Decision of the adjudicatory chamber of the Ethics Committee

Taken on 17 June 2021

COMPOSITION:

Vassilios Skouris, Greece (Chairman)

Fiti Sunia, American Samoa (Deputy chairman)

Mohammad Al Kamali, UAE (Member)

Ayotunde Phillips, Nigeria (Member)

PARTY:

Mr Issa Hayatou,

Cameroon

Regarding an infringement of the FIFA Code of Ethics (adj. ref. no. 4/2021)

I. FACTS OF THE CASE

A. PROCEEDINGS BEFORE THE INVESTIGATORY CHAMBER

a) Procedural background

1. Party

1. Mr Issa Hayatou ("Mr Hayatou") is a Cameroon national and has been the president of Confédération Africaine de Football (CAF) between 10 March 1988 and 15 March 2017, member of the FIFA Council between 1990 and 2017, including a mandate as president of the FIFA Council between 9 October 2015 and 25 February 2016, and Honorary Vice-President of FIFA since 11 May 2017.

2. Preliminary investigation and opening of proceedings

2. On 7 March 2017, the law firm Walder Wyss submitted a claim to the investigatory chamber of the FIFA Ethics Committee (hereinafter: the investigatory chamber), on behalf of the company Presentation Sport (PS) supported by evidence seeking to demonstrate the possible unethical conduct and monopolistic practices of Mr Hayatou.

3. On the same day, the Egyptian Competition Authority (ECA) submitted a communication regarding allegations of the same nature. On 8 March 2017, the ECA announced that criminal investigations were ongoing against Mr Hayatou in connection with the same factual elements.

4. On 9 March 2017, Mr Miguel Poiares Maduro, Chairman of the FIFA Review Committee, submitted a communication of the same nature to the investigatory chamber, as the Review Committee also had received communications from PS and the ECA.

5. On the same day, the investigatory chamber sent a communication to PS, acknowledging receipt of the claim made and marking the start of the preliminary investigation.

6. Taking account of the relevant information and documentation obtained throughout the preliminary stage of the investigation, the then chairperson of the investigatory chamber, Ms María Claudia Rojas, concluded that there was a prima facie case that Mr Hayatou had committed violations of the FIFA Code of Ethics ("FCE"). Consequently, the chairperson appointed Mr Michael Llamas, member of the investigatory chamber of the FIFA Ethics Committee, as the chief of the investigation in accordance with article 63 of the FCE.

7. On 25 March 2020, Mr Hayatou was informed of the opening of the investigation proceedings under reference E19-00013 related to possible violations of the following provisions of the FCE: general duties (art. 13), duty of loyalty (art. 15) and abuse of position (art. 25).

3. PwC Report

8. In September and October 2019, PwC performed a general audit and an overview of CAF's financial management and internal processes to determine whether there had been any financial misconducts, conflicts of interest and circumventions of relevant policies during the period 2015 - 2019.

9. PwC was mandated by CAF in the framework of the cooperation agreement between FIFA and CAF, effective from 1 August 2019 to 31 January 2020. The report ("PwC Report") was finalized on 2 December 2019 and was forwarded to the investigatory chamber from the FIFA Compliance Advisory Services in accordance with article 18 of the FCE.

4. Communications with the party

10. In October 2019, the investigatory chamber maintained several communications with Mr Hayatou by which he was requested to provide a statement regarding the allegations and to offer any supporting documentary evidence.

11. On 7 October 2019, Mr Hayatou, provided a written statement to the investigatory chamber responding to the allegations. In a seven-page document, he expressed his position on the alleged omission to consult the other members of the CAF Executive Committee, most notably:

- members of the CAF Executive Committee were perfectly informed of the negotiations and that the allegations were untrue;

- the Lagardère Group ("Lagardère") had been a historic commercial partner of CAF since 1993, through its different entities. At the time of the agreement signed in 2007 for the 2008-2016 period ("the 2008-2016 agreement"), there were doubts and uncertainty regarding the interest of commercial partners for the different CAF competitions. Lagardère (formerly known as Sportfive) was at the time the only company to bid for the commercialization of CAF competitions' commercial rights. It is therefore by default, according to the party, that Lagardère was chosen;

- the scarcity of interested companies led to the choice of Lagardère as exclusive agent, rendering the exclusivity justified;

- Mr Moustapha Fahmy, CAF General Secretary at the time, set up a working group prior to the signing of the agreement and it comprised members of the CAF Executive Committee. A report on the evolution of the working groups and its findings have continuously been shared with the members of the Executive Committee. Following the favourable findings of the working group, the 2008-2016 agreement was signed with the full and unanimous consent of the Executive Committee;

- Therefore, the procurement process leading to the signing of the 2008-2016 agreement has complied with all the provisions of the CAF statutes, CAF regulations and the FCE;

- The agreement signed in 2016, retrospectively valid as from 2015 for the period of 2017-2028 ("the 2017-2028 agreement") was the mere renewal of the previous agreement. In the same manner as previously, Mr Hicham El Amrani, the then Secretary General of CAF, proceeded with the creation and coordination of a working group. The findings of the working group – of which Mr Hayatou was not a part– again led to the signing of the 2017-2028 agreement and the "exceptional" and "unanimous" validation of the CAF Executive Committee.

b) **Factual findings of the investigatory chamber**

1. First agreement between CAF and Sportfive for the period 2008 - 2016

12. On 3 October 2007, CAF entered into an agreement with Sportfive (which later became Lagardère Sports) appointing the company as CAF's exclusive agent for the commercialization of commercial rights -marketing and media rights- related to various CAF competitions held until the end of 2016. The agreement provided for a minimum guarantee of USD 150 million payable by Sportfive to CAF for the contractual period (2008 – 2016).

13. Pursuant to the Memorandum of Understanding signed on 19 June 2007, the contract was valid from 1 July 2007 until the end of the last competition to be held in 2016, for all competitions held between 2008 and 2016 and also contained a preferential right which would allow the agreement to be extended for at least another 8 years.

2. Second agreement between CAF and Lagardère Sports for the period 2017-2028

14. On 24 December 2014, prior to the end of the first agreement (contract dated 3 October 2007 for the period 2007-2016), CAF made an offer to Lagardère Sports (LS) which later led to the signing of the Memorandum of Understanding (signed by Messrs Hayatou and El Amrani) dated 11 June 2015 regarding CAF competitions held until 2028.

15. On 28 September 2016, CAF once again appointed LS as its exclusive agent for the purposes of commercializing all the commercial rights throughout the world and providing CAF with the relevant services by signing a new agreement. According to the agreement, which was signed by Mr Hayatou and Mr El Amrani, President and Secretary General of CAF respectively, this exclusive agency agreement applies to all the CAF competitions throughout the period 11 June 2015 until the last day of the last competition in 2028.

16. According to the agreement, LS guarantees to CAF a minimum of revenues received equal to USD 1 billion in respect to all CAF competitions and throughout the term. The agreement is deemed to have taken effect retroactively to 11 June 2015, due to the prior signing of a Memorandum of Understanding.

17. The agreement comprises a right of first refusal for the period between 2029 - 2036. This specific clause yields to LS a right of first refusal if CAF were to appoint an external agent for the commercialization of commercial rights of CAF competitions for the next period. For LS to be able to exercise this right of refusal, the company is only expected to comply with its obligations under the agreement, including the above-mentioned one billion USD guarantee of revenues.

18. All in all, CAF has managed to remain in exclusive contractual relationships regarding the commercialization of commercial rights related to CAF competitions for an extended period of more than twenty years. The first agreement dates back to 2007 and the recent agreement covers the period 2017-2028, with the potential exercise of a right to first refusal running for the period 2029-2036. Potentially, LS could hold exclusive commercial rights to CAF competitions from 2007 until 2036.

19. According to the minutes of the meeting held by the Executive Committee on 27 September 2016, Mr Hayatou had to face several complaints of members of the committee voicing their disapproval that CAF negotiated the contract with LS without properly involving them.

3. Offer made by Presentation Sports

20. According to its claim submitted on 7 March 2017, following the expiration of the 2007 agreement between CAF and LS, the company PS attempted to demonstrate interest in bidding for CAF broadcasting rights for the period after 2016 and expected an open and transparent bidding procedure to be organized.

21. PS first contacted CAF on 5 July 2016 and explained that it would like to "compete to acquire forecited rights for Middle East region through a bidding that [CAF] will launch in this respect".

22. On 14 July 2016, CAF replied to PS and informed the company that it acknowledged PS' interest in acquiring the broadcasting rights, but that PS should contact LS concerning its request.

23. On 6 August 2016, PS sent a second letter to CAF with an offer of USD 600 million for the exclusive broadcasting rights for the Middle East and North Africa region. Following this communication, on 24 August 2016, PS sent the same offer again to CAF and expressed its wish to discuss the offer and "the terms of a Public tender".

24. Finally, on 26 September 2016, PS submitted its final offer to CAF and Mr Hayatou personally, with a guaranteed amount of USD 1.2 billion for the full commercial rights of CAF competition for the "coming 12 years". However, the claimant never received a response addressing their proposition.

4. Decision from the Egyptian Competition Authority (ECA)

25. On 3 January 2017, the ECA informed Mr Hayatou and Mr El Amrani about the decision of the Authority's Board of Directors according to which CAF was found to have violated the following provisions of Article 8 of the Competition Protection Law:

- Clause (a), due to the absence of a process guaranteeing the offering of broadcasting rights as to ensure free and fair competition.

- Clause (b), due to CAF's absolute refrainment from contracting with competitors of LS although PS made serious offers. This resulted in an abuse of controlling position by LS.

- Clause (d), due to CAF's consolidated sale of all its direct broadcasting rights without differentiations based upon periods, seasons, means of transmission or location. This resulted in a consolidation of products that are neither similar in nature nor in commercial utilization.

- Clause (e), due to the preferential granting of LS without an objective justification, despite the presence of other competitors.

26. All these elements were also communicated to the Egyptian Prosecutor-General who then initiated criminal proceedings against Mr Hayatou and Mr El Amrani.

5. Report of COMESA Competition Commission

27. On 22 July 2019, the Competition Commission of the Common Market for Eastern and Southern Africa (COMESA) issued a findings report in the matter relating to the two agreements between CAF and Sportfive/LS for the commercialization of media and marketing rights of competitions organized by CAF.

28. The Commission highlighted many elements in the case at hand, including but not restricted to:

- The lack of an open, transparent and non-discriminatory tendering process in the award of the intermediation and commercial rights of CAF.

- The fact that the right of first refusal clauses in the agreements have a distorting effect on the supply of intermediary services and commercial services for CAF competition.

- Exclusivity, albeit not anti-competitive per se, must be kept within the limits necessary to protect the investment without bringing long term market foreclosure. A balance must be found between protecting the investment and promoting the competitive process.

29. Market foreclosure, in this case, only benefits LS. CAF and the consumers happen to be the aggrieved parties. Namely, CAF received an offer of USD 1.2 billion from PS, the claimant, and these are already USD 200 million CAF will not benefit from due to the decision to maintain an exclusive commercial relationship with LS.

6. Decisions of Egyptian courts

30. On 26 November 2018, the Cairo Economic Court of First Instance issued a decision against Messrs Issa Hayatou and Hicham El Amrani. In this decision, the Court states that CAF's practices regarding the allocation of its broadcasting rights are monopolistic. Indeed, the agreements are overly lengthy, the rights are granted exclusively to LS with an unjustified right of first refusal and CAF actually ignored an offer of USD 1.2 billion from PS.

31. Furthermore, the court referred to the minutes of the CAF Executive Committee Meeting dated 26 September 2016, according to which, the members of the Executive Committee complained because they were not informed of the ongoing negotiations between LS and the two co-defendants.

32. Additionally, and based on the same minutes, the court deemed that it is undeniable that the members of the Executive Committee were not even aware of the existence of an offer from PS, the claimant, in the amount of USD 1.2 billion. The general protest among the members of the Executive Committee demonstrates that the decisions were not made collectively, as not all the members detained the entirety of the information and offers available. For these reasons, the Court held the co-defendants liable for the monopolistic practices.

33. Finally, the Economic Court of First Instance decided to impose on the co-defendants a criminal fine of 500 million Egyptian Pounds (approx. EUR 26,911,800) per defendant, resulting in a fine in the amount of 1 billion Egyptian Pounds in total. As per the civil case, the Court decided to forward the matter to the relevant civil courts.

34. Following an appeal lodged against the decision made by the Economic of First Instance Court before the Egyptian Economic Court of Appeal, the latter judicial body confirmed that the co-defendants (Messrs Hayatou and El Amrani) had violated the rules of fair competition and prevented interested companies from

competing fairly against LS in line with the Economic Court of First Instance's reasoning. However, the fine was reduced to 200 million Egyptian Pounds by the Court of Appeal and also declared that CAF was jointly liable.

c) Conclusions of the investigatory chamber

35. By signing the 2017-2028 agreement, CAF provided LS an exclusive mandate to exploit the rights in all possible viewing platforms, such as TC, Internet and mobile phones for all CAF competitions. By doing so, it reduced competition in the market, which may be considered detrimental to both CAF and the audiences of CAF's competitions.

36. It can be established that no proper tender process was ever carried out and that the described behavior was considered by the ECA and the Economic Court of First Instance to be anti-competitive.

37. Such conclusion is supported by the fact that CAF contacted LS on 24 December 2014 with an offer to continue the contractual relationship, which clearly shows that there was never any intention on CAF's side to organise a tendering process.

38. Furthermore, the duration of the agreement, which could potentially be extended for the period 2029-2036, could lead to a situation in which LS would hold exclusive commercial rights to CAF competitions from 2008 to 2036.

39. In addition, it can be established that despite being provided with an offer worth USD 1.2 billion, such offer was ignored and an agreement with LS worth USD 200 million less was signed a few days later.

40. On the other hand, it was recorded on the minutes of the meeting held by the Executive Committee on 27 September 2016 that several members had expressed their disagreement for not having been involved in the procedure to negotiate a new contract with LS. The mentioned minutes also explicitly recorded that Mr Hayatou was discontent with the complaint made by the members of the executive committee and condemned their posture. From the documented discussion, it is clear that Mr Hayatou was certainly involved in the referred negotiations for the renewal agreement with LS. Even with the expressed disapproval of some executive committee members, a day after, on 28 September 2016, CAF concluded and signed the (renewal) 2017-2028 contract with LS. One of the signees representing CAF was Mr Hayatou.

41. In view of the foregoing and of all the evidence gathered, the investigatory chamber established, to its comfortable satisfaction, that Mr Hayatou, as the party having signed the agreement with LS, has breached his duty of loyalty towards CAF and has abused his official powers by entering into an anti-competitive agreement with LS Sport which eventually caused damage to CAF in the amount of USD 200 million. Therefore, Mr Hayatou has violated the prohibition of engaging in conducts of articles 13 paras. 1, 2, 3 and 4 and 15 of the FCE 2012

edition which are also recognized as conducts that are sanctioned by the FCE 2018, 2019 and 2020 editions.

B. PROCEEDINGS BEFORE THE ADJUDICATORY CHAMBER

a) Opening of adjudicatory proceedings

42. On 26 March 2021, Mr Hayatou was informed that the adjudicatory chamber had opened proceedings based on the investigatory chamber's Final Report as per art. 68 par. 3 of the FCE.

b) Summary of Mr Hayatou´s written position to the adjudicatory chamber

43. On 30 April 2021, Mr Hayatou submitted his position to the adjudicatory chamber, in which he stated essentially the following:

Factual statements

- The investigatory chamber has not established that the 2007 contract between CAF and LS was detrimental to CAF, who received USD 307.4 million in revenue based on the contract.
- The 2007 contract contained a renewal clause, coupled with a right of first refusal, according to which:
  - CAF was obliged to enter into the renewal procedure for the Contract of 2007 by 31 December 2014 by notifying LS of the proposed conditions regarding the minimum guarantee, of the duration of the agreement and of the competitions that would be the subject of the agreement;
  - The Parties would then have to reach an agreement during the period from 1 January 2015 to 31 December 2015;
  - Without an agreement, CAF would have to launch an invitation to tender, namely from 1 January 2016.
- From the end of 2014, CAF negotiated the renewal of the Contract of 2007 with LS, in accordance with its contractual obligations from the 2007 contract;
- On 26 August 2014, a working group was established in CAF with the mandate "to design the best possible strategy for the contract renewal to be submitted to the CAF Executive Committee for approval and implementation"
- The question of the renewal of the commercial agreements was discussed at the meeting of the CAF Executive Committee of 19 and 20 September 2014, and was summarised as follows:
  - CAF was bound by the Contract of 2007 until 2016.
  - By virtue of the Contract of 2007, CAF had to send a financial offer to SportFive (i.e. LS) by December 2014.

  - If this offer were accepted, LS would have priority.
  - If LS refused the offer, CAF would open the market to everyone, as stipulated in the Contract of 2007.
  - Consequently, in view of the obligation of CAF to propose a figure to LS, a committee was established to assess the value of the TV rights of CAF and to report to the Executive Committee (the CAF/LS Strategic Committee).

- On 24 December 2014, in accordance with its contractual obligations, the CAF Executive Committee, on the basis of the conclusions reached by the Working Group and the CAF/LS Strategic Committee, decided to send a formal offer to LS requesting an amount of USD 750 million under the minimum guarantee, in exchange for coverage of all the major competitions of CAF over a period of eight years.

- On 30 December 2014, LS formulated a counter-offer, in particular a minimum guarantee of 500 million for a period of eight years or, alternatively, of 800 million for a period of 12 years, for the relevant CAF competitions.

- On 22 February 2015, CAF confirmed that it was offering a minimum guarantee of USD 750 million for a contract of eight years (or USD 1.2 billion for a contract of 12 years)

- On 21 March 2015, after negotiations and discussions, LS offered a minimum guarantee of USD 1 billion to cover the competitions of CAF during the period from 2017 to 2028.

- The minimum guarantee proposed by LS (USD 1 billion) was historic for CAF. It by far exceeded what the other competitors were prepared to offer. The Executive Committee of CAF consequently decided to pursue its contractual relationship with LS, also based in particular on the following elements:

  - An in-depth knowledge of the African continent;
  - Close collaboration to implement a production unit within CAF in order to reduce the costs of TV production;
  - A minimum guarantee offered by the parent company of LS, a multinational quoted on the Paris Stock Exchange;
  - A guarantee of long-term financial stability for CAF.
  - Close collaboration to increase capacity within the CAF Marketing Committee;

- CAF and LS concluded a Memorandum of Understanding (MoU), signed in Paris on 11 June 2015 which envisaged that more details about the agreement would subsequently be given in a "Full-Form Agreement" (FFA), which was formalised in the contract concluded on 28 September 2016. The progress of the negotiations regarding the MoU and FFA between CAF and LS was communicated, discussed and approved by the Executive Committee of CAF,

in particular those of 19 and 20 September 2014, 11 November 2014, 5 April 2015, 26 May 2015, 6 August 2015, 27 October 2015, 5 February 2016, 27 September 2016 and 12 January 2017.

- On 24 January 2016, CAF formally confirmed to LS that it was accepting the offer of USD 1 billion. A full report was also sent for agreement to the General Assembly of CAF of 11 May 2016.

- The financial "offer" made by PS was made on 26 September 2016, the day before the CAF Executive Committee, in the form of a letter addressed to the President of CAF and slid under the door of the hotel room of Mr Suketu Patel (CAF first vice-president).

- Although the approach of PS was not very orthodox, Mr Patel communicated the offer from the company completely transparently during the meeting of 27 September 2016 to the Executive Committee of CAF, as recorded in the minutes.

- On 28 September 2016, CAF, represented by Mr Hayatou and Mr El Amrani, signed the FFA;

- Despite the doubts about the seriousness of the financial offer from PS, CAF asked LS to contact PS to examine if an agreement could be reached concerning the repurchase of the TV rights from LS. However, it quickly became apparent, from the correspondence between the two companies, that PS was not in a position to provide the documentation required to CAF/LS in order to conclude a contract.

Legal claims

- art. 15 of the FCE 2012 (in conjunction with art. 6) contains a general and abstract standard which does not satisfy the requirements of a judicial likelihood ("predictability test"). The same is true, for an even stronger reason, in art. 13 of the FCE 2012, which contains solely "rules of general conduct".

- the Ethics Committee with reference to the general abstract concept of "fiduciary duties" and general rules of conduct is not authorised to impose a disciplinary sanction regarding Mr Hayatou (in his capacity as President of CAF) for the decisions taken by the body of the confederation concerned regarding the conclusion of a commercial contract with a partner.

- Mr Hayatou at all times exercised his powers in line with all the diligence required and loyally defended the interests of CAF

- The exhibits provided in the file establish that the commercial decision to conclude the 2017-2028 agreement was taken by the Executive Committee in its entirety on the basis of the reports drawn up by two committees, in the full knowledge of the facts, and with the conviction of acting in the interests of the company concerned.

- The financial offer from PS was immediately communicated to the members of the CAF Executive Committee, as recorded in the corrected minutes of the meeting of 27 September 2016 (correction made at the meeting on 12 January 2017). The Executive Committee believed that the approach by PS was not serious and was merely a diversionary tactic and an attempt to destabilise the relationship between CAF and LS.

- the investigatory chamber cannot seriously maintain that CAF (respectively, Mr Hayatou) should have accepted the financial offer from PS for the sole and single reason that this offer was higher for the following reasons:

  - the financial offer from PS of 26 September 2016 was sent to CAF more than one year after the conclusion of the MoU, when CAF was linked to LS for the agreed period, and therefore, by accepting the offer from PS, would have exposed itself to paying substantial damages to LS;

  - PS offered no financial guarantee and had never been a major player on the market, in other words it was in no way comparable to a commercial partner such as LS. It also had apparently violated the rules on television rights in the past;

  - The acceptance of the PS offer would have threatened the financial resources of CAF owing to the disputed commercial rights. In other words, the conclusion of an agreement with PS would have been detrimental to CAF.

- There is no element in the file which establishes a desire by Mr Hayatou to impose LS as the commercial partner — towards and against everyone through hidden and/or disloyal procedures.

- The role of President is restricted to the representation of CAF. It is the Executive Committee (not the President) which acts as a managerial body of CAF (cf. art. 23 of CAF Statutes). Consequently, no provision envisages any personal responsibility of the President for the managerial actions of CAF, such as those attributed to the Executive Committee.

- The investigatory chamber should not quote both art. 15 and art. 13 of the Code, considering that the violation of the duty of loyalty (see art. 15) contains a specific norm which should be applied to that devoted to the general rules of conduct (art. 13) (lex specialis derogat legi generali).

c) The hearing

44. On 2 June 2021, the adjudicatory chamber was informed that, following his election as chairperson of the investigatory chamber (replacing Ms Claudia Maria Rojas) at the 71st FIFA Congress on 21 May 2021, and due to the fact that Mr Michael Llamas was no longer a member of the investigatory chamber, chair Mr

Martin Ngoga appointed Ms Margarita Echeverria to lead the investigation proceedings as chief of investigation.

45. On 17 June 2021, upon Mr Hayatou's request, a hearing took place by videoconference, in accordance with art. 75 par. 5 of the FCE. Mr Hayatou had previously been made aware of the composition of the Panel as well as of the outline of the hearing and his right to call witnesses and to recuse the Panel members pursuant to art. 35 par. 4 of the FCE.

1. Witness testimonies

46. Two witnesses, called by Mr Hayatou, testified at the hearing. The most relevant aspects of their oral testimonies are summarized in the below sections.

a. Mr Hicham El Amrani (former CAF General Secretary)

47. Mr El Amrani stated that he strongly disagreed with the conclusion of the investigatory chamber that the signing of the 2016 CAF-LS contract was to the sole benefit of LS, arguing that the agreement was to the benefit of CAF, in particular due to the significant amount of USD 1 billion of the minimum guarantee stipulated in the contract. When asked how he could assess that such an amount was to the benefit of CAF (or if he had something to compare that figure to), Mr El Amrani presented most notably the following reasons:

- The previous 2008 – 2016 agreement included a minimum guarantee of USD 150 million, and therefore the 2017 – 2028 agreement foresaw an increase of approximately 450% in this respect;
- The amount of minimum guarantee for a period of eight years proposed by other interested companies, such as [Company 1] (according to "informal approaches") was of approximately USD 500 million, and therefore inferior to the offer of LS;
- The fact that LS had been a reliable partner in the scope of the previous contractual relationship (2008-2016 agreement) making all payments on time and delivering on the contractual obligations;

48. Mr El Amrani explained that the public tender was part of the planned process but, based on the 2008-2016 agreement, CAF has the obligation to grant a right of first and last refusal to LS and enter into negotiations in the year 2015. If CAF did not accept LS's (counter-)offer, it would have been free to contract with other parties.

49. Mr El Amrani considers that submitting a one-page document under the door of a hotel and faxing it on the same day to CAF (for an alleged amount of USD 1.2 billion) as PS did, does not constitute a serious offer.

50. With respect to the decisions of the Egyptian authorities, Mr El Amrani considers they were politically motivated and had no merits, legal or otherwise.

51. As for the meeting of the CAF Executive Committee on 27 September 2016, Mr El Amrani stated that there were only one or two members of said committee who voiced concerns, not contesting the contract with LS, but asking to be provided with a full copy of such contract for review.

52. Questioned why the 2015 MoU was approved after signature (which occurred on 11 June 2015), Mr El Amrani stated that, although the final draft of the MoU was not officially discussed at the meeting of the CAF Executive Committee on 26 May 2015, the content of the document was well known by all the members of the committee.

b. Mr Suketu Patel (former first vice-president of CAF and members of the CAF Executive Committee)

53. Mr Patel stated that the 2017-2028 agreement was intended to create wealth for CAF, not towards LS, and that Mr Hayatou signed the contract on behalf of the confederation, not in his name. He added that the contract was not only beneficial to CAF because of the overall amount, but also due to the guarantees that only LS could provide, as well as the production quality of the feed, which was very important for the confederation given the variety of competitions involved.

54. With respect to the absence of a public tender, Mr Patel mentioned that such a procedure was not practical, and that CAF discussed with other interested parties such as [Company 1] (allegedly meeting with a representative of the company in May 2015) who were not able to match or beat the offer made by LS. He added that he sees no problem in negotiating with a reliable and valuable partner, such as LS had been in the past relationship with CAF, as long as such negotiation was conducted "at arm's length" and for the benefit of the confederation. In addition, Mr Patel repeated a rhetorical question as to "how would CAF do a public tender?" and stated that, until 2017, no public tenders were conducted by CAF.

55. With respect to the members of the CAF Executive Committee not being informed of the negotiations with LS, Mr Patel stated that the working group developed a strategy and had to discuss it with the Executive Committee, which was also disclosed in the respective meeting minutes.

56. When asked about the offer from PS, Mr Patel declared that this offer was disclosed to the Executive Committee and that, at the next meeting of such, he realized the minutes of the previous meeting had not recorded the disclosure and asked that they be amended accordingly.

57. With respect to the approval of the 2017-2028 agreement with LS, Mr Patel stated that this had been unanimous, and that the respective MoU was approved

by the Executive Committee in May 2015, before being signed in June 2015. He could not explained why the minutes of the Executive Committee meetings did not record any reference to offers from other companies, or to the content of the MoU (before being signed).

58. As to the decisions of the Egyptian authorities, Mr Patel considered that the sanctions imposed were "improper" and that Mr Hayatou simply acted on behalf and in the interest of CAF.

2. Closing statements of the investigatory chamber

59. The chief of investigation, Ms Margarita Echeverria, stated that the investigatory chamber found Mr Hayatou to have violated his fiduciary duty towards CAF by acting against the interest of the said confederation when signing, on behalf of CAF, an agreement with LS in the sole benefit of the latter company. Additionally, Mr Hayatou abused his position within CAF by executing the agreement with LS, without properly informing the CAF Executive Committee of the negotiations being carried out with LS, the essential terms of such agreement and by not having disclosed the existence of other offers.

60. Mr Hayatou signed the 2017-2028 agreement with LS as President of CAF, representing and binding the latter. The agreement gave LS the right of first refusal, potentially granting the exclusivity of the marketing and media rights to LS until 2036, a period during which no other competitor could compete or present its offer. In particular, this agreement raised concerns, considering that LS had already been the exclusive owner of similar rights during the preceding period of 2008-2016, amounting to a possible period of 21 to 29 years of exclusive ownership.

61. With respect to provision 7.3 of the 2008 – 2016 agreement between CAF and LS, according to its wording CAF had the "obligation" to present an initial financial offer to LS and wait until 31 December 2015, before it could open a tender process to other competitors, but reaching an agreement with LS was not mandatory.

62. The chief of investigation then addressed the question whether the conditions agreed between CAF and LS actually benefited the confederation, by focusing on three aspects: the lengths of the contract, the renewal of the "right of first refusal" clause and the lack of a public tender.

63. According to Mr Hayatou, a Strategic Committee of CAF issued two reports (in October 2014 and January 2015), as well as prepared and presented three options to the CAF Executive Committee at its meeting on 11 November 2014, warning of the risk of assuming a long-term agreement due to the changes in the market, with the maximum length for eight years. The minutes of the respective meeting do not refer to its outcome nor do they mention which option was preferred by the committee members.

64. Despite the above, CAF ended up signing an agreement for 12 years and, based on the (counter)offers made by LS, it is clear that the company was the one proposing and preferring a contract for 12 years as such condition was beneficial towards it.

65. The Egyptian authorities considered the signing of the 2017-2028 agreement as a monopolistic activity and sanctioned Messrs Hayatou and El Amrani with a substantial fine, for which CAF was later found jointly liable. Therefore, the 2017-2028 agreement was clearly detrimental to CAF's finances and its reputation, endangering future commercial deals.

66. With respect to the absence of a tender, Messrs Hayatou, El Amrani and Suketu Patel claimed that there were "formal and informal" interactions where several competitors were approached as to figure it out a market value of the transaction, but failed to provide any evidence that prove the existence of these exchanges.

67. Mr Hayatou also contradicted himself, by admitting there was no tender process carried out by CAF on one hand, but declaring that LS presented the best offer "by far", compared to other providers who were consulted. The fact that there are no others to compare (only statements from three persons deeply involved in the transaction and therefore biased), and no criteria, makes it impossible to determine how the LS offer was considered "the best option".

68. Furthermore, the chief of investigation stressed that CAF's offer to LS was rejected twice by the latter. Since CAF's expectations were not met, and in accordance with clause 7.3 of the 2008-2016 agreement, CAF had the right/opportunity to wait until the end of 2015 and engage with other competitors. In view of above, and since CAF had already contacted other competitors and they have expressed their interest (according to Mr Hayatou), it does not stand to reason why CAF did/would not consider opening a tender process that follows transparency and good governance and could have ensured the best interests of the confederation are met.

69. With respect to the offer of PS, the investigatory chamber pointed out that, regardless of its content, it needed to be disclosed to, considered, approved or rejected by the CAF Executive Committee, in particular since it offered a minimum guarantee USD 200 million higher than the LS offer.

70. In his written testimony/report, Mr Patel declared to have "personally discounted the seriousness of the [PS] offer". There are two issues concerning that statement. First, the decision to accept or reject such offer was not under Mr Patel's discretion and power, but it was only an attribution of the CAF Executive Committee. Second, from the content of Mr Patel report, there is no indication that he actually communicated the details of the offer to the CAF Executive Committee. Also, the minutes of the CAF Executive Committee meeting of 27 September 2016 did not contain any record of the PS offer being presented or discussed.

71. According to Mr Hayatou's position, it was only at a subsequent meeting of the CAF Executive Committee on 12 January 2017 that the minutes of the 27 September 2016 meeting were amended to include the reference to the PS offer. However, Mr Patel's report, dated 27 September 2017, never mentioned the aforementioned meeting of 12 January 2017, or the amendment of the minutes of the 27 September 2016 meeting. All these aspects cast doubt/suspicion on whether the said offer was disclosed to the Executive Committee at the time it was made, and before the signature of the 2017-2028 agreement (especially considering that, in the relevant meeting several Executive Committee members raised their voice and complained about not having being involved in the negotiations of the renewal contract).

72. With respect to the alleged presentation prepared by the CAF Strategic Committee in January 2015 reporting the two option proposed by LS on 30 December 2014, there is a lack of documentation to attest whether such presentation was made to the CAF Executive Committee, or what the outcome was.

73. Three different national independent bodies and instances had decided there was an infringement of the Egyptian Competition Law, namely COMESA, the Cairo Economic Court and the Economic Court of Appeal. Those authorities separately and independently made their assessments, decided and confirmed Mr Hayatou's involvement and liability in regards to the agreement dated 28 September 2016. Consequently, the argument made by Mr Hayatou in relation of the political motivation of these authorities is without merit.

74. As to the claim of Mr Hayatou that the investigatory chamber did not carry out a full investigation, the chief of investigation stressed that all the necessary evidence to conclude that Mr Hayatou has breached the FIFA Code of Ethics was in possession of the respective chamber. Furthermore, the documentation provided by Mr Hayatou with his position only reinforced the conclusions of the final report, in particular, that the Executive Committee never approved the signing of the contract nor were they properly informed about the content of the negotiations.

75. The investigatory chamber also stated that the party was to be held personally liable for the signing of an anti-competitive agreement with LS along with the absence of a fair and transparent procurement process.

76. Taking account the length of the exclusivity granted to LS, the concern mentioned by the CAF Strategic Committee about the impossibility to adapt to the changes in the market, the fact that the agreement included all CAF competitions, the lack of a transparent competition among different companies which most likely led to a decrease of the potential revenue, and that the Egyptian authorities found CAF jointly liable for having breached competitions laws, it cannot be sustained that the 2017-2028 agreement was to the benefit of CAF, but rather detrimental.

77. Based on these arguments and conclusions, the investigatory chamber considered that the evidence at hand was sufficient to establish that Mr Hayatou violated art. 13 paras. 1, 2, 3 and 4 and art. 15 of the FCE 2012.

3. Closing statements of Mr Hayatou's legal representative

78. In particular, Mr Fabrice Robert-Tissot - Mr Hayatou's counsel - made the following remarks and statements.

79. There is nothing in the case file that enables to conclude any violation having been made by Mr Hayatou personally. In other words, Mr Hayatou should not have been prosecuted on the basis of the documents contained in the case file, including the documents he supplied due to the fact that the investigation file was incomplete. Furthermore, the investigation was selective and biased, collecting only evidence to the detriment of the accused, not being conducted in an independent manner and not respecting the presumption of innocence.

80. The investigatory chamber bases its findings only on the minutes of the CAF Executive Committee meeting of 27 September 2016, ignoring the other minutes, in particular the ones of January 2017, in which the aforementioned minutes (of 27 September 2016) were amended and completed. Mr Patel confirmed this during his oral testimony at the hearing. This dispels the argument of the investigatory chamber that the offer of PS had not been disclosed to the CAF Executive Committee.

81. The contract with LS was negotiated and entered into with the full knowledge of the members of the CAF Executive Committee, by an ad hoc committee created for this purpose. It is unthinkable that the CAF President would have acted alone, without the approval of the Executive Committee, when entering into a contract of this importance. The minutes of the various meetings of the Executive Committee meetings confirm this point.

82. The 2017-2028 agreement with LS, for an amount of USD 1 billion (minimum guarantee) was "the contract of the century", a historical agreement for CAF. There is no evidence that any other company could have offered this amount, and therefore the LS contract could not be detrimental to the confederation and its conclusion was applauded by the members of the CAF Executive Committee, who gave their enlightened consent for such.

83. CAF had to abide by its contractual obligations, in particular the clause concerning the right of first refusal included in the 2008-2016 agreement with LS, and violating such obligations would have exposed the confederation to legal action (arbitration). Nobody, including any Egyptian authorities, informed CAF that the aforementioned clause was illegal or violated competition law at the time when the respective contract was concluded in 2007. Furthermore, this clause did not damage CAF, as the confederation was free to make its offer to LS (in 2014), to

freely choose its price, and then to enter into negotiations with another partner in case LS did not accept their offer.

84. The present case does not concern a sale of TV rights, but rather a marketing agreement in the scope of which CAF's objective was to find a solid and credible partner with the requisite experience and knowledge of the market, in order to make the most of the commercial rights. The CAF working group, of which Mr Patel was a member, conducted an analysis in order to identify the best partner, and it was on the basis of this work, which was presented to the Executive Committee, that the latter body decided to renew the contract with LS for a record figure.

85. By comparison to LS, a reliable partner to CAF in the past, the company PS had a capital of just several thousands of dollars and made an offer of USD 1.2 billion. The offer was not serious, being slid under the door of Mr Patel's hotel room, instead of officially presenting it to CAF, and could have become potentially damaging or detrimental to the confederation if accepted (given that PS had violated its commercial obligations in the past).

86. With respect to the disclosure of the PS offer to the Executive Committee, the burden of proof was wrongly reversed and placed on Mr Hayatou, when it should instead be up to the investigatory chamber to demonstrate that there was a serious offer made by said company, and that the accused failed to make that offer public. In spite of this, Mr Hayatou did bring the evidence that can disprove the allegations brought forward by the investigatory chamber – the minutes of the Executive Committee meeting of 12 January 2017, during which the minutes of the previous meeting of 27 September 2016 were amended as to include the mention of the offer from PS. Furthermore, the investigatory chamber failed to prove that Mr Hayatou had an obligation to reveal the PS offer to the Executive Committee, that he hid such offer from said committee or that such acts represented an ethics violation.

87. As to the lack of a public tender for the marketing agreement, it has not been indicated what the legal basis was compelling CAF or Mr Hayatou to organize such tender, or whether this would affect competition, commercial or public aspects of such law. In any case, a brief analysis of the various laws would lead to the conclusion that neither can apply to Mr Hayatou, as he was not acting in a personal capacity, he did not have a dominant position (with respect to competition law) and committed no abuse. In any case, the Ethics Committee is not supposed to analyse or enforce competition law, but to investigate and sanction infringement to the FCE.

88. As to the personal liability of Mr Hayatou, the ethics charges against him are based on a confusion between the power of signature that a (association/confederation) president has, and the power of management, which belongs to the Executive Committee. The decision to enter into an agreement with LS was a collective one,

taken by the CAF Executive Committee, and therefore Mr Hayatou cannot be held personally liable in this respect. The decision of the Egyptian courts were taken against Mr Hayatou personally simply because Egyptian competition law (as opposed to Swiss, European or even African laws) has a criminal nature, allowing for presidents or representatives of legal/commercial entities to be directly prosecuted.

89. In conclusion, Mr Hayatou has exercised his power with due diligence and loyal to the interest of CAF, and therefore there is no violation of any FCE provisions.

4. Oral statement of Mr Hayatou

90. Mr Hayatou started by thanking the adjudicatory chamber for organizing the hearing and reverted to the statements/pleading of his counsel which perfectly summarizes his position in the matter.

91. He also stated that he had acted in the strictest of interest for CAF which he served during 31 years, as member of the Executive Committee and then president. When he started in CAF, there was no money, and the confederation had to struggle each year to find partners in order to develop African football and increase its economic interest. He assured that when the contract with LS was signed, everybody was happy, fully informed and involved, including the members of the Executive Committee, regardless of what they might declare today, also due to the very high value of the deal (which was more than USD 1 billion, as CAF would have received a percentage of any profits on top of that amount). Mr Hayatou feels that he has been wronged and does not understand why he stands accused before the Ethics Committee, as he has done everything he could for CAF during his 29-year tenure, never harming the confederation, or scheming and dealing with LS with respect to the contract.

II. CONSIDERATIONS OF THE ADJUDICATORY CHAMBER

A. COMPETENCE AND APPLICABLE LAW

a) Competence

1. Art. 30 of the FCE defines a primary (par. 1) and subsidiary (par. 2) competence of the FIFA Ethics Committee. According to the first paragraph of the said article, if the relevant conduct has been committed by an individual elected, appointed or assigned by FIFA to exercise a function, the Ethics Committee shall be entitled to investigate and judge the matter.

2. Mr Hayatou was officiating as president of CAF at the time of the facts relevant to the present case. Moreover, Mr Hayatou was a member of the FIFA Council between 1990 and 2017, a position he also held during the relevant period.

3. Consequently, the FIFA Ethics Committee is entitled to investigate and judge Mr Hayatou's conduct, as per art. 30 par. 1 of the FCE.

b) Applicability of the FCE *ratione materiae*

4. The adjudicatory chamber notes that, according to the Final Report, there are several indications of potential improper conduct in terms of the FCE by Mr Hayatou. In particular, during the investigations, possible violations of General rules of conduct (art. 13), Duty of Loyalty (art. 15) and Abuse of position (art. 25 and) have been identified. The factual circumstances raise questions of potential misconducts in terms of the FCE.

5. Consequently, the FCE is applicable to the case according to art. 1 of the FCE (ratione materiae).

c) Applicability of the FCE *ratione personae*

6. According to art. 2 of the FCE, the Code shall apply, inter alia, to "officials", as per the definitions section in the FCE and FIFA Statutes.

7. By virtue of his position as President of CAF (between 1988 and 15 March 2017), Mr Hayatou was an official within the meaning of the definition given in the FCE and the FIFA Statutes during the period presently relevant.

8. As a consequence, at the time the relevant actions and events occurred, and in view of Mr Hayatou's position in football at the time, the FCE applies to him according to art. 2 of the FCE (ratione personae).

d) Applicability of the FCE *ratione temporis*

9. The relevant facts described in previous sections of this decision occurred mostly between 2014 and 2017, and in particular in 2015 and 2016 (with a focus on 28 September 2016, when the second agreement between CAF and LS was signed).

10. With regard to the applicability of the FCE in time, art. 3 of the FCE stipulates that the (current) FCE shall apply to conduct whenever it occurred, unless a more favorable provision was in force at the time of the facts (principle of lex mitior).

11. In the present case, the legal provisions of the respective articles are deemed equivalent in the various editions of the FCE (i.e., 2012, 2018, 2019, and 2020).

12. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2012, 2018 and 2019 editions of the FCE are duly reflected in the below articles of the FCE, which contain equivalent provisions:

- Art. 13 of the FCE (General duties) has a corresponding provision in the 2012 FCE (art. 13), as well as in the 2018 and 2019 editions of the Code (art.13);
- Art. 15 of the FCE (Duty of loyalty) has a corresponding provision in the 2012 FCE (art. 15), as well as in the 2018 (art. 15) and 2019 editions of the Code (art.15);
- Art. 25 of the FCE (Abuse of position) has corresponding provisions in the 2012 FCE (art. 13 par. 4), in the 2018 FCE (art. 25) and in the 2019 FCE (art. 25).

13. Consequently, the material rules of the current (2020) FCE are applicable to the case, according to art. 3 of the FCE (ratione temporis).

14. Moreover, based on art. 88 of the 2020 FCE, the current edition of the Code is applicable with respect to the procedural rules enacted therein (for example jurisdiction).

B. PROCEDURAL ISSUES

a) Evidentiary issues

1. The party's request for (unredacted) documents

15. In his position dated 30 April 2021, Mr Hayatou made a formal request to FIFA that CAF should be asked to produce the unredacted minutes of nine CAF Executive Committee meetings (held between 2014 and 2017). In the redacted version of those documents, which Mr Hayatou submitted with his position, the excerpts relating to the LSnegotiations between CAF and LS were still legible (i.e., unredacted).

16. In reply to Mr Hayatou's request, the chairperson of the adjudicatory chamber pointed out that the parties have the right, but also the responsibility, to submit their position, to present evidence and to inspect evidence to be considered by the adjudicatory chamber in reaching its decision. That being said, the chairperson granted a new deadline to Mr Hayatou so that he could submit the CAF Executive Committee minutes he deemed relevant,.

17. Mr Hayatou then renewed his request that FIFA prompt CAF to disclose the unredacted minutes of its Executive Committee meetings in order to establish that the committee had discussed and unanimously approved the signing of the contract with LS. Mr Hayatou also argued that this request for production was necessary to counter the selective approach taken by the investigatory chamber in its investigations, as reflected in its final report.

18. The chairperson of the adjudicatory chamber responded and reiterated that there was no legal basis for FIFA to request documents from a third party such as CAF and that each party was responsible for the gathering of its supporting evidence,

as established by art. 71 of the FCE. A new extension of deadline was given to Mr Hayatou to submit additional documents, which he eventually did.

C. ASSESSMENT OF POTENTIAL ETHICS VIOLATIONS

a) Possible violation of art. 15 of the FCE (Duty of loyalty)

19. Art. 15 par. 1 of the 2020 FCE provides that persons bound by the FCE shall have a fiduciary duty to FIFA, the confederations, associations, leagues and clubs.

1. Persons involved

20. The first element set out in art. 15 par. 1 of the FCE is that the person acting must be bound by the FCE. Mr Hayatou was bound by the FCE at the time of the alleged conduct, by virtue of his positions as a FIFA and CAF football official as already discussed, therefore the first requirement of art. 15 of the FCE is fulfilled.

2. Fiduciary duty

21. The second element establishes a "fiduciary duty" on persons bound by the FCE to various bodies (FIFA, the confederations, associations, leagues and clubs).

22. Although the FCE does not define the concept of fiduciary duty, in general terms, this corresponds to a legal obligation by which one person (the fiduciary) must protect and promote the interests of another (the beneficiary). Conversely, a breach of fiduciary duty occurs when someone who is placed in a position of trust, acts in a way that is detrimental to the interests of the beneficiary or is likely to damage its reputation.

23. Is it established that Mr Hayatou, as President of CAF and senior official of FIFA, held a position of trust and was therefore expected to act with loyalty towards the aforementioned organizations, as well as ethically, when performing his functions.

24. In order to properly analyse his conduct and establish whether Mr Hayatou has violated his fiduciary duty towards CAF, the Panel needs to establish several constitutive elements of the aforementioned concept.

25. One of them is related to the position of trust and great responsibility that Mr Hayatou occupied at the time as president of the confederation. This translates, on one hand, into a higher and stricter ethical or moral standard that he must be held to, and, on the other hand, into an obligation of complete transparency towards the organization he was representing.

26. Another aspect is that of the "best interests" of the organization towards which the official is bound by the fiduciary duty. This would entail, *in casu*, that Mr Hayatou had the obligation to protect the interests of CAF by ensuring, primarily, that the confederation benefitted as much as possible from the contract with LS (mainly on a financial side, but not only). Furthermore, by signing the contract on

behalf of CAF, binding the organization, Mr Hayatou had to ensure that such agreement respected the relevant applicable laws and regulations (in other words, was not illicit or illegal), and thus that it did not expose the organization to any legal action or damages.

27. In the present case, Mr Hayatou was accused to have violated his fiduciary duty towards CAF in relation to the signing of the 2017-2028 agreement with LS on 28 September 2016. More precisely, the conduct under scrutiny concerned the following factual elements:

- The lack of a tender process and the exclusive negotiations with LS, which prevented CAF from comparing the offer from said company to other potential opportunities in the market and from choosing the best bid, leading to the conclusion of a contract for a minimum guarantee that was USD 200 million below what the confederation has initially requested from LS;

- The opacity of the process of negotiating, drafting and concluding the 2017-2028 agreement with LS, which was not (properly) disclosed to the CAF Executive Committee, culminating with the approval by the latter of the relevant MoU after it was signed;

- The creation of an unjust advantage and de facto monopoly for LS on the relevant market (of sports marketing/commercial rights) due to the extremely long and exclusive contractual relationship between CAF and the company (of up to 29 years), which would preclude or deter potential competitors from entering the market;

- The exposure of CAF to sanctions imposed by several Egyptian and international authorities such as the Economic Court, the ECA and COMESA for having violated national and international regulations of competition law, as well as to the corresponding damage to its reputation deriving from the related public scandal.

28. In what follows, the Panel will analyse each of the above alleged conducts, in the light of the constitutive elements of the concept of "fiduciary duty" previously mentioned.

Lack of competing offers and exclusive negotiations with LS

29. The 2008-2016 agreement between CAF and LS (then Sportfive) contained a special clause (7.3) regarding its renewal. This allowed the contract to be renewed or extended for at least another 8 years, and compelled CAF to provide LS with the conditions for the commercialization of rights by 31 December 2014. In case the parties failed to reach an agreement by 31 December 2015, CAF was then allowed to transmit its proposal, with the same conditions, to any other company.

In case CAF had to subsequently lower the proposal, it had to go back to LS first, who then had a period of four months to accept or not such proposal.

30. The above-mentioned clause therefore bestowed a so-called "right of first refusal" or "right of preference" upon LS, on the basis of which the company would be allowed to receive a proposal from CAF and negotiate it for one full year, before the confederation could present it to another competitor. In other words, LS had full exclusivity for one year, before the 2008-2016 agreement ended, to conduct negotiations and discuss with CAF the renewal of such contract, for a period of at least 8 years, excluding any competitors or other interested companies from such dealings. Furthermore, even if LS failed to reach an agreement with CAF by the end of 2015 (or simply did not reply by that deadline), the company still retained a right of first refusal in case CAF would have to subsequently reduce the value of the proposal (regardless of the amount/percentage of such reduction).

31. Therefore, it can be established that the clause 7.3 in the 2008-2016 agreement was extremely beneficial to LS, providing it with a very extensive exclusivity over the renegotiation of the contract, while on the other hand, it restricted CAF's options when it came to the commercialization of the right for the next cycle, having to go through LS first, wait one year before being allowed to formally transmit the proposal to other companies, and then go back to the French entity in case it had to reduce the original proposal (in case other companies would not want or be able to match it). Moreover, the clause also prevented CAF from organizing any sort of tender process until 2016, and seriously impacting any such potential tender since LS would still have a preferential right for subsequent proposals lower than the initial one.

32. In view of the above, the Panel considers that the 2008-2016 agreement contained at least one important clause that was detrimental to CAF, and restricted it from conducting a tender process for the selling of commercial rights for the next period/cycle.

33. Furthermore, while the witnesses (Messrs El Amrani and Patel) claim that CAF contacted or discussed with other companies, in particular [Company 1], in order to have an idea of the market price or value for the commercial rights contract, no evidence has been brought forward to indicate that. In particular, it cannot be established what price or minimum guarantee [Company 1], or other companies, would have offered to CAF for the relevant duration/cycle (8 or 12 years). Given that PS, an Egyptian company, made an offer for USD 1.2 billion, it cannot be discarded that other companies could have offered this amount, or even more.

34. In any case, there is no proof, nor has it been argued, that CAF organized any tender process for the awarding of the contract for the period 2017-2028. In fact, Mr Patel, the former chairman of the CAF Finance Committee and CAF first vice-president rhetorically asked during the hearing "How would CAF even do that

(N.B. conduct a public tender)?", and stated that no such tender had been organized by CAF for any contract during Mr Hayatou's presidency. For the record, the Panel would like to point out that the claim of Mr Patel appears to be contradicted by one of the documents submitted by Mr Hayatou in support of his position. In this respect, the minutes of the CAF Executive Committee meeting of 27-28 October 2015 (enclosure R-19 to Mr Hayatou's position) specifically mention at page 9 (in relation to the negotiation of the 2017-2028 full form agreement with LS) that CAF would launch a call for tender for TV production in March-April 2016, after organizing "a forum with key stakeholders".

35. The absence of a tender process, consultation of competing offers or scanning of the market (approaching other interested companies), for a contract worth USD 1 billion and lasting minimum 12 and potentially 20 years (if the contract would have been extended until 2036 as per the clause in the 2017-2028 agreement giving once more LS the "right of first refusal" for the next 8-year cycle) is deeply concerning, regardless of the question of the contractual partner or the offer it made. The problem is that, by entering into, continuing, and eventually prolonging an exclusive contractual relationship with one company, CAF failed to properly explore the potential of the market and possibly maximize its income, by evaluating various bids, in the scope of a fair and competitive (tender) process. In this respect, it is not of particular relevance whether CAF had conducted other tenders prior, or whether such process was required under its regulations. What is important and should have been addressed by CAF management (in particular Mr Hayatou in his position as president) is whether another viable or better alternative existed, before signing an extensive agreement with a company for as long as 20 years.

36. An important aspect in this regard is the fact that the process of negotiating and concluding the 2017-2028 agreement started in autumn 2014 (when the CAF working group to assess and prepare the offer to LS was appointed) and ended on 28 September 2016 with the signature of the long form contract, which represents almost two years. Therefore, during this considerable period of time, CAF exclusively dealt with LS and no mention of other potential offers or market value of the contract was ever presented to the CAF Executive Committee at any point (based on the documents in the file).

37. The above aspect is all the more relevant, since LS refused the proposal from CAF, not once, but twice.

38. The first proposal was made by CAF by letter dated 24 December 2014, in which the amount of USD 750 million was expected as minimum guarantee from LS for (the renewal of) a 8-year contract.

39. Only six days later, on 30 December 2014, LS sent a reply to CAF (interpreted as a "counter-offer"), which basically rejected the previous proposal, and put forward two alternative options: a minimum guarantee of USD 500 million for a

8-year contract, therefore USD 250 million lower that CAF's proposal, or an amount of USD 800 for a 12-year period.

40. Almost two months later, on 22 February 2015, CAF replied and confirmed its original proposal for a minimum guarantee of USD 750 million for an 8-year contract. With respect to LS's offer for a 12-year contract, it specifically stated that "the period is very long and needs a further proper evaluation on the status of African football over this period of time in particular". However, reluctantly and due to the fact that LS had included an offer for a 12-year period, CAF stated that a minimum guarantee for such length of contract should not be inferior to USD 1.2 billion, "considering the constant increasing value of our properties". It is clear, from the content of the respective letter, that CAF included the proposal for a 12-year contract reluctantly, adding that "a commitment for a longer period of time (12 years) requires significant investment and will pave the way to a much higher level of cooperation between our entities and a much higher level of delivery of obligations from CAF".

41. In this context, LS sent another letter one month later, on 21 March 2015, in which it maintained its previous offer of USD 500 million for an 8-year contract, therefore refusing CAF's proposal for a second time. In addition, the company made a revised offer of USD 1 billion for a 12-year contract, thus USD 200 million below the proposal of CAF.

42. In view of the above, it is established that LS refused twice the proposals made by CAF (on 24 December 2014 and 22 February 2015) regarding the minimum guarantee for the 8-year contract, as well as the offer for a 12-year contract. Despite these unambiguous refusals in writing, CAF continued the negotiations, and reached an agreement for a 12-year contract, for the amount of USD 1 billion, which was expressed in a MoU signed by Mr Hayatou and Mr El Amrani on 11 June 2015.

43. Therefore, it is uncontested that CAF conducted exclusive discussions with LS for almost six months, despite its two consecutive proposals having been refused by the said company. In addition, the negotiations resulted in a contract that was valued at USD 1 billion, which was exactly the offer of LS made on 21 March 2015, and USD 200 million lower that the proposal of CAF.

44. In this respect, the Panel would like to point out that, during this period of six months when a contract for an extremely significant value and very lengthy duration (according to CAF itself) was being negotiated and entered into, no evidence can attest of any effort made by CAF to reach out to other potential interested companies, or at least assess the market for other/better offers. In other words, although CAF has evaluated the commercial rights to be included in a 12-year contract at a minimum of USD 1.2 billion, and although LS had refused such offer and made a (counter-)proposal valued USD 200 million lower, the confederation did not even seek to test its assessment on the market or try to find

out whether it could obtain the amount it had estimated, or at least more than what the French company was offering.

45. Furthermore, even at that stage, when CAF would have been in its right to stop negotiations, wait until the end of 2015 (or even earlier) and then initiate a tender process with all interested companies in the market, no evidence could be found of that alternative being presented to or contemplated by the CAF Executive Committee.

46. Instead, the confederation simply proceeded to conclude the MoU on 11 June 2015, therefore much earlier than the deadline of 31 December 2015, directly accepting the offer of LS for a 12-year contract that was considerably lower than its own assessment of the respective commercial rights. Therefore, by entering into the agreement with the company, through the MoU that Mr Hayatou signed, CAF was compromising on several aspects: first on the financial side, by agreeing to a reduction of USD 200 million of its own proposal, without even trying to negotiate a middle ground between the two amounts - USD 1.2 billion sought by the confederation and USD 1 billion offered by LS; secondly, on the length of the very long duration of the contract, with the 12-year cycle having been reluctantly considered by CAF in its letter of 22 February 2015; and finally, on the fact that the confederation was not even forced to take a decision so early on (six months before the deadline of 31 December 2015) or without a proper evaluation of the market and other potential offers.

47. In conclusion, the Panel considers that the process conducted by CAF in relation to the conclusion of the MoU with LS signed on 11 June 2015, in particular the failure to appropriately test the market or contact other interested companies in order to attempt to obtain the best possible offer (and thus maximize income) in the context where LS had already refused CAF's proposals twice, was detrimental to the confederation.

Lack of transparency in relation to negotiations and conclusion of the agreement with LS

48. One of the main arguments of Mr Hayatou in his position was that, throughout the process of negotiating, discussing and concluding the 2017-2028 agreement with LS, the members of the CAF Executive Committee were continuously informed about the status of such, as well as involved, through the creation of the working group and the Strategic Committee, dedicated to the renewal of the contract with LS. In support of this argument, Mr Hayatou has relied on the minutes of the various CAF Executive Committee meetings between November 2014 and January 2017, presentations of the aforementioned committees, written report from Mr Patel, as well as the oral testimonies from the two witnesses - Messrs El Amrani and Mr Patel.

49. However, there are still various matters which have not properly been clarified by the documents on the case file.

50. First of all, as mentioned previously, the six months between 24 December 2014 (when CAF made its first proposal to LS) and 11 June 2015 (when the MoU was signed) represent an important and relevant period for the matter at stake, which consisted of written exchanges of the various proposals and counter-offers, negotiations as well as the drafting and conclusion of the MoU signed by Mr Hayatou.

51. However, the only contemporaneous evidence in the file for this period (apart the official correspondence between CAF and LS) consists of the minutes of the Executive Committee meetings of 5 April and 26 May 2015 and a presentation, apparently from January 2015 which was apparently made to the said committee.

52. The minutes of the 5 April 2015 and 26 May 2015 meetings have identical wording, simply mentioning that "negotiations with S5 (N.B. LS) were still on going and that an update will be sent to the Committee as soon as CAF and S5 find an agreement on the essential points". As for the presentation, it only mentions the first offer from LS (from 30 December 2014) for the amounts of USD 500 million and USD 800 million, corresponding to the 8-year and 12-year contracts respectively, without any analysis of such proposal, of the market value of the commercial rights offered by CAF, on the status of negotiations or next steps to be undertaken. Also, the presentation included no recommendation to the Executive Committee regarding the acceptance or not of the LS (counter-)offer.

53. In his report dated 25 September 2017 (therefore two years after the facts), Mr Patel does not bring a lot of new elements or information, besides mentioning the following: "During Afcon 2015 in Equatorial Guinea (N.B. the African Cup of Nations 2015 held between 17 January and 8 February 2015), a number of discussions were held with Managing Director of LS to see if we could come to an understanding on an acceptable MG for both parties. After a few weeks we reached an understanding that we could approach the hierarchy of our respective organization to accept a MG of USD 1 Bn covering 12 years; which exceeded by far, what other competitors were willing to commit to or accept". Mr Patel adds that "during this time, the CAF Executive Committee was kept fully, both formally and informally, of the progress in negotiations with LS." However, the written report fails to provide relevant and missing information as to:

- Who was negotiating with LS on behalf of CAF;
- Why the negotiations were continued even after LS rejected two proposals from CAF;

- Which "competitors" were approached at the time and what was the exact value of the offers, which was exceeded "by far" by the LS offer;

- Why no attempt was made by CAF to negotiate a minimum guarantee amount superior to the offer of USD 1 billion from LS, although this was USD 200 million below the proposal the confederation had made?

- What was the urgency to reach an agreement with LS within "a few weeks" in the first months of 2015 (according to Mr Patel), given the fact that, as per the 2008-2016 agreement the parties had until 31 December 2015 to negotiate and conclude the (renewal of the) contract;

- When was the CAF Executive Committee informed about the USD 1 billion offer for a 12-year contract and of the recommendation to accept such offer;

- How can it be explained that the minutes of the Executive Committee meetings of 5 April and 26 May 2015 make no reference to the LS offer of USD 1 billion or recommendation that such offer is accepted;

- Who exactly on behalf of CAF "reached an understanding" with LS that the USD 1 billion offer should be accepted by the confederation, and on what basis.

54. In addition to the many unanswered questions above, a vital aspect that has not been clarified was that of the approval of the MoU by the CAF Executive Committee. Although the witnesses insisted in their testimonies that such approval was addressed and given at the meeting of 26 May 2015, the minutes of such make no mention of any significant discussion in this respect. To the contrary, the minutes mention that "an update will be sent to the Committee as soon as CAF and S5 find an agreement on the essential points", although, according to Mr Patel, such understanding had already been reached a few months prior. It is equally odd that, based on the content of the aforementioned minutes (which have been submitted and thus are not disputed by Mr Hayatou), the Executive Committee would have been informed of a deal reached by CAF and LS "on the essential points" (meaning the acceptance of the USD 1 billion offer for 12 years), as well as of the recommendation to approve such, discussed the matter and formally approved the agreement, all in a period of two weeks between 26 May 2015 and 11 June 2015 (which included the FIFA Congress on 28-29 May 2015).

55. In the opinion of the Panel, the approval of a deal of such magnitude, which would both affect and bind the confederation from a financial and legal perspective for the following cycle of at least 12 years (potentially 20), in the circumstances described above, wherein various important details or information was apparently missing or not transmitted to the Executive Committee, should not have been rushed or compromised due to the specific and unfortunate events

which occurred prior to the FIFA Congress in May 2015, nor can it be explained retroactively as being caused by such.

56. The MoU signed by Mr Hayatou on behalf of CAF on 11 June 2015 bound the confederation, prior to the signature of the full form contract on 28 September 2016, and was therefore a very important document, the content of which had to be assessed, discussed and approved taking into consideration the best interests and objectives of CAF on long term, and such thorough analysis requires time. In this respect, the Panel considers, on the basis of the argumentation above, that the process of negotiation, drafting and concluding the MoU between CAF and LS was not transparent enough, and that the evidence on file does not indicate that the Executive Committee was sufficiently informed of all the relevant aspects of the deal reached prior to the signature of the binding document on 11 June 2015.

57. Mr Hayatou's claim is that, regardless of the fact whether the MoU was approved by the Executive Committee **before** its signature, it is undisputed that such document was **subsequently** ratified at the meeting on 6 August 2015. This argument cannot be accepted, both from a legal perspective and in view of the facts of the matter.

58. First, as rightly pointed out by the investigatory chamber, the MoU had already been signed on 11 June 2015, and therefore it deployed its effect already, one of which was the obligation for CAF to conclude a full form agreement with LS. In other words, regardless of whether the Executive Committee ratified the MoU in August 2015, the legally binding document was already in force at the time.

59. Second, since the MoU was only approved/ratified by the Executive Committee in August 2015, it is unclear what mandate were performing Mr Hayatou and Mr El Amrani when signing the document on behalf of CAF on 11 June 2015, and who bestowed such power of signature unto them.

60. Furthermore, even if the minutes of the 6 August 2015 meeting mention that the Executive Committee "congratulated CAF and the President for this historic agreement" (thus officially recognizing Mr Hayatou's main role in the conclusion of the contract), there is no specific mention of a decision, vote or approval of the MoU. In fact, the section of the minutes addressing the matter is entitled "Report on the signing of a MoU between CAF and Sportfive on the commercial rights of CAF competitions for cycle 2017 – 2028", with no mention on when and how the approval of such document was taken.

61. Moreover, the respective minutes make no reference to the fact that CAF had made a proposal of USD 1.2 billion for the minimum guarantee for 12 years, based on the evaluation of the respective rights compiled by the relevant CAF committee, or of the fact that the value of the MoU was USD 200 million lower than such internal evaluation. Also, no emphasis was placed on the length of the

contract, which was considerably higher than what CAF originally intended. In this respect, the Panel turned to the presentation prepared by the CAF working group in October 2014 (enclosures R-8 to Mr Hayatou's position), which listed various options to be considered for the proposal to LS:

- Option A: short term agreement of four years (2017 – 2020);
- Option B: mid-term agreement of six years (2017 – 2022); and
- Option C: long-term agreement of eight years (2017 – 2024).

62. From the above it is clear that CAF did not even consider initially a contract for a duration superior to 8 years. However, eventually this was another compromise that (the persons negotiating on behalf of) CAF accepted, together with the reduction of the minimum guarantee. Despite the significant (downward) alteration of the initial CAF objectives and strategy, which would have long-term effects on the confederation, these aspects do not appear to have been addressed at the Executive Committee meeting of 5 August 2015, in which the MoU with LS was allegedly ratified.

63. The pattern of lack of transparency continued as the long form contract with LS was being drafted, discussed and concluded, a process which lasted more than a year (between 11 June 2015 and 28 September 2016). One important aspect was raised, according to the testimony of the witnesses, at the last meeting of the Executive Committee on 27 September 2016, the day before the signing of the full form contract. According to the oral testimony given at the hearing, during that meeting, one or several members of the Executive Committee complained that they had not been provided with the complete final version of the LS agreement, which they were supposed to approve. While Mr El Amrani and Mr Patel consider such request as unreasonable, claiming that the CAF policy was to provide the Executive Committee members with a summary of the most important aspects of the contracts to be approved, the Panel is not of the same opinion, taking into account all the various issues presented above, as well as another extremely important element.

64. While the MoU was a basic 10-page document, confirming the most important aspects of the deal reached between the parties (such as the value of the minimum guarantee and the duration of the contract), the subsequent long form agreement incorporated a number of various clauses, similar to the 2017-2016 agreement, among which one that bore a striking resemblance. Clause 7.3 of the 2017-2028 agreement was almost identical to the one in the previous contract, creating once more a "right of first refusal" for LS, for the period 2029 – 2036 (under the same conditions as in the previous agreement), and thus binding CAF to said company for a total of 29 years.

65. In this respect, the contemporaneous evidence on file from the period of 15 months during which the full form agreement was negotiated, discussed, drafted and concluded between CAF and LS (11 June 2015 – 28 September 2016) contains no indication that the members of the CAF Executive Committee were informed of and agreed to the inclusion of the "right of first refusal" clause in the respective contract. None of the minutes of the relevant Executive Committee meetings (from 6 August 2015, 27-28 October 2015 and 5 February 2016) make any reference to such clause, nor does it appear that the inclusion of such important provision was addressed or discussed.

66. In conclusion, after a thorough analysis of the facts and documents on file, the Panel considers that the process through which the responsible persons within CAF negotiated, discussed, drafted and concluded the MoU and then the full form 2017-2028 agreement with LS lacked transparency, especially towards the responsible Executive Committee. Moreover, it appears that the MoU was signed on 11 June 2015 by Mr Hayatou (and Mr El Amrani) on behalf of CAF in the absence of a proper previous approval of the Executive Committee. These deficiencies translated in the Executive Committee not being sufficiently informed when reaching an extremely important decision to approve the contract with LS, which was concluded for an amount inferior to the initial objective of CAF, and for a duration of minimum 12 years, extending the exclusive contractual relationship with the same company for a staggering 29 years.

Violation of competition law and sanctions imposed on CAF by national and international authorities

67. It is uncontested that CAF has been sanctioned by various Egyptian authorities in relation to the 2017-2028 LS agreement, in particular its violation of national competition law. While Mr Hayatou simply dismisses them as politically motivated, the fact remains that these decisions are final and binding on both Mr Hayatou and CAF, who are jointly liable for the payment of significant fines imposed as a result of such violation.

68. The Panel will not go into a legal analysis of the decisions, dealing with Egyptian and international competition law, which is not under the remit of this Ethics committee. However, it would like to point out a number of relevant factual elements in this respect.

69. First, it is to be noted that various national judicial bodies (such as the Cairo Economic Court and the Economic Court of Appeal), independent authorities (ECA) and international entities (COMESA) have reached the same conclusion that the 2017-2028 agreement between CAF and LS is contrary to competition law, by granting exclusivity to the company for a very extensive period of time lasting up to 29 years, and thus closing the respective market for any other competitors.

70. Second, CAF was found jointly liable for the violation, as well as for the payment of the relevant fine(s). These financial sanctions clearly represent a damage that affect the confederation on an economic, but also reputational level.

71. Third, the violation was a direct consequence of the signing of the 2017-2028 agreement with LS, and thus directly imputable to Mr Hayatou (and Mr El Amrani) who had signed such contract on behalf of CAF.

72. Furthermore, the Panel would like to address an aspect which is related to how CAF had been made aware and warned about being subject to potential sanctions for violating Egyptian competition law before the 2017-2028 agreement with LS was concluded.

73. In the ECA letter dated 7 March 2017 addressed to the FIFA Ethics Committee (enclosure 9 to the final report), it is specifically stated that "the ECA did not spare any effort to address CAF amicably in order to stop its abusive behavior. Nevertheless, CAF decided to turn a blind eye to the ECA several invitations to assist CAF in amending its restrictive licensing policy. This left the ECA with no alternative options but to use the prerogatives it enjoys under the ECL to force CAF to stop the harm on the Egyptian market".

74. From the content of the aforementioned document, several important elements need to be pointed out.

75. First, the fact that the ECA "amicably" approached CAF before the start of its sanctioning proceedings (the ECA pressed criminal charges against Messrs Hayatou and El Amrani as representatives of CAF on 4 January 2017) and asked it to "stop its abusive behavior". In this respect, the ECA letter of 7 March 2017 encloses an official communication from CAF to the entity dated 7 November 2016, which refers to a previous letter from the ECA addressed to the confederation on 29 June 2016.

76. In the opinion of the Panel, the 7 November 2016 communication represents a vital piece of evidence, demonstrating that the confederation had been informed about the potential violation of (Egyptian) competition law **prior** to the signature of the full form contract with LS on 28 September 2016. CAF, and primarily its president Mr Hayatou, had therefore been fully aware of the legal and reputational risks it was exposed to due to the contractual relationship with LS, and that the content of the respective agreement was (potentially) conflicting with national law, while such agreement was still being finalized. Instead of taking the necessary steps to remedy the situation and engaging both the ECA and LS in order to find a solution, either by amending the content of the full form contract (potentially excluding the "right of first refusal" clause for the cycle 2029 – 2036, reducing the scope of the commercial rights offered or the duration of the contract), by obtaining an exemption from the Egyptian authority and/or another alternative that would have been accepted by the ECA, CAF did nothing.

77. Secondly, for more than four months, CAF failed to address an official letter from an important public authority of the country in which the confederation is based, in relation to potential violations of the national law derived from a vital agreement that was being concluded and had to be approved by the Executive Committee. Furthermore, the evidence on file, in particular the minutes of the relevant meeting on 27 September 2016, make no reference to the ECA letter of 29 June 2016, and thus there is no indication that this serious matter was brought to the attention of the Executive Committee prior to the approval of the LS contract. In other words, the content of the ECA letter was not addressed or reported to the executive body of the organization in the vital period leading to the conclusion of the contract that could have exposed (and eventually did expose) CAF to severe detrimental effects.

78. In this respect, the Panel would like to refer to the CAF Statutes in force at the time, which, at art. 24, list the prerogatives and responsibilities of the president. Besides being the legal representative of CAF (art. 24 par. 1) and signing all documents and letters binding the confederation, jointly with the Secretary General (art. 24 par. 9), the President is also "responsible for maintaining good relations between CAF and FIFA, the other confederations and Members, as well as political bodies and international organisations" (art. 24 par. 6). It is therefore astonishing that Mr Hayatou, in his capacity of CAF president, would ignore an official warning coming from an important authority of the Egyptian government, under the umbrella of the Common Market for Eastern and Southern Africa, an international organization comprising 21 African member states, until it was too late. Even in the answer sent by CAF to the ECA on 7 November 2016, after the signature of the LS contract, the confederation failed to really address the matter, simply directing the Egyptian authority to the said company without proposing any solutions or discuss about any steps that could be undertake in order to solve the matter to the benefit of CAF (thus avoiding any sanctions from the ECA or other public authorities).

79. The Panel considers that the approach taken by CAF in this respect, and in particular Mr Hayatou's conduct (or rather lack thereof) as the organisations' president have had a direct and detrimental impact on the confederation. By failing to act and address the matter, Mr Hayatou exposed CAF to potential legal and other damages, which subsequently materialized in the form of several different sanctions:

- Administrative measures imposed by the ECA in its decision dated 3 January 2017, which forced CAF to amend its 2017-2028 agreement with LS in relation to the Egyptian market;

- Fine of 200 million Egyptian pounds imposed by the Egyptian courts (decision of the Economic Court of Appeal dated 14 July 2019) on CAF and Messrs Hayatou and El Amrani, who were found jointly liable;

- Administrative measures imposed by COMESA in its decision dated 22 July 2019 which concerned any agreements for the selling of CAF commercial rights having an effect within the Common Market for Eastern and Southern Africa. These measures included the obligation to terminate various existing agreements, such as the one with LS, various sponsors and TV rights holders, following the last CAF competition to be held in 2022, the requirement to request COMESA's authorization for the conclusion of future contracts with commercial partners/intermediaries for a duration exceeding four years, the payment of a financial penalty (by CAF and LS), etc.

80. The Panel would like to point out that all the above sanctions and measures, which obviously had a detrimental effect on CAF not only regarding its finances but also on its economic activity and reputation, could have been avoided if Mr Hayatou had taken the appropriate actions in order to defend the best interests of the confederation, at the relevant time (when the ECA informed CAF of the potential risks and while the contract with LS was being finalized).

Personal liability of Mr Hayatou

81. One of the party's arguments in his written position and during the hearing is that he cannot be held personally responsible for the actions of CAF, as the decision to conclude the 2017-2028 agreement with LS was taken collectively by the CAF Executive Committee.

82. In this respect, the Panel would like to make the following considerations.

83. First, as specifically mentioned at its art. 2, the FIFA Code of Ethics only applies to individuals, which includes the category of football officials. Therefore, the notion of "collective responsibility" is clearly absent from the FCE, and would only be taken into account if specifically mentioned in the provisions relevant to the case at stake. In the present case, art. 15 of the FCE does not make any reference to a collective liability or decision-making process. To the contrary, as previously explained (par. II.22ff above), the concept of fiduciary duty corresponds to a legal and personal obligation by which the fiduciary, placed in a position of trust, must protect and promote the interests of the beneficiary. Mr Hayatou held an extremely important and singular position within CAF, as its president and highest ranked official, which also entails a correspondent responsibility towards the confederation.

84. Second, art. 6 of the FCE specifies that "breaches of this Code shall be subject to the sanctions set forth in this Code, whether acts of commission or omissions, whether they have been committed deliberately or negligently, whether or not the breach constitutes an act or attempted act, and whether the parties acted as principal, accomplice or instigator". This provision thus extends the level of participation in any ethical infringement, which renders Mr Hayatou responsible, at least as an accomplice, for his conduct as CAF president or chair of its Executive

Committee in relation to decisions taken by the (body of the) organization that would violate the FCE.

85. Third, in his capacity as president, Mr Hayatou was not only a member of the CAF Executive Committee, but also presided all meetings of the committee (art. 24 par. 3 of the CAF Statutes) and had the casting vote in case of a tie in the adoption of resolutions (art. 22 par. 18 of the CAF Statutes). He was therefore in a position of authority and leadership when it comes to the decisions taken by the aforementioned body, an aspect which is also reflected in the minutes of the various Executive Committee meetings on file: "**The President stressed** on a very important mistake made by the General Secretary […] **He instructed the General Secretary** to correct this serious error and ensure that the long form contract contains the right formulas." (minutes of the meeting dated 6 August 2015, enclosure R-18 to Mr Hayatou's position); "**The CAF President confirmed the conclusion** of an important contract with S5 that will ensure an income amounting to one billion dollars. **He asked the members** to take their time to look and see how to dispatch these revenues so that all parties can benefit from it (national federations, clubs and the staff as well as the Executive Committee". (minutes of the meeting dated 27-28 October 2015, enclosure R-19 to Mr Hayatou's position); "**The CAF President added that there should be no sensitivities** between the members of the Executive Committee and **he was disappointed** to hear members complain that CAF had negotiated the contract in their back, as if he had personal interests. **He condemned** this kind of regrettable attitude, especially since all elements were shared in advance with the Committee for agreement" (minutes of the meeting dated 26 September 2016, enclosure R-21 to Mr Hayatou's position); "**The President asked Mr Raouraoua to prepare** a draft letter to be sent to the Head of State in order to summarize the situation and possibly organize a meeting at the highest level." (minutes of the meeting dated 12 January 2017, enclosure R-22 to Mr Hayatou's position) [emphasys added].

86. Fourth, according to art. 24 pars. 1 and 9 of the CAF Statutes, Mr Hayatou was the legal representative of the confederation and had the right to sign, jointly with the Secretary General, all documents binding the organization. In the present case, it is not disputed that he signed both the 2007-2016 and 2017-2028 agreements with LS, as well as the 2015 MoU. His significant status as the legal representative of CAF, as well as the implied responsibility deriving thereof, is evident in the reaction of the members of the Executive Committee at the meeting on 6 August 2015, when they "congratulated **CAF and the President**" (emphasys added) for the signature of the MoU with LS.

87. Moreover, it has also been ruled that, throughout the process which resulted in the signature of the 2017-2028 agreement, the Executive Committee was not provided with all the relevant elements that would have allowed it to take an informed decision in this respect. In fact, based on the documents of the case, it could not even be properly established that the Executive Committee was (duly)

informed about the competing and superior offer of PS, or that the body formally approved the 2015 MoU before its signature. That would contradict Mr Hayatou's argument concerning the "collective decision" taken by the Executive Committee in this respect, and would once more point to the personal liability of the CAF President, who effectively signed the document on behalf of the organization.

88. Furthermore, it should be pointed out that, according to a final and binding decision of the Cairo Economic Court of Appeal, Mr Hayatou and CAF were found jointly liable for the financial sanctions imposed in relation to the signature of the 2017-2028 agreement with LS. In particular, the court concluded to charge Mr Hayatou as "the person responsible for the actual management" of CAF, as well as for entering into a contract "in its name". In addition, the Cairo Economic Court stated in its decision that it was undeniable that the party, in the offences for which he was being held liable, acted in his capacity as President of CAF, President of the CAF Executive Committee and legal representative of CAF.

89. Finally, the adjudicatory chamber would like to refer to an element which, although not fully clarified, should be taken into account when establishing a certain pattern of conduct of CAF senior management (in particular Mr Hayatou). The process through which the offer received from the company Presentation Sport (PS) was addressed or treated in September 2016 was not sufficiently transparent or diligent in order to allow the Executive Committee to properly consider the proposal or attempt to establish its reliability, in order to ensure that it can take the most informed decision and chooses the offer that best suits its interests. Regardless of the content, form or validity of the offer, the fact remains that this was not properly addressed by the CAF Executive Committee, which in turn limited the body's capacity to assess whether the LS agreement represented the best (or even the only) option on the table for CAF at that particular moment (27 September 2016). This aspect also shows once more the pattern of behavior from CAF senior management, particularly Mr Hayatou, to steer the confederation (and its Executive Committee) towards a deliberate objective – reaching an agreement at all costs with LS – through a dire lack of transparency, and despite the clear risks CAF was exposed to due to such an exclusive and long term legal relationship with the company.

90. In view of all the various aspects presented above, the Panel considers that Mr Hayatou is personally responsible when it comes to his conduct in relation to the negotiation, drafting and conclusion of the relevant LS contract and MoU, signed on behalf of CAF.

3. Conclusion

91. In light of all the above considerations, the Panel found that Mr Hayatou has breached his fiduciary duty towards CAF, in his capacity as president, and therefore legal representative of the confederation. In particular, Mr Hayatou's following conduct was detrimental to CAF's best interests:

- Signing the MoU with LS on 11 June 2015, which legally bound the confederation to the company following a negotiation, discussion and drafting process that was conducted in haste (long before the expiry of the relevant deadline to reach an agreement), without appropriately testing the market, contacting other competitors or conducting a tender procedure in order to secure the best possible offer. The above approach, and the exclusive relation with LS, despite the company's refusal of two consecutive CAF proposals, resulted in the acceptance of a deal for a significantly lower value (USD 200 million), and a longer duration than the confederation's initial proposal/objective;

- Failing to keep the CAF Executive Committee properly informed of the status of the aforementioned process and to obtain its approval of the MoU prior to the signature (therefore signing the document on behalf of CAF without a proper mandate from the executive body of the confederation);

- Failing to ensure that the Executive Committee is provided with all the relevant information with respect to the full form agreement with LS, in particular the "right of first refusal" clause. By signing the contract on behalf of CAF on 28 September 2016, Mr Hayatou bound the confederation to the said company for a period of up to 20 years, which extended the contractual relation between the two entities to a staggering total duration of 29 years, without the express approval of the Executive Committee;

- Ignoring the warnings of the ECA, such as the official communication of 29 June 2016 that the exclusive contractual relation with LS was in (potential) violation of Egyptian competition law and had to be amended. Failing to address and solve the matter, or at the very least report to the Executive Committee, and subsequently signing the LS contract on 28 September 2016 (while being aware that the binding document was in breach of national law) resulted in various sanctions being imposed on CAF (including financial), which caused significant damage to the confederation.

92. Consequently, the Panel is comfortably satisfied that Mr Hayatou has breached art. 15 of the FCE.

b) Possible violation of art. 25 of the FCE 2020 (Abuse of position)

93. Art. 25 of the FCE establishes that persons bound by the FCE shall not abuse their position in any way, especially to take advantage of their position for private aims or gains.

94. However, in the present case, based on the evidence on file, the Panel could not establish that one of the constitutive elements of the art. 25 of the FCE is fulfilled. Even if it could be proven that Mr Hayatou took advantage of his position as CAF president in relation to the signing of the LS contract and the failure to disclose

the PS offer to the Executive Committee (which the Panel did not conclude or even address), there is no indication of any private aims or gains that could have motivated such conduct.

95. In other words, the documents of the case cannot attest that Mr Hayatou was driven by private interests, of either a financial or other nature, when signing the 2017-2028 agreement without ensuring that the Executive Committee was informed of the competing offer amounting to USD 1.2 billion prior to the approval of such agreement. While his conduct may be considered as more than a simple omission, the absence of malicious intent prevents the Panel from ruling that art. 25 of the FCE has been breached.

c) Possible violations of art. 13 of the FCE (General duties)

96. With regard to the obligations set forth in art. 13, the Panel found that the potential breaches of the said article were already sufficiently consumed by the respective breach of art. 15 of the FCE.

d) Conclusion

97. Overall, and in the light of the considerations and findings above, the adjudicatory chamber holds that Mr Hayatou by his conduct presently relevant, has violated art. 15 (Duty of loyalty).

D. SANCTIONS AND DETERMINATION OF SANCTIONS

98. According to art. 6 par. 1 of the FCE, the Ethics Committee may pronounce the sanctions described in the FCE, the FIFA Disciplinary Code, 2019 edition ("FDC") and the FIFA Statutes.

99. When imposing a sanction, the adjudicatory chamber shall take into account all relevant factors in the case, including the nature of the offense, the offender's assistance and cooperation, the motive, the circumstances, the degree of the offender's guilt, the extent to which the offender accepts responsibility and whether the person mitigated his guilt by returning the advantage received (art. 9 par. 1 of the FCE). It shall decide the scope and duration of any sanction (art. 9 par. 3 of the FCE).

100. When evaluating the degree of the offender's guilt, the seriousness of the violation and the endangerment of the legal interest protected by the relevant provisions of the FCE need to be taken into account. In this respect, it is important to note that Mr Hayatou held the highest position in African football for 29 years and, as such, had a responsibility to serve the football community as a role model.

101. Mr Hayatou also held a very special and paramount role as Vice-President of the FIFA Council for 27 years, including even a short term as acting FIFA President. In these senior positions, he was at the top of FIFA's organization, and of world football, in terms of influence and image.

102. Therefore, Mr Hayatou has to be considered an experienced and highly professional football official, based on his extensive background both in terms of his various mandates and years of activity. Yet, his conduct revealed a pattern of disrespect for core values of the FCE.

103. Furthermore, Mr Hayatou's role was central, as he was the legal representative of CAF, signing (together with the Secretary General) all documents and letters binding the confederation (in accordance with art. 24 of the CAF Statutes), including the MoU and full form version of the 2017-2028 agreement (as well as the 2008-2016 agreement) with LS. Furthermore, he was presiding all meetings of the CAF Executive Committee in which the commercial dealings of the confederation were discussed and approved, including the one under scrutiny.

104. The Panel also notes that Mr Hayatou has not expressed awareness of wrongdoing or remorse for his actions (a circumstance that is suited to mitigate the culpability of an offender, according to the case law of FIFA's judicial bodies). On the contrary, Mr Hayatou stated that he had done everything he could for CAF during his 29-year tenure, never harming the confederation, and that he consequently felt that he had been wronged by the accusations before the Ethics Committee.

105. The adjudicatory chamber has taken into account Mr Hayatou's assistance and cooperation during the proceedings, notably by providing documentation, complying with the deadlines, providing statements to the Ethics Committee and participating in the hearing in a spirit of cooperation and to clarify the facts.

106. In the determination of the sanction, the Panel has taken into consideration Mr Hayatou's lack of known disciplinary, administrative or judicial previous record and the absence of any known precedents.

107. With regard to the type of sanction to be imposed on Mr Hayatou, the adjudicatory chamber deems that a ban on taking part in any football-related activity is appropriate in view of the inherent, preventive character of such sanction in terms of potential subsequent misconduct. In the light of this, the adjudicatory chamber has chosen to sanction Mr Hayatou by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE; art. 56 par. 2(f) of the FIFA Statutes; art. 11(f) and art. 6 par. 2 lit. c) of the FDC).

108. With respect to the duration of a ban (see art. 9 par. 2 and 3 of the FCE), the adjudicatory chamber points out that art. 15 par. 2 of the FCE (Duty of loyalty) establishes a ban maximum duration of two years.

109. In view of the above, and taking into account all the respective circumstances of the matter, the Panel finds that a ban duration of one year would be proportionate in the present case. Mr Hayatou is therefore banned on taking part in any football-related activity (administrative, sports or any other) at national and

international level for a period of one year. In accordance with art. 42 par. 1 of the FCE, the ban shall come into force as soon as the decision is communicated.

110. In the present case, the adjudicatory chamber is of the opinion that the imposition of a ban on taking part in any football-related activity is not sufficient to sanction the misconduct of Mr Hayatou adequately, in particular given the gravity of the matter which had significant and long-lasting (negative) implications for CAF. Hence, the adjudicatory chamber considers that the ban imposed on Mr Hayatou should be completed with a fine.

111. The amount of the fine shall not be less than CHF 300 and not more than CHF 1,000,000 (art. 6 par. 2 of the FCE in conjunction with art. 6 par. 4 of the FDC). Furthermore, art. 15 par. 2 of the FCE stipulates a financial sanction, represented by a minimum fine of CHF 10,000.

112. In the case at hand – taking into account the circumstances of the case (in particular the fact that Mr Hayatou held prominent official positions in association football, and the detrimental effects of his actions on CAF, such as the significant sanctions imposed on the confederation), the adjudicatory chamber determines that a fine of CHF 30,000 would be appropriate. Accordingly, Mr Hayatou shall pay a fine of CHF 30,000.

E. PROCEDURAL COSTS

113. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE).

114. Mr Hayatou has been found guilty of a violation of arts. 15, 20, 25 of the 2020 FCE as well as art. 28 of the 2018 FCE and has been sanctioned accordingly. The adjudicatory chamber deems that no exceptional circumstances apply to the present case that would justify deviating from the general principle regarding the bearing of the costs. Thus, the adjudicatory chamber rules that Mr Hayatou shall bear the procedural costs (art. 56 par. 1 of the FCE).

115. In the present case, the costs and expenses of the investigation and the adjudicatory proceedings – including a hearing before the adjudicatory chamber – add up to […].

116. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Hayatou shall bear his own legal and other costs incurred in connection with these proceedings.

III. DECISION OF THE ADJUDICATORY CHAMBER

1. Mr Hayatou is found responsible for having breached art. 15 (Duty of Loyalty) of the FIFA Code of Ethics.

2. Mr Hayatou is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for one year, as of notification of the present decision, in accordance with article 7 lit. j) of the FIFA Code of Ethics in conjunction with art. 6 par. 2 lit. c) of the FIFA Disciplinary Code.

3. Mr Hayatou shall pay a fine in the amount of CHF 30,000 within 30 days of notification of the present decision.

4. Mr Hayatou shall pay costs of these proceedings in the amount of […] within 30 days of notification of the present decision.

5. Mr Hayatou shall bear his own legal and other costs incurred in connection with the present proceedings.

6. This decision is sent to Mr Hayatou. A copy of the decision is sent to CAF and to the chief of investigation, Ms Margarita Echeverria.

NOTE RELATED TO THE FINANCIAL SANCTION:

The payment of the fine and costs of the proceedings can be made either in Swiss francs (CHF) to account no. […] or in US dollars (USD) to account no. […], with reference to case no. "Adj. ref. no. 4/2021 (E19-00013)"in accordance with art. 7 let. e) of the FIFA Code of Ethics.

NOTE RELATED TO THE PUBLICATION:

The public may be informed about the reasons for any decision taken by the Ethics Committee. In particular, the chairperson of the adjudicatory chamber may decide to publish the decision taken, partly or in full, provided that the names mentioned in the decision (other than the ones related to the party) and any other information deemed sensitive by the chairperson are duly anonymised (cf. article 36 of the FIFA Code of Ethics).

NOTE RELATED TO THE APPEAL PROCEDURE:

In accordance with art. 82 par. 1 of the FCE and art. 58 par. 1 of the FIFA Statutes, this decision can be appealed against to the Court of Arbitration of Sport ("CAS") in Lausanne, Switzerland (www.tas-cas.org). The statement of appeal must be sent directly to CAS within 21 days of notification of this decision. Within another ten (10) days following the expiry of the time limit for filing the statement of appeal, the appellant shall file with CAS a brief stating the facts and legal arguments giving rise to the appeal (see art. R51 of the Code of Sports-related Arbitration).

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION

Mr Vassilios Skouris
Chairperson of the adjudicatory chamber
FIFA Ethics Committee