UNION CYCLISTE INTERNATIONALE

Anti-Doping Tribunal

UCI Anti-Doping Tribunal

Judgment

case ADT 04.2017

UCI v. Mr. Ralf Matzka

Single Judge:

Mr. Andreas Zagklis (Greece)

Aigle, 8 January 2018

INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (hereinafter "the Tribunal") in application of the UCI Anti-Doping Tribunal Procedural Rules (hereinafter "the ADT-Rules") and in relation to an alleged anti-doping rule violation committed by Mr. Ralf Matzka (hereinafter "the Rider").

I. FACTUAL BACKGROUND

2. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Single Judge has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Judgment refers only to the necessary submissions and evidence to explain his reasoning.

3. The Rider is a 28-year-old German professional cyclist affiliated with the German Cycling Federation (Bund Deutscher Radfahrer e.V., hereinafter "BDR"). He turned professional in 2008. In 2016, he was a License-Holder within the meaning of the UCI Anti-Doping Rules (hereinafter referred to as "the UCI ADR").

4. On 3 March 2016 in Frankfurt, Germany, the Rider was tested out-of-competition. The doping control was carried out by a Doping Control Officer on behalf of the UCI. The Rider confirmed on the Doping Control Form that the urine sample had been taken in accordance with the applicable regulations and indicated that he had used the following medications over the seven days preceding the control: Salbutamol, Nasacort, Orthomol, BCA and Diprosone Creme.

5. The urine sample provided by the Rider was then analyzed in the WADA-accredited Laboratory in Lausanne, Switzerland (hereinafter the "Laboratory"). According to the relevant test report, the analysis of the Rider's A-sample showed the presence of Tamoxifen Metabolite (3OH-4methoxy-tamoxifen), which is a specified substance listed under class S.4 "Hormone and Metabolic Modulators", sub-class S4.2 "selective estrogen receptor modulators" of the 2016 Prohibited List which is maintained by the World Anti-Doping Agency (hereinafter "the WADA") and adopted by the UCI (i.e. the Adverse Analytical Finding – AAF). Tamoxifen is not a threshold substance and is prohibited both in- and out-of-competition.

6. By letter dated 11 April 2016, UCI informed the Rider of the analysis results. In the same communication, UCI informed the Rider of his right to request the opening and analysis of the B-sample, as well as to attend such procedure. By the same letter, UCI informed the Rider that under article 7.9.3 of the UCI ADR, the presence of the specified substance Tamoxifen does not require the UCI to impose a provisional suspension on him. However, UCI pointed out that, in case the Rider wished to accept a provisional suspension, receiving credit for such period against any ineligibility period which may ultimately be imposed, he had to inform UCI in writing by filling in the relevant form, which was also enclosed to said letter.

7. After having informed the Rider, UCI also informed the BDR, the Rider's team (known as Bora-Argon 18 in 2016 and currently as Bora-Hansgrohe) and WADA of the AAF.

8. On 13 April 2016, the Rider requested by email the A-sample documentation package from UCI and informed UCI that he was willing and able to provide substantial assistance in discovering or establishing an Anti-Doping Rule Violation in accordance with article 10.6.1 of the UCI ADR.

To that effect, the Rider informed the UCI of his German counsel's communication to the public prosecutor in Frankfurt on the same day.

9. On 14 April 2016, UCI informed the Rider by email that the estimated concentration of the prohibited substance found in his sample was ≅ 2ng/ml and that the deadline to communicate his intention with respect to the B-sample was stayed until he received the requested A-sample documentation package.

10. On 21 April 2016, the UCI confirmed by email to the Rider that the deadline to communicate his intention with respect to the B-sample was stayed until he received the requested A-sample documentation package.

11. On 2 May 2016, UCI sent to the Rider the A-sample documentation package. In the same communication, the Rider was invited to communicate his intention with respect to the B-sample analysis by 9 May 2016 and he was reminded of the possibility to voluntarily accept a provisional suspension.

12. On 9 May 2016, within the specified time limit, Mr. Maurice Courvoisier and Mr. Jonas Knechtli informed UCI of their appointment as the Rider's legal representatives and submitted the following requests with respect to the B-sample:

> *"1. The sample B-3801154 shall be opened and analysed.*
> *2. The opening and analysis of sample B-3801154 shall be suspended until further notice by the Prosecutor's Office.*
> *3. In the alternative: The Sample B-3801154 shall be divided in two samples suitable for analysis, one of which must be preserved for the benefit of the Prosecutor's Office."*

13. On 6 June 2016, after consultation with the German Prosecutor's Office, the UCI informed the Rider of its decision to open and analyse the B-sample in the Laboratory and proposed two alternative dates, namely 14 or 23 June 2016. In the same correspondence, copies of the Laboratory's WADA accreditation and ISO certificate were provided to the Rider.

14. On 10 June 2016, the Rider informed UCI that he would be available on 23 June 2016 at the Laboratory for the opening of the B-sample, which he assumed would be divided into two bottles, one of which was to be preserved for the benefit of the German Prosecutor's Office. At the same time, he reserved his right (i) to come back to his consent regarding the opening of the B-sample should his assumption be incorrect and (ii) to request a suspension of the results management process at any time in the future.

15. On 13 June 2016, UCI confirmed the date of the B-sample analysis, clarified that the sample will be opened and analysed in accordance with the International Standards of Laboratories and would not be split into two bottles and invited the Rider to confirm his and/or his representative's presence at the B-sample opening.

16. On 17 June 2016, the Rider confirmed that he and ***[Expert A]*** would attend the opening of the B-sample on 23 June 2016.

17. On 20 June 2016, UCI informed the Rider that 50ml was kept from the A-sample and could be made available to the German Prosecutor's Office upon receipt of a justified request.

18. On 22 June 2016, the Rider informed UCI that only ***[Expert A]*** would attend the opening of the B-sample and requested the B-sample documentation package.

19. On 23 June 2016, the opening and analysis of the B-sample took place at the Laboratory in the presence of the Rider's representative, ***[Expert A]***.

20. On 24 June 2016, the Laboratory informed UCI of the analysis results, confirming the presence of Tamoxifen in the Rider's B-sample.

21. By registered letter of 28 June 2016, UCI informed the Rider that the presence of Tamoxifen was reported in the Rider's B-sample analysis results. UCI asserted that the Rider had committed an anti-doping rule violation (hereinafter "the ADRV") and requested the Rider to provide his explanations upon receipt of the B-sample documentation package.

22. On 12 July 2016, UCI sent to the Rider the B-sample documentation package and granted him a time limit until 26 July 2016 to submit his explanations on the AAF.

23. On 26 July 2016, the Rider filed with the UCI a request for a stay of the proceedings until a final decision is reached in the German criminal proceedings. Alternatively, he requested an extension of the deadline to file his explanations on the AAF, at least until 15 September 2016.

24. On 16 August 2016, UCI rejected the Rider's request for a suspension of the proceedings but extended the time limit to provide his explanations on the AAF until 19 September 2016.

25. On 15 September 2016, the Rider requested another extension of the deadline to file his explanations on the AAF until 29 September 2016.

26. On 16 September 2016, UCI granted the Rider's request and confirmed that the deadline to submit his explanations on the AAF was extended until 29 September 2016.

27. On 29 September 2016, the Rider filed his explanations as well as an expert report by ***[Expert B]*** and an assessment by ***[Expert C]*** and ***[Expert D]*** for the ***[Institute A]*** concerning the possible source of Tamoxifen metabolites in the Rider's urine sample.

28. On 25 November 2016, upon request of the UCI, Prof. M. Saugy submitted his expert opinion commenting on the findings of the reports filed by the Rider.

29. By registered letter of 28 November 2016, UCI informed the Rider of Prof. M. Saugy's expert opinion. In the same correspondence, UCI informed the Rider that it considered that the ADRV had been established. As a result, UCI offered the Rider a so-called "Acceptance of Consequences" form pursuant to article 8.4 of the UCI ADR. The Rider was also advised of the consequences in case he would not agree with the proposed Acceptance of Consequences.

30. On 12 December 2016, the Rider requested an extension of the deadline to communicate his intentions with respect to the proposed "Acceptance of Consequences" until 22 December 2016.

31. On 13 December 2016, UCI granted the Rider's request and confirmed that the deadline was extended until 22 December 2016.

32. On 22 December 2016, the Rider submitted a "Statement regarding the proposed Acceptance of Consequences", in essence providing additional information to his explanations of 29 September 2016, including a second report by ***[Expert B]*** and requesting that the UCI reconsider its position on the establishment of the ADRV.

II. PROCEDURE BEFORE THE TRIBUNAL

33. On 18 April 2017, UCI initiated these proceedings by filing a petition together with exhibits (hereinafter "the Petition") before the Tribunal. In its Petition, UCI requests the Tribunal to issue an award:

    (a) Declaring that Mr. Matzka has committed an Anti-Doping Rule Violation.

    (b) Imposing on Mr. Matzka a period of ineligibility of 2 years.

    (c) Disqualifying all the results obtained by Mr. Matzka from 3 March 2016.

    (d) Condemning Mr. Matzka to pay the costs of the results management by the UCI (CHF 2,500), the costs of the B Sample Analysis and the costs of the A/B Sample Laboratory Documentation Package (1754 CHF).

34. On 21 April 2017, the Secretariat of the Tribunal (hereinafter referred to as "the ADT Secretariat") informed the Rider that UCI had filed the Petition, that Mr. Andreas Zagklis had been appointed to act as Single Judge (hereinafter referred to as "the Single Judge" or "the Tribunal") in the present proceedings in application of article 14 paragraph 1 of the ADT-Rules and that the Single Judge had confirmed his independence and impartiality in relation to the matter at hand.

35. In the same communication, *inter alia*, the Parties were informed that:

    a. a deadline until 10 May 2017 had been granted to the Rider to submit his answer to the Petition in conformity with article 16 paragraph 1 and 18 of the ADT-Rules; and

    b. any challenge to the appointment of the Single Judge should be filed with the ADT Secretariat within 7 days of receipt of that letter.

36. By email dated 28 April 2017, the Rider filed a submission including an objection to the Tribunal's jurisdiction and a challenge on Mr. Andreas Zagklis' appointment as Single Judge, together with exhibits, requesting that:

    (1) The Tribunal shall dismiss the case for lack of "jurisdiction".

    (2) In the alternative:

        (i) Mr. Andreas Zagklis shall be replaced as Single Judge in the present case.

        (ii) The time limit for the submission of Defendant's answer to the UCI's petition dated shall be extended by a reasonable period of time but at least until 31 May 2017. (sic)

37. By email dated 2 May 2017, the ADT Secretariat informed the Parties that the Tribunal would rule on the Rider's objection to its jurisdiction in its Judgment, in accordance with article 3 paragraph 3 of the ADT-Rules. In the same correspondence, the Parties were informed that, pursuant to article 15 paragraph 4 of the ADT-Rules, the challenge on Mr. Andreas Zagklis' appointment should be decided by the other members of the Tribunal and that the deadline for the Rider to submit his answer was extended until 31 May 2017.

38. By email dated 17 May 2017, UCI filed its submission on jurisdiction, requesting the Tribunal to reject the Rider's objection to the Tribunal's jurisdiction.

39. On 22 May 2017, the ADT Secretariat acknowledged receipt of the UCI's correspondence dated 17 May 2017 on the issue of the Tribunal's jurisdiction and notified said correspondence to the Rider.

40. By email dated 29 May 2017, the Rider requested a second extension of the deadline to file his answer until 7 June 2017, as well as a permission to file the exhibits to his answer, particularly any additional expert reports, in German, in accordance with article 8 paragraph 5 of the ADT-Rules.

41. By email dated 2 June 2017, UCI did not object to the Rider's request for an extension of the deadline to file his answer, but requested that the Tribunal should not allow him to file the exhibits to his answer in German, considering that UCI may need to engage further experts to respond to the Rider's forthcoming expert evidence, which, therefore, should be filed translated into English according to article 8 paragraph 3 of the ADT-Rules.

42. By email dated 2 June 2017, the ADT Secretariat informed the Parties that the Tribunal granted the Rider's request for an extension of the deadline to file his answer until 7 June 2017 and allowed him to file the exhibits to his answer, particularly any additional expert reports, in German. The ADT Secretariat would revert to the Parties in regard to the question of the translation of the exhibits into English.

43. By email dated 7 June 2017, the Rider submitted his answer together with exhibits (hereinafter "the Answer"), including an objection on the Tribunal's jurisdiction. In his Answer, the Rider submits the following prayers for relief:

    (1) The UCI Anti-Doping Tribunal shall dismiss the case for lack of jurisdiction.

    (2) In the alternative: The UCI Anti-Doping Tribunal shall determine that Defendant bears No Fault or Negligence according to art. 10.4 of the UCI Anti-Doping Rules and therefore refrain from imposing any sanction on Defendant; in particular any potential period of ineligibility shall be eliminated and Defendant's competitive results since 3 March 2016 shall not be disqualified.

    (3) The UCI Anti-Doping Tribunal shall waive any Costs of the Procedure according to art. 10.10.2 of the UCI Anti-Doping rules.

    (4) The UCI Anti-Doping Tribunal shall order the UCI to pay a contribution toward Defendant's costs and expenses incurred in connection with the proceedings, in particular toward legal costs as well as costs of witnesses, experts and translations.

44. By email dated 3 July 2017, the ADT Secretariat informed the Parties that the challenge on Mr. Andreas Zagklis' appointment has been rejected by the other members of the Tribunal. In the same correspondence, the ADT Secretariat informed the Parties that the written proceedings were closed and invited them to inform the Tribunal by 10 July 2017 whether they wished a hearing to be held in the present matter. Lastly, the ADT Secretariat informed the Parties that the Rider's request not to file English translations of the exhibits to his answer was partially upheld and that the Rider was required to submit English translations of exhibits 14 and 15 until 13 July 2017, which supplement two expert reports that have already been submitted translated into English by the Rider.

45. By email dated 7 July 2017, the Rider informed the Tribunal that he wished for a hearing to be held in the present matter. Moreover, in light of the Rider's financial situation, he requested that a hearing be held via electronic communications media only, in accordance with article 22 of the ADT-Rules.

46. By email dated 7 July 2017, UCI requested the Tribunal to stay the deadline to respond on its preference for a hearing until UCI receives the Rider's clarifications of his proposed witnesses as well as their evidence and the translated expert reports submitted by the Rider in his answer.

47. By email dated 10 July 2017, the ADT Secretariat informed the Parties that the Single Judge decided to hold a hearing in the present matter and invited the Parties to submit their availabilities for the proposed hearing dates, namely 24 July 2017, 21 and 28 August 2017.

48. By email dated 13 July 2017, the Rider submitted to the Tribunal the English translations of the two supplementary expert reports submitted as exhibits 14 and 15 together with the Rider's answer.

49. By email dated 14 July 2017, the Rider confirmed his availability for a hearing on 21 August 2017 and provided a list of the persons that would attend such hearing.

50. By email dated 14 July 2017, UCI confirmed its availability for a hearing on 21 and 28 August 2017 and informed the Tribunal of the persons attending the hearing for UCI. In the same correspondence, UCI requested the Single Judge to admit three additional documents (hereinafter "the Additional Documents") to the case file prior to the hearing.

51. By email dated 17 July 2017, the ADT Secretariat informed the Parties that, in view of the Parties' availability, the hearing in the present matter would take place by video-conference on 21 August 2017. In the same correspondence, UCI was requested to state until 20 July 2017 whether the Additional Documents existed and/or were available at the time it filed its petition and, if yes, to explain the reasons for not having filed them at that time. The Rider was also invited to submit his comments on the admissibility of the Additional Documents until 25 July 2017.

52. By email dated 20 July 2017, UCI filed a submission on the reasons of the late filing and supporting the admissibility of the Additional Documents.

53. By email dated 25 July 2017, the Rider filed his comments on the admissibility of the Additional Documents.

54. By email dated 28 July 2017, the ADT Secretariat informed the Parties on behalf of the Single Judge that a preparatory telephone conference for the hearing would take place on 7 August 2017. In the same correspondence, the Parties were further informed of the decision of the Single Judge not to admit on file the Additional Documents. The grounds for the Single Judge's decision to declare the Additional Documents inadmissible are as follows:

    a. UCI was aware of the Rider's allegation that a French study on mineral water contamination was the "only" study in the matter, already since the Rider's submission of 22 December 2016, i.e. several months before the Petition was filed. The research prompted by the Rider's defense and which gave rise to the Additional Documents being filed, could have been made before the filing of the Petition.

b. Such strict interpretation of article 17 paragraph 1 ADT-Rules was required in the specific circumstances of this case, given the relevance of the Additional Documents to the merits of the dispute; the length of the results management process, which included several exchanges of arguments between the parties; the delicate balance that the ADT-Rules strike between UCI and the Rider on the issues of standard and balance of proof; the significant resources that the Rider had already invested in the preparation of his Defence based on UCI's Petition. In the absence of any guidance in the ADT-Rules, and although he did not doubt UCI's good faith efforts to bring more scientific clarity to the disputed issues, the Single Judge resolved in favour of the Rider presenting the arguments of his Defence as these were crystallized after a 14-month results management process.

55. By email dated 1 August 2017, UCI noted for the record its disagreement with the decision of the Single Judge not to admit on file the Additional Documents and reserved UCI's right to rely on such disagreement in both the present proceedings and, in case of an appeal, the CAS proceedings.

56. By email dated 18 August 2017, the ADT Secretariat sent to the Parties procedural directions for the hearing.

57. On 21 August 2017, a hearing was held in the present matter by video-conference. The Tribunal sat in the following composition:

Single Judge: Mr. Andreas Zagklis.

58. The Single Judge was assisted by Mr Patrick Wilson, acting as Secretary of the ADT.

59. The following persons attended the hearing:

- UCI was represented by its counsel, Prof. Antonio Rigozzi and Ms. Brianna Quinn

- The Rider along with his counsel, Prof. Rainer Cherkeh, Dr. Maurice Courvoisier and Mr. Jonas Knechtli

60. The Single Judge heard evidence by:

- Factual witnesses, all proposed by the Rider:
  - ***[Witness A]***
  - ***[Witness B]***
  - ***[Witness C]***

- Expert witnesses:
  - ***[Experts B, C and E]*** (experts proposed by the Rider)
  - Prof. Martial Saugy (expert proposed by UCI)

61. During the hearing the Single Judge decided that Prof. Saugy was not allowed to insert through his testimony new scientific evidence. UCI reserved its rights similarly to para. 55 above.

62. At the conclusion of the hearing, the parties confirmed that, subject to the objections mentioned in their respective submissions, their right to be heard and to be treated equally in the present proceedings before the Single Judge had been fully respected.

III. JURISDICTION

A. General

63. Article 25 of the UCI ADR provides the following:

> *"25.1 These Anti-Doping Rules shall apply in full as of 1 January 2015 (the "Effective Date")" (emphasis added).*

64. Considering that the Rider's sample was collected in March 2016, i.e after the Effective Date, this case shall be governed by the procedural and substantive rules of the UCI ADR.

65. Regarding jurisdiction, articles 2, 7 and 8 of the UCI ADR provide in relevant part as follows:

> *"2. Settlement of Disputes*
> *Before referring a case to the Tribunal, the UCI shall offer the Defendant an acceptance of Consequences in accordance with Article 8.4 ADR.*
>
> *[…]*
>
> *7.1 Responsibility for Results Management and Investigations*
> *Except as provided for in Articles 7.1.1 and 7.1.2 below, for violation of these rules, results management and hearing shall be the responsibility of, and shall be governed by, the procedural rules of the Anti-Doping Organization that initiated and directed Sample collection (and if no Sample collection is involved, the Anti-Doping Organization which first provides notice to the Rider or other Person of an asserted anti-doping rule violation and then diligently pursues that anti-doing rule violation).*
>
> *[…]*
>
> *8.1 UCI Anti-Doping Tribunal*
> *The UCI shall establish an UCI Anti-Doping Tribunal to hear anti-doping rule violations asserted after 1st January 2015 under these Anti-Doping Rules.*
>
> *[…]*
>
> *8.2 Jurisdiction of the UCI Anti-Doping Tribunal [1]*
> *The UCI Anti-Doping Tribunal shall have jurisdiction over all matters in which*
> *• An anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7 […]" (emphasis added)*

66. As evidenced on the Doping Control Form, the out-of-competition doping control of 3 March 2016 was authorized by the UCI and carried out by a Doping Control Officer on its behalf. UCI, either directly or through the Cycling Anti-Doping Foundation (CADF), has been the sole results management authority in this case. Also, UCI asserted the alleged ADRV on 28 June 2016.

67. Furthermore, before referring the case to the Tribunal, the UCI has tried to settle the dispute by offering the Rider an "Acceptance of Consequences" form within the meaning of article 8.4 of the UCI ADR and article 2 of the ADT-Rules. UCI's offer was not accepted by the Rider.

68. Therefore, the requirements for the Tribunal's jurisdiction, as set out in the UCI ADR, are met in the present case.

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1 Article 3.1 of the ADT-Rules replicates the wording of Article 8.2 of the UCI ADR.

B. The Rider's objection to the jurisdiction of the Tribunal

69. Regarding the Rider's right to contest the jurisdiction of the Tribunal, article 3 paragraph 2 of the ADT-Rules provides the following:

> *"Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal's attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal's jurisdiction."*

70. A preliminary objection to the jurisdiction of the Tribunal was raised by the Rider in his submission of 28 April 2017, i.e. within the aforementioned time limit. The Single Judge must therefore resolve this issue as a threshold matter.

i. The position of the Parties on jurisdiction

71. The Rider argues that he did not voluntarily submit to the jurisdiction of the Tribunal as his submission to it was necessary to obtain a license with the BDR and a refusal would result in an occupational ban. As such, his submission to the jurisdiction of the Tribunal must be regarded null and void. In this respect, the Rider evokes relevant case law of the Swiss Federal Tribunal (case BGE 129 III 445). The Rider further asserts that the Tribunal cannot qualify as a real arbitral tribunal as it lacks the necessary independence and impartiality and is, therefore, a mere UCI internal dispute settlement body; furthermore, all its members are UCI-appointments and the Tribunal is established, financed by and fully incorporated to the UCI-structure. Lastly, the Rider argues that the ADT-Rules do not meet the (constitutional) minimum fair trial requirements as the Rider has to defend himself at his own costs and the petitioner does not investigate for exonerating circumstances.

72. UCI, in essence, submits that the UCI ADR applies, *inter alia*, to any License-Holders of the UCI member federations and, as a result, in his capacity as a holder of a UCI cycling license in 2016, the Rider is bound by the UCI ADR. Moreover, the Rider's arguments as to the nature and qualifications of the Tribunal are misconceived and irrelevant, as the issue of the mandatory nature of the UCI jurisdiction and/or whether the Rider voluntarily agreed to submit himself to the jurisdiction of the Tribunal is relevant only as far as arbitral jurisdiction is concerned. On the contrary, the Tribunal is a UCI internal dispute settlement body and not an arbitral tribunal. Finally, UCI argues that if the Rider is not happy with the Tribunal's decision, he has the opportunity to bring the matter before CAS, which will hear his appeal on a *de novo* basis and, therefore, the Rider's jurisdictional challenge should be dismissed.

ii. The position of the Single Judge on jurisdiction

73. The Single Judge notes that the Rider's objection to the jurisdiction of the Tribunal is twofold: first, that the Rider's consent to the jurisdiction of the Tribunal was compelled and not voluntary and, second, that the Tribunal is not a true arbitral tribunal due to its dependence to the UCI.

74. As a preliminary matter, the Single Judge notes that the procedural rules of the UCI ADR shall apply to the Rider's objection to the jurisdiction of the Tribunal. In this regard, the Single Judge refers to article 8.2 of the UCI ADR which stipulates that *"[t]he UCI Anti-Doping Tribunal shall have jurisdiction over all matters in which … [a]n anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7 […]"*.

75. It is common ground between the parties that the Tribunal is an internal UCI body. This means that the Single Judge needs to determine whether the Tribunal's jurisdiction is based on the

relevant UCI regulations and whether the requirements of such rules are met; these questions have been already answered in the affirmative in paras. 633 to 688 *supra*.

76. Being an association's internal disciplinary body, the Tribunal does not – by its nature – meet the conditions of an independent arbitral tribunal and, in fact, does not need so. It is merely called upon to resolve an internal dispute between the association (the UCI) and one of its indirect members (the Rider), the latter holding a license issued by a member of the UCI. The Rider's rights are guaranteed by the fact that the UCI ADR, in compliance with the World Anti-Doping Code, set certain due process standards. In case these standards are deemed by the Rider inadequate or, simply, not met by the Tribunal, the Rider shall have the right of appeal before a court of law. Such court of law generally can be either a state court or an arbitral tribunal.

77. It is exactly at that point in time, namely the appeal process, where the question of the Rider's voluntary consent or not through the license application with the BDR will become relevant. In the present case, this will happen once the UCI-internal proceedings are completed with the issuance of the present judgment. Only at that moment the Rider's submission to the jurisdiction of an arbitral tribunal produces legal effect, opening the way to a CAS appeal to the exclusion of remedies in state courts. Only then such consent can be attacked by the Rider. His objection in these proceedings is therefore premature albeit prudently placed at the outset of a two-step process that he does not wish to accept. Ultimately, it will be for the CAS and/or a state court to decide upon this objection.

78. In light of the above, the Single Judge rejects the Rider's objection to the jurisdiction of the Tribunal and concludes that the Tribunal has jurisdiction to decide on the Petition.

IV. APPLICABLE RULES

79. Article 25 of the ADT-Rules provides that *"the Single Judge shall apply the ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law"*.

80. As previously noted (see para. 64 above), these proceedings are subject to the UCI ADR, as the Rider's sample was collected in March 2016, i.e after the Effective Date. The application of the UCI ADR has remained undisputed by the parties.

81. Article 2 UCI ADR defines the relevant anti-doping rule violation as follows:

> *"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample*
>
> *2.1.1 It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*
>
> *[Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to a Rider's Fault. This rule has been referred to in various CAS decisions as "Strict Liability". A Rider's Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]*

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Rider's A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed; or, where the Rider's B Sample is analyzed and the analysis of the Rider's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider's A Sample; or, where the Rider's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

[Comment to Article 2.1.2: The Anti-Doping Organization with results management responsibility may, at its discretion, choose to have the B Sample analyzed even if the Rider does not request the analysis of the B Sample.]

2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample shall constitute an anti-doping rule violation

2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List or other International Standards or UCI Regulations incorporated in these Anti-Doping Rules may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously."

82. As for the standard period of ineligibility, article 10.2 UCI ADR provides as follows:

"The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and the UCI can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years."

83. As for the Disqualification of results, article 9 UCI ADR provides as follows:

"An anti-doping rule violation in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes."

84. Also with respect to Disqualification, article 10.8 UCI ADR provides as follows:

"In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

[Comment to Article 10.8: Nothing in these Anti-Doping Rules precludes clean Riders or other Persons who have been damaged by the actions of a Person who has committed an anti-doping

rule violation from pursuing any right which they would otherwise have to seek damages from such Person.]"

85. In relation to the commencement of the period of ineligibility, article 10.11 UCI ADR provides (in relevant part) as follows:

> *"Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed."*

V. THE FINDINGS OF THE TRIBUNAL

A. The ADRV

86. The Rider has not contested the presence of Tamoxifen in his urine sample, nor challenged the laboratory analysis or the results of that analysis; on the contrary, the Rider has effectively submitted an explanation for the presence of this substance in his body (see below under section V.C).

87. Therefore, the Rider has violated article 2.1.1 UCI ADR (Presence of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample) since Tamoxifen, a substance included on the 2016 WADA Prohibited List, was found in his urine sample taken on 3 March 2016.

88. For the sake of completeness, the Single Judge will deal at this point with the Rider's objection based on the principle of *ne bis in idem*. The Rider has argued that the German Prosecutor's Office decided not to bring forward a criminal charge for doping and, therefore, the Rider cannot be faced with double jeopardy by going through a disciplinary proceeding for the same alleged offence. In response, the UCI has stated that the elements of these violations are different.

89. The Single Judge can reject this objection summarily: criminal proceedings and sports disciplinary proceedings are based on two separate, and different in nature legal relationships and frameworks. Besides the obvious difference, i.e. that *dolus* is required to find a criminal offence, which the Rider addresses by saying that the German Prosecutor's Office based its conclusion also on objective findings, being exonerated in criminal proceedings has an *erga omnes* effect as regards the non-violation of penal rules, not of private association disciplinary rules. There is a clear difference in the protected interests between the two proceedings, in other words no identity of object, as acknowledged also by the Swiss Federal Tribunal in the Valverde case (decision of 3 January 2011 in the matter 4A_386/2010, para. 9.3.2) where it compared two sanctions closely connected to each other, namely a local sports sanction and an international sports sanction. This lack of identify of object applies *a fortiori* when comparing a criminal prosecution to a sports disciplinary case.

90. Thus, the fact that criminal proceedings against the Rider in Germany were dropped does not preclude the UCI from asserting an ADRV against the Rider and seeking his sanctioning for cycling purposes at worldwide level.

91. Further to the above conclusion, any objective findings of a state authority may of course have evidentiary bearing in the framework of establishing facts during sports disciplinary proceedings such as the present ones, but in no way impede the advancement of the case before the Tribunal nor are they binding on the Tribunal in the form of *res judicata* or in any other way.

B. Main issue

92. While the UCI has requested that, among other consequences for the ADRV, a 2-year period of ineligibility be imposed on the Rider and his related results be disqualified, the latter has requested the Tribunal to determine that he bears No Fault or Negligence and that no sanction or disqualification applies to him.

93. Therefore, the main issue in this case is whether the Rider bears No Fault or Negligence for the ADRV.

C. No Fault or Negligence

94. Article 10.4 UCI ADR provides as follows:

> *"If a Rider or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated. "*

95. No Fault or Negligence is defined in the UCI ADR as follows:

> *"No Fault or Negligence: The Rider or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered his or her system. […]"* (emphasis added)

96. Article 3.1 UCI ADR entitled "Burdens and Standards of Proof" provides as follows:

> *"The UCI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Rider or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability."* (emphasis added)

97. As mentioned above, UCI has discharged its burden of proof by establishing the ADRV.

98. The Rider is now required to prove, by a balance of probability, how Tamoxifen entered his system.

i. The position of the Parties

99. The Rider´s case can be summarized as follows: the identified amount of Tamoxifen metabolite in the Rider's sample has, under the most plausible scenario, originated from his consumption of contaminated mineral waters during his stay with his team in Belgium. For such contamination the Rider cannot be found to bear any level of Fault or Negligence and, thus, no consequences should be imposed on him for the ADRV. To support his case, the Rider submits in essence the following:

- During his stay in Belgium (26 February 2016 – 2 March 2016), the Rider consumed at the very minimum 3 liters – and potentially as much as 5-6 liters – of mineral water ***[Water A]*** and ***[Water B]*** per day, which were provided to him by his team and were commercially available in local supermarkets, where the team sourced them as evidenced by the contemporary receipts produced and witness testimony;
- In his expert opinion ***[Expert C]***, after considering the extremely low level of Tamoxifen metabolite detected in the Rider´s sample, concludes that the only explanations are a) the very recent intake of a very low dose of Tamoxifen or b) the intake of Tamoxifen at a therapeutic dose a very long time ago, the first being the only possible scenario as the Rider had undergone multiple doping controls in the past years and as recently as November 2015 and 14 March 2016. None of these controls produced an Adverse Analytical Finding. In addition, there have been no other substances detected in the sample of 3 March 2016 nor any testosterone anomalies detected in the Rider´s samples;
- The UCI has been unable to point to a doping scenario that explains the laboratory results;
- Due to the nature of Tamoxifen as means to increase testosterone production, single administration of the substance is excluded because only long-term use may have performance enhancing effects;
- The existence of Tamoxifen in the mineral waters consumed by the Rider is proven and evidenced by a study published in the French ***[Magazine]*** (hereinafter "the French Study"). The French Study is scientifically reliable and analogies can be drawn with the reliable studies of the German consumer institute "Stiftung Warentest";
- Water contamination has been a subject of studies in the past 15 years and water contamination due to medication, particularly contraceptives, is an increasing phenomenon, as shown in the evidence produced by the Rider. Tamoxifen is one of the several substances that have been detected in mineral water;
- It is impossible to produce direct evidence of the bottled water contamination as the bottles bought in Belgium were consumed by the Rider and his teammates;
- The German criminal proceedings which were initiated for doping as a criminal offence, were eventually dropped because no evidence of a criminal action on the part of the Rider was found;
- The Rider is required to establish his scenario by a balance of probability. According to the principle *in dubio pro reo*, a plausibility of less than 50 percent is sufficient. The UCI should not impose sanctions if no insuppressible doubts remain;
- Having established how the substance entered the Rider's system proves that there is no wrongdoing on the part of the Rider; the Rider asserts that he is not at fault f or this ADRV and that he bears No Fault or Negligence.

100. UCI submits in essence the following:

- Tamoxifen could not have been detected in the Rider's urine without him having utilized, applied, ingested, injected or consumed that substance;
- UCI has checked the reliability of the scenario put forward by the Rider because it is not seeking to punish him at any cost. However, there is no reliable scientific study supporting his scenario. A study commissioned by the Fédération Nationale des Eaux Conditionnées et Embouteillées and published in 2017 is the only reliable study and has not been challenged. On the contrary, the French Ministry of Health responded to a UCI query in November 2016 that "the presence of tamoxifen was not detected in any

bottled water (natur[a]l mineral water, spring water, drinking water per treatment) produced in France";

- In addition, it is "simply impossible" for Tamoxifen to have entered the Rider´s system through water contamination because there is no proof that he consumed contaminated bottled water;
- The amount detected (2 ng/ml) does not correspond to recent intake with accumulation of Tamoxifen through consumption of contaminated bottled water;
- The Rider testified that ***[Water B]*** tastes "normal" although it is common ground that it has a special salty taste that distinguishes it from other mineral sparkling waters;
- The data submitted by the Rider (expert reports, studies, articles) do not discharge his burden of proving the source of the Tamoxifen presence in his system. The Rider's assumption is largely based on the French Study published in in a French consumers' magazine which is not a peer-reviewed journal. There is no scientific paper mentioning Tamoxifen detected in mineral water and, in addition, there is no direct evidence of contamination of the bottled water, which was actually consumed by the Rider. In this respect, samples of the bottled water brands which were consumed by the athlete were tested negative to Tamoxifen in the context of the German criminal proceedings.

ii. The position of the Single Judge

101. The starting point for the Single Judge's analysis is the interpretation of the standard of proof. The notion of "balance of probability" has been addressed by the parties in their submissions, either by invoking jurisprudence of the Court of Arbitration for Sport (in favour of a 51% probability, as the UCI contends) or by invoking jurisprudence of the German NADO (in favour of a 50% probability, as the Rider contends). The Single Judge does not consider this exercise to be one of comparison, i.e. to align all possible scenarios and simply pick the most likely one. Picking the most likely among several very improbable scenarios is not what the UCI ADR are looking for: there needs to be an *objective* evaluation, and both parties point to it, by which the Tribunal may (or may not) reach a certain level of comfort that the circumstances are probable at a minimum of 50% (per the Rider) or 51% (per the UCI). Certainly, the UCI has indeed a duty to collaborate – which it has done in the present proceedings by conducting own research and calling an expert witness – and not simply to leave the Rider with the unsurmountable task of disproving several hypothetical scenarios in order to fortify his version of the facts. Thus, while the Single Judge accepts the Rider's submission that his task is to put forward an objectively credible scenario, it does not accept the argument that the UCI needs to bring forward a doping scenario which is more likely to have happened. The Rider shall be allowed, under the UCI ADR, to be successful in convincing the Tribunal of his version of facts by a balance of probability regardless if the UCI has a convincing counter-case or not.

102. With the above in mind, the Rider will be successful in his defense if he shows cumulatively that the following sequence of facts is more likely than not to have happened:

a. the Rider *consumed* mineral waters ***[Water B]*** and ***[Water A]*** during his stay in Belgium; and
b. both or either of the two waters that the Rider consumed were *contaminated*; and
c. such contamination *caused* the Adverse Analytical Finding of 3 March 2016.

103. The Single Judge notes at the outset that there is no known case of Tamoxifen detection in athletes' samples after consumption of contaminated water and, thus, no guidance for the Tribunal or the parties in this matter.

Water Consumption

104. The Single Judge has carefully reviewed the evidence before him which is relevant to the issue of the Rider's "consumption of 3 to 5 liters per day of ***[Water A]*** and ***[Water B]*** mineral waters while the team was in Belgium between 26 February 2016 and 2 March 2016".

105. From the evidence on file, the Single Judge is convinced that:

    a. the Rider, along with the rest of the team, was in Belgium between 26 February 2016 and 2 March 2017 (per the submitted Team Travel Plan and race records);
    b. the Rider consumed in that period on a daily basis between 2-3 liters (on training days) and 5 liters (on race days) of mineral water purchased by ***[Witness B]***;
    c. the Rider consumed the still water ***[Water A]***, which was purchased at ***[Shop A]*** Belgium supermarkets on 25, 27 and 29 February 2016 (per the submitted receipts);
    d. the Rider, as well as other riders of the team, were drinking predominantly still water, at a ratio of approximately 90% still versus 10% sparkling water, since "sparkling water is not good for recovery, according to expert advice" (per the witness testimony of ***[Witness A]***).

106. Where it gets more difficult for the Single Judge to ascertain the facts asserted by the Rider is the consumption of the sparkling water ***[Water B]***. While the Single Judge does not give evidentiary weight to UCI's remark that the use of ***[Water B]*** came up quite late in the proceedings, i.e. in September 2016, it is true that the only evidence supporting the Rider's version is a combination of partly incomplete and/or inconsistent witness testimonies on this particular point.
    a. Quite importantly, none of the 3 receipts from ***[Shop A]*** Belgium mentions ***[Water B]***.
    b. The ***[Witness A]*** ascertains in a written exchange with the Rider's counsel the use of ***[Water B]*** in the trip but was not, according to the Team Travel Plan, accompanying the team to the races in Belgium. Also, despite giving a straightforward account of how the water supply was organised, i.e. buying mineral water without specific guidelines to ***[Staff A]***, he did not confirm at the hearing that the sparkling water consumed in Belgium was ***[Water B]***.
    c. Furthermore, ***[Witness B]***, as the person in charge of buying and preparing drinks, was unable to remember why ***[Water B]*** does not feature on the supermarket receipts and his only explanation was that it may have been a left-over from previous races. Subsequently, he mentioned that they (***[Staff A]***) do not use sparkling water when they prepare drinks for the riders.
    d. The Rider's Defence also mentions mineral waters purchased in Spain and France without producing documentary evidence in that respect, neither of ***[Water B]*** purchase nor of any supermarket purchase with the team's credit card (or any other credit card, for that matter) in Spain or France which should have been a relatively accessible record to recover.
    e. At the end, during the hearing the Rider testified that his "zwischendurch" consumption of 1 liter of ***[Water B]*** would be "every 2-3 days".

107. Faced with the above evidence, the Single Judge finds that the Rider was able to prove by a balance of probability that he drank, in a quantity of ca. 1 liter every 2-3 days, sparkling water during the team's stay in Belgium but he was unable to prove that this sparkling water was ***[Water B]***.

Water Contamination

108. The Single Judge first notes that, according to the French Study, the ***[Water A]*** *still* water was *not* found to contain traces of Tamoxifen.

109. Although this conclusion suffices to find that the Rider failed to establish by a balance of probability also the second condition of his defence (as listed in para. 102 *supra*), the Single Judge will evaluate for the sake of completeness whether it is more likely than not that the ***[Water B]*** sparkling water which the Rider allegedly consumed was contaminated with Tamoxifen.

110. In this respect, even if the Single Judge had accepted that ***[Water B]*** was indeed consumed by the Rider while in Belgium, the absence of any evidence regarding the source of those ***[Water B]*** bottles makes it impossible for the Single Judge to see the link between the bottles examined in 2013 for the purposes of the French Study and the bottles allegedly used by the Rider in 2016. There is no suggestion, let alone evidence, that the bottles were purchased in the same country; or that reasons which caused the alleged contamination in 2013 persisted up until 2016; or that similar production methods or sources were applied in the ***[Water B]*** manufacturing line in 2016. The Rider presents a link too remote for the Single Judge to accept by a balance of probability.

111. That said, and on the basis of the evidence before him, the Single Judge is of the view that the results of the French Study, which was conducted by a publicly funded, independent consumer's institute that used an ISO-certified procedure, are credible as regards *which* substance was found in *which* mineral water. The reaction from the water syndicate is not unusual to instances where public organisations publish a study that may worry the consumers, a worry which is oftentimes sparked by the journalistic (rather than scientific) presentation of the study's results, as is also the case of the French Study. In addition, the statements and articles presented by the UCI to counter the French Study lack the necessary specificity with respect to ***[Water B]*** to convince the Single Judge that the French Study's results are not a sufficient basis for the Rider to prove that the ***[Water B]*** bottles tested in 2013 contained traces of Tamoxifen. However, as mentioned above, the Rider is not in a position to show by a balance of probability that he drank ***[Water B]*** or that the ***[Water B]*** he drank would, more likely than not, also contain Tamoxifen.

The link between water consumption, water contamination and the AAF

112. The parties have devoted significant time and effort regarding the reliability of the French Study from a scientific point of view, with a particular focus on the follow-up calculations by the respective experts, who were trying to (dis)prove the causal link between water contamination and the presence of Tamoxifen in the Rider's sample.

113. The Tribunal has already held that, following review of the first two conditions for his defence, the Rider's argument must be overall dismissed. Still, even if one were to accept that the Rider had consumed ***[Water B]*** mineral water as alleged and that the specific ***[Water B]*** bottles that he used in Belgium contained water contaminated with Tamoxifen, the Rider would be unable to establish by a balance of probability that this was the reason for the Adverse Analytical Finding.

114. The Single Judge is of the opinion that the French Study can have evidentiary value only as regard the presence of Tamoxifen in ***[Water B]*** bottles tested in 2013. It is published in a consumer's magazine with the objective of informing its audience that some mineral waters contain traces of, *inter alia*, medication. For this purpose, as held above, the French Study is credible and meets the required standard of proof. When it comes to the accuracy of its calculations, however, such as the quantification of Tamoxifen in ***[Water B]*** bottles, the French Study is going beyond its objectives and cannot be held to the standards of a scientific publication or, for the sake of the

present decision, to the standard of proof required. In the absence of the appropriate guarantees for scientific articles of this type (sampling procedures, analysis methodology and instruments, protocols of evaluation, peer-reviewing etc), which both parties agree that are not included in the French Study, the Single Judge cannot accept that the French Study's calculations are a reliable, even by a balance of probability, point of departure. This means that the resulting expert opinions presented to the Tribunal by a group of respectable scientists on both sides are crucially undermined: they are based on an unreliable assumption.

115. The causal link between water contamination and the Rider's positive sample is further weakened by the fact that, as admitted by the Rider, the second assumption used by the experts is wrong: he only used 1 liter of ***[Water B]*** every 2-3 days, as opposed to "3-5 liters daily" (this would be the amount of ***[Water A]*** consumed).

116. For the reasons set out above, the Single Judge concludes that the Rider failed to show by a balance of probability how Tamoxifen entered his body. Therefore, he is not entitled to an elimination (or reduction, since No Significant Fault or Negligence equally requires the Rider to prove how Tamoxifen entered his body) of the otherwise applicable sanction.

D. Consequences

i. Disqualification

117. Article 10.8 of the UCI ADR provides as follows:

> *"Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation*
>
> *In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider obtained from the date a positive Sample was collected (whether In-Competition or Outof-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes."* (emphasis added)

118. The doping control in the case at hand, which gave rise to the results management process and provided the evidence supporting the ADRV, was out-of-competition.

119. UCI requests that all results of the Rider obtained from the date the positive sample was collected, i.e. 3 March 2016, be disqualified.

120. Considering that the Rider's defense has been rejected; that the Rider competed only for a short period after the doping control in question, following which he retired; and that there are no reasons of fairness that would require otherwise, the Single Judge finds that the Athlete's results from 3 March 2016 onwards shall be disqualified.

ii. Period of Ineligibility

121. Article 10.2 of the UCI ADR provides as follows :

> *"The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:*

10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and the UCI can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years."

122. The Single Judge notes that Tamoxifen is a specified substance listed under class S.4 "Hormone and Metabolic Modulators" of the 2016 and 2017 Prohibited List which is maintained by the World Anti-Doping Agency (WADA) and adopted by the UCI. The Single Judge further underlines that the UCI does not submit that the anti-doping rule violation was intentional in the matter at hand (para. 128 of the UCI petition).

123. Therefore, a period of ineligibility of 2 years shall be imposed on the Rider.

iii. Commencement of Period of Ineligibility

124. Regarding the commencement of said period of ineligibility, article 10.11 of the UCI ADR provides in relevant part as follows:

"Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

10.11.1 Delays Not Attributable to the Rider or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Rider or other Person, the UCI may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified."

125. The Single Judge takes note of UCI's submission that the period of ineligibility may not start earlier than the date on which the Acceptance of Consequences has been proposed, i.e. 28 November 2016.

126. Given the delays in the results management process and the fact that the Rider did not serve any period of provisional suspension nor admitted the violation in a timely manner, the Single Judge holds that the period of ineligibility shall commence on 28 November 2016.

iv. Mandatory Fine and Costs

127. Article 10.10 of the UCI ADR provides as follows:

"In addition to the Consequences provided for in Article 10.1-10.9, violation under these Anti-Doping Rules shall be sanctioned with a fine as follows.

10.10.1.1 A fine shall be imposed in case a Rider or other Person exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3.

[…]

10.10.2 Liability for Costs of the Procedures

If the Rider or other Person is found to have committed an anti-doping rule violation, he or she shall bear, unless the UCI Anti-Doping Tribunal determines otherwise:

1. *The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*
2. *The cost of the result management by the UCI; the amount of this cost shall be CHF 2'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
3. *The cost of the B Sample analysis, where applicable.*
4. *The costs incurred for Out-of-Competition Testing; the amount of this cost shall be CHF 1'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
5. *The cost for the A and/or B Sample laboratory documentation package where requested by the Rider.*
6. *The cost for the documentation package of Samples analyzed for the Biological Passport, where applicable.*

The National Federation of the Rider or other Person shall be jointly and severally liable for its payment to the UCI." (emphasis added)

128. In the present matter, the Single Judge notes that UCI did not submit that the Rider's ADRV was intentional. As a result, the Single Judge holds that no fine is to be imposed on the Rider.

129. As provided for in article 10.10.2 UCI ADR, the Single Judge finds that the Rider shall bear the following costs:

- the costs of the results management incurred by the UCI (CHF 2'500);
- the costs of the B-sample analysis (cf. UCI Exhibit 62); and
- the costs of the two documentation packages (cf. UCI Exhibit 62).

VI. COSTS OF THE PROCEEDINGS

130. In application of article 28 paragraph 1 ADT-Rules, the Tribunal has to determine the costs of the proceedings as provided under Article 10.10.2 paragraph 1 ADR.

131. In the absence of an UCI request to be awarded a contribution for its expenses, the Tribunal decides, based on article 28 paragraph 2 ADT-Rules that the present Judgment is rendered without costs.

132. Therefore, the Single Judge decides that each party shall bear its own costs in these proceedings.

VII. RULING

133. In light of the above, the Tribunal decides as follows:

1. Mr. Ralf Matzka has committed an Anti-Doping Rule Violation (article 2.1.1 UCI ADR).

2. **Mr. Ralf Matzka is suspended for a period of ineligibility of two (2) years commencing on 28 November 2016.**

3. **The results obtained by Mr. Ralf Matzka in the period after the date of his first sample collection, i.e. after 3 March 2016 are disqualified, if any.**

4. **Mr. Ralf Matzka is condemned to pay the costs of the results management by the UCI (CHF 2'500), the costs of the B-sample analysis and the costs of the two documentation packages (CHF 1'754). All other and / or further reaching requests are dismissed.**

5. **This judgment is final and will be notified to:**

   a) **Mr. Ralf Matzka;**

   b) **German National Anti-Doping Organisation;**

   c) **UCI; and**

   d) **WADA.**

134. This Judgment may be appealed before the CAS pursuant to article 30 paragraph 2 ADT-Rules and Article 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in article 13.2.5 UCI ADR.

_____

Andreas Zagklis
Single Judge