



**TAS / CAS**  
TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2021/A/7885 Real Betis Balompié v. Paris Saint-Germain Football SASP**

## **ARBITRAL AWARD**

delivered by the

### **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Prof. Dr. Martin Schimke, Attorney-at-law in Dusseldorf, Germany  
Arbitrators: Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland  
Prof. Luigi Fumagalli, Attorney-at-law in Milan, Italy  
*Ad hoc* Clerk: Mr. Vishakh Ranjit, Advocate in Kerala, India

**in the arbitration between**

**Real Betis Balompié SAD, Spain**

Represented by Ms. María Teresa Nadal Charco and Mr. Jose Lasa Azpeitia, Attorneys-at-law in Madrid, Spain

**- Appellant -**

and

**Paris Saint-Germain Football SASP, France**

Represented by Mr. David Casserly and Mr. Adam Taylor, Attorneys-at-law in Lausanne, Switzerland

**- Respondent -**

\* \* \* \* \*

## I. PARTIES

1. Real Betis Balompié SAD (the “**Appellant**” or “**Real Betis**”) is a Spanish professional football club currently playing in *La Liga* in Spain and affiliated with the Real Federación Española de Fútbol.
2. Paris Saint-Germain Football SASP (the “**Respondent**” or “**PSG**”) is a French professional football club currently playing in *Ligue 1* in France and affiliated with the Fédération Française de Football.
3. Real Betis and PSG are hereinafter jointly referred to as the “Parties”. Both Parties and their federations fall under the governance of the Fédération Internationale de Football Association (“**FIFA**”), the world governing body of football that is headquartered in Zurich, Switzerland.

## II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

### A. Background Facts

5. On 30 August 2018, Real Betis sent a formal proposal to PSG for the temporary transfer of X. (the “**Player**”), a football player who at the time was employed by PSG, with an option for a permanent transfer.
6. On 31 August 2018, the Parties signed an agreement (the “**PSG/Real Betis Agreement**”) for the temporary transfer of the Player. The PSG/Real Betis Agreement contained the following relevant provisions:
  - a. The Player was to be transferred on a temporary basis from PSG to Real Betis from 31 August 2018 until 30 June 2019.
  - b. A loan fee of EUR 3,072,052.40 was to be paid by Real Betis to PSG (Clause 4.1).
  - c. Real Betis was granted an automatic option of obtaining the permanent transfer of the Player’s rights as of 1 July 2019 based on certain conditions (Clause 5). In the event of this option being exercised by Real Betis, an amount of EUR 22,528,384.28 (before the deduction of solidarity contribution) was agreed as the “Transfer Fee” payable to PSG (Clause 5.2.1.1). This amount would have to be paid in three instalments (Clause 5.2.1.3).
  - d. If, following the exercise of the call option, Real Betis permanently transferred the registration of the Player to another football club, including PSG (the “New Transfer”), Real Betis had to pay PSG 20% of the net profit made by Real Betis

- on the New Transfer taking into account the “total transfer fee” (Clause 5.2.2.1). The term “net profit” was defined to mean the difference between the “Total New Transfer Fee” and the “Transfer Fee” (Clause 5.2.2.2). Both these sums were to be considered excluding VAT and after deduction of solidarity contribution.
- e. The term “Total New Transfer Fee” has been defined to comprise “*any fixed compensation and any bonus/variable compensation and any variable fee received by Real Betis in the context of the New Transfer, VAT excluded, after deduction of the solidarity contribution referred to in the FIFA Regulations*” (Clause 5.2.2.3).
  - f. The possibility of the New Transfer including a player exchange was contemplated and a method of calculation of the sell-on fee in that context was provided for (Clause 5.2.2.3).
  - g. For the performance of the sell-on fee obligation, Real Betis had to communicate to PSG a copy of the agreement signed between Real Betis and the new club to which the Player was being transferred (Clause 5.2.2.4).
7. On the same day, i.e. 31 August 2018, the Player and Real Betis entered into a professional football player employment contract. This contract contained a buyout clause of EUR 100,000,000, in compliance with Article 16 of Spanish Royal Decree 1006/1987.
8. In April 2019, Real Betis exercised the option to sign the Player permanently, which, as per Article 5.2.3 of the PSG/Real Betis Agreement, meant that the permanent transfer automatically and irrevocably took effect on 1 July 2019 without the need to sign any new transfer agreement between the Parties or any new employment contract between Real Betis and the Player.
9. Around August 2019, Tottenham Hotspur FC (“**Tottenham**”) approached Real Betis regarding a potential transfer of the Player. On 8 August 2019, an agreement was signed between Real Betis and Tottenham for the temporary transfer of the Player until 30 June 2020 with an option to make the transfer permanent (the “**Real Betis/Tottenham Agreement**”). The Real Betis/Tottenham Agreement contained the following relevant provisions:
- a. Tottenham had to pay Real Betis a loan fee of EUR 16,000,000 in two instalments (Clause 2).
  - b. Tottenham was granted an exclusive option to acquire the Player’s registration on a permanent basis immediately following the expiry of the loan period, i.e., from 1 July 2020, based on certain conditions (Clause 12).
  - c. Tottenham would have a binding and irrevocable commitment to exercise the option, should it qualify for the Group Stages of the 2020/21 UEFA Champions League (Clauses 14 and 15).
  - d. If the option was exercised by Tottenham on or before 31 January 2020, Tottenham would pay to Real Betis an amount of EUR 32,000,000 (Clause 17 (a)). If the option was exercised by Tottenham between 1 February 2020 and 31

- May 2020, Tottenham would pay to Real Betis an amount of EUR 40,000,000 (Clause 17 (b)).
- e. Tottenham had to pay Real Betis certain contingent sums which were based on Tottenham qualifying for the Group Stages of the Champions League via its Premier League finishing position and on Tottenham winning the Premier League title (Clause 19). In both cases, there was also a minimum number of appearances that the Player had to make for it to be triggered.
  - f. The Parties undertook to treat as confidential the terms of the agreement and its existence and not to disclose the same to any third party including the media without the consent of the other party (Clause 26).
10. On the same day, in compliance with legal requirements under Article 11 of Spanish Royal Decree 1006/1985 as well as the Collective Bargaining Agreement for professional football activities signed between the *Liga Nacional De Fútbol Profesional* and the *Asociación De Futbolistas Españoles*, the Player's employment contract with Real Betis was temporarily suspended. On the same day, a "post-contractual non-compete agreement" was signed between Real Betis and the Player by which the Player agreed to not sign for a certain other club until 1 October 2020 for which he was to receive a certain amount of money.
  11. On 8 August 2019, Mr. Gregory Durand, representative of PSG, wrote an email to Mr. Miguel Donezar, representative of Real Betis, requesting a copy of the Real Betis/Tottenham Agreement in light of the sell-on fee obligation contained in the PSG/Real Betis Agreement.
  12. On 12 August 2019, Mr. Donezar responded to Mr. Durand providing certain details regarding the Player's transfer to Tottenham, including the loan period and the call option. Mr. Donezar further stated that "*...in this case there has been not initially a permanent transfer of the federative rights of our player X.*". According to Mr. Donezar, because of the inapplicability of Clause 5.2.2 of the PSG/Real Betis Agreement and due to confidentiality reasons, Real Betis could not share a copy of the Real Betis/Tottenham Agreement with PSG. Mr. Donezar also informed PSG that if the option right was exercised by Tottenham in the future, "*...it will be happy to share with PSG a copy of the loan agreement...*"
  13. On 14 August 2019, Mr. Durand replied to Mr. Donezar contesting the position of Real Betis that the transfer was not permanent and insisting on being provided with a copy of the Real Betis/Tottenham Agreement, in line with the PSG/Real Betis Agreement. In this email Mr. Durand also mentioned that PSG had received information suggesting that Real Betis may not have acted in complete good faith.
  14. On 16 August 2019, Mr. Donezar responded to Mr. Durand reiterating that Clause 5.2.2 of the PSG/Real Betis Agreement was not applicable. However, a redacted version of the Real Betis/Tottenham Agreement was attached to the email. Mr. Donezar also mentioned that if PSG was interested in reviewing the full version of the Real Betis/Tottenham Agreement, arrangements could be made so that PSG could access a copy in the offices of Real Betis.

15. On 29 August 2019, Mr. Durand sent an email to [...], inquiring about the terms of the Real Betis/Tottenham Agreement, the discussions prior to it and the reasons for structuring the Player's transfer as a loan with an option right.
16. On 10 September 2019, [...] responded to Mr. Durand, stating that "*...the terms of deal that we agreed with Real Betis, were the only terms that they would accept in order for us to complete the transfer. As you know, we have the option to make the loan a permanent transfer, which was of vital importance to us*".
17. On 19 September 2019, Mr. Vittoriano Melero, representative of PSG, sent a letter to Mr. Angel Haro Garcia, representative of Real Betis, alleging that Real Betis acted in "flagrant bad faith". Mr. Melero stated that "*...The unrealistic amount of the loan fee and the fictional conditions set to proceed with the final transfer of the Player...*" showed that Real Betis wanted to circumvent its commitments to PSG. Mr. Melero alleged that Real Betis decided to artificially reduce the calculation of the sell-on fee due to PSG. Mr. Melero further stated that the loan fee would have to be taken into account for the calculation of the amount due to PSG and mentioned the total sum due to PSG from Real Betis as "*5,060,683.14 Euros + 20% of all variable transfer fees*".
18. On 11 October 2019, Mr. José Ruiz, representative of Real Betis, responded to Mr. Melero denying his contentions and stating that the sell-on fee would only become due if the buyout option was executed by Tottenham. Further, Mr. Ruiz stated that Real Betis do not have any issues with PSG accessing the Real Betis/Tottenham Agreement using the mechanism provided by FIFA and invited PSG to initiate such procedure.
19. On 25 October 2019, Mr. Melero sent a letter to Mr. Donazer and Mr. Ruiz stating that PSG "*shall refer the matter to FIFA and seek appropriate relief when (not "if", as it is clearly automatic) the fictitious buyout option will be "executed"*".
20. On 28 January 2020, Tottenham published a press release stating it had exercised its option to make the transfer of the Player from Real Betis permanent. According to the decision rendered by FIFA (i.e. the object of this CAS proceeding), the amount entered in the FIFA Transfer Matching System ("TMS") as the transfer fee was EUR 31,200,000 and the Player had concluded a contract with Tottenham until 2025.
21. On 18 November 2020, upon a request from Mr. Durand, [...] sent an email stating that:

*"...I confirm that when our Club contacted Real Betis regarding X., we expressed our wish to acquire the Player on a permanent basis. In response, Real Betis confirmed that they could agree to the permanent transfer of the Player, but only if the deal was structured as a loan for one year with an option right to then transfer the Player permanently.*

*This was not particularly surprising to me, as we have had similar requests in the past when clubs preferred a particular transfer structure due to the UEFA Financial Fairplay Regulations. I assumed was also the case with Real Betis and did not have any specific objections to their proposed structure.*

*As I mentioned in my email, the key from Tottenham Hotspur's perspective was*

*securing the Player on a permanent basis and we achieved this by having an option right in our favour.”*

22. On 20 November 2020, PSG sent an invoice to Real Betis for a total amount of EUR 5,082,907.14 towards the sell-on fee payments due, to be paid within seven days.
23. On 3 December 2020, PSG filed a claim before the FIFA Players’ Status Committee (the “**FIFA PSC**”) wherein PSG claimed that Real Betis was obliged to pay to PSG a sell-on fee in the amount of EUR 5,082,907.14 (of which EUR 2,647,178.04 was outstanding). It may be noted that the claim was originally filed on 18 June 2020, but substantially amended on 3 December 2020.
24. On 23 March 2021, the Single Judge of the FIFA PSC issued a decision (the “**Appealed Decision**”) as follows:

*“1. The claim of the Claimant, Paris Saint-Germain, is partially accepted.*

*2. The Respondent, Real Betis Balompié, has to pay to the Claimant, the amount of EUR 2,627,000, plus interest p.a. as follows:*

*- 5% interest p.a. over the amount of EUR 1,260,960 as from 23 August 2019 until the date of effective payment;*

*- 5% interest p.a. over the amount of EUR 410,337 as from 17 January 2020 until the date of effective payment;*

*- 5% interest p.a. over the amount of EUR 955,703 as from 15 August 2020 until the date of effective payment.*

*3. Any further claims of the Claimant are rejected.*

*4. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.*

*5. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to **psdfifa@fifa.org**, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).*

*6. In the event that the amount due, plus interest as established above is not paid by the Respondent **within 45 days**, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:*

*1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid.*

*(cf. art. 24bis of the Regulations on the Status and Transfer of Players).*

*2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA*

*Disciplinary Committee.*

7. *This decision is rendered without costs.*” (emphasis in original)

25. The Appealed Decision issued by the Single Judge of the FIFA PSC was based on, *inter alia*, the following findings:
- a. Even though the transfer of the Player from Real Betis to Tottenham initially started as a loan, the Player was ultimately transferred on a permanent basis. The transfer of the Player from Real Betis to Tottenham was, *de facto*, of a permanent nature, regardless of the fact that it started as a loan. When assessing the applicability of the sell-on fee, the *de facto* elements concerning the subsequent transfer of the Player shall take precedence over more formalistic (*de iure*) elements.
  - b. Regardless of its legal structuring, *de facto* the Player was transferred from Real Betis to Tottenham in a manner that complies with the sell-on requirements of the PSG/Real Betis Agreement, since it resulted in a permanent transfer. This interpretation allows new circumstances to be taken into account without departing from the contractual intent.
  - c. Real Betis shall pay a sell-on fee (in accordance with Clause 5.2.2.1 of the PSG/Real Betis Agreement) for all the amounts paid by Tottenham to Real Betis for the transfer of the Player. The total amount of EUR 46,800,000 shall be used as the basis for the calculation of the sell-on fee, which corresponds to all the payments agreed between Real Betis and Tottenham, including the loan fee and the instalments of the transfer fee due on the date of the Appealed Decision, after adjusting the applicable solidarity contribution. The total sell-on fee was calculated to be EUR 5,060,682.54.
  - d. Since only 51.91% of the transfer fee was due at the time of the Appelaed Decision, the Single Judge decided that he could only award a *pro rata* amount from the applicable sell-on fee. This amount was calculated as EUR 2,627,000. Similarly, *pro rata* calculation was done with respect to applicable interest.

**B. Proceedings before the Court of Arbitration for Sport**

26. On 19 April 2021, Real Betis filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”) against the Appealed Decision, in accordance with Articles R47 and R48 of the 2020 edition of the Code of Sports-related Arbitration (the “CAS Code”) and named PSG and FIFA as Respondents.
27. On 20 April 2021, Real Betis nominated as arbitrator Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland.
28. On 22 April 2021, the CAS Court Office informed the Parties that FIFA had requested to be excluded as a party in the proceedings and Real Betis was invited to indicate its position on this request.

29. On 26 April 2021, Real Betis agreed to exclude FIFA as a respondent in the proceedings.
30. On 11 May 2021, after having been granted an extension, in accordance with Article R51 CAS Code, Real Betis filed its Appeal Brief.
31. On 14 May 2021, PSG nominated as arbitrator Prof. Luigi Fumagalli, Attorney-at-law in Milan, Italy.
32. On 18 May 2021, the Parties were provided with a disclosure made by Mr. Bernasconi further to Article R33 CAS Code, which neither of the Parties subsequently challenged further to Article R34 CAS Code.
33. On 20 May 2021, the CAS Court Office invited PSG to submit its Answer within 20 days.
34. On the same day, PSG requested that the deadline for filing its Answer be fixed once the advance of costs has been paid by Real Betis. This request was granted on 21 May 2020.
35. On 3 June 2021, the CAS Court Office informed PSG that Real Betis had paid the advance of costs and hence, invited PSG to file its Answer within 20 days.
36. On 7 July 2021, after having been granted extensions, PSG filed its Answer in accordance with Article R55 CAS Code.
37. On 13 July 2021, in accordance with Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:  
  
President: Prof. Dr. Martin Schimke, Attorney-at-law in Dusseldorf, Germany  
Arbitrators: Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland  
Prof. Luigi Fumagalli, Attorney-at-law in Milan, Italy
38. On 16 July 2021, the CAS Court Office requested FIFA to provide the CAS with a copy of the complete case file related to the proceedings.
39. Upon being invited to express their preference in this respect, the Parties confirmed that they preferred that a hearing be held. As a result, on 27 July 2021, the CAS Court Office communicated to the Parties that the Panel has decided to hold a hearing via videoconference, further to Articles R44.2 and R57 CAS Code.
40. On 30 July 2021, the Parties were provided with a disclosure made by Prof. Dr. Schimke further to Article R33 CAS Code, which neither of the Parties subsequently challenged further to Article R34 CAS Code.
41. On 5 August 2021, the CAS Court Office provided the Parties a copy of the complete case file received from FIFA.

42. On 23 September 2021, the Parties were informed that Mr. Vishakh Ranjit, Advocate in Kerala, India, had been appointed as *Ad hoc* Clerk.
43. On the same day, after consulting the Parties, the CAS Court Office informed the Parties that the hearing would be conducted by videoconference on 17 November 2021.
44. On 2 November 2021, the CAS Court Office provided the Parties with an Order of Procedure, which was duly signed and returned by Real Betis on 8 November 2021 and PSG on 9 November 2021.
45. On 17 November 2021, a hearing was held by video conference.
46. The following persons attended the hearing in addition to the Panel, Ms. Kendra Magraw, CAS Counsel, and Mr. Vishakh Ranjit, *Ad hoc* Clerk:
  - a) For Real Betis:
    - 1) Ms. María Teresa Nadal, Counsel;
    - 2) Mr. Rodrigo García, Counsel;
    - 3) Mr. José Ruiz, Witness;
    - 4) Ms. Elena Pueyo Carnero, Interpreter.
  - b) For PSG:
    - 1) Mr. David Casserly, Counsel;
    - 2) Mr. Adam Taylor, Counsel.
47. At the outset of the hearing, all Parties confirmed that they had no objection as to the constitution and composition of the Panel. The Panel then heard evidence only from one witness, Mr. José Ruiz called by Real Betis. Though [...] was named as a witness by PSG, during the hearing, PSG indicated that it did not wish to present any direct evidence from [...] and [...] did not participate in the hearing. Considering this, Real Betis submitted that if there is no direct evidence presented, they did not wish to cross examine [...].
48. Mr. Ruiz was invited by the President of the Panel to tell the truth subject to a sanction for perjury under Swiss law. Both Parties and the members of the Panel had the opportunity to examine and cross-examine Mr. Ruiz.
49. Following the Parties' explicit agreement at the hearing, the Panel informed the Parties that all documents filed in the lead-up to the hearing were admitted to the file.
50. The Parties were given the full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the members of the Panel.
51. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been

respected.

### III. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

52. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

#### A. Real Betis

##### *Interpretation of the sell-on fee clause*

53. Real Betis asserts that the sell-on fee contained in the PSG/Real Betis Agreement has to be interpreted in such a way that only the fee paid for a permanent transfer is included in the calculation of the sell-on fee. In this regard Real Betis submits that:

- a. A sell-on fee case could be problematic if the following are not defined clearly: a) the operation that entitles its accrual; b) the amounts on which the calculation of the sell-on fee is based; and c) the provisions determining the basis for calculation. However, in the present case, the terms of the sell-on fee clause (Clause 5.2.2 of the PSG/Real Betis Agreement) are absolutely clear and leave little room for interpretation.
- b. The legal transaction that triggers the payment of the sell-on fee has been determined by the Parties. The sell-on fee will be paid when a “New Transfer” is made, this being a permanent transfer to a third club after Real Betis exercises the call option. The sell-on fee must be calculated based on the “net profit” received by Real Betis from the “New Transfer”.
- c. To calculate the “net profit”, the parties freely and voluntarily decided to exclude the amount paid for the temporary transfer by Real Betis to PSG as well as by the third party that permanently acquired the Player, as it clearly says that the amount to be considered will be “*any fixed compensation and any variable fee received by Real Betis if, following the exercise of the call option, Real Betis permanently transfers the registration of the Player to another football club*” (Articles 5.2.2.1 and 5.2.2.3).
- d. Since “New Transfer” was expressly defined as the permanent transfer of the registration of the Player to another club, a temporary transfer is clearly excluded from such consideration.
- e. The Appealed Decision does not consider nor is it based on the final signed version of the PSG/Real Betis Agreement but rather on the first draft submitted by PSG containing the agreement’s terms in which Real Betis is incorrectly named “BETIS SEVILLE”.
- f. The Parties have, in this case, determined all the aspects to be considered regarding the accrual and calculation of the sell-on fee, which is perfectly consistent with their status as top-tier clubs that belong to top-tier leagues with a profound understanding of the market. The terms of the sell-on fee are perfectly

clear and reflect what the parties wished to agree. The parties clearly determined that the sell-on fee would only be calculated in case of “permanent transfer” and only based on the amount of the said permanent transfer. Consequently, permanent transfer was not agreed as a *de facto* situation, as wrongly stated in the Appealed Decision, or as a “purpose”. Instead, this is a legal operation in itself and completely different from a temporary transfer, without leaving room for any other meaning than that which was voluntarily given by the parties.

- g. The *de facto* elements should not have taken precedence over more formalistic elements, as stated in the Appealed Decision, given that the Parties had determined that such “formalistic” elements were the ones that generated the accrual of the sell-on fee, perfectly distinguishing both transactions.
- h. The Appealed Decision should have respected the agreed terms and applied them rather than reinterpreting the will of the parties, as there is no reason to justify such overreach. It cannot be concluded from the literal wording of the clause, from the will of the Parties or from practice or customary uses in football operations that “temporary transfers” or “loans” are included when calculating the sell-on fee.
- i. While it is true that, as a general rule, the literal wording of an agreement is not enough to determine the intention of the parties, it is indeed sufficient when there are no objective grounds for believing that the plain text does not reflect the parties’ will. Real Betis refers to a judgment (4A\_124/2014) of the Swiss Federal Tribunal (“SFT” or “ATF”) which stated that there is no reason to depart from the literal meaning of the text adopted by the parties to the contract if there is no serious reason to doubt that it does not correspond to their intent.
- j. The Parties in this case did not use unclear or ambiguous concepts (as was the case in CAS 2007/A/2019 and CAS 2012/A/2733) but rather clear statements that besides reflecting the will of the Parties, were fully consistent with the rest of the clauses of the agreement. The fact that it was expressly stated that the sell-on fee would only apply to the amount received for the permanent transfer clearly reflected the Parties’ will, which is accredited by Article 19 of the Swiss Code of Obligations (“SCO”).
- k. Both Parties are professional clubs and, therefore, are perfectly aware of how the football industry works as well as of the rules, principles and terms of the legal operations related to the transfer of players’ registrations, and that a “permanent transfer” can never be confused with a loan or temporary transfer.
- l. For illustrative purposes, and to further prove that professional clubs are perfectly aware of the terms they agree to and the operations on which they want to base the calculation of a sell-on fee, Real Betis transcribed a clause agreed in the case of a transfer from a French club (Olympique Lyonnais) to Real Betis, that shows that the clubs are perfectly capable of detailing the legal transactions that may or may not give rise to a sell-on fee.
- m. If PSG had wanted to include the price of a possible temporary transfer or loan for the purposes of calculating the sell-on fee, it would have included it without any problems. In the case of player exchanges (Clause 5.2.2.3 of the PSG/Real

Betis Agreement), a much less frequent event, the mechanism to be followed when calculating the “New Transfer Fee” is very clearly established. Instead, in the PSG/Real Betis Agreement, it is clearly established that the transfer must be definitive or permanent.

- n. It was PSG who drafted the agreement, and more specifically Clause 5.2.2 of the PSG/Real Betis Agreement (which was not modified by Real Betis), and it excludes from the sell-on fee calculation the amounts paid by Real Betis for the Player’s temporary transfer. If the Panel considers that the clauses were unclear or ambiguous, the lack of clarity could never be in PSG’s favour since it was PSG who drafted the clause.
- o. Real Betis never had absolute certainty that the call option would be exercised by Tottenham as it depended on Tottenham qualifying for the group stage of the Champions League. The uncertainty regarding the exercise of the call option is shown by:
  - i. The budgets approved for the 2019/20 season by Real Betis did not include, as revenue, the amount Tottenham should have paid for the permanent transfer of the Player.
  - ii. The Player’s transfer to Tottenham was carried out at the express request of the team’s coach at the time, Mr. Mauricio Pochettino, who was removed from his position in November 2019. His replacement, Mr. José Mourinho, did not seem to trust in the Player’s abilities on the field and the Player injured his hip after only playing a few minutes.
- p. The Appealed Decision confuses two different operations (a loan and a definitive transfer) with two different fees, just because, once the call option has been exercised, the loan turns into a definitive transfer. This is completely wrong. The two operations were accounted for differently in compliance with the applicable accounting regulations and under rigorous audit controls. Real Betis has produced a certification done by an economist and Chartered Accountant, Mr. Luis Ruiz de Huidobro who determined that “*the accounting records of Real Betis Balompié, Sociedad Anonima Deportiva, on the agreements related to the ACQUISITION, LOAN AND TRANSFER OF THE FEDERATIVE RIGHTS of the player X. were done in agreement with the mandatory regulations established in the accounting and commercial legislation in force in Spain.*”
- q. It is unacceptable that the amounts paid by Real Betis for the temporary transfer of the Player are not taken into account when calculating the sell-on fee while, at the same time, the amounts received by Real Betis for the same concept are included when determining the “net profit” amount. In the unlikely case that the Panel deems the Appealed Decision to be correct, Real Betis requests that the same interpretation be applied to the amounts paid by Real Betis to PSG for the temporary transfer, including them when calculating the “net profit” on which the agreed 20% is applied.

*Did Real Betis act in bad faith?*

54. Real Betis denies any allegations of bad faith and submits that:

- a. The Appealed Decision does not even consider whether Real Betis acted in bad faith. Real Betis has not acted unfairly when making the business decisions it was entitled to, nor were any expectations disappointed, since PSG knew that, in accordance with the PSG/Real Betis Agreement, it could not receive any sell-on fee from the temporary transfer. Real Betis has not circumvented any responsibility since, as it told PSG, the amount corresponding to the sell-on fee would be paid in the terms agreed in Clause 5.2.2 of the PSG/Real Betis Agreement, that is, based on the price of the final transfer.
- b. Real Betis believes that, despite Tottenham wanting a definitive transfer, if the economic offer did not suit the economic expectations of Real Betis, the latter was perfectly entitled to reject it. It was open to Tottenham to pay the buyout clause amount as provided for in the Player's employment contract with Real Betis. Real Betis was entitled to enter into a temporary transfer with a call option with Tottenham as it was perfectly lawful and within the contractual freedom of the involved parties.
- c. It is strange that a club that signed a one-season temporary loan contract for EUR 45 million argues that a EUR 16 million loan fee is disproportionate or problematic. The Player's outstanding performance in his time with Real Betis has to be considered in this case. This amount was compensation for being deprived of the Player's services during the loan period and was fully consistent with Clause 4 of the Player's employment contract which provided for a EUR 100 million buyout. Given the Player's contract had a 5-year term, his value per year would amount to EUR 20 million and therefore, EUR 16 million is not an excessive or artificially high figure.
- d. Real Betis cooperated with PSG even during the period before the transfer of the Player became permanent. For the sake of transparency, Real Betis provided PSG with the Real Betis/Tottenham Agreement, although obviously withholding certain data, as such was confidential.
- e. The application of Article 156 of the SCO requires the existence of clear and evident bad faith. It cannot be applied based on simple "feelings" or pure speculative evidence, as intended by PSG before FIFA. On the other hand, this article is the exemplification of the prohibition of the abuse of right (Swiss Civil Code 2.II), the principle according to which no one can exercise a right that has been acquired unlawfully ("*nemo auditur propiam turpitudinem allegans*").
- f. The principles of good faith may only be infringed if one of the parties, in accordance with the principles of mutual trust, has the obligation to conduct, or to refrain from conducting, certain particular behaviour that is duly expected by the other party, e.g., a party's behaviour does not comply with what was agreed upon in a conditional contract that must be interpreted in accordance with the SCO. In this sense, the limits of an authorised or prohibited behaviour depend on the analysis of the specific circumstances and, above all, on the nature of the condition, the subject matter of the contract, the author's reasons and the objective pursued. As indicated, the temporary transfer agreement with a call option is a perfectly valid agreement, carried out in accordance with the regulations of both FIFA and the national applicable regulations (Spanish Royal

Decree 1006/1985), and under the contractual freedom of the Parties, so it cannot simply be inferred, as PSG stated in its previous communications and reiterated before FIFA, that there is fraudulent behaviour.

- g. Reference is made to CAS 2012/A/3012 wherein Boca Juniors alleged that Sport Club Corinthians Paulista acted in bad faith when it terminated by mutual agreement a contract with a player, even though it knew his high value, damaging the interests of Boca Juniors, who had included a sell-on fee clause in the player's transfer contract to Corinthians, justifying its petition. The action carried out by the latter completely deprived Boca Juniors of the amounts that Boca could have received from the sell-on fee. However, in the case at hand, Real Betis complied with the provisions of Clause 5.2.2 of the PSG/Real Betis Agreement, not depriving PSG of anything to which it was entitled, recognizing in its favour the amounts that, in compliance with said clause, corresponded to PSG with respect to the amount of the "New Transfer", that is, the permanent transfer made to Tottenham once the call option was executed.

55. Based on the above submissions, Real Betis seeks the following reliefs:

*"1. To uphold the present appeal of Real Betis Balompié, SAD and annul the decision of the Single Judge of the PSC passed on 23 march 2021 regarding a dispute concerning the transfer of the player X. (REF 20-01767).*

*2. To issue a new decision stating that, according to clause 5.2.2. of the "Transfer Agreement on Terms of Loan with Option to Permanent Transfer" of 31 August 2018 (PSG/Real Betis Agreement), only the amounts paid for the permanent transfer of the player once the call option was executed must be taken into account in order to calculate the sell-on fee.*

*3. Subsidiarily, to issue a new decision stating that the amounts paid by the Appellant to PSG for the temporary transfer, must be included when calculating the "Net Profit" on which the agreed Sell-on fee is applied, as it is calculated on par. 72*

*4. To fix a sum to be paid by the Respondent to the Appellant, to help the payment of its legal fees costs.*

*5. To condemn the Respondent to the payment of the whole CAS administration costs and the Arbitrators fees."*

## **B. PSG**

### *Interpretation of the sell-on fee clause*

56. PSG argues that the amount paid as the "loan fee" should also be included in the calculation of "net profit" which serves as the basis for the sell-on fee. In this regard, PSG stated that:

- a. The PSG/Real Betis Agreement provides for the sell-on fee to be calculated on any amount to be received by Real Betis arising from the Player's subsequent transfer, once the Player is transferred permanently. As a matter of contractual interpretation, therefore, the loan fee should be included in the calculation of

the sell-on fee. This is the interpretation already arrived at by the FIFA PSC in the Appealed Decision, and which should be upheld.

- b. Pursuant to Article 1 of the SCO, a contract requires the mutual agreement of the parties. This agreement may be either express or implied. When the interpretation of a contract is in dispute, the judge seeks the true and mutually-agreed intention of the parties, without dwelling on incorrect statements or expressions used by the parties by mistake or in order to conceal the true nature of the contract.
- c. When the mutually agreed and genuine intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith (ATF 129 III 664; 128 III 419). The judge has to determine how a declaration or the external manifestation of a party could have been reasonably understood, depending upon the individual circumstances of the case (ATF 129 III 118; 128 III 419). The requirements of good faith tend to give preference to a more objective approach. The emphasis is less on what a party may have meant than on how a reasonable person would have understood the party's declaration (ATF 129 III 118; 128 III 419).
- d. In determining the intent of a party, or the intent that a reasonable person would have had in the same circumstances, it is necessary to first examine the words actually used or the conduct engaged in. However, the assessment is not limited to those words or conduct, even if they appear to give a clear answer to the question. In order to go beyond the apparent meaning of the words or the conduct of the parties, due consideration is to be given to all relevant circumstances of the case. This includes the negotiations, any subsequent conduct of the parties, and usages (CAS 2016/A/4544, CAS 2015/O/4362, CAS 2013/A/3133, CAS 2017/A/5172).
- e. Therefore, when interpreting a contract, the true intention of the parties prevails over any other elements of interpretation. This position has been confirmed by other CAS panels in more recent cases. The recent case of CAS 2019/A/6525 demonstrates that the CAS takes a broad, flexible and purposive approach to the interpretation of sell-on fee clauses, which recognises the use of such clauses to protect the selling club and to ensure its receipt of profit in relation to a player's future movement.
- f. The fact of whether the Player has been transferred permanently is relevant only to the question of whether the sell-on fee is due (i.e., when it is to be paid), not to the question of how to calculate that sell-on fee (i.e., how much is to be paid). In other words, for the purposes of calculation, it is irrelevant whether the Player was transferred initially on a temporary basis and then on a permanent basis, or on a permanent basis from the outset. The calculation of the sell-on fee depends on the "net profit", which is the surplus from a subsequent transfer of the Player. Clause 5.2.2.3 of the PSG/Real Betis Agreement further provides that for the purposes of the calculation of the sell-on fee, the total transfer fee of the new transfer comprises "*any fixed compensation and any bonus / variable compensation and any variable fee received by REAL BETIS in the context of the New Transfer*".

- g. The Real Betis/Tottenham Agreement regulates the Player's transfer from Real Betis to Tottenham. Any amount to be paid pursuant to the Real Betis/Tottenham Agreement relates to the Player's transfer to Tottenham, be it a loan fee or a permanent transfer fee. Therefore, the "loan fee" received by Real Betis was "*in the context of the New Transfer*", *i.e.*, the Player's transfer to Tottenham.
- h. It is important to distinguish a temporary transfer of the player without an option right, from a temporary transfer with an option right to transfer the player permanently, because in the first scenario, the club that transfers the player on loan pays a fee only to have a player for a limited period, whereas in the second scenario, the club not only has a player for a limited period but also pays for the right to transfer him permanently, which effectively means that it pays a part of the permanent transfer fee. In the second scenario, the permanent transfer would not be possible without paying the loan fee. Furthermore, when the option was exercised, the Player did not return to Real Betis, but rather continued with Tottenham. It should also be recalled that it is PSG's position that Real Betis and Tottenham had in any case reached an agreement for the Player to be transferred permanently, as confirmed by Tottenham's correspondence to PSG.
- i. The PSG/ Real Betis Agreement did not provide for a sell-on fee to be paid if the Player was loaned to a third club and returned to Real Betis, because the threshold amount for the sell-on fee to become due (EUR 21,496,584.28) was so high that it was not feasible that a higher amount could have been paid for a temporary transfer of the Player. However, this does not mean that the basis for calculating the sell-on fee should not include the loan amount when the new club not only transfers the Player temporarily but also purchases an option to transfer him permanently, and subsequently permanently transfers him. In fact, the clubs drafted Clause 5.2.2.3 of the PSG/Real Betis Agreement in a broad way to ensure that any possible amounts, fixed or variable, to be received by Real Betis "*in the context*" of the Player's transfer would be taken into account. It is evident that such wording includes a temporary transfer fee. It would have been open for the Parties to draft the Article much more narrowly, but they chose not to do so, instead maintaining a broader, 'context'-focused wording. It would of course also have been open to the Parties to explicitly exclude loan fees from the calculation of the sell-on fee, but again they chose not to.
- j. This broader, 'context'-focused wording is also in keeping with the approach of the CAS in CAS 2019/A/6525. The wording of the PSG/Real Betis Agreement reflects the fact that, as acknowledged and explained by the CAS, the purpose of sell-on fee clauses is to protect the "old" club (*i.e.*, PSG) against an unexpected increase in the market value of a player's services (such as, in the present case, a very significant loan fee) and also to share the profit from the future movement of a player (such as, undoubtedly, the loan profit in the present case). Moreover, the CAS states that this general purpose of sell-on fee clauses means that there is positively a "*call for their application to all cases where the intended purpose (to allow the old club to share the benefit of a subsequent transfer) can be achieved*". That call should be heeded and applied in the present case.
- k. PSG and Betis expressly agreed on how the sell-on fee should be calculated if a

“New Transfer” involved an exchange of players (see Clause 5.2.2.3 of the PSG/Real Betis Agreement). This confirms the intention of the Parties for the sell-on fee to be calculated on the basis of the actual value received by Real Betis from a third club. Because there is only one transfer of the Player from Real Betis to Tottenham, and the Player is not returning to Real Betis, it would be contrary to the Parties’ intention to separate the “loan fee” from the permanent transfer fee, as Real Betis receives the total transfer fee of EUR 48 million for the Player’s transfer. The ‘permanent’ part of the transfer fee was set at a certain amount only in consideration of the fact that the ‘temporary’ part of that transfer fee (the ‘loan fee’) would have already been paid. The value of the transfer for Real Betis can therefore only be calculated by combining the two.

- l. In the formal offer that Real Betis made to PSG on 30 August 2018, which reflected the terms that had been discussed between the clubs prior to that, and which formed the basis for the PSG/Real Betis Agreement that was entered into the following day, one of the financial conditions of the Player’s transfer to Real Betis was that “*PSG will maintain 20% of Athlete’s economic rights*”. Real Betis never sought to include a provision in the PSG/Real Betis Agreement that the sell-on fee would be calculated only on the basis of the amounts received by Real Betis for the permanent transfer of the Player, excluding loan fees. This reference to 20% of the ‘economic rights’, including loan amounts, is relevant in circumstances where, as described above, under Swiss law the PSG/Real Betis Agreement must be interpreted to reflect the true intention of the Parties.
- m. The Parties agreed to the wording of “total transfer fee” in Clause 5.2.2.1 of the PSG/Real Betis Agreement. They did not, for example, refer to the ‘total permanent transfer fee’, which it would have been open to them to specify. The fact that the PSG/Real Betis Agreement actually contains a broader reference to a total, unspecific fee contradicts Real Betis’ contention that there should be a special separation and exclusion of the loan fee amount from the sell-on fee.
- n. The fact that “net profit” was defined in Clause 5.2.2.2 of the PSG/Real Betis Agreement with reference to the new transfer fee “*after deduction of [the] solidarity contribution referred to in the FIFA Regulations*” is in favour of PSG’s interpretation, because the solidarity contributions within the FIFA Regulations are imposed when a professional player is transferred “*either on a definitive or loan basis*”. The contract does not exclude the “loan basis” from the definition of solidarity contributions for the purpose of the total new transfer fee. This is contrary to Real Betis’ interpretation that the loan fee is excluded from the calculation of the sell-on fee.
- o. Real Betis’ interpretation would allow for the entire purpose of the sell-on fee clause to be overridden. Taken to its extreme, Real Betis’ position would have allowed it to, for example, frontload 99% of the total transfer fees into a ‘loan fee’, thereby reducing the sell-on fee to a minimal and derisory amount, arising only from the ‘permanent transfer fee’. Such an interpretation would have perverse consequences that would be contrary to both the letter and spirit of the PSG/Real Betis Agreement.
- p. In arguing that the “New Transfer” is expressly defined as the permanent transfer

of the registration of the player to another club and therefore a temporary transfer is excluded from such consideration, Real Betis fails to engage with the full wording of the relevant provisions. Real Betis ignores the fact that the relevant term for calculating the sell-on fee is the “Total New Transfer Fee” which requires payment of net profit “*taking into account the total transfer fee of it*” and which is deemed to comprise “*any fixed compensation... in the context of the New Transfer*”. Real Betis mistakenly oversimplifies the interpretation of Clause 5.2.2 of the PSG/Real Betis Agreement.

- q. The references to Real Betis’ accounting operations for the loan fee and the permanent transfer fee are irrelevant. The quotation by Real Betis of a clause from an entirely unrelated agreement that was not made between the Parties and did not involve PSG is irrelevant.
- r. To the extent that it is actually alleged by Real Betis, it is denied that the principle of *contra proferentem* or *in dubio contra stipulatorem* has any application to the present case. Real Betis agreed on and made amendments to the wording used in the PSG/Real Betis Agreement, and it therefore did not have any contractual wording forced upon it by PSG. Furthermore, the CAS Panel is able to interpret the wording and to consider the will of the Parties without requiring reference to the principle, as the terms of the PSG/Real Betis Agreement are not unclear or ambiguous.
- s. The Transfer Fee referred to at Clause 5.2.2.2 of the PSG/Real Betis Agreement is a defined term as per Clause 5.2.1.1. It is specifically defined as “*a fee fixed by mutual agreement of the Parties in the amount of 22,528,384.28 Euros (twenty-two million five hundred twenty-eight thousand three hundred eight-four euros and twenty-eight cents, VAT excluded)*”. It is that same defined term that is referred to at Clause 5.2.2.2. There is no argument of contractual interpretation that can add the loan fee to the amount included within the defined term of the Transfer Fee. In any event, the loan fee (and its amount) is also a specifically defined term as per Clause 4.1, and the net profit definition at Clause 5.2.2.2 makes no reference to the Loan Fee at all.
- t. The CAS Panel will note that Real Betis does not even attempt to justify its position by reference to the terms of the PSG/Real Betis Agreement. The sole justification is simply an implied appeal to fairness and a criticism of an allegedly “selective” approach within the Appealed Decision. There is nothing “selective” about the need to interpret different provisions based on their own specific wording. Real Betis purposely ignores the fact that the “Transfer Fee” is defined in an entirely separate way to the “Total New Transfer Fee” in the PSG/Real Betis Agreement.

*Did Real Betis act in bad faith?*

57. In this regard, PSG argued that:

- a. Real Betis acted in bad faith by artificially structuring the Player’s transfer to Tottenham in a manner intended to prevent PSG from receiving the full amount of the sell-on fee. Therefore, pursuant to Swiss law and CAS jurisprudence, the

sell-on fee condition is deemed to be “fulfilled” because of Real Betis’ bad faith conduct. That fulfilment means that the sell-on fee should be calculated by reference to the loan amount as well as the permanent transfer amount. This deemed ‘fulfilment’ is a consequence of Real Betis’ bad faith, even in the unlikely event that the CAS Panel was to consider that as a matter of contractual interpretation, the loan amount should not be taken into consideration for the calculation of the sell-on fee.

- b. Because Real Betis sought to prevent the condition from being properly fulfilled by refusing to transfer the Player to Tottenham permanently, and instead insisted on structuring the transfer as a very short-term loan with an option right, according to Article 156 of the SCO, the CAS Panel must consider and deem the condition to be fulfilled in full.
- c. If it is found as a matter of contractual interpretation that the sell-on fee does not include the loan fee but only the permanent transfer fee, then the exclusion of the loan fee amount has only originated through Real Betis’ bad faith. Therefore, the sell-on fee shall be deemed fulfilled, in that the “Total New Transfer Fee” at Clause 5.2.2.1 of the PSG/Real Betis Agreement shall be taken to include the loan fee amount as well as the permanent transfer fee amount.
- d. Real Betis’ bad faith conduct involved structuring the Real Betis/Tottenham Agreement to include a high-value loan fee, so as to seek to avoid paying a greater sell-on fee to PSG. Tottenham wished to transfer the Player on a permanent basis but Real Betis stipulated that the permanent transfer could only take place if it was presented as a loan with an option right. The amount of EUR 16 million was both completely excessive and disproportionate for a supposed loan fee. Real Betis’ behaviour was consistent with wrongdoing.
- e. Real Betis wanted to earn more from the transfer, at the expense of PSG. Real Betis sought to structure the transfer in a manner that would result in Real Betis retaining 20% of the “loan fee” (around EUR 3.2 million) instead of paying it to PSG. In this way, Real Betis sought to prevent the condition from being fulfilled that would permit PSG to receive the sell-on fee for the full transfer amount (including the “loan fee”).
- f. PSG accepts that when agreeing to a sell-on fee for a player, there is the possibility that the player will not be transferred to a third club or will be transferred below the threshold amount. Moreover, Article 156 of the SCO does not impose a positive obligation on a counter-party to facilitate the fulfilment of the condition. PSG does not claim that Real Betis was obliged to facilitate the condition. However, in the present case, the evidence demonstrates that Real Betis acted in bad faith so as to actively avoid fulfilment of the condition by insisting on the transfer being restructured as it did (it was obliged not to prevent the condition from happening in the normal course of business).
- g. Had Real Betis not insisted on the permanent transfer being structured in a manner different to the normal manner in which two clubs proceed with the permanent transfer of a player, the transfer would still have happened. It was in fact Real Betis’ refusal to transfer the Player in the normal manner, as proposed

by Tottenham, that put the deal at risk. Had Real Betis not insisted on the very short-term loan as a precondition, it would have been a normal permanent transfer (because Tottenham wanted the Player on a permanent basis and it was ready to pay for such a permanent transfer) and the full amount of the sell-on fee would be indisputably due to PSG.

- h. The behaviour of Real Betis contravenes its obligation to act in good faith pursuant to the SCO, in particular, Article 156 of the SCO. According to the CAS case law (CAS 2010/A/2168) and the jurisprudence of the SFT (ATF 135 III 295, 302), *“if a condition is agreed and if its occurrence depends, to a certain extent, on the will of one of the parties on which the contract imposes obligations, this party does not have in principle an entire freedom to refuse this occurrence and to be freed, in that way, of its contractual obligations. It shall, on the contrary, act in a loyal way and according to the rules of good faith; in case of violation of these requirements, the condition is deemed to be accomplished, according to Article 156 CO”*.
- i. A clause providing for a sell-on fee in a transfer agreement is a ‘condition’ within the meaning of Swiss civil law: one club is obliged to pay to another club an additional amount of transfer compensation upon the occurrence of certain events, namely a player’s subsequent transfer to a third club. In this regard, PSG refers to the award in CAS 2009/A/1756. In that case, two clubs entered into a transfer agreement according to which Galatasaray SK was obliged to pay a sell-on fee to FC Metz in the event of a subsequent transfer of the player. However, Galatasaray SK prematurely terminated the employment contract with the player without just cause and, therefore, prevented FC Metz from receiving its sell-on fee. The CAS decided that Galatasaray SK had an obligation according to Article 156 of the SCO to act in a loyal way and according to the rules of good faith towards FC Metz. On that basis, the CAS ordered Galatasaray SK to pay the sell-on fee to FC Metz as if the player had been transferred to a third club. Similarly, in CAS 2018/A/5809, the CAS confirmed that when one club has an obligation to pay a sell-on fee to another club, the former has a duty to act in good faith towards the latter when concluding a transfer agreement with a third club.
- j. The amount of the “loan fee” was grossly disproportionate. It was a mechanism intended to allow Real Betis to avoid paying PSG the full sell-on fee. The loan fee constitutes one-third of the total transfer fee of EUR 48 million that Tottenham was obliged to pay. The option was exercised six months in, meaning that Tottenham had to pay EUR 16 million for the period of the first six months and EUR 32 million for a period of five and a half years. It is evident that amount of the “loan fee” was grossly disproportionate for a simple loan and that it was not intended to only be a fee paid for the loan. The “loan fee” constituted the first instalment of the total transfer fee. This amount would be the highest (or second highest) loan fee ever paid in the history of football.
- k. The behaviour of Real Betis after the Player was transferred to Tottenham supports the conclusion that Real Betis acted in bad faith. Had nothing unlawful occurred, Real Betis would have had no reason to avoid cooperation and no reason to avoid being transparent. If Real Betis had not been acting in bad faith,

it would have had no reason to conceal the amount of the ‘loan fee’ from PSG and to resist disclosure of the details of the Real Betis/Tottenham Agreement.

- l. Real Betis has chosen not to provide any evidence as to the course of its negotiations with Tottenham prior to the eventual agreement, including any offers made or rejected. Therefore, Real Betis’ assertion that “*the economic offer did not cover the value of the player*” is completely unsupported and unexplained. Similarly, the witness statement of Mr Jose Ruiz Maguillo explains that “*different attempts were made by Tottenham and the Intermediaries appointed by Tottenham, but all of the [sic] were rejected*” without actually explaining what the attempts were or why Real Betis rejected them.
- m. Real Betis also chooses not to engage with the key issues in relation to the bad faith submission. Real Betis suggests that Tottenham’s intention is irrelevant and tries to misrepresent PSG’s argument. The relevance of Tottenham’s intention is obvious: Real Betis frustrated that intention and imposed a loan arrangement upon Tottenham. Therefore, given that Real Betis adopted a negotiating position that was contrary to the position of the other negotiating party, this conduct becomes more questionable and requires a more cogent explanation.
- n. By contrast, the allegation that PSG provided no evidence whatsoever of Real Betis’ bad faith before the FIFA PSC is denied. PSG provided detailed and specific evidence in support of its case on bad faith, including direct evidence from the party (Tottenham) with whom Real Betis was negotiating as to Real Betis’ specific negotiation position, and which supports PSG’s submission on bad faith.
- o. Firstly, the argument that PSG has itself used such a contractual arrangement has no relevance to the bad faith analysis and affords Real Betis no realistic defence. PSG is not alleging that the mere fact of a loan agreement with a permanent transfer option is unacceptable in any situation or automatically amounts to bad faith conduct. Instead, it is specifically alleging that Real Betis’ behaviour, including its deliberate choice of that contractual structure, amounted to bad faith in the context of the PSG/Real Betis Agreement and the sell-on fee provisions contained therein. It is therefore also irrelevant for Real Betis to argue that the structure of the PSG/Real Betis Agreement was valid, or in accordance with national or FIFA regulations, or pursuant to freedom to contract. These are all unspecific points where Real Betis appears to wilfully ignore the detail of PSG’s case on bad faith, namely that Real Betis imposed the structure it did in the particular context in order to avoid a greater sell-on fee payment to PSG.
- p. PSG argued that CAS 2012/A/3012 was factually distinct from the present case and that the present case was not one of presumption as there is direct evidence from Tottenham regarding Real Betis’ behaviour.

58. PSG seeks the following reliefs in these proceedings:

“(1) *The appeal of Real Betis Balompié SAD is dismissed in its entirety.*

*(2) The Decision of the Single Judge of the FIFA Players’ Status Committee dated 23 March 2021 is upheld, including that Real Betis Balompié SAD is*

*obliged to pay to Paris Saint-Germain Football SASP the amount of EUR 2,627,000 plus interest.*

*(3) The costs of the arbitration shall be borne by Real Betis Balompié SAD.*

*(4) Real Betis Balompié SAD shall pay, alternatively make a contribution to, the legal and other costs of Paris Saint-Germain Football SASP.”*

#### **IV. JURISDICTION**

59. Article R47 CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. [...]”*

60. The jurisdiction of CAS derives from Article 58 par. 1 and 2 of the FIFA Statutes which states that:

*“1. Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*

*2. Recourse may only be made to CAS after all other internal channels have been exhausted.”*

61. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by all Parties.

62. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

#### **V. ADMISSIBILITY**

63. Article R49 CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.”*

64. In accordance with Article R49 CAS Code and Article 58 of the FIFA Statutes, the time limit for filing the appeal is 21 days. The present appeal was filed within this deadline since Real Betis received the grounds of the Appealed Decision on 30 March 2021 and the appeal was filed with CAS on 19 April 2021. The Appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee, and is therefore admissible.

## **VI. APPLICABLE LAW**

65. Article R58 CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”*

66. Article 66 para. 2 of the FIFA Statutes states that:

*“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.”*

67. Accordingly, the applicable regulations in the present case are the FIFA Regulations and subsidiarily, Swiss law. The Panel notes that the Parties agree that these are the applicable regulations.

## **VII. MERITS**

68. At the outset, the Panel states that during the hearing, the witness called by Real Betis, Mr. Jose Ruiz, was examined in detail. The Parties were given the opportunity to cross examine him and the Panel also put forward questions to him as it deemed necessary. The Panel has evaluated the evidence given by him in coming to the conclusions contained herein and shall refer to relevant portions of his testimony, as deemed necessary. Since PSG chose not to examine its witness, [...], during the hearing, the Panel has evaluated the written statements provided by [...].

69. In the present case, the Panel has to consider the following major issues:

- a. Can the “loan fee” paid by Tottenham to Real Betis be included in the calculation of “net profit” as provided in the PSG/Real Betis Agreement?
- b. Did Real Betis act in bad faith towards PSG? If so, does that result in deemed fulfilment of the sell-on fee clause?
- c. What is the calculation of the sell-on fee?

70. The Panel will address these issues in turn.

### **A. “Loan fee” and the calculation of “net profit”**

71. The terms of the PSG/Real Betis Agreement are clear and unambiguous on the mechanism of the sell-on fee:

- a. Clause 5.2.2.1 of the PSG/Real Betis Agreement states that if, following the

exercise of the call option, Real Betis permanently transfers the registration of the Player to another football club (the “New Transfer”), Real Betis will pay PSG 20% of the net profit made by Real Betis on the New Transfer taking into account the total transfer fee.

- b. The meaning of “net profit” and “Total New Transfer Fee” has also been determined in the PSG/Real Betis Agreement as follows:
  - i. “net profit” means the difference between the Total New Transfer Fee, VAT excluded, after deduction of solidarity contribution referred to in the FIFA Regulations, and the Transfer Fee, VAT excluded, after deduction of solidarity contribution referred to in the FIFA Regulations (Article 5.2.2.2 of the PSG/Real Betis Agreement).
  - ii. “Total New Transfer Fee” shall be deemed to comprise any fixed compensation and any bonus/variable compensation and any variable fee received by Real Betis in the context of the New Transfer, VAT excluded, after deduction of solidarity contribution referred to in the FIFA Regulations (Article 5.2.2.3 of the PSG/Real Betis Agreement).

72. Though the procedures envisaged by the Parties for the payment of the sell-on fee is clear, the factual scenario makes it necessary to consider the meaning of certain provisions. The Panel notes that the dispute between the Parties in the present case boils down to the meaning of the term “Total New Transfer Fee”. Real Betis argues that this amount cannot include the “loan fee” paid by Tottenham as it is a completely distinct transaction, whereas PSG claims that the “loan fee” was paid “*in the context of the New Transfer*” as provided in Clause 5.2.2.3 of the PSG/Real Betis Agreement and hence has to be included.
73. The Panel notes that the Appealed Decision contains limited reasoning with respect to the issue of inclusion of the loan fee in the calculation of the sell-on fee. The FIFA PSC decided that the transfer of the Player from Real Betis to Tottenham was *de facto* of a permanent nature regardless of the fact that it began as a loan. The FIFA PSC further stated that the *de facto* elements concerning the subsequent transfer of the Player shall take precedence over more “formalistic” elements. The Panel is of the opinion that prior to making a decision on this issue, the intention of the Parties, the language of the clauses of the PSG/Real Betis Agreement and precedents need to be considered.
74. While interpreting the intent of the Parties, the Panel considers the following principles as per Swiss law and CAS jurisprudence as relevant:
  - a. Even in case the terms used in a contract have a clear literal (i.e. unambiguous) meaning, the adjudicatory body must assess whether or not the parties truly wished to attribute such meaning to the terms used. Article 18 para. 1 of the SCO states that the content of the agreement must be construed according to the true intentions of the parties. Thus, the parties’ subjective will has priority over any contrary declaration in the text of the contract. In case a common subjective will of the parties cannot be ascertained, the contents of the contract must be

determined by application of the principle of mutual trust (CAS 2017/A/5172, paras. 70, 73. See also CAS 2005/A/871, para. 4.29; CAS 2018/A/5950, para. 76; CAS 2018/A/6023, para. 47).

- b. The court shall first seek to bring to light the real and common intent of the parties, empirically as the case may be, on the basis of clues without regard to the inaccurate expressions or designations they may have used. Failing this, it shall then apply the principle of reliance and seek the meaning that the parties could and should give according to the rules of good faith to their reciprocal expressions of will considering all the circumstances (SFT 127 III 444, para. b, ATF 140 III 134, para. 3.2; CAS 2016/A/4544, paras. 82-94; see also CAS 2018/A/6023, para. 52; CAS 2019/A/6525, para. 67; CAS 2016/A/4379, paras. 88-92).
  - c. Should the application of this principle fail to bring a conclusive result, some alternate means of interpretation may be resorted to, such as the so-called rule of ambiguous clauses, pursuant to which, in case of doubt, the contract must be interpreted against the party which drafted it (*in dubio contra stipulatorem* or *proferentem*). Under this provision, the parties' common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention. This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them. The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation. By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith, based on its wording, the context and the concrete circumstances in which it was expressed (CAS 2016/A/4544, paras. 82-94; see also CAS 2005/A/871, para. 4.29; CAS 2018/A/5950, para. 76; CAS 2018/A/6023, para. 47).
  - d. In determining the intent of a party or the intent which a reasonable person would have had in the same circumstances, it is indeed necessary to look first to the words actually used or the conduct engaged in. However, the investigation is not to be limited to those words or the conduct even if they appear to give a clear answer to the question. In order to go beyond the apparent meaning of the words or the conduct of the parties, due consideration is to be given to all relevant circumstances of the case (CAS 2016/A/4544, paras. 82-94; see also CAS 2018/A/6023, para. 52; CAS 2019/A/6525, para. 67; CAS 2016/A/4379, paras. 88-92). This includes the negotiations and any subsequent conduct of the parties.
75. Regarding the wording of the relevant clauses in the PSG/Real Betis Agreement, the Panel notes the following:
- a. There is no ambiguity in the agreement that the sell-on fee would be triggered only upon the exercise of the option by Tottenham to permanently transfer the Player from Real Betis to Tottenham. "New Transfer" within Clause 5.2.2.1 of

the PSG/Real Betis Agreement means the permanent transfer of the registration of the Player to another football club.

- b. However, Clause 5.2.2.3 of the PSG/Real Betis Agreement seems to be drafted in a broad manner by stating “*any fixed compensation and any bonus/variable compensation and any variable fee received by Real Betis in the context of the New Transfer*”. The question before the Panel essentially is whether the loan fee paid by Tottenham falls within “*any fixed compensation...received by Real Betis in the context of the New Transfer*”. The phrase “*in the context of the New Transfer*” is ambiguous and requires the Panel to interpret it based on the intent of the Parties.
- c. The Parties were at liberty to mention a potential “loan fee” specifically within the definition of the “Total New Transfer Fee”. However, they chose not to do so. This is especially important since the Parties went as far as contemplating a player exchange and described a mechanism for calculation of the sell-on fee in that scenario.

76. Having considered the relevant principles as described above and the wording of the clauses in the PSG/Real Betis Agreement, the Panel finds that the Parties did not intend to include the loan fee within the meaning of the “Total New Transfer Fee”. In coming to this conclusion, the Panel considered the following:

- a. The Panel notes that a temporary transfer of a football player (i.e., a “loan”) and a permanent transfer of a football player are two entirely distinct concepts. In a loan arrangement, there is a definitive date on which the loan ends and the player returns to his club. There are also vastly different issues to consider for football clubs while evaluating a potential loan of a player as opposed to a permanent transfer. A loan transaction involves both risk and flexibility for the parties involved. These factors are generally reflected in the structure, size and modalities of the loan fee. A loan fee needs to be distinguished from a “transfer fee” (as paid for a permanent transfer) as the considerations for the valuation process in a loan fee are completely different from those for a transfer fee.
- b. Parties to a transfer agreement have the freedom to structure it any manner that they wish to, within the limits of the applicable law and regulations. It is not uncommon in the football industry for transfer of players to be done on the basis of a loan with an option or an obligation for a permanent transfer at a later date. This is, in fact, the manner in which the services of the Player were first acquired by Real Betis from PSG. In such arrangements, if an option is granted to the receiving club, it has the discretion to decide whether or not the player should remain with the club once the loan expires. In case the receiving club has agreed to acquire the services of the player on a permanent basis upon expiry of the loan, there is an obligation to such a permanent transfer to be completed at the given time. Superficially, such a loan-plus-transfer transaction may be considered “strange”. In reality, there are multiple reasons that may bring clubs to such a transaction, notably accounting or finance reasons – against the background for example of financial fairplay rules.
- c. In the present case, the Real Betis/Tottenham Agreement involved a temporary

transfer of the Player with an option provided to Tottenham to make the transfer permanent as from 1 July 2020. Further, Tottenham was also bound to exercise this option if it qualified for the group stages of the 2020/21 UEFA Champions League. The Panel finds that the exercise of the option by Tottenham and the subsequent permanent transfer of the Player was clearly an uncertain event. To start, the qualification to a certain phase of a sporting competition is by nature an uncertain event. Further, also the exercise of an option by a party is not a certain event. In this regard, the Panel refers to the factual circumstance invoked by Real Betis i.e., the change of the coach at Tottenham, which, for any club, could be a significant factor in the decision to exercise an option for a permanent transfer. This is one of the many scenarios where Tottenham could have decided not to go through with the permanent transfer of the Player. In that situation, PSG would certainly not be entitled to receive any portion of the loan fee since there would have been no “New Transfer” as per Clause 5.2.2.1 of the PSG/Real Betis Agreement.

- d. By structuring the Real Betis/Tottenham Agreement as a temporary transfer with an option for a permanent transfer, Real Betis assumed the risk of the possibility of Tottenham not exercising the option for a permanent transfer. This risk must be treated as one of the elements considered while calculating the loan fee.
- e. In the present case, although the mechanism for the triggering and calculation of the sell-on fee is clear and unambiguous in most respects, the term “...*in the context of the New Transfer*” has created some confusion. This phrase is certainly ambiguous and requires the Panel to apply the principles of interpretation described above. As already stated, the Panel is satisfied that the loan of the Player and the potential permanent transfer of the Player are two distinct transactions. As such, a fee paid for one transaction, i.e. the loan fee, cannot be treated as being “in the context” of the other transaction, i.e. the permanent transfer.
- f. If the Panel was to consider the common intent of the Parties, it is clear that an active choice was made by the Parties to not specifically mention a loan fee as being part of the types of compensation that would be included in the “Total New Transfer Fee”. The fact that the Parties mentioned “fixed compensation”, “bonus/variable compensation” and “variable fee[s]” demonstrates that there was no intent to include a possible loan fee in the “Total New Transfer Fee”. The Parties even went to the extent of describing a process for the calculation of the sell-on fee in the event of a player exchange transfer, which is likely a less common transaction than a loan with an option for a permanent transfer.
- g. Further, the Panel notes that the initial draft of the PSG/Real Betis Agreement was prepared by PSG and that Real Betis did not suggest any relevant amendments to Clause 5.2.2. Considering that the Panel has found the phrase “...*in the context of the New Transfer*” to be ambiguous, the principle of *contra proferentem* or *in dubio contra stipulatorem* applies (see CAS 2018/A/6023; CAS 2009/A/1773-1774) and this provision has to be interpreted against PSG. This lends support to the Panel’s finding that the “Total New Transfer Fee” cannot be interpreted to include the loan fee.

- h. The Panel appreciates the reasoning in CAS 2019/A/6525 wherein it was stated that sell-on clauses are generally intended to “protect” a club transferring a player to another club against an unexpected increase, after the transfer, in the market value of the player’s services and also to share the profit from the future movement of a player. However, considering the facts in the present case, any monetary consideration linked to a temporary transfer cannot be considered part of such “protection”.
  - i. The Panel has considered PSG’s argument that not including the loan fee in the calculation of the sell-on fee would override the entire purpose of the sell-on fee as clubs could unfairly inflate the loan fees to avoid paying the intended sell-on fee. In this regard, the Panel notes that such an argument would only be applicable if the payment of a sell-on fee was a mandatory rule imposed by a relevant sports federation or by national law. In the present case, the requirement of payment of a sell-on fee arises from a contractual clause. As explained above, the Parties were at liberty to explicitly include loan fees in the definition of the “Total New Transfer Fee”, at the time of drafting the agreement or at any point subsequently.
77. Considering the above, the Panel finds that Real Betis is correct in claiming that the true intent of the Parties was not to include any possible “loan fee” in the “Total New Transfer Fee”. Though the terms “*in the context of the New Transfer*” could provide some support to PSG’s argument, it has to be understood that the “loan fee” was in the “context” of the temporary transfer of the Player and not of the permanent transfer of the Player. In view of the wording and content of the agreement and the evidence submitted, the Panel is satisfied that no different interpretation of the contractual obligations accepted by the Parties can be supported.

**B. Did Real Betis act in bad faith?**

78. PSG has essentially argued that Real Betis structured the Player’s transfer as a loan with an option for a permanent transfer so as to circumvent (or at least reduce) the obligation to pay a sell-on fee. PSG alleges, on this basis, that Real Betis acted in bad faith. Further, PSG argues that Article 156 of the SCO becomes applicable in this scenario. This provision states that “*A condition is deemed to be fulfilled if its occurrence has been prevented by one party acting in bad faith*”.
79. In CAS 2009/A/1756 (para. 14) and CAS 2012/A/3012 (para. 112), certain conditions were considered as relevant to the application of Article 156 of the SCO:
  - a. The existence of a condition;
  - b. The occurrence of this condition is prevented;
  - c. A reprehensible behaviour of one of the parties;
  - d. The violation of the good faith principle by this party, on purpose or not;
  - e. A reasonable link between the behaviour of the preventing party and the non-occurrence of the condition.
80. Having considered the above conditions, the Panel comes to the conclusion that Real

Betis did not act in bad faith and therefore, Article 156 of the SCO is not applicable in the present case. This conclusion does not differ from the findings in CAS 2012/A/3012, in which even the early termination of the employment agreement between a club and a player (which rendered the sell-on fee irrelevant) was found to just be the exercise of the parties' rights and not reprehensible behaviour.

81. In the present case, the Panel is not convinced by PSG's argument that the structure of the agreement was forced by Real Betis, in bad faith, on Tottenham. Any club seeking to engage the services of a player will have certain economic considerations set for the same and would not accept the transaction unless these considerations are met. Tottenham always had the option to walk away from Real Betis' proposal or to pay the buyout clause in the Player's contract. That being the case, it can in no way be stated that Real Betis forced this specific structure of the agreement on Tottenham and, even admitting Real Betis did so, that it acted in bad faith vis-à-vis PSG.
82. This issue is further complicated by the fact that the representative of Tottenham, [...], who was named as a witness by PSG, was not offered for examination before the Panel.
83. With regard to the two written statements of [...] (email of 10 September 2019 and letter of 18 November 2020), the Panel finds that the contents do not help advance PSG's case in any manner. In the email, [...] states that "*...the terms of deal that we agreed with Real Betis, were the only terms that they would accept in order for us to complete the transfer. As you know, we have the option to make the loan a permanent transfer, which was of vital importance to us.*" In the letter, [...] stated, *inter alia*, that Tottenham wished to acquire the services of the Player on a permanent basis and Real Betis responded that they could agree to a permanent transfer of the Player, but only if the deal was structured as a loan for one year with an option right to then transfer the Player permanently. [...] further states that this was not surprising to [...] as Tottenham have had such requests from other clubs in the past due to the UEFA Financial Fair Play Regulations. The only fact that emerges from these two statements is that Real Betis preferred a certain structure for the transfer (which is not uncommon) and Tottenham was willing to agree to it. The Panel does not find any evidence of bad faith in this.
84. Further, the Panel is not satisfied that the amount of the loan fee, by itself, can be considered evidence of bad faith. The football transfer market is constantly evolving and the valuation of the services of a player could depend on a wide variety of factors. High loan fees are reported in several occasions. Considering the performance of the Player, as per the statistics submitted by Real Betis, it is understandable why Real Betis valued him highly. The Panel finds Mr. José Ruiz's witness statement convincing in this regard. Mr. Ruiz also stated that the reasons for the relatively high loan fee included the cost to replace the Player and the ability to justify the Player's exit before fans, other stakeholders and the Board of Real Betis. The Panel is satisfied that even though the loan fee may be viewed as relatively high, in view of the explanation provided by Real Betis and the lack of other convincing evidence, no bad faith can be retained against Real Betis.

85. As explained above, a loan transaction necessarily involves a certain amount of risk. Regardless of Tottenham's willingness to agree to a permanent transfer, it agreed to paying a "loan fee" while undertaking certain risks associated with a loan with an option for a permanent transfer. Real Betis also accepted some risks in structuring the agreement with Tottenham on the described way. Finally, Real Betis and Tottenham were well within their rights to structure the transfer of the Player in the manner they did.
86. The Panel notes that an allegation of bad faith, such as the one made by PSG in the present case, is serious in nature and has to be backed up with sufficient evidence for it to succeed. In the present case, the Panel does not find any such convincing evidence.
87. Though the sell-on fee clause was indeed subject to a condition under the meaning of Article 156 of the SCO, Real Betis' structuring of the transfer as a loan with an option for a permanent transfer did not prevent the condition from occurring. Further, the Panel finds no evidence of reprehensible behaviour or violation of good faith by Real Betis in this case. No question regarding a link between the behaviour of Real Betis and the non-occurrence of the condition arises, since the condition has still been triggered.

### **C. Calculation of the sell-on fee**

88. Based on the above conclusions, the Panel finds that the loan fee shall not be included in the calculation of the "net profit" and the sell-on fee payable to PSG by Real Betis. In the Appealed Decision, the FIFA PSC provided a detailed calculation of the amount that is payable in lieu of the sell-on fee clause. The Panel notes that neither Party disputes any other issue in the said calculation except for the inclusion of the loan fee.
89. Accordingly, the Panel states that the amounts of EUR 11,800,000 and EUR 3,800,000 identified by the FIFA PSC should be removed from the "Total New Transfer Fee". Hence, the revised "Total New Transfer Fee" would be EUR 31,200,000 and the "net profit" would be  $EUR\ 31,200,000 - 21,496,584.28 = EUR\ 9,703,415.72$ . The total sell-on fee payable to PSG by Real Betis is 20% of the said "net profit" which is EUR 1,940,683.14. It may be noted that the Panel has not included in this calculation any variable amounts as contained in Clause 19 of the Real Betis/Tottenham Agreement as there is no information before the Panel regarding the triggering of the said payments.
90. The Panel notes that the FIFA PSC also went on to calculate the *pro rata* amounts that can be awarded on the date of the Appealed Decision based on the instalments due at the time. However, the Panel does not wish to enter into this calculation since Real Betis has not sought a specific relief in this regard and since a further instalment has become due in the time elapsed between the Appealed Decision and the present Award. Further, it may be noted that the Panel does not have before it the dates or details of the payments made by Tottenham to Real Betis to date. In any case, the Panel notes that the Parties do not dispute the calculations made by the FIFA PSC on

issues unrelated to the loan fee. For the sake of clarity, the Panel states that the method of calculation of interest and distribution of such interest proportionately as done by the FIFA PSC is upheld.

#### **D. Conclusion**

91. Based on the foregoing, the Panel finds that:
- i) The “loan fee” paid by Tottenham to Real Betis for the temporary transfer of the Player was not “*in the context of the New Transfer*” as mentioned in Clause 5.2.2.3 of the PSG/Real Betis Agreement. As such, the “loan fee” shall not be included in the calculation of the “Total New Transfer Fee”.
  - ii) Real Betis did not act in bad faith and hence, Article 156 of the SCO is not applicable in the present case.
  - iii) The total sell-on fee payable to PSG by Real Betis is EUR 1,940,683.14 as per the calculation made by the Panel based on information available before at the time of the conclusion of the evidentiary proceedings of this appeal, i.e. on the date of the hearing.
92. Based on the above conclusions, all other and further motions or prayers for relief are dismissed.

#### **VIII. COSTS**

(...).

\* \* \* \* \*

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed by Real Betis Balompié against the decision of the FIFA Players' Status Committee dated 23 March 2021 is upheld.
2. According to Clause 5.2.2 of the "Transfer Agreement on Terms of Loan with Option to Permanent Transfer" of 31 August 2018 signed between Real Betis Balompié and Paris Saint-Germain Football SASP, the "loan fee" paid by Tottenham Hotspur Football Club to Real Betis Balompié for the temporary transfer of X. shall not be included in the calculation of the sell-on fee payable by Real Betis Balompié to Paris Saint-Germain Football SASP. Accordingly, Item 2 of the decision of the FIFA Players' Status Committee dated 23 March 2021 shall be amended and the sell-on fee recalculated pursuant to the present award. The other parts of the FIFA decision dated 23 March 2021 are confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 28 August 2023

## THE COURT OF ARBITRATION FOR SPORT

Martin Schimke  
President of the Panel

Michele A.R. Bernasconi  
Arbitrator

Luigi Fumagalli  
Arbitrator

Vishakh Ranjit  
*Ad hoc* Clerk