

β CASE

SUMMARY OF FACTS:

1. This dispute arose from the series of contractual relationship between Blue Corporation (“Blue”) and Red Corporation (“Red”) (collectively the “Parties”) in respect of the sales and purchase of α and β series and maintenance of the same.
 2. As will be demonstrated below, the cause of the present dispute is the lack of Red’s willingness to adhere to the terms of the agreement between the Parties, in particular the Maintenance Agreement and the Memorandum of Understanding (“MoU”) as well as the established practice between the Parties in relation to the upgrade of the equipment. Consequently, Blue submits that Red is obliged to provide the the β -7 series to Blue and pay for the liquidated damages expressly provided in the Maintenance Agreement for its failure to provide the equipment. In doing so, Red is not entitled to set-off its receivables from Yellow Corporation (“Yellow”) against Blue.
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I. Red is under obligation to provide β -7 series to Blue

A. Red is obliged to provide the β -7 series under the Maintenance Agreement

3. Red is under obligation to provide the β -7 series to Blue, as Article 2 of the Maintenance Agreement [Exhibit 5] stipulates that Red shall replace parts and offer program updates and maintain the equipment in good operating condition for the fees paid for the maintenance.
4. Red came up with the β -7 series in August 2017 (¶33) and argues that it is not obligated to supply it free of charge claiming that the β -7 series is not a program update nor a part replacement, because it was developed independently and has broadened its application.
5. To start with, it operates without physical sensors worn by athletes. However, it is an undisputed fact that the β -7 series was built on the previous β -6 series. This fact alone shows that it is a part replacement rather than an independent product. Also, the fact that it has a new feature of identifying opponent’s weaknesses and flaws does not amount to a new independent product. This is because the β -6 series, the previous version, also had the same feature of identifying weaknesses and flaws. Moreover, the fact that the β -7 series resolved some bugs which had been found in the β -6 series (¶33) shows that the β -7 series is a part of Red’s obligation to maintain the equipment in good operating condition.
6. As demonstrated above, the β -7 series is not an independent product and was built on the previous version, it proves that the β -7 series involve a part replacement, a program update and an equipment maintenance. Therefore, Red is obliged to provide β -7 to Blue under Article 2 of the Maintenance Agreement.

B. Red is obliged to provide the β -7 series under the Memorandum of Understanding

7. Pursuant to Article 4 of the MoU [Exhibit 6], when Red upgrades the α , β series using the feedback and data collected at the Blue Village, Red will provide the new version as the test version exclusively to Blue. Two staff members were stationed at Blue

Village to collect feedback and data (¶27) and with the feedback and data obtained, the β -7 series resolved some bugs which had been found in the β -6 series and made minor changes to the design of the display screen and the color of the text (¶33).

8. Red might argue that the feedback and data were never used to make other improvements except for the above-mentioned and therefore Red is not obliged to provide the β -7 series to Blue under the MoU. However, nothing in the MoU nor negotiations relating to the MoU suggest that the upgrade of the equipment must be *solely* based on the feedback and data collected at Blue Village to apply Article 4 of the MoU.
9. In case of ambiguity, the contract shall be interpreted according to the common intention of the parties according to Article 4.1(1) of the UNIDROIT. In doing so, regard shall be given to the preliminary negotiations between the parties pursuant to Article 4.3(a). During the meeting of December 2012, when Blue and Red concluded the MoU, Hawk from Red responded to Sapphire's request of giving upgrades to Blue as a test version by saying that for future upgrades, they would use feedback and data they get from Blue Village and other sources as well (¶25). Based on this understanding, the Parties concluded the MoU. Accordingly, it was Red's intention and assumption that the future upgrades using the feedback and data from Blue and other sources will be provided to Blue as a test version.
10. Given the fact that Red used the feedback and data obtained at Blue Village in order to produce the β -7 series and that Article 4 does not require upgrades to be solely based on feedback and data obtained from Red, it is our submission that Red is under obligation to provide β -7 to Blue under the MoU.

C. Red is obliged to provide the β -7 series under the practice the Parties have established.

11. According to Paragraph 1 of Article 1.9 of the UNIDROIT Principles of International Commercial Contracts ("UNIDROIT"), the parties are bound by any usage to which they have agreed and by any practices which they have established between themselves. As will be explained below, Blue submits that a practice of providing an upgraded version of the β series was provided to Blue for free of charge was established between the Parties and Blue can rely on such practice for the receipt of the β -7 series.
12. During the 7 years of the business relations between the Parties in relation to the β -7 series, Red never charged for the upgrades that involved replacements of the main body of the sensors and amended programs (¶34). This is true even for the β -6 series, which incorporates a new functionality of spotting and identifying an athlete's weaknesses and areas requiring improvements, and the replacement of β -5 series with the β -6 series was offered as part of a regular maintenance (¶27). Also, taking into consideration the fact that Red assured the equipment can be used for at least 10 years (¶22), Red established a reasonable expectation for Blue to provide the β series as a part of their maintenance work in conformity with their practice since the commencement of Parties' contractual relationship in 2011. Thus, Red is bound by its established practice, which is to provide β -7 series free of charge as a test version, pursuant to Article 1.9(1) of the UNIDROIT.

D. Alternatively, Red is obliged to provide the β -7 series to Blue under Article 10 of the Maintenance Agreement

13. Even if the β -7 series is not considered as a part replacement and a program update, which we deny, Red is still under obligation to provide the β -7 series to Blue under Article 10 of the Maintenance Agreement. The provision states that Red has reasonable effort obligation to provide the services not covered by the Maintenance Agreement at 90% of its then current and standard hourly rates.
14. Article 6(e) of the Maintenance Agreement set out that provision of the new version of the equipment shall not be included in the Services (as defined in Article 2 of the Maintenance Agreement). It further provides that if Blue requested Red to perform such service, the service will be provided under Article 10 of the Maintenance Agreement.
15. Red asserts that the β -7 series was developed independently and is in a different league rather than being a mere upgraded version of the previous one. Despite such assertion, the facts stipulate that the β -7 series was built based on the β -6 series (¶33) and β -5 was created based solely on the feedback and data obtained from Blue Village (¶26). In other words, the β -7 series would not have been developed without its predecessors, β -5 and β -6. Therefore, it is unreasonable to consider the β -7 series as an independent.
16. The facts also illustrate that Red did not fulfil its obligation to use reasonable efforts. Hence, Red is alternatively obliged to provide β -7 to Blue under Article 10 of the Maintenance Agreement.

E. Non – performance of Red does not constitute a valid exemption.

17. The UNIDROIT provides for several legal grounds, such as force majeure among others, that excuse a party from the performance of its obligations. Article 7.1.7. (1) of the UNIDROIT stipulates that non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.
18. It is expected that Red would argue that it is excused from its obligation to provide the β -7 series to Blue due to force majeure, because the Sports Agency of the Negoland passed a directive as to the effect that Red refrains from the sales of the β -7 series to other countries. However, the directive cannot be considered as force majeure as it could have been avoided or overcome.
19. Negoland is a constitutional democracy (¶1) and such countries typically have a principle of ‘Rule of law’. The principle applies both in public and private laws to some extent. In this case, it is applicable in the view of credibility and legality of the directive as the Rule of law also comprises substantive ideals like respect for private property rights. According to the Black’s law dictionary, Rule of law is the predominance that is absolute of an ordinary law over every citizen regardless of that citizens power, and therefore the Sports Agency directive shall respect private property and economic rights.
20. There is no doubt that the mission of any business entity is to make profit and trade its products freely. Red is an independent business entity which operates in technology

industry, but not a division of the Sports Agency that furthers its national interest. And imposing restrictions for independent business entity's business trade against their economic and private property rights is unlawful.

21. Since Negoland is a constitutional democracy with Rule of law which respects economic rights, Red must have an opportunity to challenge the directive and overcome this clearly unlawful directive, which it did not. The facts stipulate that Red has built strong relationship with the Sports Agency of Negoland and deems the relationship of great importance to them (¶13). It can be inferred that Red had a great chance to object against such an unlawful decision or negotiate with the Sports Agency to fulfil their contractual obligations to Blue. Also, it is undisputed fact that Red did not sent any notice to Blue, let alone regarding the development of the β -7 series. In fact, Blue discovered that the β -7 series was developed by themselves (¶33) and no notice or statements have been made to Blue from Red. Thus, established that Red could have avoided and overcome the unlawful decision of the Sport Agency, the directive is not force majeure.

II. The tribunal should order Red to provide β -7 series to Blue.

22. Article 7.2.2 of the UNIDROIT sets forth that “Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance”. And according to its comment, under the Principles specific performance is not a discretionary remedy, i.e. a court must order performance, unless one of the exceptions laid down in this Article applies.
23. As demonstrated above, Red cannot legitimately rely on the unlawful directive in order to avoid its obligation to provide the β -7 series to Blue. Also, other exceptions laid down in Article 7.2.2, impossibility in fact and performance is unreasonably burdensome or expensive among others, are not applied as illustrated in the facts. Hence, since Red is obliged to provide the β -7 series to Blue, the Tribunal should order Red to provide the β -7 series to Blue.

III. The Tribunal should order Red to pay liquidated damages and Red is not allowed to set-off Blue`s obligation of US\$3 million

A. Red is under obligation to pay liquidated damages

24. Liquidated damage is the predetermined amount of compensation the aggrieved party should get if one of the Parties breaches the contract. According to Article 7 of the Maintenance Agreement, if Red fails to perform its obligations, Red is obliged to pay US\$5 million of liquidated damages to Blue. As Red breached its obligation to provide the β -7 series under Article 2, and alternatively Article 10 of the Maintenance Agreement, Red is liable to pay liquidated damages to Blue.
25. If the Tribunal finds that Red did not breach the Maintenance Agreement, which we deny Red still breached its obligation under Article 4 of the MoU. This is because the MoU served as an amendment to the Maintenance Agreement, and therefore an integral part of the Maintenance Agreement.
26. In accordance with Article 3.1.2 of the UNIDROIT, a contract can be concluded, modified or terminated by the mere agreement of the parties, without any further

requirements. The MoU is an amendment to the Maintenance Agreement for the following reasons. The Maintenance Agreement [Exhibit 5] concerns the services to be provided regarding α and β series, including provisions of updates; and the MoU covers procurements of further updates with the feedback and data collection. Therefore, both documents regulate the updates of the products and the MoU is based on the relationship that was already established by the Maintenance Agreement. Additionally, the MoU was drafted with mutual consent of both Parties as an amendment to the Maintenance Agreement (¶25). Consequently, in the preamble of the MoU it is clearly stated that both Parties agree and accept the conditions of the MoU as an addition to the existing Maintenance Agreement.

27. Pursuant to Article 7.4.13 of the UNIDROIT, if a party who does not perform their duties is obligated to pay a specified sum to the aggrieved party for such nonperformance; the aggrieved party is entitled to that sum irrespective of its actual harm. Since Red did not fulfil its obligation to provide β -7 series to Blue, such breach of the obligation under the MoU allows Blue to pursue liquidated damages. Red is therefore under an express contractual obligation to pay US\$5 million to Blue as liquidated damages.

28. Blue is entitled to claim both the β -7 series and liquidated damages at the same time, because Article 7.4.1 of the UNIDROIT provides that non-performance gives the aggrieved party a right to damages in conjunction with other remedies. Therefore, Blue's claim to provide the β -7 series does not preclude its claim for liquidated damages.

B. Red is not allowed to set-off Blue's obligation of US\$3 million to Red against its obligation to pay liquidated damages

29. Pursuant to Maintenance Agreement dated June 15, 2017 between Yellow and Blue, Yellow was obliged to provide maintenance work on the underwater cameras and sensors installed at Blue's swimming pool. However, Yellow failed to carry out the maintenance works scheduled in November and December of 2017. By January 2018, the sensors and cameras were removed and re-installed, because their performance was deteriorated causing US\$3 million damage to Blue (¶32).

30. In accordance with Article 9.1.13 of the UNIDROIT, the obligor may assert against the assignee all the defenses that the obligor would have been able to assert against the assignor. Because Yellow had an obligation to provide maintenance service under the Maintenance Agreement [Exhibit 8], Blue has a right to claim against Red due to the lack of maintenance of Yellow.

31. Red may argue that Red has no obligation to perform maintenance, as it is not a party to the Maintenance Agreement between Yellow and Blue. However, the Maintenance Agreement between Yellow and Blue is an integral part of the Sales Agreement dated June 15, 2017 between Yellow, Blue for the following reasons.

32. First, Yellow and Blue signed the Sales Agreement and Maintenance Agreement on the same day, June 15, 2017. Second, according to the preamble of the Maintenance Agreement, Maintenance Agreement is a further addition to the Sales Agreement. Third, intention of both Parties indicated that the agreements are integral. In accordance with Articles 4.1(1) and 4.3(a) of the UNIDROIT, a contract shall be interpreted according

to the common intention of the parties giving regard to relevant circumstances. Particularly, during preliminary negotiation, Orange of Yellow told Blue to consider the maintenance contract as attached to the product purchase (¶29). It made it clear that the Blue could not purchase the products without concluding the Maintenance Agreement and providing regular maintenance was a crucial part of the functionality.

33. Further, pursuant to Article 1.8 of the UNIDROIT, a Party cannot act inconsistently with an understanding it has caused the other party to act. In applying this criterion, it must be considered that Blue had an understanding that Red will give the best support. During the phone call between Sapphire and Swan, Red expressed that it will give the best support possible to keep proper maintenance by Yellow, which shows that it was already aware of the obligation of regular maintenance (¶31). Therefore, Red is not allowed to act inconsistently with the understanding it has caused Blue, in particular, it can't setoff against Blue.
34. For the reasons stated above, Red must pay the damages that have incurred due to Yellow`s failure to perform maintenance.
35. Having been established that Blue suffered damages amounting to US\$3 million, Blue has the right to seek the damages under Article 9.1.13 of the UNIDROIT. And in accordance with Article 8.5 of the UNIDROIT, Blue has the right to discharge its damage of US\$3 million with Red`s US\$3 million claim. On the other hand, Red is not allowed to set-off Blue`s obligation of US\$3 million against its obligation to pay liquidated damages.

EVENT CASE

SUMMARY OF FACTS

36. This dispute arose in relation to Blue and Red`s joint organization of a Nego-Abu Cup ("Event") following the agreement signed in 2016 ("Agreement"). Under the Agreement, it has been agreed that Negoland will host track&field, tennis and swimming, whereas Arbitria will host basketball, volleyball and golf. Both Parties are responsible for the participation of athletes and preparing suitable venues. Ticket sales and operating costs for the games will be the responsibility of the host countries and the sales profits from telecasting will be shared equally.
 37. However, individual games held in Negoland faced some troubles due to non-appearances of key athletes. As will be demonstrated below, Blue is not responsible for such non-appearances of the key athletes for reasons attributable to Red. In this dispute, Red is seeking a total of US\$2.1 million of damages from Blue due to its breach of the Agreement. Meanwhile, Blue claims that it is entitled to receive US\$500.000 from Red as its share of the profit generated from streaming the Event.
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I. Blue is not in breach of the Agreement because non-appearances of Bolt, Williams and Hosszu are justified.

A. Blue was not in breach of the Agreement regarding Bolt's failure to participate in Nego-Abu Cup since the non-performance was caused by Red.

38. Carl Bolt was not able to participate in Nego-Abu Cup due to Red's decision to cancel his appearance. Despite Blue's legitimate assurance that his suspension would be shortened since Bolt's action was without "gross error or negligence" and Bolt would be able to appear in Nego-Abu Cup (¶40), Red made a unilateral decision to exclude him from the competition. Pursuant to Article 7.1.2 of the UNIDROIT, a Party may not rely on the non-performance if it was caused by their own act or omission.

39. Furthermore, Bolt was not able to compete in the Nego-Abu Cup due to Red's failure to **cooperate** with their **best effort** in accordance with Article 1(4) of the Agreement. Article 1(4) of the Agreement states that the Parties shall use their best efforts and shall **cooperate** with each other in good faith to make the Event successful. As illustrated in the UNIDROIT Comment regarding Article 7.1.2, where one party's conduct infringes the obligation of good faith and cooperation, non-performance of the other party is to be excused. Therefore, Blue is not responsible for Bolt's failure to appear for the reason that Red had not used its **best effort** to secure the participation of a key athlete.

40. The obligation to cooperate is crucial for the Parties as expressed in Article 1(4) of the Agreement, as well as Article 5.1.3 of the UNIDROIT, which states that each party shall cooperate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations. Blue filed an appeal regarding the Sports Arbitration's decision because there was no gross error or negligence, and when Red did not recognize Blue's assurance to succeed in the hearing, Blue also suggested that they should wait until the decision is made. As mentioned before, Red denied every suggestion without a legitimate reason, whereas Blue used its best effort to cooperate. Therefore, since Red's decision regarding Bolt's cancelled appearance is the act that caused the non-performance, Blue is not responsible for the damages.

B. Margaret Williams was not able to compete in Nego-Abu Cup because the non-performance was caused by Red

41. Margaret Williams was not able to compete in the Event, for the reason that Red refused to change the venue. As stated in Article 4(3) of the Agreement, each Party is responsible to arrange the venue suitable for the games. Williams requested the change of venue due to potential heatstroke. In this case, Red's failure to fulfil its duties under the Agreement caused the non-appearance of Williams. Therefore, in accordance with Article 7.1.2 of the UNIDROIT, a party may not rely on the non-performance if it was caused by their own act or omission.

42. In Article 3(2) of the UNIDROIT, it was acknowledged by both Parties that the participation of key athletes is an important element for the success of the event. Hence, the term "suitable venue" is to be interpreted as each Party is responsible to provide venue suitable to assure the participation of the key athletes.

43. It was announced that there is about 50% possibility that the temperatures might reach 40 degrees Celsius during the event (¶42). It is expected for any reasonable person, in

this case a world-class athlete, to fear for health hazards when such extreme heat is combined with the subtropical humidity of Negotown, the city located next to Negoland [Exhibit 1]. Due to the potential heat-wave, Williams requested implementation of anti-heat measures and change of venue, which Red eventually declined. Williams' request was justifiable and consequently, it shows that Red breached its obligation under the Agreement by not using their best effort and co-operation to provide a suitable venue for the expected weather condition.

44. Regardless of the fact that the temperature reached 35 degrees Celsius and not 40 on the actual day of the competition, Williams' non-appearance would still be justified because various sport associations, including Women's Tennis Association's Rulebook, state that an athlete shall be suspended of playing if Heat Stress Index meets or exceeds 40.1 degrees Celsius.¹ When calculated with relative humidity and air temperature, the Heat Stress Index was 57.8° on the day of the competition even though the temperature was slightly lower than predicted.
45. Therefore, failure to meet the request of Williams resulted in Red's non-performance of its obligation pursuant to Article 4(3) of the Agreement.

C. Williams' decision to play at the tennis clinic in Blue Village does not prove that her concerns regarding the effects of heat-wave were false.

46. Williams participated in a tennis clinic held in open field court at Blue Village on the same day of Nego-Abu Cup. However, the conditions of the two events were significantly different. First, the temperature at Abu-Abu city was 3 degrees lower than Negotown's. Second, Williams participated in the tennis clinic, not a competition. It has been established that Blue Village holds summer clinics that are taught by Blue's contracted athletes for high school students. Competing in a world class sports event and teaching to high school students demand completely different states of mental and physical efforts.
47. Further, the fact that other two athletes from Negoland also cancelled their participation due to health concerns shows that Blue did not act in bad faith to coerce Williams from appearing in the event (¶43).

D. Hosszu's non-appearance is excused by Force Majeure

48. The Parties do not dispute that Hosszu would have been able to participate in the Event if volcanic eruption had not shut down the airport. Pursuant to Article 4(1) of the Agreement, the Parties are not liable for any failure, delay or results that are caused by unforeseeable events.
49. Article 4(1) of the Agreement includes natural disasters as force majeure event. As stipulated in the facts (¶44), a notice has been immediately sent to the Steering Committee in accordance with Article 4(1) of the Agreement and Article 7.1.7(3) of the UNIDROIT. Hence, the Hosszu's non-appearance is excused and Blue is not responsible for the damages.
50. Blue's obligation under the Agreement was to be responsible for the participation of Hosszu, but neither ordering tickets nor providing conditions she requested was the responsibility of Blue. According to Article 3(2) of the Agreement, accommodation and

¹ Women's Tennis Association: 2018 Rulebook. (USA, 2018), p. 329.

logistics are the responsibilities of the Steering Committee where two Parties have equal responsibilities. Since ordering first class tickets for Hosszu was not Blue's responsibility, Blue's obligation to assure the participation of Hosszu was not able to be fulfilled due to the volcanic eruption that shut down the airport.

II. Blue is not responsible for US\$2.1 million as damages

A. Blue is not liable for any damages because the harm was caused by acts of Red.

51. As discussed above, Blue has established that non-appearances of Bolt and Williams was caused by Red's conducts that infringed the cooperation principle and obligations under the Agreement. Pursuant to the UNIDROIT Comment regarding Article 7.1.2, if one party's non-performance was caused by the acts of an aggrieved party, it loses the quality of non-performance altogether. In other words, it is no longer considered as a non-performance and Blue is not liable to any damages caused by it. Hence, Red is not entitled to seek damages of US\$1.5 million.
52. Whereas in Hosszu's case, the obligation to remedy such damages is excused under the Force Majeure clause pursuant to Article 4(1) of the Agreement. It has been established that Hosszu would have been able to participate if the volcanic eruption had not shut down the airport. Therefore, Blue is not liable to remedy US\$0.6 million of damages.

B. Alternatively, damages must be further reduced in respect with Hosszu's non-appearance.

53. Even if the Tribunal finds that force majeure clause is not applicable in this case, which we deny, the damages incurred cannot be solely borne by Blue. This is because Blue was not under obligation to bring Hosszu by first-class air travel. In fact, first-class flight was the condition which was requested by Blue on behalf of Hosszu. Additionally, in the notice regarding Hosszu's participation provided in Exhibit 10, it is clear that the notice was addressed to the Steering Committee. The Steering Committee had the final authority to approve Hosszu's participation. Therefore, neither Blue nor Red was under obligation to fulfill the request made by Hosszu.
54. On the basis above, it is Blue's submission that the responsibilities regarding this matter are to be divided between Red and Blue, because the Steering Committee is a joint body that is equally made of the two Parties. As the damages of lost revenue from the swimming competition is US\$600,000, it is Blue's submission that Blue should only be held liable for no more than US\$300,000 (which are broken down into US\$100,000 for ticket sales and US\$200,000 for broadcasting rights) of the damages.

C. Damages must be mitigated in respect with Williams' non-appearance

55. Red refused Williams' request to change the venue, because it would increase the operating cost by US\$400,000, require cancellation charge of US\$50,000 for already sold ticket and reduce further ticket sales by US\$250,000. Accordingly, the total cost of changing the venue as per request would have been US\$700,000.
56. Red is claiming a total of US\$750,000 as damages from Blue in respect of Williams' non-appearance. Article 7.4.8 of UNIDROIT states that the non-performing Party is not liable to the damages incurred to the extent that the harm could have been reduced if the other Party had taken reasonable steps. In other words, the damages could have been

reduced to US\$700.000 if the venue change was made as requested. Therefore, Blue is not liable for the extra US\$50.000 of damages.

D. Damages must be reduced in part regarding the ticket refunds

57. Even if Blue hypothetically accepts that Red is not fully responsible for the non-performances, which we deny, the facts illustrate that Bolt, Williams and Hosszu's cancelled participation shall not be grounds to refund the tickets.
58. Red claims that they had to refund the tickets due to the large publicity drive and advertisements featuring Bolt, Williams and Hosszu as key participating athletes. However, this situation could have been avoided if there had been a disclaimer note on the posters stating about a possibility that the key athletes would not be able to participate (¶45).
59. In accordance with Article 7.4.7 of the UNIDROIT, if the harm is caused in part to acts of the aggrieved party, the amount of damages shall be reduced to the extent that these factors have contributed to the harm, having regard to the conduct of each of the Parties. Since the Steering Committee decided against making such notices, the damages arising from that decision are a joint responsibility of the Parties and Blue is only liable for the damages in the amount up to US\$350,000.

E. Damages from broadcasting rights must be shared equally between Red and Blue

60. As stated in the facts as well as in Article 3(8) of the Agreement, profits from the event telecasting is to be shared equally between the Parties. Article 1.7 of the UNIDROIT requires parties to act in accordance with principle of good faith and fair dealing. Since the sales of broadcasting rights are included in the telecasting, it would not be fair if only of both Parties bear all responsibilities, whereas the other Party gains all the benefits. The fact that Blue consulted with Red regarding the content of the Purchase Contract and Red had agreed with it shows that the sales of broadcasting rights are the responsibility of both Parties. Therefore, the responsibilities of cancelled purchases must be equally divided between the Parties and Blue is only responsible for damages in the amount up to US\$700.000.

F. Damages must be further reduced in part with respect to Red's extra profit from streaming

61. The remedy for breach of contract is compensation for loss. To quote a classical statement: "It is the general intention of the law that, in giving damages for breach of contract, the party complaining should be placed in the same position as he would have been in if the contract had been performed."² In this case, if we put Red in a position in which Blue's athletes participated in the Event, Red would not have gained extra profit of US\$200.000 from streaming the videos of the Event(¶48). In other words, Red benefited from the breach of the Agreement, which means the profits earned by Red must be deducted from the total damages incurred.
62. In sum, Blue is responsible for damages of US\$500.000, which is 23% of the total damages after deducting the aforementioned.

²An order for specific performance technically responds not to a breach of contract, but rather to the contract itself: P.V. Baker and P. St. J. Langan, *Snell's Equity*, 29th ed. (London, Sweet & Maxwell, 1990), p. 585.

III. Red must pay US\$500,000 to Blue due to its obligation under the Agreement

63. Pursuant to Article 3(7) of the Agreement, videos of the Event will be distributed in Negoland by Red via Red's streaming programs. In Arbitria, Blue will televise the Event on Blue's own cable TV channels, and it will sell broadcasting rights to terrestrial TV networks for broadcasting. In addition, according to Article 3(8) of the Agreement, profits earned from the event telecasting must be shared equally between Red and Blue.
64. In accordance with Articles 4.1(1) and 4.3 of the UNIDROIT, a contract shall be interpreted according to the common intention of the Parties giving regard to the relevant circumstances, namely, preliminary negotiations, and the nature and purpose of the contract. The purpose of the contract is to jointly organize the Event as accorded in the Preamble of the Agreement. Further, during the preliminary negotiations regarding the organization of the Event, Red and Blue used the term "telecasting" as a general term to conclude all of the above (¶37). Thus, the phrase "event telecasting" in Article 3(8) of the Agreement must be interpreted as to include Red's streaming programs, Blue's cable TV channels and the sales of broadcasting rights.
65. Moreover, on the internet streaming done by Red, not only the sports events held in Negoland videotaped by Red, but also the sports events held in Arbitria whose videos were taken and provided by Blue, were delivered (¶48). Hence, Blue contributed to the profit generated from the internet streaming.
66. Since Article 3(8) of the Agreement is unambiguous and the telecasting includes the internet streaming, and Blue contributed to Red's profit, the Parties are obligated to share the earned profit equally. Therefore, Red is obliged to share the profits in half, which amounts to US\$500,000.
67. Alternatively, even if Red objects to share its profit in the amount of US\$1 million claiming that it was a result of Red's efforts to minimize the effect of defaults made by Blue, Red is still contractually obliged to share the profits from internet streaming to Blue which amounts to US\$400,000. Because there is no dispute that the profit from the internet streaming would have been about US\$800,000 if Bolt, Williams and Hosszu had participated in the event (¶48). As established that the non-appearances of the athletes are caused by Red not Blue, Red is under obligation to share the profits in the amount of US\$400,000.
68. If, and only if, the Tribunal deems that Blue is partly or fully liable for non-appearance of the above-mentioned athletes, Red is still obligated to share the internet streaming profit with Blue which amounts to US\$150,000, as the internet streaming profit would have been US\$ 300,000 without the performance of the key athletes (¶48).