RIVISTA DI
DIRITTO ED ECONOMIA DELLO SPORT
ISSN 1825-6678
Vol. III, Fasc. 3, 2007

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

WORLD MOTOR SPORT COUNCIL
DECISION
RE: ARTICLE 151(C) INTERNATIONAL SPORTING CODE – VODAFONE MCLAREN MERCEDES

13 September 2007

The World Motor Sport Council ("WMSC") met on 13th September 2007 to consider a charge that Vodafone McLaren Mercedes ("McLaren") had breached Article 151(c) of the International Sporting Code.

1 Background

1.1 Scuderia Ferrari Marlboro ("Ferrari") has submitted that it received information on 24 June 2007 suggesting that unauthorised use may have been made of certain of its confidential information. Ferrari has submitted that it sub sequently learned that certain of its confidential information had come into possession of Mr. Michael Coughlan ("Coughlan"), the then Chief Designer of McLaren.

1.2 On 3 July 2007, in the context of litigation in the High Court of England and Wales ("High Court Proceedings") between Ferrari and Coughlan, a search was undertaken at the private residence of Coughlan under the authority of that Court. According to the evidence before the WMSC, during that search, a dossier of some 780 pages of confidential information belonging to Ferrari was recovered.

1.3 In light of the results of the search, Ferrari wrote to the FIA late on 3 July 2007 inviting it to consider whether the FIA should launch an investigation into the matter.

1.4 After preliminary investigations, on 12 July 2007 the FIA wrote to McLaren requesting it to appear at an extraordinary meeting of the WMSC in Paris on 26 July 2007 ("the 26 July WMSC meeting"). McLaren was informed that, at the 26 July WMSC meeting, it would be asked to answer the charge that between March and July 2007, in breach of Article 151(c) of the

International Sporting Code, it had unauthorised possession of documents and confidential information belonging to Ferrari. In particular, McLaren was charged with the unauthorised possession of one or more of the following technical documents that could be used for one or more of the following purposes: designing, engineering, building, checking, testing, developing and running a 2007 Ferrari Formula One car, including drawings, lay-out and digital mock-up schemes, technical documents and reports and procedures relating, amongst other things, to weight distribution, aerodynamics, component designs, suspension, gearbox, hydraulic, water, oil and fuel system designs, assembly and building technology designs.

1.5 In response to the charge, McLaren made extensive written submissions in advance of the 26 July WMSC meeting and made detailed oral argument at the meeting itself. McLaren did not dispute that Coughlan had come into possession of Ferrari confidential information but argued, inter alia:

(i) that the Ferrari confidential information in question had not been circulated within McLaren;

(ii) that McLaren had neither used nor benefited from the receipt by Coughlan of the Ferrari confidential information; and

(iii) that the actions of Coughlan in receiving and dealing with the Ferrari confidential information were those of a "rogue employee" for which McLaren should not be held responsible.

1.6 The WMSC considered the arguments and evidence presented by McLaren at the 26 July WMSC meeting and came to the conclusion that McLaren had been in possession of Ferrari confidential information and was therefore in breach of Article 15 1(c) of the International Sporting Code.

1.7 Although a number of unsatisfactory elements were noted during the deliberations, in assessing the gravity of the breach, the WMSC concluded that there was insufficient evidence that the information was used in such a way as to interfere with the running of the FIA Formula One World Championship ("the Championship").

1.8 However, conscious of, inter alia, the fact that several related procedures were ongoing (including, notably, the High Court Proceedings, a criminal investigation in Italy and various internal forensic investigations at McLaren and Ferrari), the WMSC explicitly reserved the right to revisit its conclusions if further information came to light, in particular information showing that Ferrari confidential information had been used by McLaren to the detriment of the Championship.

1.9 The following Decision was therefore reached:

"The WMSC is satisfied that Vodafone McLaren Mercedes was in possession of confidential Ferrari information and is therefore in breach of article 151c of the International Sporting Code. However, there is insuficient evidence that this information was used in such a way as to interfere improperly with the FIA Formula One World Championship. We therefore impose no penalty.

But if it is found in the future that the Ferrari information has been used to the detriment of the championship, we reserve the right to invite Vodafone McLaren Mercedes back in front of the WMSC where it will face the possibility of exclusion from not only the 2007 championship but also the 2008 championship.

The WMSC will also invite Mr Stepney and Mr Coughlan to show reason why they should not be banned from international motor sport for a lengthy period and the WMSC has delegated authority to deal with this matter to the legal department of the FIA."

2 Re-convening of WMSC

2.1 Subsequent to the WMSC Decision of 26 July 2007 (the "26 July Decision"), new evidence came to light which, in the FIA's assessment merited consideration by the WMSC.

2.2 A new meeting of the WMSC was therefore convened for 13 September 2007 ("the 13 September WMSC meeting").

2.3 All relevant parties (including McLaren and Ferrari) were informed of the new meeting and were given copies of the new evidence put before the WMSC (in some limited cases, after redaction of confidential information). McLaren and Ferrari were invited to make written submissions which have been duly received by the WMSC.

2.4 Oral submissions and explanations have also been made on behalf of McLaren and Ferrari and at the 13 September WMSC meeting, the WMSC has put questions to those concerned. Opportunities were also offered and taken up for McLaren and Ferrari to cross-examine each others' witnesses.

2.5 Some of the key elements that the WMSC has considered are set out below. In light of the strong imperative in the interests of the sport to issue a swift ruling, the following does not constitute an exhaustive list of the elements considered nor does it purport to be a summary of all of the evidence put before the WMSC.

3 New Evidence – E-mails between McLaren Drivers

3.1 In the period after the 26 July Decision, the FIA was made aware of a specific allegation that e-mails relevant to the FIA's investigation had been exchanged between certain McLaren drivers.

3.2 The FIA therefore wrote to three McLaren drivers (Mr. Alonso, Mr. Hamilton and Mr. de la Rosa) to establish whether or not this allegation had any basis in fact and requested that they produce copies of any relevant documents, including any electronic communications (howsoever conveyed or stored) which may be relevant to this case and which make reference to Ferrari, Ferrari's employee Nigel Stepney ("Stepney") or any technical or other information coming from or connected with either Ferrari or Stepney.

3.3 The McLaren drivers were reminded of their duty as competitors and Super Licence holders to ensure the fairness and legitimacy of the Formula One World Championship. Given the importance of establishing the facts and that the information might not come out any other way, the FIA offered the assurance that any information made available in response to the letter would not result in any proceedings against the drivers personally under the International Sporting Code or the Formula One Regulations. However, the drivers were notified that if it later came to light that they had withheld any potentially relevant information, serious consequences could follow.

3.4 All three drivers responded. Mr. Hamilton responded that he had no information responsive to the FIA's request. Mr. Alonso and Mr. de la Rosa both submitted e - mails to the FIA which the WMSC finds highly relevant. Subsequently (at McLaren's request) both Mr. Alonso and Mr. de la Rosa made written statements to the WMSC verifying that these e-mails were sent and received and offering context and explanations regarding the e-mails. The e-mails show unequivocally that both Mr. Alonso and Mr. de la Rosa received confidential Ferrari information via Coughlan; that both drivers knew that this information was confidential Ferrari information and that both knew that the information was being received by Coughlan from Stepney.

weight distribution

3.5 On 21 March 2007 at 09.57 Mr. de la Rosa wrote to Coughlan in the following terms:

"Hi Mike, do you know the Red Car's Weight Distribution? It would be important for us to know so that we could try it in the simulator. Thanks in advance, Pedro.
p.s. I will be in the simulator tomorrow."

3.6 In his evidence given to the WMSC, Mr. de la Rosa confirmed that Coughlan replied by text message with precise details of Ferrari's weight distribution.

3.7 On 25 March 2007 at 01.43 Mr. de la Rosa sent an e-mail to Fernando Alonso which sets out Ferrari's weight distribution to two decimal places on each of Ferrari's two cars as set up for the Australian Grand Prix.

3.8 Mr. Alonso replied to this e-mail on 25 March 2007 at 12.3 1 (they were in different time zones). His e-mail includes a section headed *"Ferrari"* in which he says *"its weight distribution surprises me; I don 't know either if it 's 100% reliable, but at least it draws attention"*. The e-mail continues with a discussion of how McLaren's weight distribution compares with Ferrari's.

3.9 Mr. de la Rosa replied on 25 March 2007 13.02 stating the following: *"All the information from Ferrari is very reliable. It comes from Nigel Stepney, their former chief mechanic – I don 't know what post he holds now. He 's the same person who told us in Australia that Kimi was stopping in lap 18. He 's very friendly with Mike Coughlan, our Chief Designer, and he told him that."*

3.10 Mr. de la Rosa's e-mail to Coughlan specifically stated that he wished to receive Ferrari's weight distribution for the purposes of testing it in the simulator the following day *("It would be important for us to know so that we could try it in the simulator")*. Mr. de la Rosa explained to the WMSC at the meeting of 13 September 2007 that when Coughlan responded with the precise details in question, he (de la Rosa) decided that the weight distribution was so different to the McLaren car set up that it would not, in fact, be tested in the simulator. Mr de la Rosa says that thereafter he regarded the information as unimportant. It seems highly unlikely to the WMSC that a test driver would take a decision of this sort on his own. It also is not clear why, if Mr. de la Rosa regarded this information as unimportant, he would still convey and discuss it with Mr. Alonso some days later in his e-mail exchange of 25th March. Mr. de la Rosa's evidence also makes clear that there was no reluctance or hesitation about testing the Ferrari information for potential benefit, but only that on this occasion he says that there was a technical reason not to do so.

3.11 McLaren's Chief Engineer Mr. Lowe gave clear evidence that decisions relating to simulator testing would normally involve a number of engineering and other staff (as would running the tests themselves). It seems highly unlikely that decisions about what would be run in the simulator would by taken by a test driver on his own.

flexible wing and aero balance

3.12 In the same e-mail exchange of 25 March 2007, Mr. de la Rosa states that tests had been carried out on a flexible rear wing which Mr. de la Rosa says is *"a copy of the system we think Ferrari uses"*. The Ferrari car's precise aero balance at 250 kph is also identified. While it is conceivable that the former item could have been copied from observation of the Ferrari car, it is clear from the context of the exchange (it being part of the information that Mr. de la Rosa describes as being "very reliable" because it comes from Stepney) that the latter item is confidential to Ferrari and that it was passed to Mr. de la Rosa by Coughlan, who got it from Stepney.

tyre gas

3.13 Mr de la Rosa's e-mail to Mr. Alonso on 25 March 2007 at 01.43 identified a gas that Ferrari uses to inflate its tyres to reduce the internal temperature and blistering. The e-mail concludes with a statement (in relation to the gas) that *"we'll have to try it, it 's easy!"*.

3.14 Mr. Alonso replied at 12.31 that it is "*very important*" that McLaren test the gas that Ferrari uses in its tyres as *"they have something different from the rest"*, and *"not only this year. there is something else and this may be the key; let 's hope we can test it during this test, and that we can make it a priority!"*.

3.15 Mr. de la Rosa replied on 25 March 2007 13.02 stating the following: *I agree 100% that we must test the [tyre gas] thing very soon.*

3.16 Although the e-mail exchange between Mr. Alonso and Mr. de la Rosa makes clear that they both were enthusiastic about trying the gas apparently used by Ferrari in its tyres, Mr de la Rosa's evidence to the WMSC was that he, on his own, decided to explore with a Bridgestone engineer whether the McLaren team should try this gas. He states that he had no other conversations with any other specialist staff within McLaren. His evidence is that the Bridgestone engineer in question doubted whether the gas would confer an advantage upon McLaren. According to Mr de la Rosa, without further consultation with anyone else at McLaren, and despite the fact that this had apparently been successfully used at Ferrari, the idea was dropped and no actual attempt was made to test the gas in the tyres used by McLaren.

3.17 It seems unlikely to the WMSC that a test driver would engage in such consultations on his own without discussing it any further with anyone else at the team. It also seems unlikely that a decision on whether to pursue

the matter further would be taken by a test driver on his own. Finally, Mr de la Rosa's evidence makes clear that there was no reluctance or hesitation about using the Ferrari information, but only that on this occasion it was concluded that there would be no advantage in doing so.

braking system

3.18 On 12 April 2007 at 12.25 Mr. de la Rosa wrote to Mr. Coughlan and asked " *can you explain me as much as you can, Ferrari 's braking system with the* [reference to detailed technical information]? *Are they adjusting from inside the cockpit*…?"

3.19 After a number of exchanges about whether a description would be too complicated to articulate by e-mail, Mr. Coughlan replies on 14 April 2007 at 14.40 with a technical description which purports to be a description of the principles underpinning the Ferrari braking system. Ferrari have confirmed that the description given is an accurate (though incomplete) description of the principles of its braking system. Coughlan concludes with a statement that *"we are looking at something similar"*. This latter statement strongly sugge sts that the McLaren system was being worked on from a position of knowledge of the details of the Ferrari system, which, even if the Ferrari system not being directly copied, must be more advantageous to McLaren than designing a system without such knowledge.

3.20 The e-mail exchange between Mr. de la Rosa and Mr. Alonso dated 25 March 2007 at 01.43 also describes some aspects of the McLaren braking system and states that *"with the information that we have, we believe Ferrari has a similar system"* and goes on to describe highly specific elements of the Ferrari system (which cannot be set out here for confidentiality reasons but which clearly demonstrate knowledge of Ferrari's confidential information).

stopping strategy

3.21 *As mentioned above, Mr. de la Rosa 's e-mail on 25 March 2007 13.02 stated "all the information from Ferrari is very reliable. It comes from Nigel Stepney, their former chief mechanic – I don 't know what post he holds now. He 's the same person who told us in Australia that Kimi was stopping in lap 18. He 's very friendly with Mike Coughlan, our Chief Designer, and he told him that.*

3.22 The evidence before the WMSC is that Mr. Räikkönen (Kimi) actually stopped at lap 19 at the Australian GP. However, the fact remains that Mr

de la Rosa cited this information as a reason to believe that Stepney was a reliable source of information. This strongly suggests that McLaren had at least taken account of this information in determining its own strategy.

3.23 The evidence before the WMSC also demonstrates that Stepney had fed information through Coughlan regarding which lap one or more of the Ferrari drivers would stop at during the Bahrain Grand Prix. McLaren has sought to discredit the significance of this information as it proved in the end to be inaccurate. However, the evidence before the WMSC was that the safety car had been deployed early in the race making it likely that stopping strategies would be adjusted. This deployment of the safety car could not have been known in advance of the race and the fact that the stoppage predictions proved inaccurate does not mean that McLaren had not considered and taken account of the information that had been received in determining its own strategy before the race.

3.24 In any case, as there is no legitimate context in which another teams' stopping strategy would be revealed to McLaren in advance, there is very clear evidence that both drivers knew that they were receiving unauthorised and confidential Ferrari information. To the WMSC's knowledge, no effort was taken to report or stem this flow.

4 New Evidence – Communications between Coughlan and Stepney

4.1 The evidence put before the 26 July WMSC meeting indicated that a limited number of contacts had occurred between Coughlan and Stepney. Coughlan's affidavit (submitted in the context of the High Court Proceedings) identified a number of such contacts and described incidents where specific Ferrari confidential information was transferred to him. The WMSC considered these contacts but had no specific evidence of further or other contacts. The focus at the 26 July WMSC meeting was on the circumstances surrounding the transmission of the 780 page Ferrari dossier discovered at Coughlan's home.

4.2 New evidence has come to light which strongly indicates that the transmission of confidential Ferrari information from Stepney to Coughlan was not limited to the 780 page dossier. This evidence demonstrates that a far greater level of communication existed between Coughlan and Stepney than was appreciated at the 26 July WMSC meeting. This evidence was submitted by Ferrari and is deemed credible as it originates from the Italian police and is the result of an official analysis of records of telephone, SMS and e-mail contacts between Coughlan and Stepney. The evidence included the following.

4.3 In its report "Allegato 18", the Italian Police demonstrated that in the period 21 March to 3 July 2007, Coughlan received 23 calls from Stepney's personal mobile phone and made four calls to that phone. In the same period, Coughlan received 124 SMS messages from Stepney and sent 66 SMS messages to Stepney.

4.4 In its report "Allegato 9" the Italian Police have identified logs which show 23 e - mails passed between Coughlan and Stepney between 1 March and 14 April 2007.

4.5 In its report "Allegato 10" the Italian police have identified a further 98 SMS messages and a further eight telephone calls (on different phones) between Coughlan and Stepney between 11 March and 14 April 2007.

4.6 In total, at least 288 SMS messages and 35 telephone calls appear to have passed between Coughlan and Stepney between 11 March 2007 and 3 July 2007.

4.7 The number of contacts increased considerably during private tests carried out by Ferrari in Malaysia at the end of March 2007 and in the run up to and during the days of the Grands Prix in Australia on 18 March 2007, Malaysia on 8 April 2007, Bahrain on 15 April 2007 and Spain on 13 May 2007.

4.8 The evidence of the Italian police that has been produced also states that Stepney sought technical details from Ferrari's chief mechanic, Mr Uguzzoni, about tests carried out by Ferrari in Malaysia in a way that drew attention within Ferrari at the time.

4.9 In addition, e-mails between McLaren drivers were produced to the 13 September WMSC meeting (see above) stating clearly that Coughlan had received information from Stepney regarding the Ferrari car and had passed this information to others within the McLaren team.

4.10 Neither Ferrari nor McLaren have ever disputed (whether at the 26 July WMSC meeting or since) that confidential Ferrari information was passed from Stepney to Coughlan during the period in question. However, the new evidence regarding the number and timing of the contacts makes it far more likely that there was a systematic flow of Ferrari confidential information to Coughlan leading to the conclusion that the illicit communication of information was very likely not limited to the transmission of the Ferrari dossier discovered at Coughlan's home on 3 July 2007. This conclusion is corroborated in the e-mails exchanged between McLaren's drivers (see above).

4.11 McLaren stated in its submissions for the 13 September WMSC meeting that this new evidence on the number and timing of the communications merely confirmed what was already known: that Coughlan and Stepney were illicitly sharing Ferrari confidential information. It has also been sugge sted by McLaren that Coughlan and Stepney were acting on their own account and that possibly they were planning to seek new employment together elsewhere.

4.12 Without drawing a definitive conclusion on this point, the WMSC considered that it was difficult to reconcile this version of events with the number and timing of the contacts described above as if Coughlan and Stepney had simply been sharing information to facilitate a plan to search for new employment there would appear to be no particular reason for the contacts to have intensified around the tests and the Grands Prix and no reason for Coughlan to share information with McLaren's drivers. Rather, it appeared more likely that the information being exchanged related to those tests and the Grands Prix.

4.13 Further, in light of Coughlan's role within the McLaren team, it had seemed unlikely to the WMSC at the meeting on 26 July 2007 that Coughlan himself would have been able to make any direct or immediate use (whether personal or within his role at McLaren) of up to date information relating to the Ferrari car at the site of different Grands Prix. However, as detailed above, at the 13 September WMSC meeting, the WMSC heard new evidence to suggest that this was not the case and that Coughlan had, in fact, communicated to at least one McLaren driver statements from Stepney of which lap the Ferrari drivers would stop at during both the Australian Grand Prix and the Bahrain Grand Prix. These communications between Coughlan and at least one of the McLaren drivers coincided exactly in time with some of the most intense period of contact between Coughlan and Stepney described above.

4.14 In the absence of another explanation, in light of the number and timing of the communications between Coughlan and Stepney and the e-mail exchanges between the McLaren drivers (see above), the WMSC regards it as reasonable to infer that Coughlan was in receipt of a flow of confidential Ferrari information from Stepney and that at least some of that information was communicated to others within McLaren (e.g. Mr. de la Rosa and Mr. Alonso).

4.15 In sum, the new information on the number and timing of the contacts between Coughlan and Stepney inevitably had an impact on the WMSC's appreciation of the nature of the contacts between Coughlan and Stepney,

on its appreciation of the emails between the drivers and on the likelihood of Ferrari confidential information received by Coughlan having an influence on his work with McLaren.

5. Coughlan's Role at McLaren

5.1 McLaren's submission made for and at the 26 July WMSC meeting indicated that Coughlan had a relatively limited managerial role and that it would not be possible for him to propose ideas without having to explain their provenance. In McLaren's submission, this demonstrated that, despite having detailed Ferrari technical information, Coughlan could not have used any of this information to benefit McLaren without a significant number of people at McLaren knowing. McLaren submitted statements from a number of its engineers that those engineers were not aware of changes made to the McLaren car using confidential Ferrari information.

5.2 The submissions made for the 13 September WMSC meeting show that that Coughlan may have had a more active role in the design of the McLaren car than previously appreciated by the WMSC.

5.3 The WMSC does not have evidence that any complete Ferrari design was copied and subsequently wholly incorporated into the McLaren car as a result of Coughlan passing confidential from Stepney to McLaren. However, it is difficult to accept that the secret Ferrari information that was within Coughlan's knowledge never influenced his judgement in the performance of his duties. It is not necessary for McLaren to have copied a complete Ferrari design for it to have benefited from Coughlan's knowledge. For example, the secret Ferrari information cannot but have informed the views Coughlan expressed to others in the McLaren design department, for example regarding which design projects to prioritise or which research to pursue. The advantage gained may have been as subtle as Coughlan being in a position to suggest alternative ways of approaching different design challenges.

6 Evidence of Mr. Neale

6.1 At the 26 July WMSC meeting (and the evidence was repeated at the hearing of 13 September) it was noted that Coughlan had revealed to his superior at McLaren, Mr. Neale, that Stepney had attempted to pass secret Ferrari information to Coughlan. A firewall was set up at the instigation of Mr. Neale to prevent further contacts from Stepney and Coughlan was directed to cease contact with Stepney. Within a matter of weeks thereafter, Coughlan attempted to show some photographs to Mr. Neale which, according to

Mr. Neale himself, because of the manner in which they were produced, sugge sted to Mr. Neale that they should not have been in Coughlan's possession. Rather than establish the facts and take appropriate action as his superior at McLaren, Mr. Neale advised Coughlan to destroy the photographs. Coming as soon as it did after McLaren had been required to install a firewall and had directed this same employee to cease contact with a known source of Ferrari confidential information, the WMSC notes that it is very unsatisfactory that no further action was taken to investigate this matter further and make appropriate disclosures to the FIA as regulator.

7. Nature of information held by McLaren

7.1 The WMSC believes that the nature of the information illicitly held by McLaren was information of a nature which, if used or in any way taken into account, could confer a significant sporting advantage upon McLaren.

7.2 Evidence was submitted at the 13 September WMSC meeting by McLaren's Engineering Director, Mr. Lowe, that the dossier of Ferrari information found in Coughlan's possession did not contain information of particular use or interest to McLaren on the basis that the McLaren car was significantly different to the Ferrari car. This submission was apparently made on the basis of the review of the index to the dossier of Ferrari documents (Mr. Lowe having stated that he had not seen the dossier itself).

7.3 The WMSC does not accept this account. In both WMSC hearings and in written submissions, and from the direct knowledge of the WMSC Members, Formula One teams have great interest in each others' technology and go to considerable lengths (within the rules) to study each other's designs and innovations through direct observation, photographic evidence and other means. In addition the technical information in Coughlan's possession was, in the WMSC's appreciation, highly significant and could certainly confer a sporting advantage, if used or taken into account.

8 WMSC's Assessment

8.1 The WMSC has carefully considered the evidence and submissions of all parties.

8.2 It has concluded (and intends to re-affirm) that a breach of Article 15 1(c) has occurred.

8.3 In the 26 July Decision, the WMSC found a breach of Article 15 1(c). In assessing the gravity of that breach, it took account of a number of factors

including any evidence (or, at the time, lack of it) to suggest that the Ferrari information improperly held had actually been used and actually conferred a sporting advantage. Other factors that it took into account included the argument that there was little evidence of the information in question being disseminated to others at McLaren, what the WMSC then understood to be Coughlan's more limited role and the argument that Coughlan was a single rogue employee.

8.4 McLaren has made detailed submissions indicating that none of the information received enhanced the McLaren car. McLaren has suggested to the WMSC that unless "actual use" and a demonstrated and itemised performance advantage can be proven beyond a reasonable doubt (i.e. to a criminal law standard of proof), the WMSC is not permitted at law to impose a penalty.

8.5 The WMSC rejects this suggestion. The WMSC has full jurisdiction to apply Article 151(c) and stresses that it is not necessary for it to demonstrate that any confidential Ferrari information was directly copied by McLaren or put to direct use in the McLaren car to justify a finding that Article 151(c) was breached and/or that a penalty is merited. Nor does the WMSC need to show that any information improperly held led to any specifically identified sporting advantage, or indeed any advantage at all. Rather, the WMSC is entitled to treat possession of another team's information as an offence meriting a penalty on its own if it so chooses.

8.6 The fact that in its 26 July Decision, based on more limited evidence, the Council had a different appreciation of the gravity of McLaren's breach does not lead to the creation of a legal test regarding the WMSC's burden of proof. The WMSC could have imposed a penalty with the 26 July Decision based on the evidence therein, but chose not to (based in part on McLaren's submissions that there had been no dissemination of Ferrari information beyond Mr Coughlan).

8.7 The WMSC has taken note of McLaren's position that an injustice would occur if a penalty were imposed without the FIA having accepted McLaren's offer to inspect the McLaren premises and designs for evidence of Ferrari technology having been copied. However, as noted above, neither the finding of a breach nor the imposition of a penalty require evidence of McLaren having directly incorporated Ferrari technology. Nonetheless, the WMSC have noted and taken account of the open and co-operative nature of this offer and taken this into account in reaching this Decision.

8.8 In light of the evidence now before it, the WMSC does not accept that the

only actions of McLaren deserving censure were those of Coughlan. While this situation might have originated with the actions of a single rogue McLaren employee acting on his own and without McLaren's knowledge or consent, evidence is now available which, when taken in its full context, makes clear that:

- Coughlan had more information than previously appreciated and was receiving information in a systematic manner over a period of months;
- the information has been disseminated, at least to some degree (e.g. to Mr. de la Rosa and Mr. Alonso), within the McLaren team;
- the information being disseminated within the McLaren team included not only highly sensitive technical information but also secret information regarding Ferrari's sporting strategy;
- Mr de la Rosa, in the performance of his functions at McLaren, requested and received secret Ferrari information from a source which he knew to be illegitimate and expressly stated that the purpose of his request was to run tests in the simulator;
- the secret information in question was shared with Mr. Alonso;
- there was a clear intention on the part of a number of McLaren personnel to use some of the Ferrari confidential information in its own testing. If this was not in fact carried into effect it was only because there were technical reasons not to do so;
- Coughlan's role within McLaren (as now understood by the WMSC) put him in a position in which his knowledge of the secret Ferrari information would have influenced him in the performance of his duties.

8.9 It seems to the WMSC clear that Coughlan's actions were intended by him to give McLaren a sporting advantage. He fed information about Ferrari's stopping strategy, braking system, weight distribution and other matters to McLaren's test driver. Furthermore, in light of Coughlan's undoubted experience, he is likely to have known a great deal about how to confer an advantage and the roles of different personnel within the team. It seems most unlikely that he confined his activities to sharing Ferrari's information with Mr. de la Rosa. It also seems most unlikely that his own work was not influenced in some way by the knowledge regarding the Ferrari car that he is known to have possessed.

8.10 Furthermore, it seems entirely unlikely to the WMSC that any Formula One driver would bear the sole responsibility for handling or processing sensitive Ferrari information (e.g. on substances used to inflate tyres or weight distribution) or deciding how or whether such information would be used or tested. In light of his experience, Coughlan would have known this and if he intended to reveal this information to McLaren, he is unlikely to have done so only to Mr. de la Rosa .

8.11 The WMSC therefore finds that a number of McLaren employees or agents were in unauthorised possession of, or knew or should have known that other McLaren employees or agents were in unauthorised possession of, highly confidential Ferrari technical information. In addition, the WMSC finds that there was an intention on the part of a number of McLaren personnel to use some of the Ferrari confidential information in its own testing.

8.12 The evidence leads the WMSC to conclude that some degree of sporting advantage was obtained, though it may forever be impossible to quantify that advantage in concrete terms.

8.13 These factors lead the WMSC to an appreciation of the gravity of McLaren's breach which is materially different to the appreciation in the 26 July Decision. On this occasion the WMSC believes that a penalty is merited.

8.14 Having indicated to McLaren that a penalty was likely to be imposed, the WMSC heard submissions regarding the appropriateness of penalties from McLaren and from counsel for Mr. Hamilton. The WMSC has reached its decision having taken due account of those submissions.

9 Decision

9.1 For the foregoing reasons, the WMSC finds McLaren in breach of Article 151(c) of the International Sporting Code.

9.2 The WMSC therefore, in accordance with the provisions of the International Sporting Code, imposes the following sanctions relation to the 2007 FIA Formula One World Championship:
- a penalty consisting of exclusion from and withdrawal of all points awarded to McLaren in all rounds of the 2007 Constructors' Championship. For the avoidance of doubt, McLaren will be permitted to race in the remaining rounds of the 2007 Championship but will not be permitted to score points in the Constructors Championship or attend the podium in the event of a top three finish in any of the remaining races in the 2007 season. Points scored by other competitors in the Championship to date will not be affected further to the withdrawal of McLaren's points;
- a fine of USD100 million (less any sum that would have been payable by Formula One Management Limited on account of McLaren's results in the 2007 Constructors Championship had it not been excluded). This fine shall be payable within three months from the date of this Decision.

9.3 Exceptionally, because primary responsibility must rest with McLaren, in

the interests of the sport and also because McLaren's drivers were offered immunity from individual sanction by the President of the FIA in his letter dated 30 August 2007, the WMSC does not consider that it is appropriate to impose any sanction on them individually or impose sanctions on McLaren which would affect these drivers' individual Championship standings. As such, both McLaren drivers will retain all the drivers' Championship points they have won so far in the 2007 season and will be permitted to win drivers' Championship points and attend the podium in the remaining races of the 2007 season.

9.4 In addition, in the interest of ensuring that McLaren is not unfairly advantaged as against any of its competitors in the 2008 Championship, the WMSC instructs the FIA technical department to conduct an investigation of McLaren's preparatory work on its 2008 car with a view to determining whether that car incorporates any Ferrari confidential information and report back before the WMSC meeting of December 2007. Once the WMSC has considered this report, a separate Decision will be taken regarding McLaren's participation in the 2008 Championship, including whether any penalty should be imposed. This present Decision does not in any way affect McLaren's entitlement to participate in the 2008 Championship if the entry conditions are fulfilled.

9.5 McLaren is reminded of its right of appeal. In the event that an appeal is lodged with the FIA International Court of Appeal, the effect of this Decision will not be suspended pending the outcome of that appeal.

Signed:

Max Mosley
FIA President

Paris, 13 September 2007