating to Case ACAP36/12, including the present decision and the activity of the Administrative Secretary, amount to **NZD 28’500**. No expenses have been incurred by the Panel.
7. The Panel considers that addressing the issue which was the subject-matter of Case ACAP36/12 was in all Teams’ interest. As a result, the amount of NZD 28’500 shall be borne by all four Teams equally, namely **NZD 7’125 each**.

AWARD OF COSTS

8. The Panel fees awarded in respect of Case 36/12 (including this decision) amount to **NZD 28'500** and shall be paid by the Parties as follows:
 - a) Each of ETNZ, Ineos Team UK and American Magic shall transfer **NZD 7'125** on the Panel's Bank Account, and
 - b) As COR has paid the application fee of NZD 8'000, the Panel will thereafter refund to COR an amount of **NZD 875**.
9. Each Party shall bear in full the costs of its counsel, if any.

PAYMENTS DUE DATE

10. All costs awards as ordered above are required to be paid to the Panel's Bank Account **within 7 days as of the date of this decision**.

David Tillett, Graham McKenzie, Henry Peter
36th America's Cup Arbitration Panel