



36TH AMERICA'S CUP

AMERICA'S CUP ARBITRATION PANEL

ACAP36/17

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**"

In relation to Event Branding Requirements

21 January 2021

AMERICA'S CUP ARBITRATION PANEL

Case No. ACAP36/17

DECISION ON COSTS

1. On 8 January 2021, the Arbitration Panel has issued a “FINAL ORDER (on the merits) and DIRECTIONS 03 (regarding costs)” regarding Case ACAP36/17 (“**Final Order**”).
2. In such Final Order, the Panel stated as follows regarding the apportionment of the Panel’s fees:

*“8. The Panel is mindful to decide that COR shall bear half of the Panel’s costs and that the other Competitors shall each bear 1/3 of the other half of the Panel’s costs, unless one or more of the Competitors submit otherwise, with reasons, **within 5 days of this final order**. A final decision on costs will be taken by the Panel once this time limit has passed”.*

3. On 15 January 2021, NYYC-American Magic filed a “Submission on costs” in which it requested “*to the Arbitration Panel to impose the full costs of these proceedings upon the Challenger of Record and, in its defect, impose no cost whatsoever to this Competitor*”.
4. On 16 January 2021, the Applicant filed a “Submission on costs” in which it requested “*the Panel to confirm its decision on cost contained in its Decision 03 of January 14, 2021*”.
5. 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*”.
6. 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*”.
7. The Panel’s fees relating to Case ACAP36/17, including the present decision and the activity of the Administrative Secretary, amount to **NZD 19’950**. No expenses have been incurred by the Panel.
8. The Panel notes that:
 - a. in its Application COR has made a request for interim relief, which the Panel has declined to grant;
 - b. a settlement, which has been agreed by all Competitors, has been reached on all ACAP36/17 issues;

- c. the matter has been about clarifying issues which were uncertain;
 - d. the dispute resulted from the late publication of the Brand Manual which was to be issued by both COR and the Defender;
 - e. the subject-matter of the dispute has been identified by COR only in November 2020, but NYYC-American Magic was perhaps best positioned to realise that there was or might have been a conflict between its sail design and the Class Rules/Brand Manual.
9. In light of the above, it does not seem fair and equitable for COR to bear the entirety of the Panel's fees, although its share should be higher than those of the other Competitors.
10. The Panel therefore considers that it is fair for the amount of **NZD 19'950** to be shared as follows: (i) NYYC-American Magic, the Defender and Ineos Team UK shall each pay **NZD 3'000** and (ii) COR shall pay **NZD 10'950**.

AWARD OF COSTS

11. The Panel's fees awarded in respect of Case 36/17 (including this decision) amount to **NZD 19'950** and shall be paid by the Parties as follows:
- a) NYYC-American Magic, ETNZ and Ineos Team UK shall each transfer **NZD 3'000** to the Panel's Bank Account, and
 - b) As COR has paid the application fee of NZD 8'000, COR shall transfer **NZD 2'950** to the Panel's Bank Account.
12. Each Party shall bear in full the costs of its counsel, if any.

PAYMENTS DUE DATE

13. 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