



FEDERATION INTERNATIONALE DE L'AUTOMOBILE

## **World Motor Sport Council**

### **Disciplinary Decision concerning the team order given by the Scuderia Ferrari Marlboro during the Grand Prix of Germany counting towards the 2010 FIA Formula One World Championship**

**8 September 2010**

#### **1 PURPOSE OF THE HEARING**

The World Motor Sport Council ("WMSC") met on 8 September 2010 to consider charges that the Scuderia Ferrari Marlboro ("Ferrari") has given a team order which interfered with the result of the German Grand Prix, counting towards the 2010 FIA Formula One World Championship ("Championship"), in breach of article 39.1 of the 2010 FIA Formula One World Championship Sporting Regulations ("Sporting Regulations") and in breach of article 151 (c) of the International Sporting Code ("ISC").

#### **2 FACTUAL AND PROCEDURAL BACKGROUND**

By decision dated 25 July 2010, the Stewards of the German Grand Prix imposed a fine of \$100,000 on Ferrari where Ferrari had given a team order which interfered with the result of the above-mentioned Grand Prix.

On 29 July 2010, two international Stewards of the Grand Prix designated by the FIA submitted to the President of the FIA a joint report according to which they decided to notify Ferrari's case to the FIA.

On 2 August 2010, the FIA President, in his capacity as the Prosecuting Body under the Code of Practice ("CoP") (adopted by the WMSC on the 11 March 2010), initiated a Disciplinary Procedure against Ferrari, following the Stewards' decision dated 25 July 2010, by sending a Notification of Grievances in accordance with article 2.3 CoP. The Notification of Grievances included the Factual and Legal Charges as well as the possible Sanctions that could be taken against Ferrari, as follows:

##### **A. Factual charges**

- i. Ferrari ordered Mr Felipe Massa, driver of Ferrari car number 8, to let Mr Fernando Alonso, driver of Ferrari car number 7, pass during the German Grand Prix, counting towards the Championship;
- ii. Following this above-mentioned order, Mr Fernando Alonso overtook Mr Felipe Massa without any kind of a fight for positions being involved, upon Mr Felipe Massa slowing down with no obvious reason to do so.

## B. Legal Charges

- i. **Breach of article 39.1 of the Sporting Regulations.** Ferrari has given a team order to his driver Mr Felipe Massa which interfered with the race result.
- ii. **Breach of article 151(c) ISC** ("*Any fraudulent conduct or any act prejudicial to the interests of any competition or to the interests of motor sport generally*"). Ferrari's team order is an act prejudicial to the interests of the Championship and to the interests of motor sport generally.

## C. Sanctions

Possible sanctions the Judging Body of the WMSC may decide to impose on Ferrari include:

- i. Penalties listed in article 153 ISC:
  - reprimand (blame);
  - fines;
  - time penalty;
  - exclusion;
  - suspension;
  - disqualification;
  - withdrawal of points over the whole of the Championship.
- ii. Pursuant to article 3.9 CoP, the Judging Body of the WMSC may order the person who is the subject of a disciplinary sanction to pay all the costs incurred by the FIA between the start of the disciplinary inquiry and the pronouncement of the decision of the Judging Body of the WMSC. The amount of the costs may be set as a fixed sum.

On 2 August 2010, the Judging Body of the WMSC summoned Ferrari to the Disciplinary Hearing of 8 September 2010, in accordance with the time delay provided by article 3.5 CoP.

On 9 August 2010, Ferrari submitted its written comments on the Notification of Grievances.

On 5 August 2010, Mr Lars Österlind, a member of the WMSC, was appointed Reporter by the chairman of the Judging Body, Mr Graham Stoker, in accordance with article 3.2 CoP. On 13 August 2010, Ferrari was summoned to the Investigation Hearing with the Reporter of 17 August 2010, in accordance with article 3.3 CoP.

The Report was issued on 24 August 2010. On the same date, the chairman of the Judging Body of the WMSC forwarded the Report to Ferrari and its legal representatives for their written observations in accordance with article 3.4 CoP.

On 24 August 2010, the Judging Body of the WMSC summoned Mr Felipe Massa and Mr Fernando Alonso to the Disciplinary Hearing of 8 September 2010, in accordance with the time delay provided by article 3.5 CoP. On the same date, the chairman of the Judging Body forwarded the Report to Mr Felipe Massa and Mr Fernando Alonso for their written observations in accordance with article 3.4 CoP.

On 31 August 2010, Ferrari, Mr Fernando Alonso and Mr Felipe Massa submitted their written observations on the Report.

### 3 THE RESPONSE

In its Response, Ferrari addressed the Factual and Legal Charges against it as outlined below.

#### A. Factual Charges

- i. Ferrari ordered Mr Felipe Massa, driver of Ferrari Marlboro car number 8, to let Mr Fernando Alonso, driver of Ferrari car number 7, pass during the German Grand Prix, counting towards the Championship;
- ii. Following this above-mentioned order, Mr Fernando Alonso overtook Mr Felipe Massa without any kind of a fight for positions being involved, upon Mr Felipe Massa slowing down with no obvious reason to do so.

In the view of Ferrari, Mr Felipe Massa was not ordered to allow Mr Fernando Alonso to pass; rather he was given relevant information, based on which he decided, for the benefit of the team, to allow Mr Fernando Alonso to pass. The relevant information was that Mr Fernando Alonso was faster than him, and that Mr Sebastian Vettel was closing the gap on both of them;

Mr Felipe Massa realised that the best interests of the team and the drivers' safety were going to be served by allowing Mr Fernando Alonso to pass, and acted accordingly;

In the view of Ferrari, there is a clear distinction between "team orders" on the one hand, and "team strategy and tactics" on the other hand. The disputed communication should be considered as "team strategy and tactics".

#### B. Legal Charges

- i. Breach of article 39.1 of the Sporting Regulations.

According to Ferrari, to establish a breach the Judging Body of the WMSC need to be satisfied of two separate matters:

- a. that a "team order" was given; and
- b. that any such order interfered with the race result.

Ferrari argues that the "team orders" alleged by the FIA are that Ferrari ordered Mr Felipe Massa to let Mr Fernando Alonso pass during the 2010 German Grand Prix (underlining added). According to Ferrari, a team order in the context of article 39.1 of the Sporting Regulations has to mean an instruction to a driver from the team which he is required to follow. If the driver has discretion as to what to do then that cannot amount to an 'order'. Thus, to establish a breach, the FIA has to point to an order which Mr Felipe Massa was required to follow. That is not the same as giving the driver information, or even an indication of what the team would like him to do. In the view of Ferrari, the contentious communication does not amount to an order and the decision to let past Mr Fernando Alonso was Mr Felipe Massa's decision ultimately.

As for "interference with a race result", Ferrari contends that, other than asserting that this was the case, the charges contain no explanation or analysis of this critical allegation.

- ii. Breach of article 151 (c) of the ISC.

There are 3 possible offences under this Article:

- a. Any fraudulent conduct;
- b. Any act prejudicial to the interests of any competition;
- c. Any act prejudicial to the interests of motor sport generally.

Ferrari understands from the Notification of Grievances the charge to allege only b. or c. above. In the view of Ferrari, if the true nature of the breach alleged is that of "team orders", Ferrari submits that either that offence is established or it is not. If it is not, it would be improper to try to make good some deficiency in the Regulations (if such there be) by relying on some generally worded provisions which are clearly intended to apply to different situations.

## C. Sanctions

### The Penalty

Ferrari finds that the decision of the Stewards to impose a fine on the Team is not equitable having regard to the fact that the same facts have not previously lead to a sanction in the following examples:

- a) During the 2008 German Grand Prix, Mr Heikki Kovalainen allowed Mr Lewis Hamilton to pass him with only 9 laps to go at exactly the same turn as Mr Felipe Massa decided to allow Mr Fernando Alonso to pass, which enabled Mr Lewis Hamilton to catch and overtake Mr Felipe Massa and Mr Nelson Piquet Jr so as to win the race;
- b) In the 2010 Turkish Grand Prix, Mr Mark Webber did not let Mr Sebastian Vettel pass as a consequence of which both drivers collided when Mr Sebastian Vettel sought to pass Mr Mark Webber;

The consequence of the accident was that Mr Sebastian Vettel was eliminated from was eliminated from the race, and Mr Mark Webber finished the race in the 3rd place;

- c) In the 2010 Turkish Grand Prix, the McLaren drivers Mr Lewis Hamilton and Mr Jenson Button took over in 1st and 2<sup>nd</sup> place respectively. The published radio communications with Mr Lewis Hamilton and Mr Jenson Button can be seen as a case of so called "team orders". The message to "save fuel" could be said to have been a coded instruction to the drivers to preserve their existing positions.

The Stewards imposed a fine of \$100,000 on Ferrari, but although Ferrari knew that it had not breached the regulations it decided not to appeal the Stewards' decision. As their team principal, Mr Stefano Domenicali, explained at the time: "*... in the interests of the sport we have decided not to go through a procedure of appealing against it, confident that the World Council will know how to evaluate the overall facts correctly*". Ferrari also wanted to avoid an overlap of procedures, as any appeal to the FIA International Court of Appeal would have conflicted with the WMSC procedure pursuant to article 152 of the ISC.

Ferrari claims that any additional penalty would be unjust. The decision of the Stewards not to alter the race result no doubt reflects a degree of realism on their part regarding the ambiguous nature of the rule itself, and the difficulties of policing it and ensuring consistent treatment between different teams.

In determining the correct approach Ferrari suggests that the WMSC should take into account that there is a grey area between impermissible 'team orders' and legitimate team strategy and tactics. The FIA has acknowledged in the past that "the primary objective of any team is for one of their drivers to win". That is what Ferrari wanted to ensure by letting Mr Felipe Massa know that Mr Fernando Alonso was faster than him.

## 4 THE REPORT

The Report set out the key evidence derived from statements made by Ferrari during an audio conference and the additional documentation provided by Ferrari. The Report includes the transcripts of the interviews conducted by the Reporter with Mr Stefano Domenicali, team principal, Mr Massimo Rivola, team manager, Mr Robert Smedley, race engineer, and Mr Felipe Massa, driver.

### A. Factual and Legal Charges

The Reporter considers that Ferrari's argument relating to the fact that Mr Fernando Alonso was faster than Mr Felipe Massa appears not to hold up. Indeed, a few laps prior to the contentious overtaking, Ferrari's drivers reduced their engine speed at the request of their respective race engineers. Then Mr Fernando Alonso increased his engine speed without Mr Felipe Massa's being informed. Mr Fernando Alonso was therefore benefiting from a definite performance advantage over Mr Felipe Massa in the moments preceding the contentious overtaking.

The Reporter considers that the fierce battle between the two team drivers a few laps prior to the contentious overtaking, corroborated by the content of the communications between the drivers and the race engineers, as well as the use of the term "sorry", are revealing of the fact that Mr Felipe Massa allowed Mr Fernando Alonso to overtake him following a team order.

The Reporter considers that this team order interfered with the race result as the position of the two team drivers were modified consequently.

It is the role and the responsibility of the FIA as the world governing body for motor sport to promote sports ethics and fair play. It does so by publishing regulations on what is considered to be ethical or unethical behavior and by applying appropriate sanctions where necessary.

The Reporter finds that the contentious communications between the drivers and their engineers did interfere with the race result in accordance with article 39.1 of the Sporting Regulations. It is undeniable that the race result would have been different had the contentious instruction not been issued to Mr Felipe Massa.

The Reporter also finds that the contentious communications have proven prejudicial to both the competition and motorsport generally by entirely eliminating the competitive character of the race between the two drivers. Motor racing ought to be and remain unpredictable, as it has been to date. Part of that competitive element is to take equal interest in all competitors. Irrespective of their fitness, talent or position in the race and/or championship, competitors should be able to rely on themselves for purposes of winning the race without any form of external aid influencing their sporting performance.

Sports ethics involves the elimination of cheating and bending the rules. In addition to the existing written rules, there can therefore be said to be a moral obligation on drivers to abide by the rules, in accordance with the principles of fair play.

Therefore, the Reporter concludes that:

- (a) Ferrari has committed a breach of article 39.1 of the Sporting Regulations; and
- (b) Ferrari also by breaching article 39.1 of the Sporting Regulations has committed a breach of the article 151 (c) of the ISC.

## B. Sanctions

- i. The Reporter notes that Ferrari has been extremely cooperative with the Reporter during this detailed procedure. They have provided all documents requested without delay.
- ii. As to Penalty, should a breach (or breaches) be found to have been committed by Ferrari, the Reporter recommends the Judging Body of the WMSC to consider the following penalties:
  - i. A fine of \$100,000;
  - ii. A 5-second penalty imposed on Fernando Alonso to his time at the German Grand Prix 2010;
  - iii. A withdrawal of points of the Championship (for both the team's drivers in the drivers' championship and for the Team in the manufacturers' championship), suspended for 2010. Provided that no incident of comparable nature occurs during that time, the penalty will be removed thereafter.

## 5 THE DISCIPLINARY HEARING

The Judging Body of the WMSC took into account the detailed written evidence before it contained in a two hundred and sixty page dossier. They also heard from Mr Jean-Pierre Martel of Orrick Rambaud Martel on behalf of the FIA, and from Mr Stefano Domenicali, Ferrari's team principal, and Mr Henry Peter and Mr Nigel Tozzi, Q.C, on behalf of Ferrari. Mr Felipe Massa and Mr Fernando Alonso were available by video link.

### A. FOR THE FIA

Mr Jean-Pierre Martel made four main points:

- i. On the facts, team orders clearly existed here as on lap 49 Mr Felipe Massa let Mr Fernando Alonso by, and Mr Felipe Massa accepted this. He was leading the race and could have won, and the orders interfered with the race result.
- ii. Whilst teams are free to adopt a strategy, there are a number of indications here this was prohibited team orders, and when there is pressure on a driver this is equivalent to team orders. The indications included the fight to lap 21 and letting Mr Fernando Alonso past on lap 49, the radio communications, the mood of the drivers on the podium, their answers in the post race press conference where it was made clear that the interest of the team took precedence over the individual drivers, and the fact Ferrari did not appeal the Stewards' decision.
- iii. That the prohibition on team orders dated from 2002 and was in the current Sporting Regulations and had never been objected to before. It was however accepted that there were issues over its interpretation and policing and it might sensibly be referred to the F1 Sporting Working Group.
- iv. Finally on penalties the drivers had not been subject to any charges, and team orders are a matter for the team. The drivers therefore should not suffer a penalty. As for the team, the fine of \$100,000 should be confirmed, but the issue was: is this enough? If points were deducted this should be suspended until the end of the 2010 season.

## B. FOR FERRARI

Mr Nigel Tozzi, Q.C, also made four points.

- i. Team orders are different from team strategy. There was no instruction here that Mr Felipe Massa was required to follow. This was the giving of information, and what the team wanted him to do. Pressure is not enough, and the information enabled the driver to choose. If this was not permitted there was a risk of accidents and collisions between team mates such as suffered by team Red Bull at this year's Turkish Grand Prix.
- ii. With 18 laps to go and with Mr Fernando Alonso the faster driver, how could we be sure this had interfered with the race result.
- iii. Ferrari thought the prohibition in the rules only applied to clear team orders. There were ambiguities in the rule and inconsistencies in its application, and this had influenced Ferrari's approach.
- iv. Finally, the decision of the Stewards could be upheld, but an additional penalty should not be applied here. The Stewards had imposed a fine, and had not sought to withdraw points. Reference was also made to letters of support from Mr Frank Williams and Mr Peter Sauber, who both pointed out the risk of collision of team mates, that this was a team sport, and the rules needed revising. Mr Stefano Domenicali added that Ferrari had not sought to be smart, and to secure an advantage, and did not think that what they had done was wrong. They however could now understand how others could be concerned, and perhaps the rule should be examined.

## 6. DECISION

### A. Team orders

The Stewards and the Reporter have concluded team orders were issued here, and it is noted that Ferrari also choose not to appeal the Stewards' decision. Having heard extensive detailed evidence, the Judging Body of the WMSC was satisfied itself that team orders were issued. Referring to the record of radio communications, on lap 19 Mr Fernando Alonso put pressure on his engineer saying "*Guys, I am a lot quicker*", and the engineer said in reply: "*Got that, and we are on the case, don't worry*"; and on lap 28 Mr Felipe Massa's engineer said: "*You must keep the lead, you must keep that gap to him, you know the score, come on*". There then eventually followed from lap 44 to lap 49 the repeating four times of the message "*Fernando is faster than you*" ending on lap 49 with "*Fernando is faster than you, confirm you understood the message?*" and Mr Felipe Massa then slowed and allowed Mr Fernando Alonso to pass. It is self evident to the Judging Body of the WMSC that this was an implied team order using a message, and as such was contrary to article 39.1 Sporting Regulations.

### B. Interference with the race result

It was said by Ferrari that with 18 laps to go at the moment of the overtaking the race results were uncertain, but the Judging Body of the WMSC noted that from lap 1 to lap 49 Mr Felipe Massa comfortably led the race, on lap 21 Mr Fernando Alonso past Mr Felipe Massa only to be immediately repassed, and that Mr Fernando Alonso only eventually past Mr Felipe Massa on lap 49 when Mr Felipe Massa unexpectedly slowed down after receiving the messages. This clearly interfered with the results of the race, and with Mr Fernando Alonso standing on the podium for first place, when his team mate had slowed to allow him to pass was in the Judging Body of the WMSC's view prejudicial to the interest of motor sport and contrary to article 151 (c) of the ISC. It is important for the FIA to act to protect the sporting integrity of the FIA Formula One World Championship, and to ensure the podium finish has been achieved by genuine on track racing.

### C. Team orders in practice

The Judging Body of the WMSC did however consider there were many examples of what could have been said to be team orders in Formula One in recent years, and therefore there has been inconsistency in its application. Also its application to indirect team orders via messages where drivers raise no complaint is uncertain and difficult to detect and police. The Judging Body of the WMSC accepted that this may well have influenced Ferrari's approach, and Ferrari also had a legitimate concern to avoid collisions between team mates in close on track racing. Moreover the Judging Body of the WMSC was made aware that there was clear support for team orders in some quarters, and noted the letters in support of Ferrari from Mr Frank Williams and Mr Peter Sauber. In such a case the Judging Body of the WMSC considered the most appropriate course of action is to require that this issue be referred by the FIA to the F1 Sporting Working Group to review article 39.1 of the Sporting Regulations.

### D. Penalties

The Judging Body of the WMSC noted the uncertainty and complexity surrounding the ban on team orders, and the difficulties of detecting and policing. The Stewards held a full hearing on this matter at the circuit and listened to a wide range of witnesses, and decided to impose a maximum fine of \$100,000, and this was not appealed. The Judging Body of the WMSC would not seek to increase or reduce this, but consider they should support the Stewards in the penalty they imposed. It became common ground during the hearing that the drivers should not be penalised, and with the ambiguities in the rule recognised it would not be appropriate to increase the overall penalty.

### E. Costs

The Judging Body of the WMSC having found a breach of the rules was established and that the Stewards' decision in its entirety was upheld considered that Ferrari should pay the costs of these proceedings.

Ferrari was informed of its right to appeal to the International Court of Appeal. The appeal period is seven (7) days counting from the notification of the pronouncement of the sanction.

According to Article 152 ISC, the present decision of the Judging Body of the WMSC takes the place of the penalty which the Stewards of the German Grand Prix have pronounced on Ferrari.

The present decision is enforceable as of right as soon as it has been pronounced. This decision is immediately notified to Ferrari, Mr Fernando Alonso and Mr Felipe Massa and forwarded to the President of the FIA, in accordance with article 3.9 CoP.

**Signed:**



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Graham Stoker  
FIA Deputy President, Chairman of the Judging Body  
Paris, 8 September 2010



In accordance with article 3.9 CoP, the names of the members who took part in the deliberation are:

Graham Stoker  
Skh Abdulla Bin Isa Khalifa  
Michel Boeri  
Morrie D.Chandler  
Gary Connelly  
Luis Pinto de Freitas  
Nicolas Deschaux  
Vassilis Despotopoulos  
Bernard Ecclestone  
Enrico Gelpi  
Carlos Gracia Fuertes  
Henry Krausz  
Vincenzo Spano  
Teng Lip Tan  
Surinder Thatthi