**Arbitration CAS 2017/A/5022 Fédération Internationale de Football Association (FIFA) v. Confederação Brasileira de Futebol (CBF) & Cristiano Lopes, award of 28 September 2017**

Panel: Mr Efraim Barak (Israel), President; Prof. Michael Geistlinger (Austria); Mr Attila Berzeviczi (Hungary)

*Football*
*Doping (19-norandrosterone; 19-noretiocholanolone; stanozolol)*
*Metabolites of a prohibited substance*
*Intent*
*Relation between intent and the defence of no fault/negligence or no significant fault/negligence*
*Admission of the anti-doping rule violation*

1. **The mere fact that metabolites of prohibited substances were found in an athlete's sample is sufficient to conclude that an anti-doping rule violation was committed.**

2. **The definition of "intent" in Article 19.3 of the FIFA Anti-Doping Regulations (ADR) incorporates so-called "indirect intent" or *"dolus eventualis"*. It follows that in order for the anti-doping rule violation to be committed intentionally, the player i) must have known that there was a significant risk that his/her conduct might constitute or result in an anti-doping rule violation; and ii) manifestly disregarded that risk. Notwithstanding the fact that establishing how the substance entered the athlete's system is no formal prerequisite in the FIFA ADR, although theoretically, looking at the full spectrum of possibilities and circumstances, an athlete may establish the lack of intent without proving how the substance entered his body, practically it is highly unlikely that an athlete would be able to meet the burden to prove the absence of intent without establishing how the substance entered his body.**

3. **If an athlete has failed to establish that the anti-doping rule violation was committed unintentionally, it is not necessary to assess whether he/she may have had "No Fault or Negligence" or "No Significant Fault or Negligence" in committing the anti-doping rule violation, as the threshold of establishing that an anti-doping rule violation was not committed intentionally is lower than proving that an athlete had "No (Significant) Fault or Negligence" in committing an anti-doping rule violation. This for example follows from the fact that proof as to how the prohibited substance entered the athlete's system is a mandatory prerequisite in order to benefit from the fault-related deductions, but is not strictly required in order to prove the absence of intent. Indeed, the conclusion that a violation was committed intentionally excludes the possibility to eliminate the period of ineligibility based on fault-related grounds.**

4. **As provided for by Article 23.2 and 23.3 FIFA ADR, in case a player admits an anti-doping rule violation before having received notice of a sample collection this may lead**

**to reduction of the period of ineligibility. However, in case a player admits an anti-doping rule violation upon being confronted with the anti-doping rule violation, this may only lead to a reduction of the period of ineligibility upon the approval and at the discretion of both WADA and FIFA. In the absence of any approval from FIFA and WADA in this respect, it is not possible to reduce the period of ineligibility on this basis.**

## I. PARTIES

1. The Fédération Internationale de Football Association (the "Appellant" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over continental federations, national associations, clubs, officials and football players worldwide.

2. The Confederação Brasileira de Futebol (the "First Respondent" or the "CBF") is the governing body of football at domestic level in Brazil. The CBF has its registered office in Rio de Janeiro, Brazil, and is affiliated to FIFA.

3. Mr Cristiano Lopes (the "Second Respondent" or the "Player") is a professional football player of Brazilian nationality, registered at the relevant time with the Brazilian football club Oeste FC, participating in the Brazilian Series A.

## II. FACTUAL BACKGROUND

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

### A. Background Facts

5. On 30 January 2016, after the match between Oeste FC and A.A. Ponte Preta, the Player was submitted to an in-competition doping control on urine.

6. The A-sample with the sample no. 3922719 provided by the Player was analysed by the WADA-accredited UCLA Olympic Analytical Laboratory in Los Angeles, United States of America. The results of the analysis revealed the presence of 19-norandrosterone, 19-noretiocholanolone (both metabolites of nandrolone)[1] and stanozolol metabolites (3'hydroxystanozolol, 16ß-hydroxystanozolol, and 4ß-hydroxystanozolol). 19-

[1] The fact that 19-norandrosterone and 19-noretiocholanolone are metabolites of nandrolone is addressed in more detail in para. 92-93 below.

norandrosterone and 19-noretiocholanolone are metabolites specifically listed under sections S1.1.a and S1.1.b of the 2016 Prohibited List. Neither of the metabolites concerned specified substances.

7. On 22 March 2016, the results of the analysis were submitted to WADA, the CBF and FIFA.

8. On 1 April 2016, the B-sample was analysed in the same laboratory, which confirmed the adverse analytical finding of the A-sample[2].

9. On 5 April 2016, the Player was provisionally suspended for 30 days.

## B. Proceedings before the 3rd Disciplinary Committee of the STJD São Paulo

10. On 18 April 2016, the Player filed a written submission wherein he *"confessed having ingested the prohibited substances through a sports supplement known as Lipo 6 Black"* and that he had ingested it during his holidays with the intention of reducing weight. According to the Player, a friend had obtained the product from Paraguay.

11. On 16 May 2016, a hearing was held, during which the Player confirmed his written submissions. The Player testified that *"he was on vacation and was at a gym academy and was going to a wedding on 17th December and commented with someone that he had put on weight and that the suit he planned to wear at the wedding was too tight, whereas this person who works at the academy in the town of Navirai, where the accused lives, suggested he take a medicament to lose weight"*. The Player maintained to have used the pills of "Lipo 6 Black" from approximately 4 December 2015 to 4 January 2016 and that *"he used the medicament to lose weight thinking of the wedding, not football, moreso because at the time the athlete was in his last month of a loan contract with Oeste, this only being renewed on 4 or 5 January 2016, and that, according to the deponent, after he was no longer using the supplement"*. The Player also argued that *"he did not use the supplement intending to have sports benefit and "swears from his heart" that he was only set on losing weight for the wedding and that he had no idea that the medicament could cause problems to his career"*. Upon the request of the Player's lawyer, the open bottle of "Lipo 6 Black, containing 35 capsules, was admitted into evidence.

12. On 13 June 2016[3], the 3rd Disciplinary Commission of the Superior Court of Sports Justice (the "STJD") São Paulo issued its decision (the "First Instance Decision"), translated into English, with the following operative part:

> *"That said and also what is included in the case files, the athlete did not partake in any significant fault capable of proving that the anti-doping violation was intentional; thus, at this first stage I shall apply a base suspension-term of two, and not four, years (Article 10.2.2).*

[2] Although FIFA argued that the Player requested the opening of his B-sample, the Panel observes that there is no evidence on file suggesting that the Player made such request. To the contrary, based on the Player's letter dated 18 April 2016 it appears that he was only notified of his anti-doping rule violation on 5 April 2016, *i.e.* at a moment that the B-sample had already been analysed.

[3] Although the original version of the First Instance Decision refers to 13 June 2015, the Panel considers this to be an obvious typo as the decision was rendered on 13 June 2016.

*Furthermore, I acknowledge the possibility of applying a reduction related to the prompt confession of a violation of an anti-doping norm, after having faced a violation punishable under the terms of article 10.2.1 or article 10.3.1, as provided for in article 10.6.3.*

*The athlete, initially subject to a potential four-year sentence, promptly admitted to violating an anti-doping norm. Thus, he is entitled to benefit from a reduction in the suspension term, which I determine to be 3/4$^{th}$ of the base sentence of two years, in other words, one year and six months, in such a way that the sentence is reduced to 6 months' suspension, in light of the intermediate degree of fault.*

*Lastly, considering the preventive suspension term of 30 days already carried out by the athlete, I hereby apply a detraction (article 10.11.3.1 of the CMA, in conjunction with article 105 of the CBJD).*

*I therefore vote for sentencing athlete Cristiano Lopes of Oeste Futebol Clube to a final suspension-term of five months for violation of articles 2, 2.1, 2.1.1 and under articles 10.2; 10.2.2; 10.2.3; 10.6; 10.6.3 and 10.11.3.1, all of them from the World Anti-Doping Code, in conjunction with article 6, 1, 2 and 3; 7, 1 and 2 of the FIFA Anti-Doping Regulations.*

*[…]".*

## C. Proceedings before the Full Disciplinary Commission of the STJD São Paulo

13. Both the Player and the Brazilian Anti-Doping Authority (the *"Autoridade Brasileira de Controle de Dopagem"* – the "ABCD") lodged an appeal against the First Instance Decision.

14. On 26 September 2016, the Full Disciplinary Commission of the STJD São Paulo issued its decision (the "Second Instance Decision"), imposing a two-year period of ineligibility on the Player[4].

## D. Proceedings before the Full Court of the STJD

15. Both the Player and the ABCD lodged an appeal against the Second Instance Decision.

16. On 17 June 2016, the UCLA Olympic Analytical Laboratory in Los Angeles, United States of America, had reported the results of the analysis of the "Lipo 6 Black" capsules that were provided by the Player, concluding that *"[t]he sample is negative for nandrolone, 19-norandrost-4-ene-3,17-dione, 19-norandrost-5-ene-3,17-dione, 19-norandrost-4-ene-3ß,17ß-diol, 19-norandrost-5-ene-3ß,17ß-diol and their esters".*

17. On 11 November 2016[5], the Full Court of the STJD issued its decision (the "Third Instance Decision" or the "Appealed Decision"), with the following operative part:

[4] The Second Instance Decision, nor any other evidence in respect of the proceedings before the Full Disciplinary Commission of the STJD São Paulo was submitted into evidence in the present proceedings before CAS.
[5] FIFA submits that the Appealed Decision was issued on 11 November 2016. The first page of the English translation of the Appealed Decision indicates that a trial was held on 10 November 2016. The final page of the Appealed Decision in Portuguese as well as the translation into English however indicate that the Appealed Decision was issued on 8

*"In view of the foregoing, I dismiss both appeals and uphold the contested decision as regards the conviction of the Cristiano athlete to be suspended for a period of two years, albeit on other grounds, as a result of unintentional ingestion of prohibited substances.*

*The ineligibility suspension shall be counted from the date of the preventive suspension – April 5, 2016".*

18. The grounds of the Appealed Decision, determine, *inter alia*, as follows:

In respect of the ABCD's appeal:

*"As for ABCD's claim that the prohibited substances found in the athlete's sample were not found in the Lipo 6 Black supplement, and that no reducer should be used due to the athlete's immediate confession of the infringement, this should not prosper.*

*In the first place, as noted in pg 118, the ABCD did not even appear at the first hearing where it could have submitted the requirements of a joint and accurate analysis of the substances present in the supplement confessedly used by the athlete.*

*Having failed to appear at the proper time, the request made by the Appellant ABCD was precluded. In addition, in view of art. 150 of the CBJD, the production of evidence at the appeal stage is not allowed.*

*Notwithstanding, on analyzing the arguments exposed by the Appellant, one notes that the document referred to by the ABCD does not set the Player's confession aside, since stating that the laboratorial analysis carried out with supplement Lipo 6 Black did not find the prohibited substances present in the athlete's sample is incorrect.*

*The result of the test in referred-to technical report held with the player's sample was: 19-norandrosterine, 19-noretiocholanolone and the metabolites of Stanozolol 3'-hydroxystanozolol, 16 ß-hydroxystanozolol and 4 ß-hydroxystanozolol.*

*Thus, the report is not enough to set aside the existence of those components in the Lipo 6 Black supplement analyzed, because it does not* ***specifically*** *set aside the existence of the substances presented in the player's anti-doping test.*

*Lastly, according to the fundamentals that will be presented in the next topic, the understanding of these reports is that Article 10.6.3 of the WADA Code (Article 23, Paragraph 3 of the FIFA Anti-Doping Regulations) should not apply to cases in which the player is sanctioned to the penalties provided for in art. 10.2.2 of the WADA Code (Article 19, § 2 of the FIFA Anti-Doping Regulations), which it considers to be perfectly applicable".*

In respect of the Player's appeal:

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November 2016. Notwithstanding this confusion, the exact date of notification is not important for the admissibility of the present appeal because FIFA's deadline to appeal only commenced on the date it was provided with the fully translated case file (*i.e.* on 13 February 2017).

*"As specified in art. 10.2.3 of the WADA Code and Article 19.3 of the FIFA Anti-Doping Regulations, the term "intentional" is used to identify players who cheat. In this sense, the term assumes that the player has practiced this conduct knowing that it is an anti-doping rule violation or that there is a significant risk of doing so and, even so, ignored that risk to be better than his opponents.*

*For this reason, I apply the basic suspension penalty for two years and not for four years, pursuant to article 10.2.2 of the WADA Code and Article 13.2, of the FIFA Anti-Doping Regulations.*

*As to the possibility of reducing the penalty due to the Player's immediate confession of the violation, he has no luck in this respect.*

*The basic penalty of two years provided in art. 10.2.2 of the WADA Code (art. 19.1 of the FIFA Anti-Doping Regulations), does not permit a penalty reduction for a player's immediate confession when confronted by an Anti-Doping Organization.*

*The reason for this is that art. 10.6.3 of the WADA Code admits expressly this possibility, but only for a violation according to articles 10.2.1 or 10.3.1 of the same diploma, which is not this case, since the player is clearly under the sanction provided in art. 10.2.2.*

*Art. 23.3 of the FIFA Anti-Doping Regulations foresee the same limitation, permitting a penalty reduction only if the player is being accused of violation sanctionable in art. 19.1 (Ineligibility for presence, use or attempted use, or Possession of a Prohibited Substance or Prohibited Method), or art. 20.1 (Ineligibility for other anti-doping rule violations).*

*Both devices allow for a reduction of the ineligibility period up to a minimum of two years, which is already achieved by the application of the sanction provided for in Articles 10.2.2 and 23.3 of the WADA Code and the FIFA Anti-Doping Regulations, respectively. Thus, there is no way to add the requested attenuation, since the ineligibility is already being granted for the minimum period established in the aforementioned diplomas".*

19. On 13 December 2016, the CBF communicated the Appealed Decision to FIFA.

20. On 22 December 2016, FIFA asked the CBF to send the full case file.

21. On 13 February 2017, FIFA received the full case file from the CBF in Portuguese and in an English translation.

## III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 6 March 2017, FIFA filed a Statement of Appeal, pursuant to Article R48 of the CAS Code of Sport-related Arbitration (edition 2017) (the "CAS Code") with the Court of Arbitration for Sport ("CAS"). FIFA nominated Prof. Dr. Michael Geistlinger, Professor in Salzburg, Austria, as arbitrator.

23. On 20 March 2017, FIFA filed an Appeal Brief, pursuant to Article R51 of the CAS Code, submitting the following requests for relief:

*"1) The appeal of FIFA is admissible.*

*2) The decision rendered by the "Full Court of the Superior Court of Sports Justice – STJD" on 10 November 2016 is set aside.*

*3) Mr Cristiano Lopes is sanctioned with a four-year period of ineligibility starting the date on which the CAS award enters into force. Any period of ineligibility already served by the Player shall be credited against the total period of ineligibility imposed.*

*4) The costs of the proceedings shall be borne by the Respondents.*

*5) FIFA shall be reimbursed its legal fees and other expenses related to the present procedure by the 1st Respondent".*

24. Also on 20 March 2017, the CBF requested to be excluded from the position of respondent in this arbitration as it maintained that FIFA submitted no relief against it. The CBF further submitted that, in case the exclusion would not be granted, it would adopt a passive stance.

25. On 21 March 2017, the CAS Court Office acknowledged receipt of FIFA's Appeal Brief and granted the CBF and the Player a deadline of 20 days to file their Answer.

26. On 23 March 2017, upon being invited to express its view in this respect, FIFA informed the CAS Court Office that it maintained the CBF as a respondent in the proceedings.

27. Also on 23 March 2017, the CBF requested the time limit to file its Answer be fixed after the payment by FIFA of its share of the advance of costs, which request was granted by the CAS Court Office.

28. On 18 April 2017, the CAS Court Office informed the parties that the Player's deadline to file his Answer expired on 12 April 2017, but that no Answer or any other communication was received. The parties were further informed that, in accordance with Article R55 of the CAS Code, the Panel, once constituted, could nevertheless proceed with the arbitration and deliver an award.

29. On 27 April 2017, upon receipt of payment of its share of the advance of costs by FIFA, the CBF was granted a deadline of 20 days to submit its Answer.

30. On 3 May 2017, counsel for the Player informed the CAS Court Office that he was appointed as the Player's representative on 26 April 2017 and received a signed power-of-attorney on 2 May 2017. With reference to the deadline of 20 days granted to the CBF on 27 April 2017, the Player requested to be granted a new deadline to defend his right to be heard.

31. Also on 3 May 2017, the CAS Court Office granted FIFA a deadline to state whether it agreed with the Player's request and informed the parties that in the absence of an answer, or in case of objection, no Answer shall be filed by the Player.

32. On 4 May 2017, upon being invited by the CAS Court Office to express its position in this respect, FIFA informed the CAS Court Office that it did not agree to the Player being granted a new deadline to file an Answer.

33. On 5 May 2017, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeal Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

- Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, as President;
- Prof. Dr. Michael Geistlinger, Professor in Salzburg, Austria; and
- Mr Attila Berzeviczi, Attorney-at-Law in Budapest, Hungary, as arbitrators.

34. On 17 May 2017, the CBF filed its Answer, in accordance with Article R55 of the CAS Code. The CBF submitted the following requests for relief:

> *"(1) To be excluded as a respondent from the proceedings CAS 2017/A/5022 FIFA v. Confederaçã Brasileira de Futebol (CBF) & Mr. Cristiano Lopes, based on its lack of standing to be sued; and*
>
> *(2) CAS not to impose any amount in connection with the arbitration costs of this case on CBF. Consequently, the allocation of the arbitration costs shall be distributed only and exclusively between FIFA (Appellant) and Mr. Cristiano Lopes (Respondent)".*

35. On 18 and 24 May 2017 respectively, upon being invited to express their opinions in this respect, the Player requested to have a hearing, FIFA did not deem it necessary to hold a hearing, and the CBF did not oppose the holding of a hearing but indicated that, in light of its passive stance, it would not attend the hearing if the Panel would decide to hold one. FIFA also filed unsolicited comments in respect of the CBF's Answer.

36. On 24 May 2017, the Player requested FIFA's submission of 24 May 2017 to be entirely disregarded as counsel for the Player was only appointed after the deadline to file an Answer to the Appeal Brief, but was nevertheless denied the right to provide additional submissions. Despite this, FIFA provided further written submissions, ignoring the instructions of the CAS Court Office in its letter dated 18 May 2017 that the parties, unless the parties would agree otherwise or the President of the Panel would order otherwise on the basis of exceptional circumstances, would not be authorised to supplement their argument after the submission of the Appeal Brief and the Answer.

37. On 8 June 2017, the CAS Court Office informed the parties on behalf of the Panel that, as a matter of CAS practice, before deciding on the CBF's request to be excluded from the proceedings the other parties would have to be asked to comment on such request. The Panel therefore decided not to ignore FIFA's comments, but invited the Player to file his comments on the CBF's request. The parties were also informed that the Panel had decided to hold a hearing.

38. On 14 June 2017, the Player informed the CAS Court Office that, although he would accept any decision of the Panel in this respect, he was of the opinion that the CBF, in accordance

with the Brazilian national regulations, is not the body against which FIFA should have appealed, as this should have been the STJD.

39. On 26, 27 and 29 June 2017 respectively, FIFA, the Player and the CBF returned duly signed copies of the Order of Procedure to the CAS Court Office.

40. On 24 July 2017, a hearing was held in Lausanne, Switzerland. At the outset of the hearing the parties confirmed not to have any objection as to the constitution and composition of the arbitral tribunal.

41. In addition to the Panel, Mr William Sternheimer, Deputy Secretary General to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

a) For FIFA:

1) Mr Volker Hesse, Counsel;
2) Mr Alexis Weber, FIFA Head of Medical & Anti-Doping

b) The CBF was not represented during the hearing.

c) For the Player:

1) Mr Enric Ripoll González, Counsel, in person;
2) The Player, by video-conference;
3) Ms Michele Brandão Boni, the Player's wife, by video-conference;
4) Mr Rodrigo Grumach, Interpreter.

42. The Player had not previously called his wife as a witness, but announced that she would be present at the hearing. FIFA objected to hearing Ms Brandão Boni as she was not previously announced as a witness. The Player argued that he was prevented from announcing her because FIFA, by opposing his request for an extension to submit his Answer, prevented him the opportunity to announce her.

43. The Panel finds that the Player could have announced his wife as a witness before, even after the time limit of filing the Answer, but after hearing a short summary of her expected testimony (where it was announced that she would not contest any scientific facts, that she would testify that she recommended the prohibited substance to the Player and that she would explain what happened in December 2014), the Panel decided that exceptional circumstances were present in that the Player only retained legal counsel after the deadline to file his Answer had already expired and because the expected testimony, as already revealed to the Panel, could be very important as it would confirm that the Player knowingly ingested a prohibited substance. The Panel therefore allowed Ms Brandão Boni to testify.

44. During the hearing, the Player presented a copy of his employment contract in order to prove that the Player only earned a salary of Brazilian Real ("BRL") 5,000 a month.

45. FIFA objected to this document being admitted into evidence.

46. The Panel decided not to admit the document into evidence, as it was filed late and because the Player would probably be able to testify that his salary at the time was indeed BRL 5,000.

47. When the Player was about to be heard through video-conference, it became clear that Mr Rodrigo Grumach, the Player's Brazilian lawyer, would act as interpreter via video-conference (at another location as the Player). The Player maintained that he did not have the required financial means to pay for an interpreter.

48. FIFA objected against the Player's Brazilian lawyer acting as interpreter, out of fear that the translation would not be accurate as it considered that Mr Grumach was not independent from the Player.

49. After having heard both parties' views and balancing the risk of an incorrect translation and the Player's right to be heard, after questioning Mr Grumach about his relations with the Player and upon being satisfied that Mr Grumach did not have any involvement in the matter at hand as a lawyer and that he only acts as the Player's lawyer in an unrelated labour law matter and that he would not be remunerated by the Player for his services as an interpreter in the matter at hand, the Panel decided to allow Mr Grumach to act as interpreter. In its decision, the Panel took into account that i) the President of the Panel sufficiently understands the Portuguese language in a level that would allow him to understand the testimony of the Player in Portuguese and at the same time be satisfied that the translation is accurate; ii) that the hearing is recorded so that it could be checked retrospectively whether the translation was accurate and correct; and iii) that Mr Grumach would confirm to translate accurately and that he would be warned, as required also by the CAS Code, of the fact that he could be subjected to the sanctions of perjury under Swiss law if this would turn out not to be the case.

50. The Panel heard evidence from the Player and Ms Michele Brandão Boni, the Player's wife. As witness, the Player's wife was invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The parties and the Panel had the opportunity to examine and cross-examine the Player and his wife.

51. Although FIFA initially called Prof. Martial Saugy, Director Center of Research & Expertise in Anti-doping Sciences, Institute of Sports Sciences of the Lausanne University, as an expert witness, FIFA finally renounced such request.

52. The parties were afforded full opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

53. Before the hearing was concluded, FIFA expressly stated that it did not have any objection with the procedure adopted by the Panel and that its right to be heard had been respected. The Player indicated that he had certain reservations. He argued that a default was created by not allowing him to present evidence, but that this default was almost cured during the hearing, however still, he stated that he maintained certain reservations in this respect, but without any more precisions.

54. On 26 July 2017, further to a request from the Panel at the end of the hearing, FIFA filed a breakdown of the costs incurred.

55. On 1 August 2017, further to a request from the Panel, the CBF filed its comments in respect of FIFA's breakdown submitted on 26 July 2017.

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

## IV. SUBMISSIONS OF THE PARTIES

57. The submissions of FIFA, in essence, may be summarised as follows:

- FIFA maintains that the Player admitted to having committed an anti-doping rule violation and did not contest the sample collection procedure nor the analysis performed by the UCLA Olympic Analytical Laboratory in Los Angeles, United States of America. The anti-doping rule violation in the sense of article 6 FIFA Anti-Doping Regulations ("FIFA ADR") is therefore established.

- With reference to CAS jurisprudence, FIFA submits that the Player carries the burden of proof to establish that the anti-doping rule violation was not intentional and that the Player has to establish how the prohibited substance entered his body if he wants to prove that his anti-doping rule violation was not intentional.

- In this respect, FIFA argues that the Player's submission on the ingestion of prohibited substances with "Lipo 6 Black" is pure speculation and not supported by any proof. The analysis of the "Lipo 6 Black" capsules performed by the UCLA Olympic Analytical Laboratory contradicts the Player's assertions regarding the source of the prohibited substances. In any event, FIFA finds it more likely that the Player used the prohibited substances as doping substances to enhance his performance.

- Even if the Player could establish that the prohibited substances entered his body by the way of "Lipo 6 Black", *quod non*, FIFA maintains that the Player could not establish that his anti-doping rule violation was not intentional. The Player argument that he took "Lipo 6 Black" to reduce his weight is not credible. FIFA finds that the Player's degree of fault was high because the product was recommended by "a friend" who works in a fitness centre, while it is well-known that fitness centres are places where anabolic steroids are traded, because the product had to be imported from Paraguay as it was prohibited in Brazil, because he did not ask his team doctor about the ingestion of the supplement, because he failed to do any research about the product on the internet, while a simple search would have shown that the product "Lipo 6 Black" is associated with doping cases, and because the official label of the product explicitly mentions that *"this product contains ingredients that may be banned by sports organisations"*.

- Subsidiarily, FIFA argues that there is no room for the application of "no significant fault or negligence", because i) the Player did not establish how the prohibited substance entered into his body; ii) "Lipo 6 Black" cannot be considered as a "Contaminated Substance" in the sense of the definition set out in the FIFA ADR as the product label indicates that it may contain prohibited substances; and iii) the Player did not take the required precautions and was in fact reckless in taking the product.

- FIFA furthermore argues that the standard four-year period of ineligibility cannot be reduced on the basis of a prompt admission of the anti-doping rule violation by the Player, because FIFA never approved the application of such reduction, as is required under the FIFA ADR. In any event, FIFA maintains that there are no elements in the procedure at national level that would establish that the Player ever promptly admitted an anti-doping rule violation as he even immediately asked for the opening of the B-sample.

- Finally, FIFA submits that the period of ineligibility shall start with the communication of the award of the present procedure, with a credit given of 30 days for the provisional suspension already served. There were no substantial delays in the hearing process that would justify an earlier starting date of the period of ineligibility.

58. The submissions of the CBF, in essence, may be summarised as follows:

- With reference to CAS jurisprudence, the CBF argues that it does not have standing to be sued as it is not personally obliged by the dispute at stake and because nothing is sought against it. The CBF was not a party to the disciplinary proceedings before the STJD.

- The CBF further maintains that the arbitration costs of this case shall not be imposed on it, because, in accordance with Article 52 of the Law 9.615/98 (the "Pelé Law"), the Brazilian Sports Justice tribunals are independent and autonomous from the sports administration entities. If CAS would oblige the CBF to bear the costs of the present arbitration proceedings, CAS would be indirectly violating the Pelé Law. The CBF also refers to CAS jurisprudence in this respect.

59. For the reasons explained above, the Player did not file any written submission within the prescribed deadline.

## V. JURISDICTION

60. The Panel observes that Article R47 of the CAS Code provides as follows:

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

61. Article 58(5) of the FIFA Statutes (2016 edition) determines the following:

> *"FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by the confederations, member associations or leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations".*

62. The Player is a "national-level player" pursuant to the definition contained in the FIFA ADR.

63. Article 75(3)[6] of the FIFA ADR (2015 edition) determines as follows:

> *"*[…] *For cases under art. 75 par. 2 (Appeals involving other Players or other Persons), WADA, the International Olympic Committee, the International Paralympic Committee, and FIFA shall also have the right to appeal to CAS with respect to the decision of the national-level appeal body. Any party filing an appeal shall be entitled to assistance from CAS to obtain all relevant information from the Anti-Doping Organisation whose decision is being appealed and the information shall be provided if CAS so directs".*

64. The jurisdiction of CAS, which remained undisputed, is further confirmed by the Order of Procedure duly signed by the parties.

65. It follows that CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

66. Article R49 of the CAS Code determines the following:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

67. Article 80(1.1) of the FIFA ADR determines as follows:

> *"The time to file an appeal to CAS shall be 21 days from the date of receipt of the motivated decision in an official FIFA language by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed:*
>
> *a) Within 15 days from notice of the decision, such party/ies shall have the right to request a copy of the case file translated in an official FIFA language from the body that issued the decision;*
>
> *b) If such request is made within the 15-day period, the party making such request shall have 21 days from receipt of the file to file an appeal to CAS".*

[6] FIFA's reference to Article 75(1) of the FIFA ADR (2015 edition) is considered to be an obvious typographic mistake.

68. The Panel notes that FIFA received the Appealed Decision on 13 December 2016 from the CBF.

69. On 22 December 2017, and thus within the deadline of 15 days set out in article 80(1.1)(a) of the FIFA ADR, FIFA requested the CBF to send the case file in Portuguese and English.

70. On 13 February 2017, FIFA received the translated case file from the CBF.

71. On 6 March 2017, and thus within the deadline of 21 days set out in article 80(1.1)(b) of the FIFA ADR, FIFA filed its Statement of Appeal with CAS.

72. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

73. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

74. Article R58 of the CAS Code provides the following:

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

75. Article 57(2) of the FIFA Statutes determines as follows:

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

76. Article 80(3) FIFA ADR determines the following:

> *"Where FIFA appeals against a decision of in particular an Association, Anti-Doping Organisation or Confederation to CAS under this chapter, the applicable law for the proceeding shall be the FIFA regulations, in particular the FIFA Statutes, the FIFA Anti-Doping Regulations and the FIFA Disciplinary Code".*

77. Given the foregoing provisions, the Panel is satisfied that the present appeal arbitration proceedings shall be primarily adjudicated and decided on the basis of the various regulations of FIFA, in particular the FIFA ADR, and subsidiarily, on the basis of Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

## VIII. MERITS

### A. The Main Issues

78. The main issues to be resolved by the Panel are the following:

i. Does the CBF have standing to be sued?

ii. Did the Player commit an anti-doping rule violation?

iii. If so, should the sanction imposed on the Player in the Appealed Decision be upheld or be set aside and replaced by a different sanction?

iv. When shall the period of ineligibility start?

#### *i. Does the CBF have standing to be sued?*

79. The Panel observes that the issue of the CBF's standing to be sued, an analysis that also deals with the independence of the STJD *vis-à-vis* the CBF, was already dealt with by other CAS panels.

80. The Panel finds that the correct approach is reflected by the Sole Arbitrator in CAS 2014/A/3842, citing previous CAS awards:

> *"The Sole Arbitrator notes that a similar situation to this particular one was solved in cases CAS 2010/A/1370 & 1376 and CAS 2010/A/2307. As the Panels in such cases noted: "the Panel is of the view that (at least) for international purposes the decisions of the STJD, although independently reached, must be considered to be the decisions of the CBF. In other words, the CBF is to be considered responsible vis-à-vis FIFA (or other international sports bodies) for the decisions adopted by the STJD. This is exactly the same legal situation as we have in public international law, where States are internationally liable for judgments rendered by their courts, even if under their constitutional law the judiciary is wholly independent of the executive branch".*
>
> *In this regard, there is no doubt that the event where the doping control was carried out was organized by the CBF, and moreover, that the CBF controlled and directed the doping control. Indeed, even though the STJD may be "autonomous" from the CBF, the CBF entrusts its disciplinary powers to the STJD and the STJD is an integral part of the organizational structure of the CBF as set forth in CAS 2010/A/1370 & 1376. Nothing in the facts of this case or jurisprudence as a whole justifies the modification of such CAS precedent on this exact point. As such, the Sole Arbitrator determines that the CBF has standing to be sued"* (CAS 2014/A/3842, para. 48-49 of the abstract published on the CAS website).

81. Insofar as the CBF argues that it is not personally obliged by the disputed right at stake and that nothing is sought against it, the Panel finds that this argument must be dismissed, because, *inter alia*, and with reference to Article 83(2) of FIFA's ADR, FIFA submits that its entire costs

(in particular the legal fees of its external counsel, travel and accommodation expenses) are to be borne by the CBF.

82. As will be examined in more detail below, the Panel finds that FIFA's costs shall indeed be partially reimbursed by the CBF. Since this would not have been possible had FIFA failed to call the CBF as a respondent, the Panel finds that this is an additional reason to conclude that the CBF has standing to be sued in the matter at hand.

83. Consequently, the Panel finds that the CBF has standing to be sued.

### *ii. Did the Player commit an anti-doping rule violation?*

84. The Panel observes that Article 6(1) and (2) of the FIFA ADR determine the following:

> *"It is each Player's personal duty to ensure that no Prohibited Substance enters his body. Players 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 Player's part be demonstrated in order to establish an anti-doping rule violation under art. 6.*
>
> *Sufficient proof of an anti-doping rule violation under art. 6 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Player's "A" Sample where the Player waives analysis of the "B" Sample and the "B" Sample is not analysed; or where the Player's "B" Sample is analysed and the analysis of the Player's "B" Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Player's "A" Sample; or where the Player'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".*

85. Since the Player did not contest the sample collection procedure nor the analysis of the sample performed by the UCLA Olympic Analytical Laboratory in Los Angeles, United States of America, because the analysis of the A-sample revealed the presence of metabolites of prohibited substances, which adverse analytical finding was subsequently confirmed by the analysis of the B-sample, the Panel has no doubt that the Player violated article 6 FIFA ADR.

86. It remained undisputed between the parties that the mere fact that metabolites of prohibited substances were found in the Player's sample is sufficient to conclude that an anti-doping rule violation was committed.

87. Consequently, the Panel finds that the Player committed an anti-doping rule violation by infringing article 6 FIFA ADR.

### *iii. If so, should the sanction imposed on the Player in the Appealed Decision be upheld or be set aside and replaced by a different sanction?*

88. The Panel observes that the Full Court of the STJD decided to dismiss the appeals filed by the Player and the ABCD against the decision of the Full Disciplinary Commission of the STJD São Paulo to impose a two-year period of ineligibility on the Player.

89. Commencing with its own independent analysis of the case, the Panel observes that Article 19 FIFA ADR determines the following:

> *"The period of Ineligibility for a violation of arts 6 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample)* […] *shall be as follows, subject to potential elimination, reduction or suspension pursuant to arts 21 (Elimination of the Period of Ineligibility where there is No Fault or Negligence), 22 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence) or 23 (Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault):*
>
> 1. *The period of Ineligibility shall be four years where:*
>
> a) *the anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional;*
>
> b) *the anti-doping rule violation involves a Specified Substance and FIFA can establish that the anti-doping rule violation was intentional.*
>
> 2. *If art 19 par. 1 does not apply, the period of Ineligibility shall be two years.*
>
> *[…]".*

90. The Panel notes that the metabolites of two prohibited substances were found in the Player's sample: nandrolone and stanozolol. Although FIFA maintained during the hearing that the two relevant prohibited substances were stanozolol and norandrosterone, the Panel observes that 19-norandrosterone and 19-noretiocholanolone are metabolites of nandrolone and specifically listed in the Prohibited List.

91. Indeed the fact that 19-norandrosterone and 19-noretiocholanolone are metabolites of nandrolone is dealt with by scholars in a publicly available scientific article:

> *"Nandrolone (19-nortestosterone, 17β-hydroxyestr-4-en-3-one) was first synthesised in the 1950s.*
>
> *[…]*
>
> *The principal urinary metabolites formed following the administration of 19-nortestosterone (19-NT), were rapidly identified as 19-norandrosterone (19-NA; 3α-hydroxy-5α-androstan-17-one), 19-noretiocholanolone (19-NE; 3α-hydroxy-5β-androstan-17-one) and 19-norepiandrosterone (19-NEA; 3β-hydroxy-5α-androstan-17-one)"* (AYOTTE, Significance of 19-norandrosterone in athletes' urine samples, Br J Sports Med. 2006 Jul; 40 (Suppl 1): i25–i29).

92. Both nandrolone and stanozolol are no "Specified Substances" in the context of article 19(1)(a) and (b) FIFA ADR. As such, the period of ineligibility to be imposed on the Player is in principle four years, unless he can establish that the anti-doping rule violation was not intentional.

93. The burden of proof in establishing that the anti-doping rule violation was not committed intentionally thus lies with the Player. Should the Player fail to prove his lack of intent on a balance of probability, the period of ineligibility is given.

94. Article 19.3 FIFA ADR defines the term "intent" as used in Article 19.1 FIFA ADR as follows:

> *"As used in arts 19 (Ineligibility for presence, Use or attempted Use, or Possession of a Prohibited Substance or Prohibited Method) and 20 (Ineligibility for other anti-doping rule violations), the term "intentional" is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. […]".*

95. The Panel finds that this definition of "intent" incorporates so-called "indirect intent" or *"dolus eventualis"* and feels comforted in this respect by the reasoning of another CAS panel:

> *"This Panel holds that the term "intent" should be interpreted in a broad sense. Intent is established – of course – if the athlete knowingly ingests a prohibited substance. However, it suffices to qualify the athlete's behaviour as intentional, if the latter acts with indirect intent only, i.e. if the athlete's behaviour is primarily focused on one result, but in case a collateral result materializes, the latter would equally be accepted by the athlete. If – figuratively speaking – an athlete runs into a "minefield" ignoring all stop signs along his way, he may well have the primary intention of getting through the "minefield" unharmed. However, an athlete acting in such (reckless) manner somehow accepts that a certain result (i.e. adverse analytical finding) may materialize and therefore acts with (indirect) intent"* (CAS 2012/A/2822, para. 8.14 of the abstract published on the CAS website).

96. Following the definition of "intent" given in Article 19.3 FIFA ADR it follows that in order for the anti-doping rule violation to be committed intentionally, the Player i) must have known that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation; and ii) manifestly disregarded that risk.

97. Before turning to these prerequisites, the Panel observes that it has been debated in CAS jurisprudence whether an athlete is required to prove how the prohibited substance entered his body in order to prove the absence of intent. The Panel notes that such requirement is not contemplated for in Article 19.3 FIFA ADR, contrary to for example the definitions of "No Fault or Negligence" or "No Significant Fault or Negligence" in the FIFA ADR. Notwithstanding the conclusion that establishing how the substance entered his system is no formal prerequisite, the Panel deems that although theoretically, looking at the full spectrum of possibilities and circumstances, an athlete may establish the lack of intent without proving how the substance entered his body, practically it is highly unlikely that an athlete would be able to meet the burden to prove the absence of intent without establishing how the substance entered his body.

98. In the matter at hand, two theories of how the prohibited substances entered the Player's body have been advanced: i) in the proceedings before the domestic committees in Brazil the Player

argued that he had used the supplement "Lipo 6 Black"; and ii) in the present proceedings before CAS the Player decided to admit that he had ingested stanozolol once by way of an injection. Both the Player and his wife testified that the Player's wife had suggested to inject stanozolol after she had used it herself. The Player's wife testified that she administered the stanozolol to her husband by way of injection.

99. Oddly enough, despite the Player's testimony that he had ingested stanozolol by way of injection – which *prima facie* appears to exclude any argument of unintentional use from the side of the Player – FIFA objected to the admissibility of such argument on the very strict procedural ground that, since the Appeal Brief and Answer had already been filed, no new arguments and evidence could be advanced pursuant to Article R56 CAS Code.

100. Commencing with the Player's initial explanation for the presence of metabolites of nandrolone and stanozolol in his system, the Panel observes that during the proceedings before the 3rd Disciplinary Commission of the STJD São Paulo leading to the First Instance Decision, the Player handed in an open bottle of "Lipo 6 Black", containing 35 capsules.

101. On 17 June 2016, during the proceedings before the Full Court of the STJD leading to the Third Instance Decision, the UCLA Olympic Analytical Laboratory in Los Angeles, United States of America, reported the results of the analysis of the "Lipo 6 Black" capsules that were provided by the Player, concluding that *"[t]he sample is negative for nandrolone, 19-norandrost-4-ene-3,17-dione, 19-norandrost-5-ene-3,17-dione, 19-norandrost-4-ene-3ß,17ß-diol, 19-norandrost-5-ene-3ß,17ß-diol and their esters"*. It remains unclear to the Panel whether the analysis was also negative for metabolites of stanozolol. In any event, there is no proof on file that the results of the analysis were positive for stanozolol.

102. It remained undisputed between the parties that the "Lipo 6 Black" capsules handed in by the Player were negative for the metabolites of nandrolone found in the Player's sample dated 30 January 2016.

103. In the absence of such potentially corroborating evidence, the Panel notes that the Player's theory was only supported by his own words. However, the "Lipo 6 Black"'-theory was actually contradicted by the testimonies of the Player and his wife before the Panel, as both he and his wife stated freely and by their own will that the Player's wife had injected a shot of stanozolol to the Player and that this was the reason for the presence of metabolites of stanozolol in his bodily specimen.

104. Contrary to the view of FIFA, the Panel finds that such crucial statement made by the Player and corroborated by the testimony of his wife cannot be ignored and indeed constitutes an exceptional circumstance in the sense of Article R56 of the CAS Code. The Player's "injection"-theory is therefore admitted into evidence and FIFA was granted the opportunity to respond.

105. Having dismissed the "Lipo 6 Black"-theory, the Panel turns its attention to the Player's "injection"-theory.

106. The Panel considers the Player's testimony to be credible, not in the least because it was corroborated by the testimony of his wife and because it appeared a truthful explanation of how the prohibited substance entered his system.

107. Consequently, although the Panel is satisfied to accept that the metabolites of stanozolol entered the Player's system by means of an injection of stanozolol, this however leaves unexplained how the metabolites of nandrolone entered the Player's system.

108. Turning its attention to assessing whether the ingestion of stanozolol by injection occurred unintentionally, the Panel finds that this is clearly not the case and that, based on the testimony of the Player and his wife, a more detailed analysis is not required in order to reach a conclusion in respect of the intention of the Player.

109. Nevertheless, the Panel will refer also to the Player's argument that he used the stanozolol in order to lose weight and not in order to enhance his sporting performance. The Panel finds that this argument must be dismissed. Losing weight in an artificial way by injecting a prohibited substance, in principle clearly benefits also the Player's sporting performance, which indeed amounts to the collateral result referred to in CAS 2012/A/2822 (*"it suffices to qualify the athlete's behaviour as intentional, if the latter acts with indirect intent only, i.e. if the athlete's behaviour is primarily focused on one result, but in case a collateral result materializes, the latter would equally be accepted by the athlete"*).

110. The Panel finds that the proverbial *"running into a minefield while ignoring all stop signs"* as referred to in CAS 2012/A/2822 (*"If – figuratively speaking – an athlete runs into a "minefield" ignoring all stop signs along his way, he may well have the primary intention of getting through the "minefield" unharmed. However, an athlete acting in such (reckless) manner somehow accepts that a certain result (i.e. adverse analytical finding) may materialize and therefore acts with (indirect) intent"*) quite tellingly portrays the Player's behaviour in the matter at hand. The Panel therefore finds that the Player's reckless behaviour amounts, at the very least, to "indirect intent".

111. Moreover, in the absence of any evidence or argument being provided by the Player as to how the metabolites of nandrolone entered his system or that he did not commit the anti-doping rule violation unintentionally, the Panel finds that the Player failed to meet his burden to prove his lack of intent in respect of the metabolites of nandrolone.

112. The Panel therefore concludes that the Player failed to prove that the anti-doping rule violation was not intentional. As a consequence, the standard period of ineligibility to be imposed on the Player is four years, subject to a possible deduction on the basis of Article 21 (No Fault or Negligence), 22 (No Significant Fault or Negligence) or 23 (non-fault related deductions) of the FIFA ADR.

113. Since it is already concluded above that the Player failed to establish that the anti-doping rule violation was committed unintentionally, the Panel does not deem it necessary to assess whether the Player may have had "No Fault or Negligence" or "No Significant Fault or Negligence" in committing the anti-doping rule violation, as the threshold of establishing that an anti-doping rule violation was not committed intentionally is lower than proving that an

athlete had "No (Significant) Fault or Negligence" in committing an anti-doping rule violation. This for example follows from the fact that proof as to how the prohibited substance entered the Player's system is a mandatory prerequisite in order to benefit from the fault-related deductions contemplated in Article 21 and 22 FIFA ADR, but is not strictly required in order to prove the absence of intent. Indeed, the Panel finds that the conclusion that a violation was committed intentionally excludes the possibility to eliminate the period of ineligibility based on fault-related grounds.

114. The Panel feels comforted in this conclusion by the following legal doctrine:

> *"A basic assumption in this article is that the 2015 Code treats intentional and non-intentional as mutually exclusive categories of anti-doping rule violations. This premise, in and of itself, should not be overly controversial. However, we also suggest that violations committed with No (Significant) Fault or Negligence are categorically considered as non-intentional. Simply put, if a violation is intentional as understood in the 2015 Code, it should not also be considered as committed with No (Significant) Fault or Negligence, and vice versa"* (RIGOZZI/HAAS/WISNOSKY/VIRET, Breaking Down the process for determining a basic sanction under the 2015 World Anti-Doping Code, Int Sports Law J (2015), p. 10).

115. In any event, the Player failed to establish how the metabolites of nandrolone entered his system, which is a mandatory requirement for establishing "No Fault or Negligence" or "No Significant Fault or Negligence".

116. Finally, as to possible non-fault related reductions, the Panel observes that the Player does not argue that the application of Article 23 FIFA ADR should lead to a reduction or suspension of the period of ineligibility, nor does there appear to have been any "substantial assistance" from the side of the Player.

117. Article 23.2 and 23.3 FIFA ADR determine the following:

> *2. Admission of an anti-doping rule violation in the absence of other evidence*
>
> *Where a Player or other Person voluntarily admits to the FIFA Disciplinary Committee that he has committed an anti-doping rule violation before having received notice of a Sample collection which could establish an anti-doping rule violation (or, in the case of an anti-doping rule violation other than art. 6 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample), before receiving first notice of the admitted violation pursuant to section 3 of chapter IX (Results management)) and that admission is the only reliable evidence of the violation at the time of admission, the period of Ineligibility may be reduced, but not below one half of the period of Ineligibility otherwise applicable.*
>
> *3. Prompt admission of an anti-doping rule violation after being confronted with a violation sanctionable under art. 19 par. 1 (Ineligibility for presence, Use or attempted Use, or Possession of a Prohibited Substance or Prohibited Method) or art. 20 par. 1 (Ineligibility for other anti-doping rule violations).*

> *A Player or other Person potentially subject to a four-year sanction under art. 19 par. 1 or 20 par. 1 (for evading or refusing Sample collection or Tampering with Sample collection), by promptly admitting the asserted anti-doping rule violation after being confronted by FIFA, and also upon the approval and at the discretion of both WADA and FIFA, may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Player or other Person's degree of Fault.*

118. Although the Player argues that he admitted the anti-doping rule violation, the Panel finds that such argument cannot lead to a reduction of the standard period of ineligibility of four years.

119. As provided for by Article 23.2 and 23.3 FIFA ADR, in case a player admits an anti-doping rule violation before having received notice of a sample collection this may lead to reduction of the period of ineligibility. However, in case a player admits an anti-doping rule violation upon being confronted with the anti-doping rule violation, as is the case here, this may only lead to a reduction of the period of ineligibility *"upon the approval and at the discretion of both WADA and FIFA"*.

120. In the absence of any approval from FIFA and WADA in this respect, the Panel finds that it is not authorised to reduce the period of ineligibility on this basis.

121. In any event, the Panel notes that the Player's initial confession dated 18 April 2016 by which he maintained that the prohibited substances entered his system by means of "Lipo 6 Black" capsules, turned out to be incorrect. The Player furthermore omitted to inform the authorities of the fact that he administered stanozolol by means of an injection at the relevant time. The Panel does not consider the Player's explanation credible insofar as he argued that he simply forgot about the injection of stanozolol.

122. Under the above circumstances, the Panel finds that the Player should not benefit from any non-fault related deductions.

123. Consequently, the Panel finds that the Player did not have no (significant) fault or negligence in committing the anti-doping rule violation, nor shall the standard period of ineligibility of four years otherwise be reduced or suspended. As a consequence, the Panel finds that the Appealed Decision is to be set aside and that a four-year period of ineligibility is to be imposed on the Player.

### *iv. When shall the period of ineligibility start?*

124. Article 28 FIFA ADR determines as follows:

> *"Except as provided below, the period of Ineligibility shall start as soon as the decision providing for Ineligibility is communicated to the Player or other Person concerned.*
>
> *1. Delays not attributable to the Player or other Person*

*Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Player or other Person, the FIFA Disciplinary Committee may decide that the period of Ineligibility shall start 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.*

*2. Timely admission*

*Where the Player or other Person promptly (which, in all events, for a Player means before the Player competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by FIFA, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this article is applied, the Player or other Person shall serve at least one half of the period of Ineligibility going forward from the date the Player or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, the date of the communication of the decision imposing a sanction, or the date the sanction is otherwise imposed. This article shall not apply where the period of Ineligibility has already been reduced under art. 23 par. 3 (Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault).*

*3. Credit for Provisional Suspension or period of Ineligibility served*

*a) If a Provisional Suspension is imposed and respected by the Player or other Person, the Player or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, the Player or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.*

*b) If a Player or other Person voluntarily accepts a Provisional Suspension in writing from FIFA and thereafter respects the Provisional Suspension, the Player or other Person shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. A copy of the Player or other Person's voluntary acceptance of a Provisional Suspension shall be provided promptly to each party entitled to receive notice of an asserted anti-doping rule violation as provided in these Regulations (article 68: Information concerning potential anti-doping rule violations).*

*c) No credit against a period of Ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension regardless of whether the Player elected not to compete or was suspended by his club or Association".*

125. The Panel finds that there were no substantial delays in the hearing process. The three Brazilian instances rendered internally final and binding decisions by 11 November 2016, which is a mere seven months after the Player was notified of the adverse analytical finding on 5 April 2016.

126. The Panel also finds that there was no timely admission from the Player, as was already set out above. This goes also for the term "admission" as used by Article 28.2 FIFA ADR. The Player only during the hearing before CAS and, thus, at a moment only exceptionally acceptable by the Panel from a procedural point of view disclosed that he injected stanozolol and, thus, partly admitted an anti-doping rule violation. This cannot be understood as "promptly". The Player, thus, should not benefit from any back-dating of the starting date of the period of ineligibility in circumstances where his admission was incomplete and partially incorrect.

127. As contemplated in Article 28.3(a) FIFA ADR, any provisional suspension served shall in principle be credited against the period of ineligibility finally imposed.

128. A provisional suspension is defined as follows in the FIFA ADR:

> *"Provisional Suspension: a Player or other Person is suspended temporarily from participating in any Competition prior to the final decision at a hearing conducted under the provisions set forth in these Regulations and in the FIFA Disciplinary Code".*

129. In accordance with the heading of Article 28 in conjunction with the definition of "provisional suspension" in the FIFA ADR, the period of ineligibility shall thus start with the final decision providing for ineligibility, *i.e.* with the communication of the present arbitral award.

130. The Panel observes that FIFA submits in its requests for relief in the Appeal Brief that *"any period of ineligibility already served by the Player shall be credited against the total period of ineligibility imposed"*. FIFA however specifies what period of ineligibility is to be credited in the reasoning of its Appeal Brief (para. 90) by stating that *"the period of ineligibility imposed on the Player shall start with the communication of the award of the present procedure with a credit given of 30 days of the provisional suspension already served"*. Therefore, the Panel understands that FIFA does not want any provisional suspension to be credited beyond the 30 days mentioned above.

131. The Panel observes that it thus remained undisputed that a provisional suspension of 30 days was imposed on the Player on 5 April 2016 and that this period is to be credited.

132. In addition, the Panel notes that the Player also served a period of Ineligibility since 13 June 2016, *i.e.* when the 3rd Disciplinary Commission of the STJD São Paulo issued the First Instance Decision, until the date of the present CAS award. Following the First Instance Decision, the Player remained ineligible throughout the proceedings leading to the Second Instance Decision (increasing the period of ineligibility to two years) and the Third Instance Decision (maintaining the two-year period of ineligibility) and during the proceedings before CAS (increasing the period of ineligibility to four years). Pursuant the last sentence in Article 28.3(a) FIFA ADR and since the Player was ineligible prior to the final decision (*i.e.* prior to the present CAS award), also this period shall be credited. The Panel notes that FIFA's reasoning in the Appeal Brief and at the hearing and in its Prayers for Relief are partially contradictory by mixing suspension and ineligibility.

133. Consequently, the Panel finds that the four-year period of ineligibility to be served by the Player formally starts on the date of notification of the present CAS award. Nevertheless, the Player is entitled to be credited for the periods of (i) the provisional suspension (30 days) commenced on the day of 5 April 2016, and ii) the period of Ineligibility he served since the notification of the First Instance Decision, *i.e.* 13 June 2016, up until the notification of the present CAS award. In order to avoid any possible misunderstanding in the calculation of the period of ineligibility, the Panel observes that this effectively means that the four-year period of ineligibility imposed on the Player should be calculated from 13 June 2016, with a period of 30 days to be credited against the period of ineligibility imposed.

## B. Conclusion

134. Based on the foregoing, and after having taken into due consideration both the regulations applicable and all the evidence produced and all arguments submitted, the Panel finds that:

i. The CBF has standing to be sued.

ii. The Player committed an anti-doping rule violation by violating article 6 FIFA ADR.

iii. The Player did not have No (significant) fault or negligence in committing the anti-doping rule violation, nor shall the standard period of ineligibility of four years otherwise be reduced or suspended.

iv. The Appealed Decision is to be set aside and a four-year period of ineligibility is to be imposed on the Player.

v. The four-year period of ineligibility imposed on the Player should be calculated from 13 June 2016, with a period of 30 days to be credited against the period of ineligibility imposed.

135. All other and further motions or prayers for relief are dismissed.

## ON THESE GROUNDS

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

1. The appeal filed by the *Fédération Internationale de Football Association* on 6 March 2017 against the decision issued on 8 November 2016 by the Full Court of the Superior Court of Sports Justice is partially upheld.

2. The decision issued on 8 November 2016 by the Full Court of the Superior Court of Sports Justice is set aside.

3. A period of ineligibility of four years is imposed on Mr Cristiano Lopes. The four-year period of ineligibility imposed on the Player shall be calculated from 13 June 2016, with a period of 30 days to be credited against the period of ineligibility imposed.

4. (…).

5. (…).

6. (…).

7. All other and further motions or prayers for relief are dismissed.