

Decision of the Japan Anti-Doping Disciplinary Panel

Name of Athlete: X
Sport: Cycling

Pursuant to the decision of the Hearing Panel convened for Case 2012-002, the Japan Anti-Doping Disciplinary Panel has made the following decision with respect to this case.

June 4, 2012
Japan Anti-Doping Disciplinary Panel
Chair: Toshio Asami

Case 2012-002: Hearing Panel Decision

The Hearing Panel for Case 2012-002, which is composed of the following members appointed by the Chair of the Japan Anti-Doping Disciplinary Panel pursuant to Article 4.3.2 of the Japan Anti-Doping Code (the “Code”), has made the following decision concerning this case pursuant to the results of the hearing held on May 25, 2012.

June 4, 2012
Takahiro Yamauchi _____
Toshio Asami _____
Tetsuhiko Kimura _____

Decision:

- A violation of anti-doping rules cannot be found to have occurred.
- The provisional suspension imposed upon the Athlete by the Japan Anti-Doping Agency as of May 18, 2012 shall cease to be effective prospectively from the date of this decision.

Reasons:

1 Facts found by the Panel

The following facts are found in accordance with each of the relevant evidences submitted respectively by the Japan Anti-Doping Agency (“JADA”) and the Athlete, and the testimonies of the Lead DCO of the competition event (Doping Control Officer; hereinafter referred to as the “Lead DCO”), JADA staff, the Athlete, the coach of the cycling team to which the Athlete belongs, and secretary general of the Japan Cycling Federation.

- The Athlete is a bicycle rider belonging to the cycling road race team originating from an on-line community (the “Athlete’s Team”). The team was established by a group of amateur racers, and is a club team without any support from companies, bicycle dealers or the like.
- The Athlete arrived at the Iwatesan Panorama Line Course, Hachimantai Hot Springs Village, Hachimantai City, Iwate Prefecture on Saturday, April 28 to participate in the “All Japan Road Race Championship 2012” (the “Competition Event”) which took place at said venue from Saturday, April 28, 2012 to Sunday, April 29, 2012. The Athlete took part in the category “Elite Men (ME)” (in which each athlete was required to complete 16 rounds of a 15.8 kilometer course, totalling 252.8 kilometers). The Athlete attended this competition event for the second time, the first time being in 2011.
- A Riders Meeting targeting the participants in “Elite Men (ME)” was convened at 16:30 on Saturday, April 28, which the Athlete also attended. The second page of the Communique distributed to the participants at that meeting contained the following statements regarding anti-doping tests at the Competition Event (“Anti-Doping Pamphlet”).

Anti-Doping Test

1. The anti-doping test at the event shall be conducted in accordance with the JADA rules and the UCI Anti-Doping Rules.

2. The test shall be conducted at a location designated by the organizer, using a JADA vehicle.
3. The athletes subject to the test shall be displayed at the testing room and in the vicinity of the finish line. The athletes themselves should confirm whether they are subject to the test at their own responsibility. At this event, notice shall also be given by Chaperone to the riders subject to testing. Chaperone shall observe the actions of the riders by staying near the riders until their arrival at the testing room.
4. The athletes subject to testing may not take a shower until they finish the test.
5. The athletes selected to undergo the test must promptly appear within thirty minutes after the end of the race. The athletes who are requested to attend a news briefing must appear within thirty minutes after the necessity of their attendance at the news briefing ceases.
6. The athletes subject to testing must appear with a license or identification card with a photo attached.
7. The athletes subject to testing may be accompanied with one team officer and/or one interpreter.
8. All attending racers shall submit a list of drugs and medicines taken, which shall be distributed by the organizer before the start of the sporting event.

Lead DCO
[Name of Lead DCO]

- At the Riders Meeting, one of the DCOs who conducted the doping test at the Competition Event gave an explanation on doping tests. It was explained that there were three locations displaying the athletes to undergo testing (in front of the officers' tent near the finish line, the testing room and the community board); however, explanations of the locations of the Chaperone waiting position and testing room (a vehicle owned by JADA) were only each given orally, and not optically using a map or otherwise. Neither was it explained that the athletes who abandoned the competition could also be selected to undergo the test.
- The "Elite Men" competition started at 8:00 a.m. on Sunday, April 29 (there were 145 racers). The Athlete fell from his bicycle when several racers fell from their bicycles in an accident in their first round immediately after the start of the competition, and due to this accident the Athlete was not able to finish the second round within the time limit, and was consequently disqualified (DNF) at the end of the second round.

- Although the Athlete was initially scheduled to remain in the Competition Event until the end of the race, taking into account the physical effect of the fall and the possibility of bicycle breakdown on his return, he decided on leaving early, and left the competition venue around 13:44 that day, riding a bicycle towards Ichinoseki Station to take the Tohoku bullet train. Ichinoseki Station was approximately 120 kilometers away from the competition venue, and he estimated that it would take approximately 5 hours to reach the station.
- There were a total of three persons belonging to the “Elite Men (ME)” category of the Competition Event to undergo doping tests; the winner and two other persons selected by a draw. The Athlete was selected to undergo testing by a draw conducted by DCOs. At 14:29 of said date, as the first athlete entered his final round, the DCOs displayed the persons subject to testing (the “Posting”) in the form attached to this decision at the scheduled locations (in front of the officers’ tent near the finish line, the testing room and the community board). The Posting was given in a unified form prepared by the International Cycling Union (UCI), and although it contained a description both in French and English stating “COUREURS A CONTROLER/RIDERS TO BE TESTED”, there was no Japanese description indicating that it was a list of persons subject to testing.
- The winner of the “Elite Men (ME)” category finished the race at 14:55 38 seconds, and forty athletes finished the race thereafter by 15:12 38 seconds. The remaining 105 athletes were disqualified due to dropping out of the race or other reasons.
- Chaperone searched the Athlete to take him to the doping test site but could not find him. Meanwhile, the coach of the Athlete’s Team (the “Coach”) saw the Posting and learned that the Athlete was to be tested. The Coach tried to contact the Athlete by calling his mobile phone, but the Athlete did not answer the call. As a consequence, the Coach headed to Ichinoseki Station by car in order to catch up with him, while another teammate of the Athlete’s Team (the “Teammate”) appeared at the testing site and notified the DCOs that the Athlete had already left the competition venue; that the Athlete was scheduled to go to Ichinoseki Station by bicycle and from Ichinoseki Station to his home in Kanagawa Prefecture by the bullet train; that the Athlete could not be contacted by mobile phone or announcements in the station and the train; and that the Athlete could possibly have sent his mobile phone together with his other luggage. The Teammate did not notify the DCOs that the Coach was chasing after the Athlete by car.
- The Coach who was chasing the Athlete received a call to his mobile phone from the Teammate at 17:20, and was told that the DCOs had discontinued the testing and had

already left to go home.

- The Coach caught up with the Athlete who was riding his bicycle up Japan National Route 4 in Kitakami City, Iwate Prefecture, and told the Athlete that he had been selected to undergo doping testing, but that he had been notified by the Teammate that the doping test had already finished. The Athlete decided that it would be meaningless to return to the competition venue if the doping test were already finished, and returned directly home.
- On May 18, JADA made a decision to impose a provisional suspension on the Athlete pursuant to Article 7.6 of the Japan Anti-Doping Code, considering that the abovementioned actions of the Athlete fell under Article 2.3 of the Code which states: “Refusing, or failing without compelling justification to submit to Sample collection after receiving notification as authorized in these Anti-Doping Rules or otherwise evading Sample collection”. JADA notified the Athlete to such effect by phone, and dispatched a written notice containing a description to the same effect, which arrived at the Athlete on the following 19th of May.

2 Whether a violation of anti-doping rules could be found

We hereby consider whether the actions of the Athlete could be found to constitute a violation of Article 2.3 of the Code. It is found that the Athlete did not collect a sample at a testing after the race at the Competition Event. The issue is whether the Athlete meets the requirement of “after receiving notification as authorized in these Anti-Doping Rules” as set forth in Article 2.3 of the Code.

- The Code does not contain any provision defining “notification as authorized in these Anti-Doping Rules.” However, Article 5.3 of the Code provides as follows:

Testing conducted by JADA and its National Sports Federations shall be in substantial conformity with the International Standard for Testing in force at the time of Testing.

Therefore, the meaning of “notification as authorized in these Anti-Doping Rules” can be referred to “The World Anti-doping Code: International Standard for Testing, 2009 edition” (“International Standard for Testing”); specifically, “Notification of Athletes” in Chapter 5 of said Standard.

- Article 5.2 of the International Standard for Testing provides as follows:

Notification of Athletes starts when the ADO [panellist’s note: Anti-Doping Organization; refers to JADA in this context] initiates the notification of the selected Athlete and ends when the Athlete arrives at the Doping Control Station or when the Athlete’s possible failure to comply is brought to the ADO’s

attention.

The Athlete falls under “selected Athlete” under this Article.

- Article 5.4.1 and Article 5.4.3 of the International Standard for Testing provide as follows:

5.4.1 When initial contact is made, the ADO, DCO or Chaperone, as applicable, shall ensure that the Athlete and/or a third party (if required in accordance with Clause 5.3.8) is informed:

- a) That the Athlete is required to undergo a Sample collection;
- b) Of the authority under which the Sample collection is to be conducted;
- c) Of the type of Sample collection and any conditions that need to be adhered to prior to the Sample collection;
- d) Of the Athlete’s rights, including the right to:
 - i. Have a representative and if available, an interpreter;
 - ii. Ask for additional information about the Sample collection process;
 - iii. Request a delay in reporting to the Doping Control Station for valid reasons; and
 - iv. Request modifications as provided for in Annex B – Modifications for Athletes with disabilities.
- e) Of the Athlete’s responsibilities, including the requirement to:
 - i. Remain within direct observation of the DCO/Chaperone at all times from the point of notification by the DCO/Chaperone until the completion of the Sample collection procedure;
 - ii. Produce identification in accordance with Clause 5.3.4;
 - iii. Comply with Sample collection procedures (and the Athlete should be advised of the possible consequences of Failure to Comply); and
 - iv. Report immediately for a test, unless there are valid reasons for a delay, as determined in accordance with Clause 5.4.4.
- f) Of the location of the Doping Control Station.
- g) That should the Athlete choose to consume food or fluids prior to providing a Sample, he/she does so at his/her own risk, and should in any event avoid excessive rehydration, having in

mind the requirement to produce a Sample with a Suitable Specific Gravity for Analysis.

- h) That the Sample provided by the Athlete to the Sample Collection Personnel should be the first urine passed by the Athlete subsequent to notification, i.e., he/she should not pass urine in the shower or otherwise prior to providing a Sample to the Sample Collection Personnel.

5.4.2 When contact is made, the DCO/Chaperone shall:

- a) From this time until the Athlete leaves the Doping Control Station at the end of his/her Sample Collection Session, keep the Athlete under observation at all times.
- b) Identify themselves to the Athlete using the documentation referred to in Clause 5.3.3.
- c) Confirm the Athlete's identity as per the criteria established in Clause 5.3.4. Confirmation of the Athlete's identity by any other method, or failure to confirm the identity of the Athlete, shall be documented and reported to the ADO.
- d) In cases where the Athlete's identity cannot be confirmed as per the criteria established in Clause 5.3.2, the ADO shall decide whether it is appropriate to follow up in accordance with Annex A – Investigating a possible failure to comply.

5.4.3 The Chaperone/DCO shall then have the Athlete sign an appropriate form to acknowledge and accept the notification. If the Athlete refuses to sign that he/she has been notified, or evades the notification, the Chaperone/DCO shall if possible inform the Athlete of the consequences of refusing or failing to comply, and the Chaperone (if not the DCO) shall immediately report all relevant facts to the DCO. When possible the DCO shall continue to collect a Sample. The DCO shall document the facts in a detailed report and report the circumstances to the ADO. The ADO shall follow the steps prescribed in Annex A – Investigating a Possible Failure to Comply.

- On the other hand, Article 5.3.5 of the International Standard for Testing provides as follows:

The ADO, DCO or Chaperone, as applicable, shall establish the location of the selected Athlete and plan the approach and timing of notification, taking into consideration the specific circumstances of the sport/Competition/training

session/etc and the situation in question.

Article 1 of the Anti-Doping Pamphlet which was distributed to the athletes at the Competition Event provides that “The anti-doping test at the Competition Event shall be conducted in accordance with the JADA rules and the UCI Anti-Doping Rules.” “JADA rules” refers to the Code, and “UCI Anti-Doping Rules” refers to the “UCI Anti-Doping Rules” stipulated by the International Cycling Union (UCI). For the grounds for their claims, JADA and Chief DCO also quotes the Competitive Rules of the Japan Cycling Federation (“JCF Competitive Rules”), which organized the Competition Event, and more specifically, “Anti-Doping Control” in Chapter 23 of said Rules.

- The UCI Anti-Doping Rules provide as follows:

Doping Control Station

172. Premises suitable for the taking of Samples and in substantial accordance with Appendices 4 and 5 must be provided in the immediate vicinity of the finish line. The location must be clearly signposted from the finish line.

Notification of Riders

177. Any Rider including any Rider who has abandoned the Race, shall be aware that he may have been selected to undergo Testing after the Race and is responsible for ensuring personally whether he is required to appear for Sample collection as specified in the following paragraph.
180. The organizer and the Doping Control Officer shall ensure also that a list of the Riders who are required to appear for Sample collection shall be displayed at the finish line and at the entrance of the doping control station immediately before the finish of the winner.

- Article 99.17 “Notification of Riders” (2) in Chapter 23 “Anti-Doping Control” of the JCF Competitive Rules provides as follows:

- (2) A Rider shall be invited to the testing by using the notice form.

Article 99.22 “Testing Session after Competition” (11) provides that an athlete must go to either the location of the list of those to undergo testing, the Chaperone’s waiting position, or the doping control station:

- (11) In the case of a mass start road race the organizer and the Doping Control Officer shall ensure also that a list of the Riders who are requested to appear for Sample collection shall be displayed at the finish line and at the entrance of Doping Control Station before the finish of the winner.

The Rider, immediately after finishing or abandoning the Race shall locate and

proceed to the place where Chaperones are waiting to notify Riders.

Should no Chaperone(s) be present the Rider shall immediately locate and proceed to the place where the list is displayed or to the Doping Control Station.

The absence of a Chaperone shall not excuse the Rider for not appearing in time to the Doping Control Station.

Article 99.22(8) imposes upon any athlete who has dropped out of a race an obligation to confirm whether he/she has been requested to appear:

(8) Any Rider including any Rider who has abandoned the Race, shall be aware that he may have been selected to undergo Testing after the Race and is responsible for ensuring personally whether he is required to appear for Sample collection.

As seen above, the International Standard for Testing provides that notification to athletes are not momentary but continues for a certain amount of time from “when the ADO initiates the notification of the selected Athlete” until “when the Athlete arrives at the Doping Control Station or when the Athlete’s possible failure to comply is brought to the ADO’s attention”. On the other hand, the International Cycling Union and the Japan Cycling Federation provide that “a list of the Riders who are requested to appear for Sample collection shall be displayed” for mass start road races at a stage before the DCO or Chaperone contacts the athletes. The issue here is the extent to which “Notification of Athletes”, which is provided to continue for a certain amount of time, should be made in order to fall under “after receiving notification as authorized in these Anti-Doping Rules”.

The Panel considered whether the following argument could be made in relation to the Athlete.

- It is considered that Article 2.3 of the Code provides that “Refusing, or failing without compelling justification to submit to Sample collection after receiving notification as authorized in these Anti-Doping Rules or otherwise evading Sample collection” would constitute a violation of anti-doping rules for the purpose of enhancing the effectiveness of doping tests by prohibiting actions such as ignoring or avoiding doping tests, and at the same time, such actions would fundamentally be in violation of the spirit of sport, such as “ethics, fair play and honesty”, “respect for rules and laws” and the like (please refer to the Preface of the Code, and “Fundamental Rationale for the Code and WADA’s Anti-Doping Code”).
- Since Article 5.3.5 of the International Standard for Testing allows for planning for a notification method “taking into consideration the specific circumstances of the sport/Competition/training session/etc and the situation in question”, it is

considered that an anti-doping agency or a DCO conducting anti-doping tests under the direction of an anti-doping agency would also be allowed to reasonably specify a “notification” method in accordance with the characteristics of the discipline of the sport at any particular competition. Although the UCI Anti-Doping Rules and the JCF Competitive Rules do not automatically constitute the legal grounds for the implementation method of the anti-doping test at the Competition Event, given that Article 5.3.5 of the International Standard for Testing provides that JADA and DCO should conduct an anti-doping test at the Competition Event pursuant to these rules, it is considered that they have become the legal grounds for the implementation method of the anti-doping test at the Competition Event.

- Since a cycling road race competition as the one in question would require a long amount of time and the competition venue required for such competition would be huge, it involves a special circumstance that the anti-doping agency (DCO and Chaperone) would face extreme difficulty in searching the athlete to be tested. In consideration of this special circumstance, it would be reasonable to require the athlete to cooperate with the anti-doping test in order to enhance the effectiveness of the test; more specifically, to impose upon the athlete an obligation to appear at either the location where the list of the persons to be tested is displayed, where the Chaperone’s is waiting, or the doping control station, and to confirm whether he/she has been selected to undergo testing. Such “notification” method is within the scope of authority of the anti-doping agency or DCO conferred pursuant to Article 5.3.5 of the International Standard for Testing, and can be found to be generally accepted for cycling road races.
- In order to ensure the effectiveness of such “notification” method, it is necessary for a “notification” to be found to have commenced when the list of the persons to be tested is displayed. If an athlete intentionally or negligently fails to adhere to a “notification” after the commencement thereof, it does not conform to the spirit of sport, which consists of “ethics, fair play and honesty”, “respect for rules and laws” and the like.
- Although the athlete was not contacted by the time of commencement of the “notification” in this case, this is not a problem as the International Standard for Testing does not require the athlete to be contacted as a requirement for commencement of “notification”. The Comment to Article 2.3 of the Code provides that: “A violation of ‘refusing or failing to submit to Sample collection’ may be based on either intentional or negligent conduct of the Athlete, while ‘evading’ Sample collection contemplates intentional conduct by the Athlete”. Here, it is considered

that refusal or failure to submit a sample due to “negligence” typically refers to refusal or failure to submit a sample prior to being contacted.

- On the other hand, Article 2.3 of the Code provides: “after receiving notification as authorized in these Anti-Doping Rules”, which seems to require that the notification to the athlete be completed and the mere commencement of the “notification to the athlete” would not be enough. However, if Article 2.3 does not apply to a situation in which the person subject to testing runs away the moment the notification commences, then Article 2.3 of the Code would lose much of its significance. Therefore, “after receiving notification as authorized in these Anti-Doping Rules” should be construed as not requiring the notification to have been completed, but as merely requiring the “notification” to have commenced. (This interpretation can also be justified by the provisions of Article 2.3 of the World Anti-Doping Code, which provides: “Refusing or failing without compelling justification to submit a Sample collection after notification as authorized in applicable anti-doping rules, or otherwise evading Sample collection”, and does not provide: “..... after notification has been completed as authorized.....”. It is considered that Article 2.3 of the Code should originally have adopted the wording: “after notification as authorized in these Anti-Doping Rules”.) According to this interpretation, Article 5.4.1 of the International Standard for Testing, which sets forth the matters to be notified to an athlete by ADO, DCO or Chaperone “when initial contact is made”, merely provides that these matters should be notified when initial contact with the athlete has been successfully made, and does not set forth the requirements to meet the wording: “after receiving notification as authorized in these Anti-Doping Rules”.
- Therefore, in this case, “notification to the athlete” “commenced” at the time the DCOs displayed the Posting in the vicinity of the finish line and other locations at 14:29, April 29, and through this act the requirement of “after receiving notification as authorized in these Anti-Doping Rules” was also met.
- The Athlete makes the excuse that he was not aware, and neither was any explanation given, that the athletes who abandoned the race were also subject to testing. However, the UCI Anti-Doping Rules and the JCF Competitive Rules expressly provide that the athletes who abandoned the race are also subject to testing, and athletes are obviously required to have a good understanding of these rules. Therefore such excuse of the Athlete cannot be accepted.
- In accordance with the foregoing, the Athlete did not collect a sample “after receiving notification as authorized in these Anti-Doping Rules”, and is therefore found to be in violation of Article 2.3 of the Code.

However, as a result of a review of this case, the Panel reached the conclusion that the argument above should not be accepted. Admittedly, the Preface to the Code does provide as follows: “Anti-Doping Rules, like Competition rules, are sport rules governing the conditions under which sport is played. Athletes and Athlete Support Personnel accept these rules as a condition of participation and shall be bound by them. These sport-specific rules and procedures, aimed at enforcing anti-doping principles in a global a harmonized manner, are distinct in nature and, therefore, not intended to be subject to or limited by the requirements and legal standards applicable to criminal proceedings or employment matters.” If such nature of the Code is to be emphasized, it may be considered that anti-doping rules should be applied in a manner taking into account the characteristics of each sport pursuant to Article 5.3.5 of the International Standard for Testing in order to ensure the effectiveness of anti-doping tests. However, even if it is “not intended to be subject to or limited by the requirements and legal standards applicable to criminal proceedings or employment matters”, anti-doping testing imposes a considerable disadvantage upon athletes, and therefore it should be construed that a minimum level of due process should be ensured as a premise for imposing such a disadvantage.

If supposedly the Athlete in this case were to be found to be in violation of anti-doping rules, the Athlete would be subject to ineligibility for a period of two years, and even if supposedly such period of ineligibility were reduced pursuant to Article 10.5.2 of the Code, the period of ineligibility would be a minimum length of one year. In comparison with, for example, Article 10.4 of the Code, under which a sanction may be alleviated to a reprimand with no period of ineligibility, this sanction is considerably too heavy for this case. Therefore, we should adopt the following restrictive interpretation concerning the extent to which a violation of anti-doping rules as set forth in Article 2.3 of the Code can be established.

- Article 5.4.1 of the International Standard for Testing sets forth the matters to be notified to the athletes “when initial contact is made” for the purpose of requiring a specific notification of the disadvantages which the athlete may suffer before the athlete undergoes the doping test, from the viewpoint of ensuring a minimum level of due process. Therefore, it would be necessary for “notification as authorized in these Anti-Doping Rules” as set forth in Article 2.3 of the Code to meet the requirement of “notification” as specified in the International Standard for Testing, including Article 5.4.1 of said Standard.

- In consideration of the above, in this case, “when initial contact is made” under Article 5.4.1 of the International Standard for Testing is considered to refer to the time when the document titled “CONTROLE ANTIIDOPAGE/ANTI-DOPING EXAMINATION” describing the list of the athletes required to appear for sample collection was displayed at the finish line, the doping control station and one other location. However, this document does not contain most of the matters to be notified listed in Article 5.4.1 of the International Standard for Testing. It only contains the description “COUREURS A CONTROLER/RIDERS TO BE TESTED” in French and English, and does not contain any Japanese description. Accordingly, it cannot be said that the Athlete was duly notified that “such athlete is required to collect a sample”.
- We cannot rule out room for interpretation that, with the descriptions in Anti-Doping Pamphlet, the matters listed in Article 5.4.1 of the International Standard for Testing were substantially notified to the Athlete prior to “when initial contact is made”. However, although the Anti-Doping Pamphlet provides that “The anti-doping test at the Competition Event shall be conducted in accordance with the JADA rules and the UCI Anti-Doping Rules”, it does not specifically quote the contents of any of these rules. It is particularly problematic that the athletes were not notified that those who were disqualified from the race could also be subject to testing as a result of the draw. Although the UCI Anti-Doping Rules and the JCF Competitive Rules do provide that disqualified athletes could be subject to testing, these are merely the rules of the International Cycling Union and the Japan Cycling Federation and are not rules established by anti-doping agencies such as JADA. Accordingly, in order to conduct doping tests in accordance with these rules, it is necessary to notify and publicize the contents of these rules to athletes at each competition event. Since it can hardly be recognized that the athletes were duly notified at the Competition Event that disqualified athletes could also be subject to testing as a result of the draw, we cannot place due reliance upon the provisions of the UCI Anti-Doping Rules and the JCF Competitive Rules.
- Furthermore, while Article 5.4.1 f) of the International Standard for Testing lists “the location of the Doping Control Station” as a matter to be notified, the Anti-Doping Pamphlet merely provides: “The test shall be conducted at a location designated by the organizer, using a JADA vehicle“, and does not describe the location of the JADA vehicle or the Chaperone’s waiting position. The Athlete cannot be found to have been otherwise notified of the location of the doping control station or the Chaperone’s waiting position. This cannot go unrecognized as a mere

descriptive error, as Article 22(11) of the JCF Competitive Rules requires athletes to contact the Chaperone after the competition, and furthermore, to ultimately appear at the doping control station. Other notification matters required by Article 5.4.1 differ in detail (there is no description of the type of sample to be collected, no description of “the Athlete’s rights”; an accompanying person is limited to “one team officer”; there is no notification of the consequences of non-compliance to be suffered by the athletes; the permissible reasons for delay in reporting to the doping control station are more limited than Article 5.4.4; etc.), and the matters listed in Article 5.4.1 of the International Standard for Testing cannot be construed to have been appropriately notified to the Athlete.

- It was not desirable that the Athlete left to return home after being disqualified in the race and did not confirm whether he was selected to undergo testing. Neither does the Panel intend to fully deny the notification method generally used in the cycling world. However, in this specific case, the Athlete cannot be found to have received “notification as authorized in these Anti-Doping Rules” in Article 2.3, and therefore a violation of anti-doping rules as set forth in the Japan Anti-Doping Code cannot be found to have occurred.
- Since the Athlete cannot be found to be in violation of anti-doping rules, the provisional suspension imposed upon the Athlete as of May 18, 2012 shall automatically lose effect concurrently with the making of this decision by the Panel. (Please refer to “Consequences of Anti-Doping Rule Violations” (c) in Appendix I “Definitions” of the Code. With respect to the provisional suspension, a provisional hearing was convened as of the same date as this hearing.) In order to make clear that the provisional suspension has lost any and all effect, the Panel hereby declares that the provisional suspension has ceased to be effective.

Based on the foregoing, we have made our decision as stated above.