DECISION 2022/01

OF THE

BADMINTON WORLD FEDERATION

INDEPENDENT HEARING PANEL

DEFENDANT(s):  Mr. Li Jun Hui
                 Mr. Liu Yu Chen
                 Mr. He Ji Ting
                 Mr. Tan Qiang

PANEL:         Mr. James Kitching (Chair)
                 Mr. Kevin Carpenter
                 Ms. Yuri Yagi

DATE:          24 January 2022

Regarding alleged violations of the:

Nov 2017 Code of Conduct in Relation to Betting, Wagering, and Irregular Match Results
PRELIMINARY MATTERS

Introduction
1. On 11 April 2021, Mr. James Kitching, the Chair of the Badminton World Federation ("BWF") Independent Hearing Panel ("IHP") appointed the following members to a hearing panel in accordance with Article 18 of the BWF Judicial Procedures (22 November 2020) ("Procedures"):

1.1. Mr. James Kitching as Chair ("Chair"); and
1.2. Mr. Kevin Carpenter and Ms. Yuri Yagi as Members ("Members"),
collectively, the "Panel".

2. The Panel was appointed to decide on a case involving breaches of the November 2017 Code of Conduct in Relation to Betting, Wagering, and Irregular Match Results ("Code") allegedly committed by four (4) Chinese athletes:

2.1. Mr. Li Jun Hui (LJH);
2.2. Mr. Liu Yu Chen (LYC);
2.3. Mr. He Ji Ting (HJT); and
2.4. Mr. Tan Qiang (TQ),
collectively, the "Defendants".

Parties
3. The parties to this matter are:

3.1. BWF, the international governing body for the sport of badminton, recognised by the International Olympic Committee ("IOC"); and
3.2. LJH, LYC, HJT, and TQ, badminton athletes affiliated to the Chinese Badminton Association ("CBA").

Procedural and Factual Chronology
4. This section outlines the key communications and procedural rulings which occurred. Not all communications are recorded for reasons of relevance.

Initial Report
5. On 9 November 2018, the pair LJH - LYC played against the pair HJT - TQ in the quarter finals of the men’s doubles at the 2018 Fuzhou Open ("Match").

5.1. Following the Match, a “BWF Incident Report Form” was submitted by Mr. C.R. Rajeev, the umpire of the Match ("Umpire"), and by Mr. Pencho Stoynov, the tournament referee ("Referee").
5.2. Both alleged that the Defendants failed to use their best efforts to win the match.

6. The BWF (through its Integrity Unit) opened an investigation.

First Interviews
7. On 26 November 2018, the BWF individually invited each Defendant, via the CBA, to attend an interview as part of its investigation.

8. On 3 December 2018, the Defendants, via the CBA, individually confirmed receipt of the interview invitation and individually confirmed their attendance at an interview.

9. On 10 December 2018, LJH was interviewed in Guangzhou, China P.R..

10. On 10 December 2018, LYC was interviewed in Guangzhou, China P.R.

11. On 11 December 2018, HJT was interviewed in Beijing, China P.R..

12. On 11 December 2018, TQ was interviewed in Beijing, China P.R..

13. All interviews were conducted by the BWF Integrity Unit Manager, Mr. Andy Hines-Randle and BWF investigator, Mr. Paul Scotney. In each interview the Defendant was assisted by an independent interpreter and accompanied by a CBA representative.

14. The testimony provided is set out below in Part C.

Request to Referral Officer
15. On 2 February 2021, the BWF Secretary General referred the case to the BWF Referral Officer, Mr. Alexander McLin, for review in accordance with Article 15.4 of the Procedures.

15.1. The purpose of a referral is for the Referral Officer, an independent party, to review the evidence and decide whether to refer the case to the IHP.

16. On 24 March 2021, the Referral Officer confirmed that he had decided to refer the case to the IHP.

Charges
17. On 12 April 2021, the BWF individually notified each Defendant, via the CBA (“Charge Notice”):

17.1. that they were charged with three (3) violations of the Code;

17.2. the time limits to acknowledge receipt of the Charge Notice (19 April 2021) and respond to the Charge Notice (26 April 2021);

17.3. their rights pursuant to the Procedures; and

17.4. the evidence pertaining to the case, and documents entitled “Charges” and “Case Summary” prepared by the BWF.
Submissions and pre-hearing matters
18. On 26 April 2021, the CBA on behalf of the Defendants requested an extension of time until 3 August 2021 to provide the response to the Charge Notice.

19. On 29 April 2021, following confirmation that the BWF had no objection to the request, the Chair confirmed the new time limit to provide the response to the Charge Notice would be 3 August 2021.

20. On 3 August 2021, a joint response was received on behalf of the Defendants.

21. Following several exchanges of correspondence, an oral hearing was scheduled for 29 November 2021 and 3 December 2021.

Charges
22. The charges state:

LI JUN HUI, LIU YU CHEN, HE JI TING and TAN QIANG are charged in relation to the quarter final of the men’s doubles at the Fuzhou China Open 2018 played between LI & LIU and HE & TAN (the Match) as follows:

Charge 1
That on 9 November 2018, LI JUN HUI, LIU YU CHEN, HE JI TING and/or TAN QIANG failed to use his best efforts in the Match played between LI & LIU and HE & TAN in breach of §3.1 and 3.1.2 of the Code.

Charge 2
That on 9 November 2018, LI JUN HUI, LIU YU CHEN, HE JI TING and/or TAN QIANG contrived and/or attempted to contrive the outcome of the Match or aspect of the Event in breach of §3.1.17 of the Code and in particular:

a. Failed to compete to achieve the best score,
b. Failed to encourage his partner to play to their best ability, and/or
c. Made deliberate errors.

Charge 3
That on or before 9 November 2018, LI JUN HUI, LIU YU CHEN, HE JI TING and/or TAN QIANG agreed with each other to not use their best efforts in the Match and thereby solicited or facilitated the another Player not to use his best efforts in the Match in breach of §3.1.8 of the Code.

B. APPLICABLE RULES

Jurisdiction
23. Article 31 of the BWF Constitution recognises the IHP as a judicial body of the BWF.

24. The IHP is authorised by Article 29 of the BWF Constitution to “penalise a Member, player, coach, competition official, or other person for infringement of the Statutes, for misconduct during competition, or for actions that bring the game of Badminton or the Federation into disrepute.”
25. In accordance with Article 7.5 of the Procedures, the IHP has jurisdiction to decide matters, inter alia, regarding alleged breaches of the “Code on the Prevention of the Manipulation of Competitions (BWF Statutes, Section 2.4)”.

25.1. The Code (promulgated in November 2017) is the equivalent version (albeit with a different name) in force at the time of the alleged violations.

26. Pursuant to Article 15.4 of the Procedures, the case against the Defendants was referred to the IHP following consideration of the evidence by the Referral Officer.

27. As such, the Panel has jurisdiction to hear this matter. In any event, the Defendants never disputed the jurisdiction of the Panel.

**Burden of proof and standard of proof**

28. Article 32.2 of the Procedures provides that the “burden of proof regarding an allegation of breach rests on the Investigating Party”. In this matter, this is the BWF.

29. Article 32.1 of the Procedures states that the “standard of proof...shall be the balance of probabilities...a matter will be found proved if it is more likely to have occurred than not”.

**Violations**

30. The Defendants are each charged with violating the following provisions of the Code:

3.1 The following are considered offences under this Code:

3.1.2 Any Player not using one’s best efforts to win a match.

... 3.1.8. No Covered Person shall, directly or indirectly, solicit or facilitate any Player to not use his or her best efforts in any Event.

... 3.1.17 No Covered Person shall, directly or indirectly, contrive or attempt to contrive the outcome or any other aspect of any Event.

31. The relevant regulatory scope of the Code is provided below:

1.1.6 Covered Person: refers to any Player, Related Person, or Tournament Support Personnel.

... 1.1.16. Player: refers to any player who enters or participates in any badminton competition, Event or activity organised or sanctioned by the BWF or any governing body.

**C. PROCEDURAL REQUEST(S), EVIDENCE, POSITIONS OF THE PARTIES**

32. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence. Additional facts and allegations found in the
written submissions, pleadings and evidence may be set out, where relevant, in connection with the findings at Part D.

Evidence
33. The evidence provided as part of each Charge Notice is summarised below.

Match and post-Match reports
34. The following is a summary of the events that are alleged to have occurred by the BWF during the Match.

34.1. On 9 November 2018, the Defendants commenced playing the Match.

34.2. At the time, the pair LJH-LYC were ranked 2 and the pair HTJ-TQ were ranked 17 in the BWF world rankings for men’s doubles.

34.3. During the Match, another badminton player (“Athlete”) that was observing it from the sideline formed the impression that the players were not giving their best efforts to win the Match and alerted the Referee accordingly.

34.4. The Referee subsequently attended the Match with Mr. Matt Judson, the BWF Tournament Series Manager. They arrived during the second game. The Referee concurred with the report from the Athlete following a short observation.

34.5. At the 11-point interval of the second game, the pair HTJ-TQ were leading the Match 21-15, 7-11.

34.6. During the interval, the Referee spoke to the Umpire, and they both directly addressed the Defendants before play resumed. First, the Umpire addressed them alone, and secondly, the Referee addressed them with the Umpire. On both occasions they requested the Defendants to use their best efforts (“Interventions”).

34.7. Following the Interventions, the quality of the Match and performance of the Defendants significantly improved, and the remainder of the second game and the third game were played at a much higher standard.

34.8. The pair HTJ-TQ ultimately won the Match 21-15, 14-21, 21-19.

35. On 10 November 2018, the Umpire submitted the following report (extracted in full):

“In the first game, the rallies were very short. Many rallies ended with the shuttle landing out of court. At the interval of 11-7 in the second game, the Referee and the Umpire advised all the players to use their best efforts to win the match. Afterwards the rallies were comparatively longer and the players seemed to use their best efforts to win the match.”

36. On 11 November 2018, the Referee submitted the following report (extracted in full):

“The match was the last one on court 2 - MD quarterfinal, the umpire was C.R.Rajeev (IND), BAC-C umpire who was in the group of umpires appraised from Yao Li Na and
Sandy to be selected to go for BWF-A assessment. We were regularly having feedback from the assessors and for Rajeev the feedback was very good.

At the time when the MD match started a WD Korea - Korea match was beginning on court 3, where the umpire was from Iran, also from the course but quite unexperienced. She made a mistake in the very beginning being unable to identify the sides and starting the match with mirror scoring. I had to go on court to correct the mistake and it took nearly 5 minutes before the problem was solved. Meanwhile Michael was delegated to work on the Umpire's duties for the semi finals, so he was not watching the matches.

On my way back from court 3, near the Referee's desk I was met by two Danish players who informed me that some strange game is going on court 2. I saw that the first game was already over, duration about 10 min. and they have started already the second game. I immediately called Matt Judson who was at the Referee's desk and we both went near court 2. After watching couple of rallies, extra short rallies and unusual mistakes made by professional players, I decided to intervene and go on court which I did during the one minute interval. I instructed the umpire to call the players and tell them that they must use their best efforts to win the match. He did so in the end of the interval, explaining the players what he was told to do, but they were looking at him very surprised and not understanding, therefore he called me on court. I was staying beside so entered immediately and told them we are observing the game closely, that they are not playing seriously and if not using their best efforts to win the match both sides can be disqualified.

After that, until the end of the second game and especially in the final game there was a real game and fight and therefore the match was finished normally.

Any additional comments:
As a Referee I can claim that the impression was that both sides before I went on court were not playing fair game…"

Interviews\(^1\)
37. In summary, LJH relevantly stated:

37.1. that he had “tried his hardest” during the Match [18, 21, 22, 23, 26, 28];

37.2. that when the Interventions occurred, “the referee’s main idea was that we had to play our hardest in the game” [19] and “I do not speak English, but I got the main idea that the referee wanted us to show more commitment and try harder” [28];

37.3. in response to the allegation that “all four players demonstrated a lack of focus”, that “I have really try my best – hard – hardest. Maybe I was – it was only that I was not in my best shape’ [21] and “The quality of the ball hit by the other side is very good. That’s the first point. Secondly, before the game when we change and we often play against each other. The third point is that the other side knows very well how we play” [22]; and

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\(^1\) Number references in this section are to the document marked “BWF Exhibits V2”. 

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that he denied having been asked to deliberately lose the Match or that he was following team orders [23, 26, 27].

38. In summary, LYC relevantly stated:

38.1. that “in the second half of the year we are – we were in bad shape” [32];

38.2. that he and his partner were playing hard [32, 33, 36, 37, 43]

38.3. that prior to the Interventions, rallies were short “because we are all familiar with each other” [34]; and

38.4. in relation to the Interventions, that he thought the Referee “only wanted us to...cheer for ourselves when we win a point, to root for ourselves” [34] as “the four players are from the same country, and so – so that is why some – or we do not yell or shout at each other and maybe that makes the game looks boring” [34].

39. In summary, HJT relevantly stated that:

39.1. it was a “normal match” and believed the Referee had said the same in his report [46, 48];

39.2. he did not know why the Interventions occurred as he does not speak English [47];

39.3. they won the first game quickly because the opponents were not prepared for the match [49];

39.4. they were “trying their best” since the start of the Match and the Interventions made no difference [50, 52];

39.5. he was not instructed on how to approach the Match by anybody [53-54]; and

39.6. he won the Match through his “tactic...and...energy over this young teams (sic)” [54].

40. In summary, TQ relevantly stated that:

40.1. in relation to the Match, “he and his team – team member are fully devoted to this game and that they are young team – a young badminton players and why he couldn’t – why their team can made it to the final because they are fully devoted and that they have their career target and objective to win this match” [63];

40.2. he does not speak English and did not know the subject of the Interventions [64];

40.3. he was “not surprised” that they won the first game as they were “fully prepared” [68, 69-70]; and
40.4. it was “impossible” that someone would instruct him to lose a match [70].

Witness Testimony
41. The BWF provided written witness testimony from several persons, including two (2) individuals that the BWF considered to be expert witnesses. The following paragraphs set out the salient points from their written statements.

Athlete
42. The Athlete relevantly stated that:

42.1. they have been playing professionally at an international level for 7 years;

42.2. they were watching the Match with a teammate while waiting for their own match to start. They noticed that the players “were not moving properly on court” and decided to “report the stand of play to the referee...straight after the end of the first game”; and

42.3. they observed the Referee watching the match, and the Interventions.

Pencho Stoynov
43. The Referee relevantly stated that:

43.1. he has been a BWF Referee since 2004, and was certified at the highest level, BWF Certificated Referee, in 2015;

43.2. he was the Referee of the 2018 Fuzhou Open; and

43.3. he prepared the BWF Incident Report Form (extracted above). His witness statement declared similar facts as to those contained in the report.

C.R. Rajeev
44. The Umpire relevantly stated that:

44.1. he has been a Badminton Asia Umpire since 2011, and was certified as a Badminton Asia Certificate Referee in 2016;

44.2. he was an Umpire at the 2018 Fuzhou Open, and the Umpire of the Match;

44.3. he prepared the BWF Incident Report Form (extracted above). His witness statement declared similar facts as to those contained in the report.

Judith Brosula
45. Brosula relevantly stated that:

45.1. she has been a Badminton Asia Certificated Umpire since 2008;

45.2. she was the appointed Service Judge for the Match;

45.3. “at the start of this match I noticed that both pairs gave the impression of not being in the mood to play. I observed that both pairs were not using their best
effort in winning the match. The Umpire did not call immediately, but on the 3rd instance he called up the Referee. I also recall that they did not change the shuttle frequently, which is unusual.

After the Referee came in and spoke to the players (at the interval of the second game) they became more aggressive and played the match seriously.”

Matt Judson

46. Judson relevantly stated that:

46.1. he has been employed as a BWF Tournament Series Manager since February 2015. He was assigned to the 2018 Fuzhou Open;

46.2. during the Match, he was at the ‘match control desk’ and was informed by the Referee that the Match was “not being played at full intensity...We watched a few points and it did not appear to me that the match was being played at the intensity one would expect in a HSBC BWF World Tour Super 750 Men’s Doubles Match: I have seen both pairs play before and they did not seem to be playing to the same pace as when I have seen them previously. After a few minutes of watching the referee decided to speak to the players, if I recall correctly this was during the 11-7 point interval in the second game.

After the referee spoke to the players, there seemed to be an increase in the intensity and speed of play from both pairs during the next few points. At this point I went back to the match control desk...”.

Andy Hines-Randle

47. Hines-Randle relevantly stated that:

47.1. he has been employed as the BWF Integrity Unit Manager since November 2014;

47.2. following receipt of the report from the Referee, an investigation was opened. He facilitated and participated in the interviews;

47.3. the BWF engaged two experts to assess whether the Defendants were “giving their best efforts throughout the entirety of the match”. The experts were provided footage of the Match and a subsequent match involving the Defendants at the All-England Championship in March 2019 (“Comparator”); and

47.4. at the time of the Match, the pair LJH-LYC were ranked number 2 and the pair HJT-TQ were ranked number 17 in the BWF world rankings for men’s doubles. Following their finish in 2018 Fuzhou Open, the pair HJT-TQ improved to number 14.

Andy Wood

48. Wood relevantly stated that:

48.1. he is currently a Performance Manager at the Derbyshire Institute of Sports. He was a former professional player and has coached professionally in badminton
for 40 years. He has held several top positions including Badminton England National Coach, Badminton England Head Coach, Badminton England Tutor Assessor, Great Britain Olympic Head Coach, Great Britain Olympic Team Manager, and International Olympic Committee Development Technician;

48.2. he was asked by the BWF to “give my personal opinion on the level of effort made by the individual players - specifically whether they were giving their ‘best efforts’ throughout the duration of the two matches...and more specifically give my opinion as to whether there is any discernible difference in the levels of effort made by the players when comparing the two matches”;

48.3. in relation to the Match:

48.3.1. the warm-up was “non-structured and all four players appeared unfocused as well as mentally and emotionally under motivated, showing very little movement and many errors”;

48.3.2. regarding the first game:

“\text{It took 9 minutes 30 seconds of continuous play. In my experience this is very quick for a game at this level and is indicative of a lot of short rallies.}

\text{There were 20 combined un-forced errors. In my experience this is a far more than you would expect from a match at this level.}

\text{There was 1 shuttle change. This is extremely unusual; in a match at this level I would expect the shuttle to have been changed much more frequently. The fact that it was not is indicative of a lack of intensity in the rallies, therefore not causing damage to the shuttle and/or the players being unconcerned about the condition of the shuttle.}

\text{There was no crowd involvement in the match which is indicative of a lack of intensity and effort by the players}

\text{At the mid game interval, the players only took 30 seconds instead of the full minute –again this is unusual.}

\text{My general comments about the play in the first game are that all four players demonstrate a lack of focus throughout – which was more obvious with [the pair LJH-LYC]. There was also a lack of movement, or even commitment to movement by all four players - coupled with a lack of energy. Unusually there are no motivational shouts from the players throughout the game especially post successful rallies.}

\text{The shot selection and execution is questionable at regular stages of the first game resulting in misses by high margins – such as the shuttle going a long way out of the back of the court. This is very unusual for players at this level”};
48.3.3. regarding the second game:

“It took 8 minutes 43 seconds of continuous play. This is very quick for a game at this level and is indicative of a lot of short rallies.

There were 20 combined un-forced errors. This is a lot more than you would expect from a match at this level. There were 2 shuttle changes. This is very unusual and is indicative of a lack of intensity in the rallies not causing damage to the shuttle and/or the players not being concerned about the condition of the shuttle.

At the mid game interval, the players only took 30 seconds instead of the full 60 seconds.

My general comments about the play in the second game are that all four players demonstrate a lack of focus, particularly in the first half of the second game – and the lack of focus was more evident with [the pair HJT-TQ].

The missed shots by high margins continue as does the selection/use of ‘high risk shots’; also, there continues to be no personal motivational shouts by the players before or after rallies.

…

At the interval of the second game (when the score was 11-7) it can be seen from the footage that the umpire and the referee go onto the court and speak to all four players. Whist it is not clear from the footage what is being said to the players I am of the opinion from what I have seen previously in the way the game has been played the players are being warned by the umpire and referee for not ‘giving best efforts’.

Once the match restarts there is a clear shift in all four players’ level of focus, commitment, speed and willingness to work hard for every point played. All four players are now demonstrating what I would consider to be a full competitive mode and therefore giving very best efforts”;

48.3.4. regarding the third game:

“My general comment about game three is that the speed of movement of all four players is now visible and of a far higher levels than game one and the first part of game 2. There are now personal motivational shouts before and after rallies. The players are now requesting ‘towel down’ breaks which they had not done previously and are indicative of increased effort by the players.

Another change in the mood of the match is that the players are showing dissatisfaction with each other, which indicates to me more commitment and intent. As does the fact that the pairs are now
disputing whether the shuttle should be changed – which was again not
evident previously.

In general conclusion it is quite clear to me that for the first game and
up until the mid-level of the second game that all four players were not
giving ‘best efforts’. After the intervention of the umpire and referee at
the mid-level of the second game the levels of performance and
commitment improved dramatically with the body language showing a
desire to win”;

48.4. in relation to the Comparator:

“...it was an epic match of the highest quality fought out by two fully motivated
and competitive pairs. High speed intensity, full power and agility were evident
throughout the duration of the match. Both team’s desire to gain a competitive
edge throughout the match was clear to see.

More specifically the warm-up before the start of the match was focussed and
structured and there was consistent discrete signalling of service placement
intention to partners. There were also clear interactive partnership tactical
discussions along with high passion motivational shouts.

Additionally, there were requests made for the mopping of the court to clean
sweat patches.

There were significant leads held in the deciding game by [the pair LJH-LYC]
- there were five match points saved by [the pair HJT-TQ] - there were nervous
tendencies exhibited as the winning line was approached by the [the pair LJH-
LYC] - there were rallies of the very highest quality. There was evidence that
all four players were very familiar with each other’s style of play particularly
on serve and return.

It is a fundamental principle of Sport that the result of a badminton match is
determined only by the skill and talent of the players in that match. In my expert
opinion that was certainly the case in this contest for the reasons outlined
above”;

48.5. when comparing the Match and the Comparator:

“Having closely compared these two matches using my highest level of care
whilst analysing the footage provided, I am left in no doubt whatsoever that
there were clear differences in the level of endeavour of the players between
[the Match] and [the Comparator].

Specifically, the game durations in time are significantly different between the
two matches which indicates a clear difference in the level of competitiveness
and intensity. The number of combined unforced errors in game 1 and game 2
of [the Match] are surprisingly high for players of this quality and World
Ranking level. However, the numbers of combined unforced errors in [the
Comparator] are significantly lower and indicate a match of far greater focus, commitment and endeavour.

The number of shuttle changes in [the Comparator] is significantly higher than [the Match], this may be indicative of a greater desire to gain a competitive edge with a shuttle becoming more unpredictable the longer it is used. The rallies were more consistent with higher levels of determination, therefore increasing the need to take brief time-outs. The comparison of the two matches makes it crystal clear to me in my considered opinion as a BWF Expert Consultant that ‘Best Efforts’ were certainly not evident in Game 1 and the first half of Game 2 in [the Match].”

49. His witness statement annexed a written report ("Wood Report"). This was a technical analysis of the Match, analysing each individual player. It concluded:

“It is quite clear to me that for the first game and up until the mid-game interval of the second game, ‘Best Efforts’ were certainly not evident by any of the four individual players that formulate the two partnerships. After the Tournament Referee’s intervention at the mid game interval of the second game then the levels of performance, desire, intensity and commitment altered radically.”

Dr. Andrew Butterworth

50. Butterworth relevantly stated that he is a recognised and qualified sport scientist with doctoral and professional qualifications. His PhD study created and implemented an objective system to analyse international badminton player performance.

51. His witness statement annexed two (2) reports.

51.1. The first report purported to analyse the “levels of effort given by each of the pairs in each match. The two matches will be compared with any similarities and identified differences between the two matches highlighted” (“First Butterworth Report”).

51.2. The second report purported to analyse “the ‘best efforts’ of individual players...all methods utilized in this second report mirror the exact methods used in [the First Butterworth Report]” (“Second Butterworth Report”).

51.3. The method utilised to analyse the data was described as:

“To ensure reliability and trustworthiness of the data, reliability testing has been performed on a sample of the coded data. The methods utilized to do this are industry standard and follow recommendations of previous performance analysis research (e.g. O’Donoghue, 2007).

Intra-operator testing was utilized for this report, completed by Dr. Butterworth. A randomly selected game from the match one was selected to be re-coded in full. This data was then compared to the initial coding to establish reliability levels. To remove any possibility of familiarity effect from the coding completed, a time period of 7 days (one week) elapsed between the original coding, and the reliability coding.
To test rally timings, a measure of absolute reliability, percentage error, was calculated to determine the timings of rallies of both observations...

The findings show strong reliability with minimal percentage error (6.91%) between the two observations. The discrepancies between observations is trivial, and in line with the results of previous international badminton research (Butterworth, 2018).

To test nominal variables (e.g. rally outcomes, shot types, serve errors, serve return errors), kappa testing method was utilized as an absolute measure of reliability following the recommendations of previous research (e.g. O’Donoghue, 2007; Butterworth, 2018)...

The results of the kappa testing show a very good strength of intra-operator reliability (0.94). Cohen’s (1960) research on reliability stated that an agreement between 0.81 and 1.00 equates to ‘almost perfect’ reliability. This therefore confirms the accuracy of coding in this report.”

52. The First Butterworth Report relevantly found:

52.1. “a prolonged period of [the Match] of particular interest. This period runs from the commencement of game one at 0-0, to the break at 11-7 during game two. During this period, there are a number of unusual occurrences and discrepancies with the data when compared to other games in [the Match], and the games played during [the Comparator];

52.2. that the ‘period of interest’ in the Match:

52.2.1. had an increased number of rally-ending unforced errors, as opposed to the Comparator;

52.2.2. had an increased ‘margin of error’ (how significant the error was) on unforced errors, as opposed to the remainder of the Match as well as the Comparator;

52.2.3. had an increased number of serve errors and serve return errors as opposed to the Comparator;

52.2.4. the mean rally length (i.e. number of shots in a rally) was significantly shorter than the remainder of the Match, as well as the Comparator. In particular, there was a high number of short rallies;

52.2.5. had a lower number of ‘attacking intents’ as opposed to the Comparator;

52.2.6. had less shuttle changes as opposed to the Comparator; and

52.2.7. had decreased momentum swings as opposed to the Comparator;
52.3. in conclusion: “having completed a thorough valid and reliable objective analysis of the two matches, evidence suggests that both pairs failed to give ‘best efforts’ during the opening points (0-54) of [the Match].”

53. The Second Butterworth Report relevantly concluded that:

“Having completed a thorough valid and reliable objective analysis of the two matches, evidence suggests that all players failed to give ‘best efforts’ during the first 54 points of [the Match]. There is an increase in shot volume and attacking intents in the periods outside of [the Match] 0-54, whilst the number of unforced errors generally decreases. There is however no distinct evidence that a single player within either or both pairings were giving more or less ‘best efforts’ than their partner. Whilst there are some some (sic) discrepancies in the objective data pointing toward individual players effort levels at different times, there is not enough underlying outright evidence to condone a single player outright. Therefore it is Dr. Butterworth’s objectively informed professional opinion that all four players failed to give best efforts in points 0-54 of [the Match], but that these efforts cannot be attributed to a single player.”

Video
54. The BWF provided a copy of the full video recording of the Match, which included the warm-up period and the Interventions. This was viewed by all members of the Panel.

BWF case against the Defendants
55. In summary, the BWF case against the Defendants is that:

55.1. during the first game and up until the interval of the second game, they failed to use their best efforts to win the Match, a violation of the Code;

55.2. as a result, the Defendants contrived or attempted to contrive the outcome of the Match, a violation of the Code; and

55.3. as a result, on or before 9 November 2018 the Defendants agreed with each other to not use their best efforts in the Match and thereby solicited or facilitated each other to not use best efforts in the Match, a violation of the Code.

56. The BWF case is predicated on the fact that:

56.1. the witness testimony, including that of the experts (Wood and Butterworth), is that the first game and up until the interval of the second game it was clear that the Defendants were not using their best efforts to win the Match; and

56.2. the video evidence demonstrates a clear and obvious change in the effort levels of the Defendants following the Interventions, supporting the witness testimony.

Defence
57. The Defendants provided a brief joint defence (“Defence”). They relevantly stated:

57.1. they denied the charges in full;
57.2. the Athlete was “possibly biased” or had a conflict of interest when the report was made to the Referee;

57.3. the Referee’s observations were not based on an objective observation of the Match having been triggered by the report from the Athlete;

57.4. the Referee and the Umpire had spoken to the Defendants in English, of which none of them understood;

57.5. consequently, the Defendants did not change the manner in which they played after the Interventions;

57.6. the analysis in the Wood Report is “very subjective...taking into only accounts of the Athletes’ movement and shot selection identifying in particular points in the Match is not thorough, scientific, or conclusive”. There are other reasons that can lead to the same conclusions, beyond simply not “using best efforts”;

57.7. similar criticisms are made of the First Butterworth Report and Second Butterworth Report;

57.8. the Wood Report possibly demonstrates bias against the Defendants where it states that there was a “deliberate attempt to manipulate the outcome of this match”. Analysing a match via video cannot lead to that conclusion; and

57.9. although it appears that the Defendants did not play as well in the Match as opposed to the Comparator, that is not an offence under the Code relating to Charge 1. Even if Charge 1 is made out, there is no evidence to support Charge 2 or Charge 3.


58.1. The first report was from Fu Haifeng (“Haifeng Report”):

58.1.1. Haifeng is currently the coach of the Guangdong Province Badminton Team. He won the men’s doubles badminton event at the 2012 London Olympics and 2016 Rio Olympics. He has been involved in badminton for over 30 years;

58.1.2. in preparing his report, he was provided with the Wood Report. He stated in opening:

“First, judging from my many years of competition experience and coaching, It is not surprising to see that when athletes face players from their own country who often train and compete with each other, they have already known the opponent’s skills and are in a position to anticipate the effects because they are very familiar with each other. It is not abnormal that they would strike back only if they can (with
anticipation of the effect of the opponent’s strike). And, if they predict one move is hard to strike back, it’s not surprising that they give up. This also matches the performance of the first game, mainly reflected from the small number of shots, the small number receiving before net and the low frequency of ball changes. It could also be the reason that the players are very familiar with each other so there is no need to use change of balls as tactics. Meanwhile, these two pair of players were friendly with each other and there was no need to shot. That said, they tend not to shout out loud after winning one point as a war cry.

Second, in the first game pause at 11-6, it can be seen that both sides were discussing tactics among their own pairs and trying to win points by changing moves. Li Junhui and Liu Yuchen let up a little because they were far behind on the first game. In the second game, both sides tried to win the game by taking the initiative in front of the net and creating attack opportunities. Therefore, there were very few multi-move rounds. In conclusion, both sides were trying to win scores, especially the balls in front of the net. When the balls in front of the net are restricted, it is hard to reverse back. And it caused many unnecessary mistakes”;

58.1.3. the Haifeng Report provided an analysis of various errors of play identified in the Wood Report, which were countered with his own view. On all occasions, this took an opposite view to the Wood Report.

58.2. The second report was from Zihua Xie (“Xie Report”):

58.2.1. Xie is currently the head coach of the Thai badminton club Banthong Yord. He was previously a member of the Chinese national badminton team. He moved to Thailand in 1992 and has trained many world champions. He has been working in badminton for 47 years;

58.2.2. in preparing his report, he watched the video recording, and was provided with the Wood Report, First Butterworth Report, and Second Butterworth Report. He stated in opening:

“As a starting point, it is not uncommon for athletes to have ebbs and flows in their competition, and it is difficult even for outstanding athletes to keep participating in their best conditions. Not in the best condition might be caused by many factors, such as fatigue before games, small injuries, etc. And it cannot be simply viewed as athletes engaging negative competition, or trying to manipulate the game.

a) Regarding the short duration of the game: the length of the game cannot be used as a measure of whether the athletes are trying their best to compete; it may be a tactical issue, for example, falling behind in the first game and the score is difficult to reach. Athletes want to save energy and trying for the second game;

...
b) Regarding the many unforced errors: it may be related to the athlete's performance status, such as tension / fatigue; it may also be that the player is significantly behind and does not want to receive too many shots and chooses to play a risky ball, leading to higher errors.

c) Regarding the low number of ball changes: more than half of the players change the ball not necessarily because the ball is broken, but for tactical purposes. The ball changes could also be used to change the momentum of the game.

d) Regarding the lack of passion for the game: both players are Chinese, and they are familiar with each other's play. They are emotionally stable.

e) Short half time: It may be the fact that there is no coach guiding tactical adjustments. So the players simply communicate with each other in brief. Or because they want to maintain the momentum of the game”;

58.2.3. the Xie Report provided an analysis of various errors of play identified in the Wood Report, which were countered with his own view. On all occasions, this took an opposite view to the Wood Report; and

58.2.4. it concluded:

“The two sides were not in the best state of the game, Although they had a strong desire to win, they were not able to do it. Fluctuations in state are common and may be affected by both psychological and physical factor. It does not necessarily mean that the game was negative, and the result was manipulated. Some balls that seem to be out of state can give a reasonable explanation after careful analysis. The game was normal.”

Hearing
59. A hearing was held on 29 November 2021 and 3 December 2021 via videoconference.

60. At its outset, the Parties confirmed that they had no objection to the composition of the Panel or to any other persons attending the hearing.

61. At its conclusion, the Parties confirmed that they had been provided an opportunity to state their case and had no objection to the procedure conducted. The Parties were provided an opportunity to provide a post-hearing brief.

62. On 3 December 2021, the BWF provided its post-hearing brief.

63. On 10 December 2021, the Defendants provided their post-hearing brief. This formally concluded the hearing.
Attendance
64. The Parties attended the hearing in person with their representatives:

64.1. BWF, represented by Mr Louis Weston, counsel, and Mr. Thomas Delaye-Fortin, BWF Head of Legal Affairs;

64.2. The Defendants, represented by Mr. Yupeng (Yves) Hu, counsel, and assisted by Mr. Wei Zhengang, interpreter.

65. The hearing was also attended by Mr Stuart Borrie and Ms. Rachel Jayaratnam from the BWF secretariat to provide logistical and administrative support to all parties and observers in the hearing.

Procedural Requests
66. Prior to and at the commencement of the hearing, several procedural requests were received and decided. They are briefly set out below.

66.1. Prior to the hearing and at the onset of the hearing, the BWF requested that Wood and Butterworth (as designated ‘expert’ witnesses) be permitted to witness the BWF case prior to their giving testimony. This request was rejected by the Panel. Wood and Butterworth would only be permitted to attend the hearing when they were called for evidence.

66.2. Prior to the hearing, the Defendants requested that the hearing be conducted in a consecutive translation manner. This request was rejected by the Panel. As per the Procedures, the conduct of the procedure is in English. The purpose of consecutive translation is to assist the Panel in understanding individuals that do not speak English, and to protect the right to be heard of unrepresented defendants if they do not speak English. Given that the Defendants were represented by counsel, counsel was expected to conduct all matters in English. Consecutive translation was to be utilised at the appropriate time. Notwithstanding this, the Panel directed the Defendants that it was permissible for them to arrange simultaneous translation, so they may follow the hearing, utilising the existing technology or some other form.

BWF Opening Note
67. Prior to the hearing, the BWF provided a written “Opening Note” and requested that it be considered as its opening. In short, this relevantly addressed the Defence as follows:

67.1. BWF reasserted the matters set out in the “Case Summary”;  
67.2. the allegation regarding the Referee’s evidence being tainted could be put to him directly at hearing;  
67.3. it is clear from the video that the Athletes had listened during the Interventions, and “it is unlikely that they would have both done so without understanding what was being said, and then changed their play coincidentally”;  
67.4. the criticisms of the Wood Report, First Butterworth Report, and Second Butterworth Report are unfounded;
67.5. the author of the Haifeng Report is incapable of impartiality given his current or former role with the CBA. The Haifeng Report is speculative and does not address the cumulative position identified in the various evidence. It attacks the Wood Report on an unfounded allegation of bias. It does not address the change in performance after the Interventions, nor does it address the First Butterworth Report or Second Butterworth Report; and

67.6. the Xie Report is speculative and does not address the cumulative position identified in the various evidence. It does not address the change in performance after the Interventions, or the First Butterworth Report and Second Butterworth Report.

**Defendants’ Opening**

68. The Defendants provided a joint opening and then each read out a prepared statement.

69. The joint opening relevantly stated that:

69.1. there has been a ‘snowballing’ effect following the report made by the Athlete – who had recently lost a match to one of the Defendants – which had led to a presumption of guilt against the Defendants [T1, 6];

69.2. the only evidence is subjective perceptions of performance [T1, 6];

69.3. the pair LJH-LYC were not in good physical shape, having suffered injuries and a long match schedule [T1, 7];

69.4. the Defendants all participated in the Match with their best efforts and the goal of winning the game. They have not changed their way of playing, rather they were utilising tactics to win [T1, 7].

70. LJH relevantly stated that:

70.1. he has never made any attempt or had any intent to manipulate a match [8-9]. The short rallies prior to the Interventions were as a result of a “tactical choice”; during the interval, he had a discussion with his partner and they adjusted their tactics [T1, 9];

70.2. he has had several major injuries and his “physical condition was declining”. His physical condition was not at its best during the tournament [T1, 9].

71. LYC relevantly stated that:

71.1. their opponents in the Match were also their teammates in training and other matches, they have played many times against each other, and are familiar with each other. Therefore “we would not often shout aloud at each other or do other agitating things to motivate ourselves when the matches begin” [T1, 9];

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2 Number references in this section are to the transcript of hearing. “T1” refers to Day 1 of the hearing, and “T2” refers to Day 2 of the hearing.
72. HJT relevantly stated that:

72.1. “our opponents were also our team mates in the routine training and other matches. We had played together many times and know each other’s playing style and tactics quite well” [T1, 10];

72.2. “from my perspective, my partner, Tan Qiang, and I made due preparation before this match, including defining our tactics and the training for fitness. Therefore, from the very beginning we lacked in points. Although the second game started with the close points, we felt that changes in tactics made by the opponent after the mid-game interval. When it came to game 3, my partner and I quickly adapted our tactics in response and won the match and finally ended up the second place for the Fuzhou Open” [T1, 10]; and

72.3. he has never thought about not playing with his best efforts and has never received instructions from anybody regarding the manipulation of results [T1, 10].

73. TQ relevantly stated that:

73.1. he and his partner “made adequate preparation beforehand. We set winning this match as our goal. Through all this match we captured many opportunities and finally won it. I believe this to result from our efforts” [T1, 11];

73.2. he did not understand what was stated during the Interventions as he does not understand English. After the Interventions, he played according to the tactics discussed with his partner. The opponents had also obviously made timely tactical changes which caused them to lose the second games [T1, 11];

73.3. before the third game, he and his partner communicated and adjusted their tactics, and won the Match accordingly [T1, 11];

73.4. he has never thought about manipulating a match or failing to play on court with his best efforts [T1, 11].

Witness Testimony
74. The parties and the Panel had an opportunity to examine the witnesses and the Defendants, with the exception that the Athlete, Brusola, and Haifeng were unable to
attend on the scheduled days. Below is a summary of new or contradicting information adduced at hearing (vis-à-vis the written statements), in the order in which the witnesses were heard.

Pencho Stoynov
75. Under examination, the Referee stated:

75.1. he had never seen an incident like this before. It was the worst incident he had encountered in his career [T1, 18];

75.2. when he first spoke to the Umpire during the 11-7 interval, the Umpire confirmed that the rallies were short, but was unsure how to deal with the situation [T1, 18-19];

75.3. the Umpire first spoke alone to the Defendants. After he spoke, the Umpire requested his assistance and stated “It seemed they don’t understand me”. He subsequently stepped on court and instructed the Defendants to use their best efforts [T1, 19];

75.4. in response to whether he had seen matches where players conserve their energy in the opening parts, or adopt a different way of playing, he stated: “I have seen many games, different games, and players playing different tactics definitely, but unfortunately that was the one which was not any doubt – didn’t bring any doubt to me that something is wrong” [T1, 20];

75.5. in his career as a BWF referee he has intervened on court during a match on several occasions, for various reasons [T1, 21-22]. He could not remember whether he had intervened in a match previously because a player failed to give best efforts. He stated: “I don’t remember many. I don’t remember many times. Because it’s really not easy to decide if it’s really not making best efforts or these are his efforts at the moment, or it’s not easy to decide. It must be really obvious and this was a case when I was not in doubt” [T1, 23];

75.6. in response to whether he believed the Defendants understood his instruction to use their best efforts, he stated: “I think they understood very well what I – what I said because after that they – the game changed. The game changed and it was a good game until the end of the match” [T1, 22]; and

75.7. the Defendants looked surprised when he spoke to them during the Interventions. He did not recall any response from them [T1, 22-23].

CR Rajeev
76. Under examination, he stated:

76.1. he has umpired hundreds of matches at BWF World Tour level [T1, 26-27];

76.2. he genuinely believed that the Defendants were not playing with their best efforts before the Referee approached him during the 11-7 interval in the second game [T1, 29];
76.3. he had never experienced this situation previously [T1, 31]. He was not sure whether he should intervene until the Referee approached him [T1, 32]; and

76.4. in his experience as an umpire, a referee had never intervened on court to ask players to use their best efforts. Following this Match and what he had learned, he has never had to intervene in such manner in future matches [T1, 34].

**Matt Judson**

77. Under examination he recalled spending approximately five (5) minutes watching the Match prior to the Interventions [T1, 38]. After the Interventions, he watched the Match only for a few more points before departing with the Referee [T1, 39].

**Andy Hines-Randle**

78. Under examination, he stated:

78.1. ‘best efforts’ is “a very difficult term to define. It’s anything that is seen not to be within the maximum efforts available to the athlete at that time, in my personal opinion” [T1, 47]. The main trigger to start an investigation for a failure to use ‘best efforts’ is a report from a BWF technical official [T1, 48]; and

78.2. he directly instructed Wood and Butterworth [T1, 47].

**Andy Wood**

79. Under examination, he stated:

79.1. when questioned on the fact that the pair HJT-TQ won the first game and third game of the Match, despite him identifying a huge difference in effort levels, he stated: “Well, I mean, again my duty was to point out best efforts and in doing so there was a clear change in best efforts being shown at the midpoint interval of Game 2 and there was a significant change in tempo, speed, focus and effort from that point onwards. The outcome of the match wasn’t necessarily my concern. It was the best efforts throughout the duration of the match” [T1, 62];

79.2. when questioned on how long it would take players to ‘get into the rhythm’ of a match at this level, he stated: “In truth, instantaneously. In my experience, particularly of the very best Chinese men’s doubles players, is they come out of the blocks flying, faster than any other nation. So it was – it would be very abnormal for them to do anything else, as demonstrated here” [T1, 63];

79.3. in his years involved in badminton, he had only very rarely seen best efforts not given in a match [T1, 63];

79.4. when questioned whether it was common for doubles pairs to conserve energy in the first game of a match to focus on winning the second and third games, he stated: “I mean, because of the nature of the scoring you can still win two of the three games, but it’s unusual, very unusual, because if you let your grip of a match go it’s incredibly difficult to just re-establish it again in badminton, because matches just run away with you. So I would suggest it’s quite unusual to adopt that approach” [T1, 63];
79.5. there was no indication that such a tactic had been adopted by one pair or the other: “No, absolutely not because the four players, most of the time, were equally exhibiting the factors that led me to believe best efforts were not being utilised. It was never where one pair was and one pair wasn’t. It was nearly always all four players and then, at the mid-game interval in the second game, all four players stepped into gear instantaneously, so that was the difference” [T1, 64]; and

79.6. he estimated that he had witnessed a referee intervene in a match to request players use best efforts approximately three (3) to four (4) times a season, in which he would normally watch thousands of matches [T1, 66-67].

80. In this respect, the Defendants neither challenged Wood’s expert status or his conclusion that there was a significant difference in performance following the Interventions.

Dr. Andrew Butterworth
81. Under examination, he stated:

81.1. he coded both the First Butterworth Report and Second Butterworth Report alone [T1, 69]. He coded the Match twice, seven (7) days apart, to remove familiarity [T1, 71];

81.2. these were the first reports of their kind that he had produced for the BWF [72]. They were the first reports of their kind that he had produced relating to best efforts for any sporting organisation [T1, 74-75];

81.3. the reports did not take into consideration physical condition and tactics. They are based purely on indicators [T1, 73]. If the same players in different matches adopted different tactics, it would potentially affect the variables [T1, 75];

81.4. the identifier ‘suspicious period’ to describe points 0-54 of the Match was provided to him by the BWF in his brief. In his opinion, the data which he produced confirmed that points 0-54 of the Match were suspicious [T1, 77];

81.5. if he were to code more matches, it would give more weight to the data, but his instruction was only to code the Match and the Comparator [T1, 78]; and

81.6. since being served with the First Butterworth Report and Second Butterworth Report, the Defendants had not asked him to analyse any other matches [T1, 80].

82. In this respect, the Defendants neither challenged Butterworth’s expert status or the objective facts that he concluded in his reports.

LJH
83. Under examination, he stated:
83.1. he did not understand the content of the Interventions as they were in English [T1, 84]. None of the other Defendants asked him to explain, or explained to him, what had been said [T1, 85]. He agreed that the Match became “more intensive” after the Interventions; this was normal for the third game of a match [T1, 85];

83.2. he and his teammate did “not get into the conditions quickly” in the first game and second game of the Match [T1, 83-85]. When questioned why in his opening statement he had stated that it was a tactical choice to play short rallies, he failed to answer [T1, 85];

LYC

84. Under examination, he stated:

84.1. despite having a highly successful year in men’s doubles (Bronze at the Asian Games, Gold at the Asian Championships, 2nd at the Indonesian Masters and Japan Open, winners at the BWF World Tour Finals), he and his partner were in poor form during October and November due to their heavy schedule. This impacted their performance in the Match [T2, 4-5];

84.2. in his career, a referee had never intervened during a match in the way that the Interventions occurred [T2, 5]. Despite this, and despite not understanding the content of the Interventions, he did not seek to clarify what was stated [T2, 5-6];

84.3. he previously stated that he thought that the Referee wanted them to shout or cheer more, based on the hand gestures that he had made [T2, 6];

84.4. before the Interventions occurred, he had spoken to his partner and discussed that they needed to be “more focussed” [T2, 7]; and

84.5. after the Match, to his knowledge no-one had sought clarification from the Referee or Umpire about the nature of the Interventions [T2, 7].

HJT

85. Under examination, he stated:

85.1. he defeated the Athlete during the mixed doubles earlier at the same event, a match in which the Athlete was not satisfied with the umpiring decisions and was emotional [T2, 8];

85.2. he accepted that he needed to “play faster and intensively” to win the second game and the Match. He was “slack mentally” after the first game [T2, 10];

85.3. in his career, a referee had never intervened during a match in the way that the Interventions occurred [10]. Despite this, and despite not understanding the content of the Interventions, he did not seek to clarify what was stated [T2, 10-11];
85.4. when an umpire or referee intervenes in a match, they do so in English. He normally does not understand it, and it is not his normal practice to clarify what was stated [T2, 13].

*TQ*

86. Under examination, he stated:

86.1. in his career, a referee had never intervened during a match in the way that the Interventions occurred [T2, 16-17]. Despite this, and despite not understanding the content of the Interventions, he did not seek to clarify what was stated [T2, 16-17];

86.2. he did not consider the Interventions to be serious as the Referee and Umpire had not shown any yellow card or red card [T2, 16];

86.3. he only seeks to clarify instructions from umpires or referees if he deems that they have an impact on his match [T2, 17-18]. In general, badminton players that do not speak English will not clarify instructions and “pay little regard to what the umpires say” [T2, 18].

*Xie Zhihua*

87. Under examination, he stated:

87.1. in his experience, he has never seen a referee intervene in a match in which he has participated, but he has heard that it has happened [T2, 22];

87.2. in matches between players from the same country, there is “less passion”. He has never come across a match where it was agreed only to play properly in the third game. He has never come across a match where it was agreed, at this level of badminton, that players would not try and win the first game [T2, 22];

87.3. there is a difference in intensity of the players between the Match and the Comparator [T2, 23]. He agreed that there was a change in intensity in the Match after the Interventions; the “play was better after the intervention by the referee” [T2, 23].

Closing Submissions

88. The Parties provided closing submissions orally (both on 3 December 2021) and in writing (BWF on 3 December 2021 and the Defendants on 10 December 2021). Below is a summary of their positions.

*BWF*

89. In summary, the BWF submitted:

89.1. it reasserted its position set out in the “Case Summary” and “Opening Note”;

89.2. “best efforts” was not a term of art and should be given its standard, normal meaning in the context in which it is deployed. In any case, there is no ambiguity or difficulty in deriving what “best efforts” requires;
89.3. it is irrelevant that the only matches analysed by the experts are the Match and Comparator. The only issue is whether BWF made out its case and it is reasonable to have used the Comparator. The players have not provided any alternative or better comparison match;

89.4. motive is irrelevant to proving the charges;

89.5. there is clear unchallenged evidence that the performance of the players changed dramatically after the Interventions. The expert of the Defendants, Xie, agreed with the experts of the BWF in this respect. LJH in his interview understood what the Referee required. LYC in his witness testimony understood at least a need for change in performance. The Referee was adamant that this was a very clear case, and contemporaneous reports were submitted by the Referee and Umpire;

89.6. there is simply no other logical explanation for what occurred besides that there was an agreement by the Defendants not to compete;

89.7. the Defendants’ oral testimony was a recitation of general propositions and avoidance of answering simple questions;

89.8. it is incomprehensible and thus unlikely that the Defendants wouldn’t want to know or clarify why the Referee had come onto the court. The only logical reason why they didn’t do so is because they understood why he intervened;

89.9. the reasons given by the Defendants as to their performance in the first and second game of the Match suggest that they recognise their performance was below their normal standard. It makes no sense that those reasons disappeared after the Interventions. The only logical position is they changed their effort levels because they were told to do so by the Referee;

89.10. the evidence of Xie is general in nature. He cannot explain the change in performance after the Interventions;

89.11. Charge 1 is proven based on the above;

89.12. Charge 2 is proven on the basis that failure to use “best efforts” was a deliberate approach adopted by the Defendants;

89.13. Charge 3 is proven on the basis that the deliberate failure must have only come about because the Defendants all must have agreed with each other to act in that manner beforehand;

89.14. if the Panel finds that one (1) or all the charges are made out, the appropriate sanction would be:

89.14.1. suspension of 6 months from all badminton-related activities, suspended for a probationary period of two (2) years;

89.14.2. forfeiture of rewards from the Match and competition; and
Defendants

90. In summary, the Defendants submitted:

90.1. the BWF failed to prove its case. It cannot prove the existence of any intent for the Defendants. Intent is a necessary element of the offences charged; proving that a player failed to use best efforts alone is not enough. It must be linked to match manipulation in some way. There is no evidence proving any action or attempt of the Defendants to manipulate the Match. The only thing relied upon is subjective perceptions from non-impartial observers;

90.2. neither the Umpire or Referee were able to explain what “failing to use best efforts” means, nor can the BWF. The principle of nullum crimen sine lege (“only the law can define a crime and a penalty”) applies;

90.3. the Referee’s statement was not reliable as he was tempered with a desire to incriminate the Defendants. The video shows that he instructed the Umpire to intervene, whereas his statement provides that he discussed it with the Umpire first and then decided to intervene. Furthermore, the Umpire felt no requirement to intervene until asked by the Referee;

90.4. the expert opinions obtained by the BWF are defective. They were obtained for the specific reason of proving a charge. They only use the Comparator, specifically chosen by the BWF. They both conclude about “best efforts” – one even about “match manipulation” - without actually considering what it means. They do not provide their assumptions (e.g. regarding physical condition, tactics adopted etc) when preparing their opinions. They did not refer to the Code at all; thus it was not their place to come to a conclusion about “best efforts” – only the Panel can do so;

90.5. LYC and LJH were not in their best shape and decided not to exhaust themselves in the first game. HJT and TQ, when having the upper hand in the first game, also had no reason to exhaust themselves;

90.6. whether the Defendants understood English or improperly reacted to the Interventions is irrelevant, as there was no intent, no attempt, and no outside influence to not use best efforts to manipulate the outcome of the Match; and

90.7. the case should be dismissed. In the unlikely event that the Panel upholds one (1) or more charges, the appropriate sanction would be a fine or probationary period of suspension.

HJT

91. HJT provided further oral submissions in closing. He relevantly re-stated that the complaint from the Athlete to the Referee was biased because of losing the mixed doubles match.
LYC

92. LYC provided further oral submissions in closing. He relevantly stated that his performance in the Match was normal and the complaint was frivolous.

D. FINDINGS

93. While the Panel has carefully considered all the facts, evidence, allegations and arguments submitted, the Panel refers in these findings only to the submissions and evidence it considers necessary to explain its reasoning.

94. The Panel noted the jurisprudence of the Court of Arbitration for Sport (CAS) when dealing with the assessment of evidence in corruption matters.

95. On several occasions, the CAS has recognised that special attention must be given to the paramount importance of fighting corruption of any kind in sport and to the nature and restricted investigatory powers of sport governing bodies compared to state authorities (see e.g. CAS 2009/A/1920 FK Pobeda et al v. UEFA; CAS 2014/A/3832 Vanessa Vanakorn v. FIS).

96. In this respect, various CAS panels have recognised that corruption is “by its nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoings” (CAS 2010/A/2172 Oleg Oriekhov v. UEFA).

97. Consequently, it is more likely than not that direct evidence will be the exception and indirect evidence the standard when dealing in cases involving alleged corrupt activity. In this respect, the CAS has previously held “It is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt” (CAS 2015/A/4059 Klubi Sportiv Skenderbeu v. UEFA).

98. In this matter, the standard of proof is one of balance of probabilities. In a recent decision involving the BWF, the CAS stated “…the application of any standard of proof must take into account the nature of the allegation and the potential consequences against the person charged with the offence...As such the Panel considers it necessary... to have "a high degree of confidence in the quality of the evidence" supplied by the Respondent in discharging the standard of proof.” (CAS 2020/A/7606 Nikita Khakimov v. BWF).

Threshold evidentiary matters

99. As a threshold evidentiary matter, the Panel addressed the issue of the Athlete, Brosula, and Haifeng providing written testimony but being not available for oral examination.

100. In this respect, the Panel agreed that no weight would be provided to any of the written testimony from the Athlete, Brosula, and Haifeng. Given that similar testimony was provided by other witnesses, the Panel deemed that neither party would be prejudiced in taking this decision.

Charge 1
Charge 1 alleges that, quite simply, the Defendants “failed to use their best efforts” in the Match in violation of Articles 3.1 and 3.1.2 of the Code.

This reflects Articles 3.1 and 3.1.2 of the Code which state:

3.1 The following are considered offences under this Code:

3.1.2 Any Player not using one’s best efforts to win a match.

The Defendants are each clearly a “Player” for the purposes of the Code.

Article 3.1.2 is simple in construction, but nonetheless complex. The Panel agreed with the BWF that there was no requirement to prove any motive or reason (e.g. for financial or sporting gain) for a player to fall into breach of the provision; rather, the simple fact of not using one’s best efforts to win a particular match would violate the rule. At the same time, the Panel noted that what constitutes such a failure, in a case where no motive or reason was relied upon, was not obviously clear. In this respect, the Panel questioned the BWF and majority of the witnesses as to how they would define “not using one’s best efforts”. It was clear, given the varied responses, that providing a specific definition is a next to impossible task. When or not best efforts are utilised in a particular match is a subjective matter which requires an examination of all the circumstances regarding that match and the player(s) alleged to have not utilised their best efforts.

In this context, the Panel accepted the BWF’s position that “best efforts” is not a term of art and should be given its ordinary dictionary meaning – by way of example, the Cambridge Dictionary defines it as “the greatest possible effort to achieve something or do something, especially when this is difficult”. The Panel noted that “best efforts” in the context of sporting performance may be restricted by certain sporting circumstances (e.g. physical or mental injury, weather condition, coaching, performance of a partner), but these do not hamper an athlete providing their greatest possible effort to win a match; they simply impact on performance.

Given the above, a majority of the Panel held that it was more probable than not that the Defendants had failed to use their best efforts to win up until the point of the 11-7 interval of the Match. In making this finding, the Panel noted:

106.1. the witness evidence, particularly of the expert witnesses, was effectively unanimous and unchallenged. There was a clear and stark increase in performance and skill level in the Match after the Interventions. The Referee had never witnessed something like this previously and felt compelled to both intervene in the Match and report it to BWF. Wood, a top-level badminton coach, systematically broke down the performance of the Defendants in the Match, and drew the same conclusion. Xie, the Defendant’s expert, agreed with Wood that the Match was completely different following the Interventions. Although the Panel had reservations about the breadth of data used to underpin the evidence of Butterworth (it would have been preferable for several comparators of how the Defendants play – not necessarily against the same opponents), his conclusions aligned with the other badminton experts that testified, and were generally unchallenged;
106.2. the video evidence confirms the subjective opinions provided by the witnesses. Although none of the Panel are technical badminton experts, the video was a demonstration to the untrained eye of two different matches being played – a lethargic, lackadaisical first match up until the point of the Interventions (what one might imagine a badminton ‘training session’ resembles) – and a high intensity, high passion, closely-fought second match played following the Interventions;

106.3. the Defendants’ evidence was unconvincing and at times contradictory. Testimony was asserted that the Match was impacted by the fact that they were injured or fatigued, tactically naïve or unprepared, familiar with each other, or had changed their approach to the Match. No direct or specific evidence of these matters was provided, in particular what ‘tactics’ had been adjusted. In any respect, none of these explanations account for that fact directly after the Interventions there was a sharp (and obvious, as if a switch had been turned on) increase in the quality of the Match and the performance of the Defendants;

106.4. the evidence asserted by one Defendant that the report made by the Athlete was due to a vendetta arising from an earlier loss was rejected. This was not raised until the hearing itself and not supported by any evidence. In any event, the evidence of the Athlete was not considered when making the ultimate finding;

106.5. of particular concern, that none of the Defendants purportedly sought to clarify with the Referee or Umpire as to the meaning of the Interventions, despite allegedly failing to understand their instructions. All testified that they had never been interrupted on court in such a manner previously by a referee. The Panel could not comprehend that top-level athletes, ranked 2nd and 17th in the world, would not seek to understand why the chief official of the tournament had personally stepped onto their court during a break in play to give instructions. Testimony was received that the pairs had not even sought to clarify with each other what the subject of the Interventions was. The Panel found the explanations in this respect to be extremely fanciful, and heavily weighted against the Defendants.

107. Weighing all of those factors, a majority of the Panel had a high degree of confidence in the quality of the evidence before them, and the inferences drawn from the responses of the Defendants when questioned. It deemed that there was no other logical explanation for what occurred in the Match up until the Interventions but that the Defendants were not using their best efforts to win the Match.

108. Accordingly, the Panel held that the Defendants had each violated Article 3.1.2 of the Code.

**Charge 2**

109. Charge 2 alleges that the Defendants “contrived and/or attempted to contrive the outcome” of the Match and in particular:

109.1. “failed to compete to achieve the best score”;

109.2. “failed to encourage his partner to play to their best ability; and/or
109.3. “made deliberate errors”.

110. This reflects Articles 3.1.17 of the Code which states:

3.1 The following are considered offences under this Code:

3.1.17 No Covered Person shall, directly or indirectly, contrive or attempt to contrive the outcome or any other aspect of any Event.

111. The Defendants are each clearly a “Covered Person” for the purposes of the Code.

112. In short, the Panel was not convinced with the evidence with respect to this charge. The BWF argument was that Charge 2 would be proven if Charge 1 was proven, on the basis that the failure to use best efforts was a deliberate approach adopted by the Defendant.

113. The Panel noted that the allegation they had to decide upon, as set out in the Charge Notice, was whether the Defendants had contrived and/or attempted to contrive the outcome of the Match. No evidence was put to the Panel that the Match was manipulated in a manner to determine which pair would win. The only evidence before the Panel is that best efforts were not utilised to win the Match.

114. As a result, the Panel dismissed the charge.

**Charge 3**

115. Charge 3 alleges that the Defendants “agreed with each other to not use their best efforts in the Match and thereby solicited or facilitated another Player not to use his best efforts in the Match”.

116. This reflects Articles 3.1.8 of the Code which states:

3.1 The following are considered offences under this Code:

3.1.8. No Covered Person shall, directly or indirectly, solicit or facilitate any Player to not use his or her best efforts in any Event.

117. The Defendants are each clearly a “Covered Person” for the purposes of the Code.

118. The Panel was also not convinced with the evidence with respect to this charge. The BWF argument was that Charge 3 would be proven if Charge 1 and 2 were proven, on the basis that the failure to use best efforts was a deliberate approach adopted by the Defendant, and that the deliberate approach must have only come about because the Defendants all must have agreed with each other, prior to the Match, to act in that manner.

119. The Panel noted that the allegation they had to decide upon, as set out in the Charge Notice, was whether the Defendants had agreed with each other and thereby solicited or facilitated another Defendant not to use best efforts. No evidence was put to the Panel of any solicitation or facilitation by any of the Defendants. The only evidence before the Panel is that best efforts were not utilised to win the Match; there is no evidence as to
why best efforts were not utilised, nor is there evidence as to who facilitated (whether the Defendants themselves, a coach, an official, a non-sporting third party, or any other individual or group of individuals) the failure to use best efforts. In such circumstances, the Panel could not in good faith form a conclusion that the Defendants had agreed with each other to not utilise best efforts.

120. As a result, the Panel dismissed the charge.

Sanction
121. Article 41 of the Procedures stipulates the types of sanctions that may be imposed by an IHP if an individual is found to have committed regulatory violations.

122. When determining a sanction, Article 43.1 of the Procedures states that the: “hearing panel deciding upon the sanction shall determine the type and extent of any sanction, its scope and duration, considering all relevant mitigating and aggravating factors in a case and the degree of guilt of the party when imposing a sanction. The hearing panel shall be bound to impose a proportionate sanction.”

123. Article 43.2 of the Procedures sets out the aggravating and mitigating factors that a hearing panel must take into consideration when determining a sanction.

124. The Procedures do not prevent the Panel from drawing inspiration from the decisions of similarly-constituted sporting tribunals or prior BWF decisions.

125. The Panel recalled the press release dated 25 November 2014 by the BWF where its stance on corruption offences was made clear:

“We are pleased to join with IOC and other international federations in the fight against corruption in sport. We expect IBIS to have a positive impact and we look forward to benefiting from it...This is a significant ideal to which we all subscribe—that sport must be played in an environment devoid of illegal betting, match-fixing or any other forms of corruption or manipulation-and BWF will continue to do its utmost to uphold this and to spread this philosophy among its global membership.”

126. The Panel also noted the preamble to the November 2017 Code:

“Every athlete has the right to compete in clean and fair sport which is free from manipulation. It is a fundamental principle of sport that the outcome of a match is determined by the skill of the players, and anything that attacks the integrity of a match brings the whole of a sport into disrepute. Protection against any attempt to gain advantages (personal advantage or advantage for others) by not making best efforts shall also be considered as a serious offence that can bring the sport into disrepute.”

127. As a starting point to determining the appropriate sanction, the Panel referred to a seminal CAS decision regarding corruption (emphasis added)

“78. However, the Panel has to remind itself that match-fixing, money-laundering, kickbacks, extortion, bribery and the like are a growing concern, indeed a cancer, in
many major sports, football included, and must be eradicated. **The very essence of sport is that competition is fair; its attraction to spectators is the unpredictability of the outcome...**

80. *It is therefore essential in the Panel’s view for sporting regulators to demonstrate zero-tolerance against all kinds of corruption and to impose sanctions sufficient to serve as an effective deterrent to people who might otherwise be tempted through greed or fear to consider involvement in such criminal activities...*

(CAS 2010/A/2172 Oleg Oriekhov v. UEFA)

128. The Panel was also guided by CAS jurisprudence regarding the principle of proportionality in disciplinary sanctions, which was recently described as follows:

“The principle of proportionality implies that there must be a reasonable balance between the nature of the misconduct and the sanction. In order to be respected, the principle of proportionality requires that (i) the measure taken by the governing body is capable of achieving the envisaged goal, (ii) the measure taken by the governing body is necessary to reach the envisaged goal, and (iii) the constraints which the affected person will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal. In other words, to be proportionate a measure must not exceed what is reasonably required in the search of the justifiable aim.”

(CAS 2016/O/4684 ROC & Lyukman Adams et al. v. IAAF)

129. In this respect, the Panel noted that this particular case was unique within the international sports tribunal landscape; whereby athletes had been sanctioned for not utilising their best efforts to win a match, but at the same time not sanctioned for manipulating the outcome of a match.

130. Notwithstanding this, the match manipulation jurisprudence available demonstrates that it is paramount, where an individual has undertaken corrupt behaviour which directly strikes at the heart and essence of sporting competition, that a significant sanction must be issued: both as a strong deterrent to future offenders, but also and **primarily**, to demonstrate the seriousness of the violation and the zero-tolerance to be shown to such behaviour.

131. The onus was therefore on the Panel to determine an appropriate and proportionate sanction, considering “*the totality of the facts and circumstances*”.

132. The Panel noted that BWF had requested the following sanction:

132.1. suspension of 6 months from all badminton-related activities, suspended for a probationary period of two (2) years;

132.2. forfeiture of rewards from the Match and competition; and

132.3. fine of $5,000.
133. Similarly, the Panel noted that the Defendants had agreed that a financial sanction or suspension with a probationary period would be considered appropriate if found to have violated the Code.

134. The Panel subsequently relied upon the following when determining sanction:

134.1. the Defendants had failed to utilise their best efforts to win the Match in part. They had utilised their best efforts after the Interventions;

134.2. the actions of the Defendants had a negative impact on the reputation of the sport of badminton;

134.3. the Defendants had each earned prize money and ranking points following the conclusion of the competition. HJT and TQ had each earned USD12,250, while LTC and LJH had each earned USD2,187.50; and

134.4. the necessary deterrent effect that a sanction would provide, to protect and enhance the reputation of badminton globally.

135. In this respect, considering that the best efforts were not utilised for part of the Match only, the Panel subsequently ordered that the Defendants:

135.1. serve a suspension of three (3) months from all badminton-related activities, suspended for a probationary period of two (2) years;

135.2. forfeit the rewards they earned from the 2018 Fuzhou Open. This sanction is pronounced pursuant to Article 42.5 of the Procedures, which defines “forfeiture of rewards” as “the loss of some or all of an individual’s medals, points, and/or prizes which shall be returned or repaid forthwith to the awarding person or body.”

136. The probationary period for the suspension shall commence from the date of notification by the BWF of this decision.

Costs
137. Having heard no submissions on costs, the Panel made no order as to costs, whilst noting that it may be requested to make a costs order in future, in accordance with Article 40 of the Procedures.
DECISION

1. Li Jun Hui, Liu Yu Chen, He Ji Ting, and Tan Qiang have each violated Article 3.1.2 of the Code of Conduct in Relation to Betting, Wagering, and Irregular Match Results (November 2017).

2. The charges relating to Article 3.1.8 and 3.1.17 of the Code of Conduct in Relation to Betting, Wagering, and Irregular Match Results (November 2017) are dismissed.

3. Li Jun Hui, Liu Yu Chen, He Ji Ting, and Tan Qiang are each sanctioned with:
   a. a suspension of three (3) months from all badminton-related activities, suspended for a probationary period of two (2) years as from the date of notification of this decision; and
   b. a forfeiture of their rewards earned at the 2018 Fuzhou Open.

4. The BWF is directed to take all necessary operational actions to facilitate the forfeiture of the rewards earned at the 2018 Fuzhou Open.

Note: This reasoned decision is communicated within 45 days of the date of the conclusion of the hearing, in accordance with Article 35.3 of the BWF Judicial Procedures.

The 21 day time limit to appeal to the Court of Arbitration for Sport commences after the service of the reasoned decision, in accordance with Article 38.1 of the BWF Judicial Procedures.

In accordance with Article 40 of the Procedures, a party may apply to the hearing panel to make an order for costs, but such application shall be made within 7 days of the notification to that party of this reasoned decision

Kevin Carpenter  James Kitching  Yuri Yagi
(Chair)

24 January 2022