# UNIFORM TENNIS ANTI-CORRUPTION PROGRAM

# FINAL DECISION OF THE ANTI-CORRUPTION HEARING OFFICER IN THE CASE OF DANIEL KÖLLERER

TIM KERR QC

## Introduction

1. This is my final decision in the second case involving Mr Daniel Köllerer, given in my capacity as Anti-Corruption Hearing Officer appointed by the Tennis Integrity Board pursuant to Article F.1.a of the Uniform Tennis Anti-Corruption Program ("the Program"). The Program has been adopted by four governing bodies responsible for international professional tennis, namely ATP Tour Inc. ("ATP"); the Grand Slam Committee; the International Tennis Federation ("ITF") and WTA Tour, Inc.

2. I understand that the 2009, 2010 and 2011 versions of the Program were effective in the calendar years 2009, 2010 and 2011respectively. In the present case, the offences were allegedly committed in 2009 and 2010. By Article J.6 the Program is applicable prospectively to offences committed during the particular period of its effectiveness. The matter is therefore governed by the 2009 and 2010 versions of the Program.

3. No alteration to its provisions from year to year material to this case has been drawn to my attention, although the numbering of the provisions relied on in this case changed in 2011 as a consequence of an addition to Article D.1 (a new Article D.1.c.) which is not relevant here. I shall refer below to the numbering of the relevant provisions as set out in the 2010 version of the Program.

4. The purpose of the Program is described as follows in Article A:

> **A. Introduction**
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> The purpose of the Uniform Tennis Anti-Corruption Program is to (i) maintain the

integrity of tennis, (ii) protect against any efforts to impact improperly the results of any match and (iii) establish a uniform rule and consistent scheme of enforcement and sanctions applicable to all professional tennis Events and to all Governing Bodies.

5. The present case was referred to me by means of a notice sent to Mr Köllerer, copied to me and dated 24 January 2011. The notice stated that the Professional Tennis Integrity Officers ("PTIOs") representing all four governing bodies believed that five corruption offences may have been committed under Article D.1 of the Program.

6. The five offences alleged against Mr Köllerer charge that in different ways and on different occasions in 2009 and 2010 he invited other players to fix matches, and that on three of the five occasions he suggested that the other player could receive money in return for fixing a match or matches. I shall return to the individual charges below and also to the important question of the standard of proof.

7. The case was heard before me in London on 27 and 28 April 2011. The Tennis Integrity Board was represented by Mr Andrew Hunter of counsel and Mr Jamie Singer of Onside Law Limited, commercial lawyers in London. Mr Köllerer was represented by Dr Herbert Heigl, his lawyer in Marchtrenk, Austria. I heard oral evidence live from two witnesses, and by video link from a further eight witnesses in six countries. I shall deal more fully with that evidence below.

8. I am grateful to the legal representatives and the parties for their assistance and cooperation in helping me to reach my decision in this case, for the high quality of the written and oral submissions made to me and for the professionalism with which the matter was handled by all concerned including the video technicians, the simultaneous transcribers and the interpreter.

**The Facts**

9. Daniel Köllerer was born in Wels, Austria, on 17 August 1983 and is therefore now aged 27. He is an Austrian citizen and a professional tennis player. In October 2009 he was ranked 56th in the world in the ATP World Tour rankings. His considers his greatest sporting achievement to be reaching the [redacted] of the US Open in 2009.

10. On 28 April 2003 he played his first ATP event. On 8 June 2003 he was sanctioned for his first disciplinary offence when he was fined $100 for uttering an obscenity in Italian. He has since been subject to many disciplinary sanctions for offences committed on court, namely swearing, aggression, racket throwing and the like.

11. He has a very poor disciplinary record. He has paid numerous fines. In 2006 he was fined $125 not using his best efforts in a match. In January 2006 he was banned for nine months by the ATP. In March 2006 he signed a "reduced penalty agreement" reducing the ban to six months ending in September 2006 on condition he submitted to a five month programme of counselling for anger management.

12. In Austria, he is notorious and is nicknamed "Crazy Dani" in the press. His matches and antics have drawn much media attention. He has continued the unwanted tradition of confrontational behaviour on the court, for which John McEnroe is remembered from the 1980s, though without a track record of Grand Slam titles to match McEnroe's. It is fair to add that he has never been disciplined for any doping offence.

13. In September 2007 he was playing at a tournament in [redacted] Slovenia. [redacted] player, [redacted] was there. I accept that during that tournament Mr Köllerer in a joking way suggested to [redacted] that the latter might like to lose a match. I also accept that he had three or four mobile phones at that tournament.

14. No allegations against Mr Köllerer are made by the PTIOs arising from that tournament or his conversation with [redacted] who thought that Mr Köllerer was joking and did not take the conversation seriously until later. I do not think that this incident is probative of any later wrongdoing on Mr Köllerer's part. It occurred over two years before the first occasion in October 2009 in respect of which he is now charged.

15. When interviewed by Mr Nigel Willerton of the ATP in August 2010, [redacted] told Mr Willerton that Mr Köllerer had given no reason for having so many

telephones. When giving oral evidence to me he said that Mr Köllerer had given a reason at the time, namely that it was cheaper to have lots of phones. Many people have more than one mobile phone for many reasons and did in 2007, without any wrongful intent.

16. Mr Köllerer's behaviour and attitude have made him very unpopular with other players, particularly Austrian players. In 2008 or 2009 a number of players signed a document asking for some action to be taken against him. I have not seen the document and it is not clear exactly what action against him was sought. It is clear that some efforts have made by some Austrian players to exclude him from the Austrian Davis Cup team.

17. Due to his unpopularity, other Austrian players do not frequently socialise with Mr Köllerer. I accept the evidence of [redacted] that Mr Köllerer more frequently socialised with non-Austrian players and would try to befriend them at tournaments, and that he had social contact with [redacted] in 2008.

18. In December 2008 a copy of the Program (the 2009 version) was sent to all players on the circuit, as it was due to come into effect from 1 January 2009. Prior to 1 January 2009 the four governing bodies each had separate rules in respect of corruption offences, match fixing and the like.

19. According to Mr Köllerer's psychiatrist in a recent report, it was in April 2009 that [redacted] Press reports say that Mr Köllerer [redacted]. Mr Köllerer was badly affected. Yet that year later also saw his greatest sporting success.

20. In May 2009 Mr Köllerer played in [redacted] He [redacted] in the [redacted] to a [redacted] player, [redacted] Contrary to [redacted] evidence, Mr Köllerer did not play against the [redacted] player, [redacted] At about this time a player from [redacted] became injured and faced a lengthy spell without playing.

21. In June or July 2009 at [redacted] played against [redacted] of [redacted] and [redacted] in [redacted] The Tennis Integrity Unit ("TIU") was suspicious because of what it considered to be unusual betting patterns. The TIU commenced an investigation but ultimately took no action against [redacted] or anyone else arising from that match.

22. At [redacted] Mr Köllerer did play against [redacted] In August 2009 he played in the [redacted] and reached the [redacted] That is [redacted] to date. In the autumn of 2009 [redacted] was negotiating a sponsorship agreement with an [redacted] betting company called [redacted]

23. On 14 October 2009 Mr Jeff Rees and Mr Bruce Ewan, both of the TIU, visited Mr Köllerer's website and discovered a link to the active betting pages of [redacted] com. This ultimately led to other corruption offences being alleged against Mr Köllerer and [redacted] which were disposed of by means of agreed sanctions approved by me in my first decision, dated 16 August 2010, which was made publicly available.

24. On 16 October 2009 Mr Köllerer and [redacted] were confronted by the TIU with that matter in emails and telephone calls. Mr Köllerer's tone was hostile. He blamed [redacted] and [redacted] blamed himself and took responsibility. This incident represented a major escalation in the disciplinary problems Mr Köllerer had encountered during his career. It was the worst disciplinary situation for him since September 2006 when his ban had ended three months early, by agreement with the ATP.

25. It is common ground that Mr Köllerer's playing form began to dip from then on and that his ranking has dropped considerably. Mr Hunter, for the PTIOs, suggested that this translated into lost earnings which provided a financial incentive for Mr Köllerer to fix matches. I think that is too speculative. Mr Köllerer's form has probably been affected by being under more or less constant investigation by the TIU since the autumn of 2009. It is common ground that his form reached its nadir in May 2010 at

the [redacted] shortly after he was formally charged with a corruption offence under the Program for the first time.

26. On [redacted] October 2009 the [redacted] Tournament in [redacted] started. The [redacted] was at 1[redacted] Mr Köllerer discovered that he was drawn to play against [redacted] I accept that (as he said in interview in February 2010) Mr Köllerer regarded this as a quite favourable draw because [redacted] was ranked a lot lower than Köllerer and was [redacted]

27. [redacted] had recently come back from injury and played in [redacted] successfully. He is a [redacted]. So is [redacted] Mr Köllerer is a [redacted], along with about 80 per cent of players. Both Mr Köllerer and [redacted] say that Mr Köllerer spoke to him, [redacted] about the issue of [redacted]. This is not surprising given that Mr Köllerer was to play against a [redacted], [redacted]

28. On [redacted] October 2009 Mr Köllerer and his lawyer, Dr Heigl, met Mr Rees at the [redacted] where Mr Köllerer and other players were staying. According to Mr Rees in his report prepared for the previous case, at paragraph 2.11:

> Dr Heigl's letter [*a letter written later*] makes mention of a meeting between Rees, Ewan, Koellerer, [redacted] and Dr Heigl in [redacted] October 2009. That meeting was unrelated to the matters subject of this report.

29. It was not clear to me what that meeting was about. Mr Köllerer said in evidence it was about a match he had played against a player called [redacted] which Mr Köllerer [redacted] I have no reliable evidence about that match, only rumour. What is clear is that Mr Köllerer knew on that Sunday evening that he was under investigation in respect of the [redacted] matter and under suspicion in another matter, probably connected with betting.

30. I accept the evidence of [redacted] and Mr Köllerer that after their meeting with Mr Rees, [redacted] asked them how the meeting had gone. The [redacted] October 2009, [redacted] met Mr Rees and Mr Ewan and they asked him questions about his match against [redacted] at [redacted] played in June or July 2009.

31. [redacted] in oral evidence stated that the contents of his written witness statement were true. In that witness statement he stated at paragraph 15 that while he was in [redacted] with Mr Köllerer, "Köllerer told me that he was under investigation for a match he had played against [redacted] which [redacted] believed had been played between the [redacted] and [redacted] in 2009, i.e. in about June 2009.

32. That evidence is completely wrong. The match against [redacted] was played on [redacted] March 2010. It had not yet been played when [redacted] and Mr Köllerer were in [redacted] together in October 2009. It was played about five months later.

33. I further reject [redacted] evidence in the same paragraph of the same witness statement that Mr Köllerer then told him, [redacted] that he, Mr Köllerer, had been approached to fix a match against [redacted] by losing at the [redacted] in 2009. Mr Köllerer did not play [redacted] at the 2009 [redacted] He played [redacted] He played [redacted] at [redacted] in 2009.

34. [redacted] alleges that in October 2009, while in [redacted] – he does not say when in October 2009 – Mr Köllerer "did say that if I, or anybody else that I knew, would like to fix a match, then I should let him know as he said that he was in touch with the people that organise match fixing" (witness statement paragraph 14). This corresponds to the second of the five charges against Mr Köllerer.

35. I do not accept that evidence. It comes from a witness I find wholly unreliable. Moreover, [redacted] did not report that alleged conversation until either April or July 2010, during the currency of what became in May 2010 a backdated two year ban for a doping offence and while negotiating with the ITF to achieve a reduction of that ban from two years to one year; but before succeeding in that objective.

36. The same day, [redacted] October 2009 (probably earlier in the day), it is agreed that Mr Köllerer and [redacted] and others took breakfast at the [redacted] in [redacted] [redacted] was having breakfast with [redacted]

Mr Köllerer was having breakfast with his then coach, [redacted] and a [redacted]

37. [redacted] says that Mr Köllerer asked him (in English) for his room number on the morning of [redacted] October 2009, calling over in a loud voice from about a table about four metres away, in the hearing of [redacted] He thought this strange and thought Mr Köllerer might be planning to put him off his game by calling him in the middle of the night, or that he might be intending to ask about playing doubles together in another tournament. [redacted] says he asked why and Mr Köllerer then said in a quieter voice that he would explain later. [redacted] says he did say what his room number was.

38. [redacted] interviewed months later on 18 May 2010, did not confirm that she had heard Mr Köllerer ask for [redacted] room number on the Monday morning. She is clearly an honest woman who was doing her best to recollect events, but her recollection was not surprisingly inexact and her English was poor. I do not agree with Mr Ewan who noted that she speaks English well. The notes of what she said in English show the contrary, as did her evidence to me.

39. [redacted] says that the next day, [redacted] October 2009, again at breakfast, Mr Köllerer again greeted him and asked again (in English) for his hotel room number which [redacted] gave him, and again asked why, to which Mr Köllerer responded that he would explain later. [redacted] again asked why and Mr Köllerer then asked if he would let Mr Köllerer win the [redacted] match they were due to play against each other.

40. [redacted] says he declined, saying he was [redacted] was not prepared to lose. He says Mr Köllerer repeated his request, saying the home crowd in Austria expected him to win, that he (Mr Köllerer) had recently been injured and that he knew how many points [redacted] needed to qualify for Australia. [redacted] again refused and Mr Köllerer said something like "so there is

no chance". [redacted] believed the request was serious. The conversation then ended.

41. Mr Köllerer's evidence (given in interview with Mr Rees in February 2010, and given orally to me) is that he had one conversation (in English) with [redacted] not two, and that it took place on [redacted] October, not [redacted] October 2009. He denies that he asked [redacted] for the number of his hotel room. It is agreed that on the Monday, in the evening, Mr Köllerer [redacted] in the [redacted].

42. Mr Köllerer says he shook hands with [redacted] at the buffet (or breakfast bar), congratulated him on his success in Stockholm and said something to the effect: "looks like you are fit again" referring to his recovery from injury. Mr Köllerer then says he got a weird reaction and thought [redacted] had misunderstood him and that he, [redacted] said something indicating that he thought Mr Köllerer was trying to make a coded suggestion ("hinterrücks" in German, as he put it in oral evidence to me) that the match should be fixed.

43. Mr Hunter suggested that Mr Köllerer had changed his story by locating the conversation at [redacted] table in oral evidence, but at the breakfast bar when interviewed in February 2010. I do not think the transcript (day 2, page 50) supports that interpretation. Mr Hunter extrapolated from that suggestion the further suggestion that Mr Köllerer had changed his story concerning whether the conversation could have been overheard. Again, I do not agree that his two accounts are inconsistent in that regard.

44. After much anxious thought I have come to the conclusion that I accept [redacted] account and prefer his evidence to that of Mr Köllerer. I do not find as convincing Mr Köllerer's evidence that he must have been misunderstood by [redacted] I do not exclude the possibility of a misunderstanding, for reasons I shall explain more fully later, but I do not think it is as likely to be what happened as Mr [redacted]s evidence that there was a specific request from Mr Köllerer that [redacted] should lose the match.

45. I accept that later the same day, [redacted] October, [redacted] telephoned [redacted] and told her about what Mr Köllerer had said; and that he told [redacted] at some point that day though it is not clear whether before or after she left to visit the sites of [redacted] and that he told [redacted] he had told [redacted] and that he decided to report the matter but to wait until the match was over before reporting it in order to keep his concentration on his game. It is common ground that the two men met at the lift in the hotel that evening, but nothing significant was said.

46. As it happens, the same [redacted] October 2009, the chief executive officer of [redacted] com, Mr [redacted] provided a letter explaining that the terms of Mr Köllerer 's sponsorship contract included a term giving the sponsor the right to terminate and extract repayment of all payments made, in the event of match fixing, and setting out the other terms of the sponsorship contract or proposed contract.

47. On [redacted] October 2009 in the evening, Mr Köllerer played [redacted] and won in [redacted], [redacted] After the match [redacted] spoke to his [redacted] in the locker room. The [redacted] is [redacted] [redacted] [redacted] speaks Swedish and his evidence to me was that the conversation must have been in [redacted] But his witness statement, the truth of which he confirmed, specifically says that the conversation was in English.

48. Mr [redacted] was not called but I accept that the conversation took place, in whichever language, and that [redacted] reported what he understood, i.e. that Mr Köllerer had asked him intentionally to lose the match. About half an hour after the end of the match he reported the approach to [redacted] and [redacted] ATP tournament supervisors in [redacted]

49. Mr [redacted] immediately rang Mr Ewan of the TIU and handed the telephone to [redacted] who reported the matter in terms summarised in writing by Mr Ewan which are similar to but not identical to [redacted] s evidence to me and in interview with Mr Ewan on 1 November 2009; with the difference that [redacted] reported that he had refused to give his room number the first time. [redacted] reported that the

incident had occurred the previous day, i.e. [redacted] October, which is consistent with his evidence now.

50. There is another more important difference. [redacted] report to [redacted] and Mr Ewan appears to have included the allegation that Mr Köllerer offered to "buy the match" (as put by [redacted] in a contemporaneous email and by Mr Ewan) or "offered him money" (in [redacted] contemporaneous email). In interview on 1 November 2009 [redacted] expressly disclaimed any suggestion that money was offered. I accept [redacted] evidence that she specifically asked him about this point and he said that Mr Köllerer had not offered money.

51. I am troubled by this point but after careful thought have concluded that it does not lead me to reject [redacted] evidence outright. The charge relating to [redacted] rightly, does not include an allegation of offering money. I think [redacted] s evidence is essentially truthful and that either Messrs [redacted] Ewan and [redacted] read too much into what [redacted] reported to them (not in his first language), or he initially read too much into what Mr Köllerer (not in his first language) was proposing to him.

52. On 1 November 2009 Mr Ewan interviewed [redacted] in [redacted] Unfortunately, Mr Ewan led [redacted] into an error about the timing of the incident by asking him "to give an account of what happened on [redacted] morning", which error [redacted] adopted and had to correct in a written statement prepared the same day. I do not think this inaccuracy over the dates of the events is of major significance.

53. On 6 November 2009 Dr Heigl wrote to the TIU concerning the investigation into dealings with [redacted] asserting that no sponsorship contract had been entered into or payments made, and drawing attention to the sponsor's right to terminate and obtain repayment in the event of match fixing.

54. Then on 19 November 2009, with the [redacted] investigation still ongoing, Mr Rees wrote to Mr Köllerer putting to him [redacted] allegation, seeking information and informing that he would be required to attend an interview in due

course. Dr Heigl responded trenchantly on 27 November that the allegations were defamatory and a "lie", as well as giving information as sought.

55. Against that unhappy background the two men faced each other again in [redacted] on [redacted] December 2009, in the run up to the [redacted] I can only guess what the atmosphere must have been like. This time [redacted] won in [redacted]

56. On [redacted] December 2009 Australian customs officers to whom the ITF later publicly expressed its gratitude, found [redacted] in [redacted] s luggage. [redacted] says that in his witness statement (paragraph 19) that he saw Mr Köllerer at the [redacted] and that Mr Köllerer told him he had made 80,000 to 90,000 in a currency [redacted] could not recall, from the matches that were under investigation.

57. I discount this evidence. According to [redacted] s earlier evidence, those matches included one against [redacted] which as at January 2010 still had to wait three months before being played. When Mr Rees later interviewed [redacted] in [redacted] in July 2010, he noted that [redacted] had made this allegation in April 2010 in [redacted] to the ITF's lawyer, [redacted]

58. By April 2010 the [redacted] match had (recently, on [redacted] March 2010) been played. When Mr Rees asked [redacted] in July 2010 which matches Mr Köllerer had been referring to in January 2010 in [redacted] and mentioned the [redacted] match, [redacted] was happy to confirm that the matches talked about in [redacted] included the [redacted] match.

59. Mr Rees interviewed [redacted] on 8 February 2009 and Mr Köllerer on 9 February 2009, at Dr Heigl's offices in Marchtrenk. The following month on [redacted] March 2010 Mr Köllerer at last did play [redacted] in [redacted] and [redacted] in [redacted] At around this time Mr Köllerer became friendly with an [redacted] in Austria, [redacted]

60. Mr Köllerer and [redacted] would meet for meals sometimes. I accept Mr Köllerer's evidence that he was interested in buying a property with [redacted] s assistance.

When Mr Rees and Mr Willerton interviewed Mr Köllerer again in October 2010, Mr Willerton put to Mr Köllerer that [redacted] had placed six successful bets on elements of the [redacted] match. Mr Köllerer said he knew nothing of the bets, admitted that this looked suspicious but denied any collusion with [redacted]

61. I agree that the circumstances look suspicious but no charges have been brought arising from the [redacted] match, the placing of the bets has (for that good reason) not been independently proved and I cannot exclude the possibility that assuming they were placed, [redacted] was either a shrewd judge of form, or lucky, or a combination of the two. Furthermore, I have no evidence about the way Mr Köllerer and Mr [redacted] played in that match.

62. On 23 April 2010 [redacted] was interviewed in London by [redacted], the ITF's lawyer. A note of that interview has not been disclosed, but we know from Mr Rees' subsequent references to it that they discussed three topics of which one was Mr Köllerer. Mr Rees stated in his later interview with [redacted] on 12 July 2010 that, in his interview with [redacted] [redacted] had mentioned something Mr Köllerer had allegedly said to [redacted] about [redacted]

63. This appears to be the genesis of what subsequently became the second of the five charges now before me, founded on [redacted] s evidence, and part of the first of the five charges, founded on [redacted] account purporting to corroborate [redacted] account.

64. When [redacted] made his statements to [redacted] he had yet to be sanctioned under the ITF's Anti-Doping Programme for possession of [redacted] but was voluntarily abstaining from competition, as we know from the fact that his subsequent two year ban (later reduced to one year) ran from 29 December 2009, the date when customs officers had searched his luggage. I infer that he was interested in providing information to the ITF in the hope of improving his situation.

65. On 11 May 2010 Mr Köllerer and [redacted] were formally charged with corruption offences arising from the [redacted] matter. On 19 May, around the start of the

[redacted] received his two year ban for his doping offence, backdated to [redacted] December 2009 and expiring on [redacted] December 2011. At [redacted] Mr Köllerer reached a low point. He suffered what was described as "burn out" and was unable to continue playing. He consulted a psychiatrist in [redacted] at the beginning of June 2010.

66. The same month – and in my judgment almost certainly much earlier - rumours were circulating that Mr Köllerer was corrupt and that among his sins was that he had offered [redacted] money to lose the match in [redacted] the previous October. We know that by 30 June 2010 the rumour had reached the ears of [redacted] an [redacted] player who accepted its truth without question. In an interview that day was happy to say "I ... know that ... he was trying to offer some money to ... [redacted] although [redacted] himself had either withdrawn that allegation or had never made it.

67. It was against that background that players assembled at [redacted], Italy, for the ATP Challenger tournament due to start (apart from qualifying rounds) on [redacted] June 2010. Mr Köllerer arrived on [redacted] June 2010. It is agreed that a group of players, [redacted] of Mr Köllerer went out to a pizza restaurant that evening for dinner and walked to the restaurant. The third charge against Mr Köllerer arises from words allegedly spoken by him to [redacted] en route to the restaurant.

68. [redacted] and Mr [redacted] another [redacted] player and [redacted] at the tournament, were among the restaurant goers. So was [redacted] ("[redacted] a player from [redacted] with whom [redacted] practised. So was a woman called [redacted] a friend of Mr Köllerer. So was an [redacted] called [redacted]

69. At the time of the dinner, Mr Köllerer was double booked to play the following week both in [redacted] and in the [redacted] a non-ATP event. The relevant rules prohibited this: it is only permitted to play in one tournament in each week. The PTIOs suggest that Mr Köllerer intended deliberately to lose his [redacted] match in [redacted] in order to go on to play in the [redacted]

70. However the third charge against Mr Köllerer does not allege that he deliberately [redacted] his [redacted] match in [redacted] It alleges much more seriously that Mr Köllerer offered money to [redacted] to fix matches. Expression of an intention to lose deliberately in [redacted] during the same walk to the restaurant, is relied on by the PTIOs as supporting evidence.

71. [redacted] English is very good but he uses some German idioms. His evidence is that during the walk to the restaurant they got lost and while searching for it Mr Köllerer said he was playing in [redacted] the following week, [redacted] said he too was going, while [redacted] said he would be playing in [redacted] Romania, the following week. This conversation was in German.

72. At that point someone ([redacted] is unclear who) joked – in German - about how funny it would be if Mr Köllerer were to be drawn against [redacted] [redacted] a veteran making a comeback, whom Mr Köllerer would be expected to beat quite easily.

73. When interviewed by Mr Willerton in Dornbirn, Austria, on 24 July 2010, [redacted] said that Mr Köllerer had reacted by saying that "he cannot win"; "he made a mistake with his entry and he is not willing to win the match [redacted] in [redacted] i.e. because he was scheduled to play in the [redacted] that week. In German "will" means "want" though [redacted] also uses the English word "want" sometimes.

74. In the same interview [redacted] said Mr Köllerer had never asked him to throw a match and that "he knows the Austrian players I mean the good ones they don't do those things and, and it would be too dangerous for him to ask players like us".

75. In his written witness statement, the truth of which he confirmed, [redacted] stated that he understood from Mr Köllerer said that he intended deliberately to lose his [redacted] match in [redacted]

76. In his oral evidence in answer to Dr Heigl, [redacted] said that it was he who had mentioned the amusing thought of a contest between Köllerer and [redacted] and attributed to Mr Köllerer only the response that "somehow it wouldn't be so good for him".

77. In re-examination by Mr Hunter, asked whether Mr Köllerer had said why it would not be good for him, [redacted] said because of "an entry mistake because he has to play the national championships as well the same week, so it was pretty obvious he was going to throw the match"; but asked whether he said anything about that, [redacted] answered:

> No, he didn't say that he was going to throw the match. He just said that he is not happy -- he wouldn't be happy to play [redacted] because he has also to play the [redacted] That was his way of telling me like he is not going to win actually against him. That's how it took place.

78. [redacted] was interviewed in [redacted] by Mr Willerton on 30 June 2010, 10 days later, having discussed Mr Köllerer informally with Mr Willerton the previous evening. Before the interview he made a written statement along similar lines, alleging that Mr Köllerer "made it clear that he intended to lose the [redacted] so he could go to the championships in Austria".

79. [redacted] went on to allege, much more seriously, that Mr Köllerer then took him aside from the others and asked if in the event of him, [redacted] qualifying for the main event in [redacted] he would be interested in making some money, which he understood to mean by betting on matches; and the [redacted] responded that he was not interested.

80. In his tape recorded interview with Mr Willerton, he repeated that allegation, expanded it slightly, repeated other rumours of corrupt matches allegedly played by Mr Köllerer and twice asserted that Mr Köllerer had offered money to [redacted] to lose a match.

81. In oral evidence, [redacted] repeated his assertion as to what Mr Köllerer had said about the [redacted] tournament and confirmed the truth of his witness statement,

which included the allegation that on the way to the restaurant Mr Köllerer had offered him the chance to make money from match fixing.

82. Dr Heigl pointed out that [redacted] had not said much in oral evidence about this point; but that was a reflection of the questions asked of him. In fact he did repeat the allegation in answer to a question from me, and in re-examination by Mr Hunter, when he denied inventing the allegation.

83. I am quite satisfied that there was mention of the [redacted] tournament during the walk to the restaurant. Indeed, Mr Köllerer accepted this in oral evidence. I think it more likely than not that Mr Köllerer said something about losing in [redacted] and that, more likely than not, he said something which implied that he was not going to play his best in [redacted] and linked that suggestion with the fact that he was also booked to play in the [redacted] that week.

84. I do not accept Mr Köllerer's point as put to Mr Willerton in an interview on 11 October 2010, that he would have had no motive for "tanking" (deliberately losing, or not trying to win) the match in [redacted] because he already knew he would not be able to play in the [redacted] anyway. It was not until about a week later that he withdrew from the [redacted] and only after a telephone conversation with a supervisor. I infer that on that [redacted] June 2010 he had hopes of playing in both competitions.

85. On Tuesday 22 June 2010 while Mr Köllerer was in [redacted] a deposit of 15000 euros was made into his business account, which was run by [redacted] as signatory. The same day, a further 6500 euros was paid in by another source in payment of an invoice, and a routine mobile phone bill from "[redacted]" was paid out of the account.

86. I accept the evidence of [redacted] and Mr Köllerer that this money came from the latter's grandmother and was needed to balance the account; and I accept [redacted]s evidence that he and [redacted] attended the bank together that day to make the deposit. The PTIOs, through Mr Hunter, suggested that the payment was sinister but

made no attempt to elicit an explanation of it from Dr Heigl before the hearing and it seems to me unremarkable that sums of this order should go in and out of the business account of a professional tennis player.

87. Mr Hunter suggested that the timing of the deposit was suspicious and that it would have provided a fund from which to make a corrupt payment to [redacted] That is pure speculation. Dr Heigl showed that the account was indeed in need of money to avoid it becoming overdrawn. A tax payment of just over 35000 euros out of the account was made on 2 August 2010 by a transfer. In the period from 1 March to 21 September 2010 only about 9000 euros more went into the account than out of it, leaving a balance of about 6500 euros at the start of the period and nearly 15800 euros at the end of it.

88. The same day, 22 June 2010, Mr Köllerer played his [redacted] match in [redacted] against the [redacted] player [redacted] and won. [redacted] alleged that Mr Köllerer had made insulting racist remarks in German during the match. [redacted] made a statement to the local police the next day and a formal complaint on [redacted] June. He does not understand German and the umpire, who does, did not hear the remarks.

89. The ATP supervisor present, [redacted] made a statement later explaining that a [redacted] player, [redacted] who did not want to get involved, had translated (history does not relate into what language) the remarks to another [redacted] player, [redacted] who had reported the remarks to [redacted] who then approached [redacted] for confirmation and obtained an imperfect linguistic match with what [redacted] had reported.

90. To add to the confusion the umpire heard Mr Köllerer shouting in English "Run, run to the forrest gump" which might be thought to be connected with the alleged racist remarks but which also refers to the name of a 1994 American film in which it is the name of the main character. [redacted] decided that Mr Köllerer should be warned for general unsportsmanlike behaviour.

91. During the afternoon of [redacted] June, [redacted] went to the office of [redacted] to check the timing of his match the next day. [redacted] asked him if he could comment on the racism allegations, since he, [redacted] had been present for most of the match between Köllerer and [redacted] and had been about 10 metres from [redacted] [redacted] said he was happy to confirm what [redacted] had alleged and also that additional racist remarks [redacted] were made by Mr Köllerer to him after the match.

92. On [redacted] June 2010 [redacted] and a [redacted] player, [redacted] went to complain to the local police. Probably on [redacted] June, Mr Köllerer played his [redacted] match against an [redacted] who is a good friend of [redacted] Mr Köllerer won the match. He misbehaved during it, antagonising Mr [redacted] and [redacted] and leading to subsequent disciplinary measures.

93. Mr Köllerer's conduct led to a document being prepared in Italian denouncing Mr Köllerer, signed by various players including [redacted] and [redacted] One handwritten page was produced to me but it is only partly legible and it is not clear that the whole of the document was available to me. The single sheet is not dated but must have closely followed the match against [redacted] It was obviously some sort of complaint (it includes the Italian word "denuncia") of Mr Köllerer.

94. On [redacted] June 2010 the local police issued a list of persons they wanted to interview, to which should be added, so [redacted] advised them the next morning, the name of [redacted] As a result [redacted] was summoned and after his doubles match that day was driven to a police station where he spent about four hours and, presumably, made some sort of statement which I do not have.

95. On or about [redacted] or [redacted] June 2010, Mr Köllerer played his [redacted] match against [redacted] of Argentina and [redacted] in a hard fought [redacted] match including a tie breaker set. Mr Köllerer too, at some stage, had to attend the police station for interview because of the complaint against him.

96. [redacted] evidence to me included inaccuracies and poor recollection. He remembered the name of the victim of the alleged racist remarks as [redacted] not [redacted] A [redacted] player called [redacted] had also signed the document in Italian. He thought [redacted] was from [redacted] rather than [redacted]

97. In his later interview with Mr Willerton on 30 June 2010, [redacted] was much less careful than was [redacted] to distinguish between recollection and rumour. He was not present at the match between [redacted] and Köllerer, yet he supported and signed the document denouncing Mr Köllerer. He had already, when he denounced Mr Köllerer to Mr Willerton, formed the mistaken belief that Mr Köllerer had offered money to [redacted] [redacted] to lose a match.

98. In oral evidence, [redacted] gave evidence about the circumstances in which he first made the allegation now made by the PTIOs as the third charge. His evidence was that Mr Köllerer on [redacted] June 2010 in effect offered him the prospect of money to fix matches. In oral evidence, [redacted] appeared to be claiming that he mentioned the matter in an unofficial way to the ATP supervisor, before signing the document denouncing Mr Köllerer after the [redacted] match.

99. I have difficulty accepting that evidence. [redacted] written statements make no mention of this point and he was not called. [redacted] written statement dated 30 June is silent on the circumstances in which he reported the allegation. His tape recorded interview records only that he had seen Mr Willerton the previous evening, 29 June. The notes of his interview on 30 June 2010 make no mention of the chaotic events surrounding the [redacted] and [redacted] matches and the involvement of the police.

100. I infer from the facts found above that [redacted] had not formed any intention to report any allegation against Mr Köllerer either about indicating he would deliberately lose a match at [redacted] or about an offer of money to him, [redacted] until after he was asked by [redacted] whether he would be a witness in an unrelated matter, after he had come to [redacted] office, not to make any report about Mr Köllerer, but to check his order of play the next day.

101. In oral evidence [redacted] confirmed the truth of his written witness statement. However, I do not accept the correctness of paragraph 16 where he states that he reported his allegations to [redacted] "during the course of the tournament". I think if that were correct, there would be evidence from [redacted] to that effect. There is none. Such evidence as I have is of a report to Mr Willerton in [redacted] the following week.

102. I also do not accept the correctness of paragraph 19 of [redacted]s witness statement where he says that because of Mr Köllerer's offer of money to fix matches he "came forward" and reported the incident to the ATP supervisor. I do not accept that he "came forward". He went to [redacted] office to find out about his order of play the next day and was asked by [redacted] to be a witness in an unrelated matter.

103. I have come to the conclusion, after much careful thought, that I am unable to accept [redacted] word that Mr Köllerer made an offer of money to him to fix matches, during the walk to the pizza restaurant on [redacted] June 2010. I think he would have been quick to report such an offer if it had been made and that there would be evidence of the report having been made promptly, as in the case of [redacted] report, rather than nine days later in a different city.

104. I also think that [redacted] would have mentioned the matter to [redacted] and that [redacted] would have mentioned it to [redacted] another [redacted] player who was [redacted] in the tournament played in [redacted] Romania, the following week.

105. I turn next to the events concerning the fourth and fifth charges against Mr Köllerer. On [redacted] June 2010, the [redacted] player [redacted] arrived by aircraft in [redacted] to play in the tournament there. [redacted] and his friend and [redacted] for the tournament, [redacted] were also due to play.

106. [redacted] evidence was that soon after the aircraft landed, he switched on his mobile phone and received a call from a number he did not recognise, answered

and heard a voice speaking in English which he recognised as that of Mr Köllerer. [redacted] speaks English quite well, as does Mr Köllerer. He does not know Mr Köllerer well and has never given him his phone number, though they have met on the circuit and spoken to say hello. He does not know how Mr Köllerer obtained his phone number.

107. [redacted] was due to play a [redacted] player, [redacted] in the [redacted] According to [redacted] evidence, Mr Köllerer said who he was and then asked if [redacted] would like to "tank" (deliberately lose) the match and make some money, and mentioned a sum of about 10000 euros. He did not explain how or by whom the money would be paid.

108. According to [redacted] his response was that he was not interested at all, that he wanted to win his match and that he did not want to have any distractions, whereupon Mr Köllerer asked him if he was sure and suggested the amount could be increased. The reply was again negative. The call then ended. In his first match, [redacted] defeated [redacted] did not report the matter to the tennis authorities. He did not keep stored in his phone the number from which Mr Köllerer had called. His attitude was that he did not care and did not want problems.

109. When [redacted] was later interviewed by Mr Willerton on 25 August 2010 at the US Open offices, he made it clear that he too had heard stories about Mr Köllerer making similar offers to others. This is not surprising. Mr Köllerer's reputation preceded him. A [redacted] player, [redacted] had accompanied [redacted] to the police station in [redacted] When asked by Mr Willerton how [redacted] knew of Mr Köllerer's alleged intention to lose in [redacted] he replied "Everybody knows that ...".

110. In answer to Mr Willerton's question whether the call was "mobile to mobile", he said "yes" and when Mr Willerton asked "Ok, so you think he was on a mobile and he phoned your number", he again said "yes". In the same interview [redacted] said to Mr Willerton that he believed he could get the number from which Mr

Köllerer had telephoned him. Mr Willerton asked whether [redacted] had his phone with him and the latter replied "no, no".

111. I think it is very unlikely that [redacted] would want tennis officials examining his mobile phone. He had not intended to make any report at all of the incident. His evidence to me was that after being contacted by Mr Willerton, he asked advice from an ATP supervisor and was told that he must tell the truth. He was reluctant to get Mr Köllerer into trouble and was prepared to attribute the incident to Mr Köllerer being a bit crazy and perhaps not meaning his offer seriously.

112. In the notes of his interview there are also indications of defensiveness and concern that he might bring suspicion on himself. This is quite understandable. Many players would prefer not to be dragged into a corruption investigation, even if as only a witness. At all events, there is no evidence of any attempt by Mr Willerton to persist in examining [redacted] phone. The PTIOs are unable to show the number from which the call was made, if it was made.

113. [redacted] had told [redacted] about the conversation in [redacted] and that he expected Mr Köllerer to lose his [redacted] match in [redacted] where Mr Köllerer was due to play against [redacted] of the [redacted] In [redacted] meanwhile, Mr Köllerer withdrew over the weekend of [redacted] June 2010 from the [redacted] after speaking to a supervisor at [redacted] This was the same weekend as the alleged call to [redacted]

114. Mr Köllerer did indeed lose to [redacted] in [redacted] in [redacted] He assured Mr Willerton in a later interview, in October 2010, that he had tried his best but had strained his thigh in the [redacted] match against [redacted] in [redacted] a match he said had lasted [redacted] minutes and which he had [redacted] in the [redacted] after [redacted] match points. The PTIOs did not adduce any evidence of the way in which Mr Köllerer and Mr [redacted] played in [redacted]

115. I accept the evidence of [redacted] and [redacted] that on [redacted] June 2010 in [redacted] a conversation in English took place between Mr

[redacted] and [redacted] about Mr Köllerer. [redacted] does not understand German but his evidence was that he heard [redacted] and [redacted] speaking and picked up that they were talking about Köllerer. He decided to try to find out more about why Mr Köllerer had made the call to him.

116. He approached them and spoke in English to [redacted] left. [redacted] passed on to him the suggestion that Mr Köllerer intended to tank his first match in [redacted] so he could play in the [redacted] the same week and that Mr Köllerer would be under investigation. [redacted] says, and [redacted] confirms, that he, [redacted] told [redacted] about the call he had received from Mr Köllerer two days earlier. [redacted] and [redacted] are not close friends but know each other on the circuit.

117. Five days later, on [redacted] July 2010, Mr Köllerer and [redacted] were in [redacted] Netherlands. Both were due to play in the ATP Challenger tournament there. While [redacted] was checking into his hotel, he says he received a further call from Mr Köllerer. He recognised the voice again, but not the number because he had not kept the number from which the first call had been made a week earlier.

118. [redacted] says that Mr Köllerer again offered a sum of around 10000 to 15000 euros to fix his [redacted] match. His evidence is that this time he considered that Mr Köllerer was serious. [redacted] was in the [redacted] and was due to play the [redacted] player, [redacted] in the [redacted] on [redacted] July 2010. [redacted] evidence is that he again refused and made it clear he was not interested.

119. [redacted] played against [redacted] and beat him. He did not report the second call to the tennis authorities or seek advice, even though his evidence is that the second time he thought the offer was definitely serious. He took no further step until he received a call several weeks later from Mr Willerton of the TIU. Even then he

sought advice from an ATP supervisor before speaking to Mr Willerton, which he did at the [redacted] offices on [redacted] August 2010.

120. Mr Köllerer's evidence is simply that the two calls to [redacted] were never made. He insisted that he never had [redacted] phone number and had not had any contact with him. He asserts that he disclosed all his mobile phone numbers and records and points out that there is no record of any call to the number given by [redacted]

121. In about early July 2010, [redacted] had a conversation with [redacted] who is a good friend of [redacted] told Mr Willerton about this on 24 July 2010 in [redacted] Austria. [redacted] account of what [redacted] had told him was more colourful than [redacted] s subsequent evidence to me and included alleged mention by Mr Köllerer to [redacted] of a [redacted] man being involved and speaking on a dedicated mobile phone used for betting purposes.

122. [redacted] said nothing about the alleged involvement of a Russian man in his written statement, nor when subsequently interviewed by Mr Willerton on [redacted] August 2010 at the [redacted] offices, nor in his oral evidence to me, which was limited to evidence about the 2007 tournament in [redacted] as noted above. When interviewed by Mr Willerton, [redacted] gave two mobile phone numbers he had for Mr Köllerer. These two numbers match two of the three numbers subsequently disclosed by Dr Heigl in November 2010. They also tally in the sense of one being presented as obsolete, and one current, by both Köllerer and [redacted]

123. I asked [redacted] during the hearing whether he had ever spoken to [redacted] or [redacted] about Mr Köllerer. His answer was "I never spoke to them about this." I do not accept the correctness of that answer. It directly contradicts the evidence of [redacted] which I do accept, that he and [redacted] met in around early July and discussed Mr Köllerer. Indeed it was that conversation which led to Mr Willerton contacting [redacted]

124. Also in early July 2010 negotiations proceeded between the TIU and Dr Heigl to dispose of the charges against Mr Köllerer and [redacted] by agreed sanctions. Meanwhile the TIU's enquiries continued. Mr Rees interviewed [redacted] on 12 July 2010 in [redacted] as mentioned above. This is the first occasion where I have clear evidence of [redacted] making allegations against Mr Köllerer. On the tenth page of the interview notes, he is recorded as offering to find out more information from Mr Köllerer the next time the two should meet.

125. On 16 August 2010 I issued my decision in the first case against Mr Köllerer and [redacted] The case was disposed of by agreed sanctions which I approved. These involved a suspended three month ban and a suspended 15000 euro fine for Mr Köllerer; and 12 months' removal of accreditation and access to tennis events for [redacted] all sanctions being suspended for a period of two years from the date of the signed agreement. Both sanctions were suspended:

> for a period of two years from the date of the signed agreement; conditional upon no Corruption Offence of any kind being committed by the [Covered Person] in such two year period nor a decision relating to a Corruption Offence by the [Covered Person] being issued in such two year period.

126. I do not have any signed agreement but I take the two year period as running from the date of my decision, which was 16 August 2010. The suspension of the sanctions is expressed as being conditional upon no corruption offence of any kind being committed during the two year period. In the present case, the last of the offences charged was allegedly committed on 3 July 2010 in [redacted] before the two year period started.

127. This decision is, as it happens, issued within that two year period, but that is more a matter of chance than of anything else. It could have been delayed beyond August 2011 if, for example, I had not agreed to hear evidence by video link. I had not fully appreciated the significance of the concluding words ("nor a decision relating to a Corruption Offence by the [Covered Person] being issued in such two year period") when I approved the agreed sanction in my first decision, because I was not made aware that there were outstanding investigations relating to Mr Köllerer.

128. On 3 September 2010 Mr Köllerer opened a bank account in [redacted] He was planning to move to [redacted] and buy a property there. I accept [redacted] evidence that he did not approve of this plan because he was concerned that Mr Köllerer was taking on too much debt. The [redacted] account was used to receive loan monies of over 400000 euros which were needed to buy the property. The [redacted] was [redacted]

129. If Mr Köllerer thought his disciplinary problems were over following the agreed sanctions imposed by me in respect of the [redacted] matter, he must have soon realised they were not when he received Mr Willerton's letter of 7 September 2010 about suspect betting patterns arising from the match against [redacted] played in [redacted] in March 2010. Mr Willerton asked for information about [redacted] and others, and about telephone numbers and bank account details.

130. Mr Köllerer signed the purchase contract for the [redacted] property in 26 September 2010. The PTIOs sought to suggest that Mr Köllerer in a later interview had not been frank about the manner in which the purchase was financed. I reject this. It was an ordinary property purchase financed by a loan in the ordinary way. The PTIOs were unable to show anything sinister about the purchase or the way it was financed, despite their suspicions about [redacted] successful bet on the [redacted] match.

131. In response to Mr Willerton's request for information, Dr Heigl by email on 1 October 1010 disclosed various pieces of information including one mobile phone number, noting that the request was only for numbers of phones used since 1 January 2010. The number matched the number that had been given as current by [redacted] The other number given by [redacted] was, he stated, an old one from more than three years earlier, i.e. well before 1 January 2010.

132. Mr Willerton interviewed Mr Köllerer in the presence of Dr Heigl on 11 October 2010. The interview was wide ranging and covered the allegations now made. At the start of the meeting Mr Willerton asked about mobile phones and Dr Heigl explained that there was a second number that was not used. He and Mr Köllerer then made essentially the

same disclosure about mobile phone numbers that was made in Dr Heigl's subsequent letter of 10 November 2010.

133. On 10 November 2010 Dr Heigl wrote in more detail giving information about bank accounts, mobile phone numbers and enclosing the purchase contract for the property in [redacted] He gave details of the method by which the purchase was financed. The disclosure was full. He concluded by asserting his right to inspect the TIU's files.

134. On 22 December 2010 the ITF issued a press release stating that the second half of [redacted] s two year ban had been suspended on account of ongoing substantial assistance provided by him, with the consequence that he was free to compete again from 29 December 2010 instead of 29 December 2011.

**The Proceedings**

135. Mr Köllerer was charged by letter of 24 January 2011. The charges were as follows, with my numbering added:

> (1) On 27 October 2009, Mr Koellerer requested that [redacted] deliberately lose a match at the [redacted] Tournament in [redacted]
>
> (2) During the [redacted] Tournament in [redacted] in 2009, Mr Koellerer advised [redacted] that he had offered compensation to [redacted] to fix his match. During the same tournament, Mr Koellerer advised [redacted] that if he was interested in fixing a match he should let him know as he is in touch with the people that do it.
>
> (3) On [redacted] June 2010 in [redacted] Italy, Mr Koellerer asked [redacted] if he was interested in making some money through a combination of tennis bets which would not put his ranking status at risk.
>
> (4) In June 2010, Mr Koellerer contacted [redacted] at the A[redacted] Tournament in [redacted] Romania and offered [redacted] approximately €10,000 to lose his match against [redacted]
>
> (5) In July 2010, Mr Koellerer contacted [redacted] at the A[redacted] Tournament in [redacted] Netherlands and offered [redacted] approximately €10,000 to lose his match against [redacted]
>
> Specifically, the Corruption Offenses alleged to have been committed by you are found in Articles D.1.d, e and g of the 2011 Program, formerly Articles D.1.c, d and f of the 2010 Program.

136. Despite the initial words of charge (2) it is not suggested that Mr Köllerer in fact offered "compensation", i.e. money, to [redacted] This suggestion in the charge letter was apparently founded on the testimony of [redacted] It is not supported by [redacted] evidence, as already explained.

137. Mr Köllerer, through Dr Heigl, made it clear in a letter of 2 February 2011 that he denied all the charges and required an oral hearing and disclosure of the TIU's files. On 10 February 2011 a telephone conference was held and I gave directions for the hearing which were set out in a written procedural order of that date.

138. The PTIOs submitted their written brief on 2 March 2011. Dr Heigl submitted the player's brief in response on 23 March 2011. There were then discussions by email about the arrangements for the hearing. A dispute emerged about whether I should permit evidence to be given by video link.

139. I decided that evidence by video link should be permitted, subject to the possibility of excluding such evidence if the situation became unfair to Mr Köllerer during the hearing. My more detailed ruling and the reasons for it were set out in an email dated 19 April 2011.

140. The hearing took place in London on 27 and 28 April 2011 and was conducted with exemplary professionalism and courtesy on both sides. I was satisfied that there was no unfairness in receiving by video link the evidence given by the eight witnesses called by the PTIOs. Dr Heigl did not renew orally his application to exclude that evidence, which I had previously refused in writing.

141. An exchange of further submissions by email occurred in the days immediately following the conclusion of the hearing. This was limited to two topics: firstly, the standard of proof under Florida law; and secondly, the question of telephone records in relation to the allegations made by [redacted] I have taken into account the points made by the parties in those written submissions.

**Reasoning and Conclusions**

142. Article J.3 of the Program provides that it is governed in all respects including, but not limited to, matters concerning the arbitrability of disputes, by the laws of the State of Florida, without reference to conflict of laws principles. By Article G.3.a the PTIOs bear the onus of proving the commission of the offences charged, and "[t]he standard of proof shall be whether the PTIO has established the commission of the alleged Corruption Offense by a preponderance of the evidence".

143. The standard of proof is important in this case because the allegations are of serious wrongdoing and the PTIOs rely principally on reports of conversations but have not attempted to produce any evidence from covert sound recordings. Subject to Florida law permitting (in the context of rules which include provision that the strict rules of evidence do not apply; see Article G.3.c), I would probably have been willing to receive and consider evidence of covert sound recordings.

144. The PTIOs produced extracts at paragraphs 339-341 from the 6th edition of *McCormick on Evidence*, a reputable United States work, and other related materials, in support of their submission that the standard of proof here is the ordinary balance of probabilities. Dr Heigl submitted that in the context of a penal regime involving sanctions which threaten his client's livelihood and include allegations of criminal wrongdoing, the standard of proof must be proof beyond reasonable doubt; that the principle *in dubio pro reo* must be applied; and that the citations from *McCormick* relied on by the PTIOs were applicable in ordinary civil monetary claims and had no application here.

145. In proceedings before the CAS, the standard normally applied is that of "comfortable satisfaction", particularly in doping cases. That standard is, however, normally enshrined in the relevant rules being applied, which is not the case here. In *Pechstein v. International Skating Union* CAS/2009/A/1912, a doping case involving new methods for detecting prohibited substances, the CAS at paragraphs 123-126 rejected the submission that allegations of doping are akin to criminal allegations and that the

standard of "comfortable satisfaction" must therefore be very close to the criminal standard of proof beyond reasonable doubt.

146. In some jurisdictions including that of England and Wales, and also in some states in the United States according to *McCormick*, it has been suggested that where the allegations of wrongdoing are particularly serious, more cogent evidence than usual is required even to satisfy the ordinary civil standard of proof on the balance of probabilities, or in Florida, by a preponderance of the evidence.

147. But this reasoning has been cogently criticised as illegitimately raising the standard in civil cases, in which a monetary claim for reimbursement or damages based on fraud can succeed if it is proved on the balance of probabilities, i.e. if it is more likely than not that the facts asserted by the claimant are true.

148. In the second edition (2008) of Lewis and Taylor's *Sport: Law and Practice*, it is stated at paragraph A2.101 that the governing body's rules should define the standard of proof, but:

> The concept of satisfaction to the civil standard in the context of disciplinary offences involves a sliding scale: the more serious the offence, the greater the degree of satisfaction required. It has been argued that where the disciplinary offence discloses a criminal offence, the standard should be the equivalent of the criminal standard, but this may be putting it too high. ...

149. I have not been made aware of any CAS case law outside the field of doping, in which the question has arisen whether the CAS will apply at face value a governing body's rule providing for the ordinary civil standard to be applied to criminal or quasi-criminal acts such as acts preparatory to match fixing. I can see nothing in Florida law which prevents this.

150. It is possible that the CAS, which tends to interpret its functions broadly, would regard Swiss law as relevant to this question even in a case where the rules in question provide for an applicable law other than Swiss law (cf. *Puerta v. International Tennis Federation*, CAS/2006/A/1025, at paragraphs 10.1-10.8, which however was a doping case).

151. The sport of cricket has recently seen penalties imposed on players in respect of allegations connected with match fixing or attempted match fixing. The International Cricket Council's Anti-Corruption Code for Players and Player Support Personnel, governed by English law, expressly provides for the standard of "comfortable satisfaction" to be applicable.

152. More specifically, that Code provides at paragraph 3.1:

> 3.1 Unless otherwise described herein, the burden of proof shall be on the ACSU's General Manager and the standard of proof in all cases brought under the Anti-Corruption Code shall be whether the Anti-Corruption Tribunal is comfortably satisfied, bearing in mind the seriousness of the allegation that is being made, that the alleged offence has been committed. This standard of proof in all cases shall be determined on a sliding scale from, at a minimum, a mere balance of probability (for the least serious offences) up to proof beyond a reasonable doubt (for the most serious offences).

153. However, the Program in the present case does not so provide. My jurisdiction is confined to applying the rules set out in the Program. I cannot find any jurisprudence which empowers me to do other than apply, albeit with some unease, the standard of proof provided for in the Program, which is the ordinary standard of proof by a preponderance of the evidence, which, I accept, would in England be described as proof on the balance of probabilities.

154. I cannot find any support in Florida law for Dr Heigl's proposition that this standard must, in the present context, be interpreted as meaning proof beyond reasonable doubt or something close to it. That said, I do bear in mind that if I am to be satisfied to that standard, I will first have to weigh in the balance Dr Heigl's proposition that the allegations against Mr Köllerer are of conduct which is extraordinarily rash and reckless and (in Dr Heigl's phrase) does not correspond to ordinary human experience.

155. With the above in mind, I need to say a little more about the individual witnesses, in so far as I have not already covered the points above. I will mention them in the order in which they gave evidence.

156. I return first to [redacted] He is a critically important witness. He has no known motive for inventing allegations against Mr Köllerer. His demeanour was that of a witness of truth. He was reluctant to get involved. However, there are some concerns about this evidence.

157. First, a friend of his, [redacted] helped him write his statement. Secondly, he was alerted by overhearing a conversation in German but he does not understand German, though the conversation probably included "[redacted] and "Köllerer" which he might pick out. Thirdly, he did not keep or reveal (from "recent calls") the number from which Mr Köllerer called him on either occasion.

158. Fourthly, he twice said "yes" to Mr Willerton's question whether the first call came from a mobile phone (contrary to a submission made by the PTIOs after the hearing concluded). Yet none of the records under numbers disclosed by Mr Köllerer, which matched [redacted] record of his old and current numbers, matched [redacted] mobile number.

159. Mr Hunter pointed out that Mr Köllerer could have made the calls from a land line, but that is to invite me to pick and choose from [redacted] evidence, which was that the first call came from a mobile.

160. Fifth, [redacted] was defensive and appeared worried about getting into trouble himself. I think he felt he was in a difficult position whether he cooperated or not. He did not produce his phone to the TIU and was not pressed to do so, on the evidence I have. The TIUs did not verify his claim not to have retained the numbers from which the calls came.

161. Sixth, he did not agree that he was encouraged by [redacted] to report the matter, although [redacted] said he urged [redacted] to report it. One obvious reason for not reporting the calls would be if they were not in fact made.

162. Seventh, he said he did not know Mr Köllerer well. Yet he said he recognised his voice on the telephone – speaking in English, a foreign tongue to both men - before Mr Köllerer announced who he was.

163. Eighth, he said twice in oral evidence that many players have his cell phone number and that he has perhaps 20 or 30 players' numbers in his phone. In his written witness statement, which he said was carefully prepared in accordance with his factual instructions with assistance from [redacted] he said that he does not consider it normal for players to have other players' numbers and that he only has the numbers of a few players who are close friends.

164. Ninth, he gave as one reason for not reporting the first call, the possibility that Mr Köllerer may not have been serious. His evidence was that when the second call was made, he thought it was definitely serious; but he still did not make any report until contacted by Mr Willerton.

165. Finally, the second call represents an astonishingly high risk because, if made, it was a further attempt to corrupt a player who had already resisted the previous attempt to corrupt him.

166. I have given careful and anxious consideration to all the above points. I have found this the most difficult part of the case. But in the end I have come to the conclusion, applying the standard of proof provided for in the rules, that I prefer the evidence of [redacted] to that of Mr Köllerer. [redacted] account of his conversation with [redacted] is corroborated by the latter and by [redacted] It is consistent with the first call having been made. I think [redacted] is an honest witness who did not want to get involved and reluctantly told the truth for fear of trouble if he did not. I infer that Mr Köllerer made the calls using a borrowed phone or phones or one that he did not disclose to Dr Heigl.

167. The next witness was [redacted] There are also concerns about his evidence. I have no doubt that he is an honest witness. But I have to consider Mr Köllerer's assertion that he must have misunderstood him. If so, that would be an innocent

explanation of his report to [redacted] to [redacted] to [redacted] to [redacted] and to Mr Ewan.

168. The conversation or conversations at the breakfast table took place in a language that was not the mother tongue of either speaker. There is always a risk of misunderstanding. Mr Köllerer already had a certain reputation in October 2009. [redacted] was mistaken at least once about the language in which he spoke to Mr [redacted] His recall of details was not perfect – for example, as to whether he gave the room number once or twice.

169. The most important issue with [redacted] evidence is the evidence that he reported an offer of money from Mr Köllerer, an offer to "buy" the match. This has caused me to reflect long and hard, given that this allegation is no longer pursued and not supported by any other evidence except from [redacted]

170. In the end, as indicated above and applying the standard of proof here, I have come to the conclusion that [redacted] evidence is true, and that I cannot accept Mr Köllerer's assertion that there was a misunderstanding. I accept, of course, that if [redacted] interpreted the approach at the time as an offer of money, that was wrong and he read too much into what Mr Köllerer was saying. I accept that the request for [redacted] room number was made and I do not accept that it was made for innocent purposes.

171. I had one or two concerns about the evidence of [redacted] He was unwilling to admit to the high degree of hostility he entertains towards Mr Köllerer. He was reluctant to own up to knowledge of the petition against Mr Köllerer arising from events in South America in 2008 or 2009. He claimed to have urged [redacted] to report the call the latter had received, but [redacted] did not support him in this.

172. But I am quite satisfied that he was not making up the conversation he had in [redacted] with [redacted] nor the conversation he had with [redacted] His evidence therefore importantly corroborates that of [redacted]

173. [redacted] was ill disposed towards Mr Köllerer. I was not happy to accept his evidence. I have given my reasons why already, in my account of the facts above. He claims to have the subject of a direct approach by Mr Köllerer with an offer of money to lose his [redacted] match in [redacted] should he qualify for the main event.

174. I do not exclude the possibility that this happened, but I do not think it is proved by the PTIOs by a preponderance of the evidence. If Mr Köllerer made a corrupt offer to [redacted] as the latter alleges, he was doing the very thing which [redacted] told Mr Willerton was unlikely: making a corrupt offer to a hostile [redacted] player who, he could expect, would be quick to report it.

175. When I asked [redacted] twice, who had told him that Mr Köllerer had offered money to [redacted] he replied unconvincingly that he did not recall who told him. I do not accept that evidence. I am confident that if he was ever told that Mr Köllerer had offered money to [redacted] he knows well who told him.

176. [redacted] was a truthful witness who was confident in giving evidence but his recollection of details was not as accurate as first appeared, for example in relation to seating at the restaurant, and in relation to who first made the joke about Mr [redacted] playing against Mr Köllerer. He was careful to distinguish between evidence and rumour. He should not have been so ready to sign the "denuncia" against Mr Köllerer. But again, his evidence corroborates that of [redacted] [redacted] in an important way.

177. [redacted] was a wholly unreliable witness for reasons which I have already given above. Indeed the PTIOs have not sought to support his assertion recorded in the charge letter, but not repeated in the PTIOs' opening brief, that Mr Köllerer told [redacted] he had offered "compensation" to [redacted] In his witness statement he said that he had no reason to invent evidence but surprisingly did not even mention the deal he had negotiated with the ITF.

178. [redacted] was not a witness of central importance. He was mainly truthful but did not admit to having had a conversation about Mr Köllerer with [redacted] in [redacted]

July 2010 and claimed, incorrectly, never to have spoken to [redacted] about Mr Köllerer.

179. [redacted] was in my judgment a truthful witness. I reject the attack on his credibility, to the extent that there was one. He is a businessman with no prior evidence of a bad character, apart from his admission of breaching the rules in relation to the [redacted] matter.

180. However, he is concerned to maximise the profitability and income of Mr Köllerer even to the point of becoming involved in breaches of the rules, at least in the [redacted] com matter and also by failing to prevent double booking of tournaments which is prohibited.

181. As for Mr Köllerer himself, with regret and after considerable reflection I am unable, on a preponderance of the evidence, to accept him as a witness of truth in the most important issue which is his denial that he has acted corruptly. I accept Mr Hunter's submission that he is a man who shows a reckless disregard for the rules of his profession and that he has courted disaster by breaking them.

182. I would like to add that I think he is a foolish rather than an evil man, and that he is more motivated by reckless impulses than by ruthless and cool dishonesty. I am not convinced that he is part of a sophisticated criminal betting syndicate, or even that he would be in a position to make good corrupt offers of money to players if they were stupid enough to accept them.

183. It follows that I find the first, fourth and fifth charges proved on a preponderance of the evidence. I dismiss the second and third charges. In case it assists the parties, I would like to add that I would not have found any of the charges proved if the standard of proof to be applied were the criminal standard; and I have not formed a view about whether I would have been "comfortably satisfied" of the charges or any of them. I have given my reasons above for entertaining a reasonable doubt about the first, fourth and fifth charges.

184. Mr Hunter urged that this was an "all or nothing" case and that I should find all the charges proved or none. I do not agree. Unfortunately, if a player has a reputation for being corrupt, other players may in their evidence become less concerned about the niceties of accuracy and proof of specific instances of corruption than about supporting the general proposition that the player is corrupt. This can easily lead to inaccurate evidence of corruption in certain instances and accurate evidence in others. There is no substitute for proof to the requisite standard of each individual allegation.

**Ruling on Liability and Consideration of Sanctions**

185. Accordingly, I rule that the first, fourth and fifth charges against Mr Köllerer are proved and that the second and third charges are not proved. As required under Article G.4.b.ii of the Program, I now consider the appropriate sanctions, having heard written and oral submissions (at a telephone hearing on 25 May 2011) from the parties in relation to sanctions after informing them of my decision on liability.

186. The PTIOs, through Mr Singer, emphasised that I have found proved three offences of attempted match fixing over a nine month period; that in two of the three cases there was an offer of money; and that Mr Köllerer attempted to corrupt two other players and offered money to one of them. Mr Singer submitted that such conduct strikes at the heart of the sport and must be met with a policy of zero tolerance. He pointed to support for that proposition from CAS case law (*Oleg Oriekhov v. UEFA,* CAS 2010/A/2172) and from press reports of unpublished decisions in other sports.

187. Mr Singer emphasised the need to restore the damage to the reputation of tennis which this case would otherwise inflict, this being the first match fixing case in the sport of tennis. He submitted that a long ban unaccompanied by a substantial fine would be insufficient deterrent for a player entering the latter stages of a playing career, since he must also be prevented from returning to the sport later as a coach or trainer.

188. Accordingly, the PTIOs sought a life ban and a fine of US $ 190000 (to include activation of the suspended fine of 15000 euros). Mr Singer submitted that Mr Köllerer had an appalling disciplinary record which showed that he was beyond the

reach of deterrence and rehabilitation, had shown no remorse and was beyond redemption. He had made matters worse by false accusations of lying against other players.

189. Mr Singer invited me to conclude that Mr Köllerer's motive must have been financial gain and that he had engaged in "premeditated acts", approaching each player ([redacted] and [redacted] twice, and the second player again even after an initial rejection. The PTIOs invite me to ensure his permanent exclusion from professional tennis and to impose a substantial fine on him.

190. For Mr Köllerer, Dr Heigl made a heartfelt plea for leniency while reserving his right of appeal, including in respect of the standard of proof, and noting that his client did not accept the findings of guilt. He made his submissions, correctly, on the basis that my findings must stand for present purposes subject to them being challenged on appeal later.

191. Dr Heigl pointed out that client was, as I have found, foolish rather than evil, had not been shown to be part of a sophisticated criminal betting syndicate and would not necessarily have been able to make good the financial offers I have found he made to [redacted] Dr Heigl noted that Mr Köllerer is a man of hitherto good character with no findings of any similar misconduct against him (save in respect of the [redacted] matter), who lives a quiet and orderly life as a private citizen in a stable relationship from which he is soon to become a father.

192. Dr Heigl submitted that Mr Köllerer's poor behaviour on the court was the result of the sport being the "valve to channel his emotions and tensions" and that it could not be concluded from his poor disciplinary record resulting from impulsive behaviour that he is a man without respect for the rules of the sport who would engage in coldly premeditated match fixing. Dr Heigl submitted that whatever the correct standard of proof, nothing less than absolute certainty must be a pre-condition of a life ban and that the sanction should reflect any degree of doubt in the mind of the fact finding tribunal.

193. Dr Heigl also submitted that Mr Köllerer had a history of psychological problems and had behaved in a naïve and credulous manner in the [redacted] matter, being guilty in that matter of nothing worse than over-reliance on [redacted] He invited me to reject any suggestion that the offences were premeditated and emphasised that on my findings, no match was actually fixed. A life ban and substantial fine, he submitted, would be disproportionate and would destroy Mr Köllerer's very livelihood.

194. I have considered these arguments very carefully. I have come to the conclusion, first, that in considering the appropriate sanctions, I must disregard the relatively low standard of proof on the preponderance of the evidence and the fact that I would not have found any of the offences proved to the criminal standard of proof beyond reasonable doubt. If the tennis governing bodies are entitled to require competitors to submit to a disciplinary regime which includes the standard of proof on a preponderance of the evidence, sanctions must be applied, where that standard is met, on the basis that the offences proved took place in fact, and not on the basis that there is a reasonable doubt as to whether they took place.

195. Secondly, I do not accept fully the PTIOs' contention that the offences I have found proved, were premeditated acts committed with malice aforethought for financial gain. Mr Singer suggested that the offer to [redacted] was deliberately increased from 10000 to 15000 euros on the second occasion, to make it more tempting. I do not think that is proved. [redacted] did not clearly recollect with precision the amount of the sums offered on either occasion.

196. I do not think the PTIOs' contention is consistent with Mr Köllerer's character. I do accept that Mr Köllerer was interested in financial gains from tennis over and above what the rules permit. His admission of guilt in the [redacted] matter shows that. But I think it is more likely that he committed these offences mainly out of reckless bravura, and quite possibly without a clear plan to make good the financial offers he made to [redacted] I think the repetition of the offer of money to the latter reflects not cold premeditation but astonishing and rash audacity and a

misguided wish to live up to his reputation for acting in an exuberantly "crazy" manner.

197. What fate should await a man who commits such serious offences in such strange circumstances? The rules do not, unlike in doping cases, provide for uniform mandatory sanctions. Life bans must be imposed in the worst cases, but recognising that any offence connected with match fixing or the possibility of match fixing is by definition very grave indeed. I accept that the CAS case law supports a policy of virtual zero tolerance. It is difficult to think how any offence related to match fixing could ever be trivial.

198. After much thought, I am driven to accept Mr Singer's submission that the offences here are so serious that they cannot be seen to be mitigated by features such as those so eloquently advanced by Dr Heigl. The tennis public would perceive, rightly, that match fixing is not taken seriously unless sanctions of the highest severity were imposed for offences of this type, however misguided the perpetrator and however outlandish the circumstances of the offences.

199. Here, the offences are very serious. There were three corrupt attempts to influence the outcome of matches, two other players whom the perpetrator attempted to corrupt, and two offers of money to one of them. I cannot see how anything less than a life ban can be imposed. I do not think I can allow such sympathy as Dr Heigl is able to induce in me to lead me to impose any lesser period of ineligibility.

200. I also accept that it is necessary to mark these offences with a substantial fine. I have evidence that Mr Köllerer's means are limited and that he is in substantial debt, particularly because he has recently borrowed an amount in the region of 400000 euros to finance his property purchase in 2010. I think the appropriate fine is US $100000, which includes and absorbs the suspended fine of 15000 euros imposed in August 2010.

201. I therefore rule that Mr Köllerer is permanently ineligible for participation in any event organised or sanctioned by any of the four Governing Bodies, and I impose a fine of US $100000.

202. The effect of my decision is described thus in Article H.1.c of the Program:

> No Player who has been declared ineligible may, during the period of ineligibility, participate in any capacity in any Event (other than authorized anti-gambling or anticorruption education or rehabilitation programs) organized or sanctioned by any Governing Body. Without limiting the generality of the foregoing, such Player shall not be given accreditation for, or otherwise granted access to, any competition or event to which access is controlled by any Governing Body, nor shall the Player be credited with any points for any competition played during the period of ineligibility.

**Rights of Appeal**

203. Under Article G.4.b.iii of the Program, I am required to deal with rights of appeal. These are governed by Article I. The time limit for appealing is 20 business days from today's date.

204. Mr Köllerer is entitled to appeal to the CAS against my decision that the first, fourth and fifth charges are proved. The PTIOs are entitled to appeal to the CAS against my decision to dismiss the second and third charges. Both parties are entitled to appeal against my decisions in relation to sanctions.

**TIM KERR QC**
**Anti-Corruption Hearing Officer**
**11 KBW Chambers, London**
**31 May 2011**