

**DECISION OF THE INTERNATIONAL TENNIS FEDERATION  
PURSUANT TO ARTICLE 8.1.4 OF THE 2018 TENNIS ANTI-DOPING PROGRAMME**

**I. Introduction**

1. The International Tennis Federation (the **ITF**) is the international governing body for the sport of tennis. Further to its obligations as a signatory to the World Anti-Doping Code (the **Code**) and its responsibilities as custodian of the sport, the ITF has issued the 2018 Tennis Anti-Doping Programme (**TADP**), which sets out Code-compliant anti-doping rules applicable to players competing in '**Covered Events**' (as defined in TADP Article 1.10).
2. Igor Ribeiro Marcondes (the **Player**) is a 21-year-old tennis player from Brazil. He has competed on the ITF Pro Circuit since October 2012 and reached career high rankings of 704 in singles in 2017 and 526 in doubles in 2016. When he registered for an International Player Identification Number (IPIN) on 22 January 2018, the Player expressly agreed to be bound by the TADP. By virtue of that agreement, and by virtue of his subsequent participation in ITF Pro Circuit events ('**Covered Events**' under the TADP), the Player was bound by and was required to comply with the 2018 TADP.
3. The ITF has charged the Player with the commission of an anti-doping rule violation under the 2018 TADP and has proposed certain consequences based on its analysis of the degree of fault borne by the Player for that violation. The Player has admitted the anti-doping rule violation charged and has accepted the consequences proposed. The ITF issues this decision further to TADP Article 8.1.4, which provides: '**In the event that [...] the Participant admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the ITF [...], a hearing before the Independent Tribunal shall not be required. Instead the ITF shall promptly issue a decision confirming [...] the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed)**'.

**II. The Player's commission of an anti-doping rule violation**

4. On 8 March 2018, while competing at the Loulé Open – Future Portugal 3 held in Loulé, Portugal (the **Event**), the Player was required to provide a urine sample for drug testing pursuant to the TADP. That sample was given reference number 4217921, and was analysed by the WADA-accredited laboratory in Montreal, which found Hydrochlorothiazide (**HCT**) at an estimated concentration of 20 ng/mL in the sample. HCT is a diuretic and masking agent banned at all times under section S5 of the WADA Prohibited List. The Player does not have a therapeutic use exemption (**TUE**) permitting use of HCT.
5. Upon review of the case file, and not seeing any departures from the applicable procedure for sample collection and analysis that could have caused this adverse analytical finding for HCT, the independent Review Board decided that the Player had a case to answer for breach of TADP Article 2.1. The ITF therefore sent him a formal notice of charge on 8 May 2018, asserting that the presence of HCT in his sample collected in-competition on 8 March 2018 constitutes an anti-doping rule violation under TADP Article 2.1.
6. The Montreal laboratory conducted the B sample analysis for sample number 4217921 on 17 May 2018, which confirmed the finding in the A sample.

7. Given that HCT is classified as a 'Specified Substance' under the TADP, the Player was not subject to a mandatory provisional suspension under TADP Article 8.3.1. However, he accepted a voluntary provisional suspension on 29 May 2018, further to TADP Article 8.3.5(a).
8. TADP Article 2.1 is a strict liability offence that is established simply by proof that a prohibited substance was present in the sample, i.e., the ITF does not have to prove how the substance got into the Player's system or that the Player took the substance intentionally (or even knowingly).
9. In his preliminary response to the charge on 28 May 2018, the Player admitted the TADP Article 2.1 anti-doping rule violation charged.
10. A further urine sample (number 4255384) was collected from the Player in-competition at the Brazil F2 Futures tournament in São Paulo, Brazil, on 30 April 2018. That subsequent sample also tested positive for HCT, and was notified to the Player on 29 May 2018. TADP Article 10.7.4(a) provides that '[an Anti-Doping Rule Violation will only be considered a second Anti-Doping Rule Violation if the ITF can establish that the Participant committed the second Anti-Doping Rule Violation after the Participant received notice \[...\] of the first alleged Anti-Doping Rule Violation](#)'. Given that the second sample was collected before the ITF sent the Player a notice of charge, the ITF will not pursue the second adverse analytical finding as a second anti-doping rule violation, rather they will be treated together as a single violation.

### **III. Consequences**

#### **III.A Period of ineligibility**

##### **(a) How the HCT got into the Player's system**

11. It is a precondition of any mitigation of sanction for a TADP Article 2.1 violation that a player proves on the balance of probabilities how the prohibited substance found in his sample entered his system. Otherwise, it is impossible to assess the degree of fault that the player bears for the substance being in his system.
12. In his response dated 28 May 2018, the Player asserted that his positive test had been caused by a supplement contaminated with HCT. In summary, he says that on 5 February 2018, his physician ( [REDACTED] ) gave him a prescription for 120 supplement capsules containing Coenzyme Q10 (200mg), Pyrroloquinoline quinone or PQQ (10mg), D-ribose (500 mg) and chlorophyll to be taken prior to training sessions and matches, and recommended that he take the prescription to be produced at the Farma Conde laboratory in São Paulo, Brazil. The Player says that Farma Conde provided him with the supplement capsules on 8 February 2018. In support of his explanation, the Player provided a prescription signed by his physician dated 5 February 2018, and a purchase receipt from the Farma Conde laboratory dated 8 February 2018. The Player says that he stopped taking the supplement capsules when he received the notice of charge, at which point he still had 60 capsules remaining.
13. In the circumstances, the ITF requested that the supplement capsules be sent to the WADA-accredited laboratory in Montreal for further testing. The Montreal laboratory tested 10 capsules, and detected levels of HCT in those capsules of around 20 µg to 30 µg. According to Prof. Christiane Ayotte, Director of the Montreal laboratory, the levels of HCT detected in the capsules could have caused the concentration of HCT detected in the Player's sample. However, she noted that the capsule bottles had been opened before they reached her

laboratory, the levels of HCT were relatively consistent in each of the capsules (whereas she would ordinarily expect more variable levels in unintentional contamination cases), and the weight of each capsule did not match what was set out in the prescriptions (i.e. each capsule weighed around 200mg, or 28%, less than indicated on the prescription).

14. To follow up on Prof. Ayotte's concerns, the ITF sent a number of questions to counsel for the Player to ask the Farma Conde laboratory. Counsel for the Player sent a number of emails to, and arranged meetings with, the managers and lawyers of Farma Conde over a period of around two months. The ITF was copied on some of the correspondence, which confirmed that all of its questions had been sent to Farma Conde. Farma Conde refused to provide any response to the questions.
15. The ITF notes that when his urine sample was collected on 8 March 2018, the Player was asked to list on the Doping Control Form any medicines or supplements that he had taken in the previous seven days. The Player declared (among other things) that he had taken 'Coenzima' (200mg) and 'Ribose' (500mg) on the date of sample collection. The Player also declared 'Coenzima' and 'Ribose' on the doping control form for the second sample collected on 30 April 2018. The ITF asked the Player why he did not declare PQQ or chlorophyll (i.e. the two other ingredients in his supplement capsules). He responded that he could no longer read the label on the supplement bottle as it had worn off (he provided a picture of the bottle to evidence this), and could only remember the Coenzima and Ribose ingredients. The ITF accepts this explanation.
16. In all of the circumstances of this case, and in particular considering that the Montreal laboratory detected HCT in the supplement capsules, the levels of HCT detected in the capsules were consistent with the estimated concentration of HCT detected in the Player's sample, and Farma Conde provided no response to the ITF's questions (or any challenge to the Player's account), the ITF accepts that the Player has established that it is more likely than not that the HCT found in his urine sample 4217921 came from his ingestion of a supplement containing HCT (an undisclosed ingredient) taken on the day his urine sample was collected on 8 March 2018.

**(b) TADP Article 10.2**

17. This is the Player's first doping offence.
18. TADP Article 10.2.1 specifies that a TADP Article 2.1 violation that is '**intentional**' and is a first offence attracts a mandatory four-year ban, but it also specifies that if the prohibited substance is classified as a Specified Substance, the ITF has the burden of proving that the violation was '**intentional**'. If it cannot do so, then TADP Article 10.2.2 provides for a two-year ban, subject to mitigation. TADP Article 10.2.3 explains that in this context '**the term "intentional" is meant to identify those Participants who cheat. The term, therefore, requires that the Participant engaged in conduct that he/she 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**'. The jurisprudence is clear that what counts in this context is what the Player actually knew, not what he should have known.
19. Since HCT is a Specified Substance, and the ITF does not have any basis to contend that the offence was '**intentional**' within the meaning of TADP Articles 10.2.1 and 10.2.3, the two-year period of ineligibility prescribed by TADP Article 10.2.2 applies, subject to possible reduction in accordance with TADP Article 10.4 or Article 10.5.

**(c) TADP Articles 10.4 and 10.5**

20. Proving the source of the adverse analytical finding is just a necessary pre-condition to obtaining a reduction in sanction below two years. In order to get the sanction reduced, the Player must show that he bears 'No Fault or Negligence' for the violation, or (alternatively) that he bears 'No Significant Fault or Negligence' for the violation.
21. TADP Article 10.4 provides that if a player establishes that he bears No Fault or Negligence for the anti-doping rule violation in question, the otherwise applicable period of ineligibility will be eliminated. No Fault or Negligence is defined in the TADP as follows: 'The Player or other Person establishing that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule'.
22. TADP Article 10.5.1(a) provides that where the prohibited substance found in the player's sample is classified as a Specified Substance under the TADP (as here), and the player can establish that he bears No Significant Fault or Negligence for its presence in his system, then the otherwise applicable two-year period of ineligibility may be reduced by between 0 and 24 months (i.e., by up to 100%, in which case there would be a reprimand only). No Significant Fault or Negligence is defined in the TADP as follows: 'The Player or other Person establishing that his/her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the Anti-Doping Rule Violation'. Where No Significant Fault or Negligence is found, the amount of reduction to be given depends upon the degree of the player's (not 'Significant') fault. (The ITF notes that it does not need to decide whether or not TADP Article 10.5.1(b) applies, because it has the same discretion to reduce the Player's sanction for No Significant Fault or Negligence under TADP Article 10.5.1(a)).
23. A plea of No Fault or Negligence or No Significant Fault or Negligence is assessed by considering how far the player departed from his duty under the TADP to use 'utmost caution' to ensure that he does not ingest any prohibited substances or otherwise do anything that might constitute or result in the commission of an anti-doping rule violation.<sup>1</sup> 'The difference between the two [...] is one of degree: to establish No Fault or Negligence, the athlete must show that he took every step available to him to avoid the violation, and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant'.<sup>2</sup>
24. The CAS jurisprudence is clear that the standard of 'utmost caution' is very onerous, and requires a player to show that he 'made every conceivable effort to avoid taking a prohibited

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<sup>1</sup> See, e.g., Kutrovsky v ITF, CAS 2012/A/2804, para 9.49 ('the athlete's fault is measured against the fundamental duty that he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any prohibited substance'); FIFA & WADA, CAS 2005/C/976 & 986, paras 73-75 ('The WADC imposes on the athlete a *duty of utmost caution* to avoid that a prohibited substance enters his or her body. [...] It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified').

<sup>2</sup> IBAF v Luque, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

substance'.<sup>3</sup> It follows that 'even in cases of inadvertent use of a Prohibited Substance, the principle of the Athlete's personal responsibility will usually result in a conclusion that there has been some degree of fault or negligence'.<sup>4</sup>

25. The Player asserted in his response to the charge that he bears No Fault or Negligence, so that no period of ineligibility should be imposed, or (alternatively) that he bears No Significant Fault or Negligence. In support of this, he relies in particular on the following: (i) this is his first anti-doping rule violation, (ii) he has admitted the charge, (iii) he has voluntarily accepted a provisional suspension, (iv) he declared the supplement on his doping control form, (v) he waived the right to a hearing, and (vi) he has provided the supplement capsules for testing. Other than the declaration on his doping control form, none of these points is relevant to assessing the Player's degree of fault. However, the ITF notes that the Player consulted (and obtained a prescription from) a physician, which did not list any prohibited substances, and took the prescription to a laboratory recommended by his physician. These factors weigh in favour of the Player.

26. However, the ITF also takes note of the following factors that weigh against the Player:

26.1 It has long been well-known that supplements may contain substances that are not listed as a named ingredient. The CAS has clearly stated that any player who takes a supplement assumes the risk that it may contain one or more prohibited substances, and so cannot plead No Fault or Negligence under TADP Article 10.4.<sup>5</sup> The same is also set out in the comment to Code Article 10.4, which states: 'No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination)'.

26.2 These principles apply whether the supplement is an off-the-shelf product produced in bulk by a manufacturer, or a bespoke compound mixed at a local pharmacy. For example, in FINA v Cielo Fihlo and CBDA, CAS 2011/A/2495, the athletes were Brazilian swimmers who were prescribed caffeine pills by their doctor. They had those pills made up by a reputable pharmacy, which inadvertently contaminated those caffeine pills with furosemide during the production process. This was a very high profile case, in Brazil and elsewhere. Following Cielo, the Player was on specific notice that there was a risk that using bespoke vitamin formulations that required the pharmacy to mix different ingredients carried a risk of inadvertent contamination during production, even if a reputable pharmacy was used. He therefore could not assume that by following the advice of his doctor, and sending his prescription to the pharmacy he recommended to be filled, he was avoiding the risk of such contamination. To the contrary, he is deemed to have voluntarily assumed that risk.

26.3 Furthermore, two other Brazilian tennis players (Marcelo Demoliner and Thomaz Bellucci) have recently tested positive for HCT, which they blamed on the

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<sup>3</sup> Knauss v FIS, CAS 2005/A/847, para 7.3.1; WADA v NSAM et al, CAS 2007/A/1395, para 80 ('The burden is therefore shifted to the athlete to establish that he/she has done all that is possible to avoid a positive testing result').

<sup>4</sup> Adams v CCES, CAS 2007/A/131, para 155.

<sup>5</sup> See FINA v Cielo, CAS 2011/A/2495, award dated 29 July 2011, para 8.8.

contamination of bespoke vitamin pills produced by laboratories in Brazil. Those players received bans of three and five months, respectively. The Player was aware of those cases, and they were (in any event) reported on the ITF website and in the media.<sup>6</sup> Therefore, if the Player was using 'utmost caution', when he heard about the other cases, he should have taken precautions to ensure that he did not suffer the same fate. Instead, he took the supplements at his own risk.

27. Based on the foregoing, the Player cannot sustain his plea of No Fault or Negligence. However, the same Code comment quoted above goes on to say: 'However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.5 based on No Significant Fault or Negligence'. The ITF accepts that, in the specific circumstances of this case, the Player's fault was not 'significant' within the meaning of TADP Article 10.5.1, justifying a reduction from the two-year starting point. While the Player is to be deemed to have accepted the risk that the supplements mixed to his bespoke prescription by Farma Conde might contain a prohibited substance, the ban may still be significantly less than two years. However, the ITF is of the view that the circumstances of this case justify a ban higher than Mr Demoliner's (six months reduced to three months) and Mr Bellucci's (i.e. eight months reduced to five months), considering that the Player is necessarily more at fault than both those players (because he was on greater notice), and because the earlier bans on those players clearly did not deter other players from taking similar risks.
28. If the issue of consequences were to be contested and therefore a hearing before the Independent Tribunal was required, the ITF would be asking the Independent Tribunal to consider imposing a ban in the region of 12 months. The ITF's practice is to give a player credit of three months for agreeing an outcome that avoids the need for a hearing and so saves time and money for use elsewhere in the fight against doping in tennis. Therefore, the ITF has proposed, and the Player has acceded to, a period of ineligibility of nine months.
29. Due to his prompt admission of his anti-doping rule violation, the Player is entitled to the benefit of TADP Article 10.10.3(b), such that his nine-month period of ineligibility will be deemed to have started running from 8 March 2018 (the date of collection of his sample) and so will expire at midnight on 7 December 2018. Given that the Player has served a voluntary provisional suspension since 29 May 2018, the Player will have served more than half his period of ineligibility, thereby meeting the requirement of TADP Article 10.10.3(b).
30. During his period of ineligibility, the Player's status will be as set out under TADP Article 10.11, i.e., he may not play, coach or otherwise participate in any capacity in (i) any Covered Event; (ii) any other Event or Competition, or activity (other than authorised anti-doping education or rehabilitation programmes) authorised, organised or sanctioned by the ITF, the ATP, the WTA, any National Association or member of a National Association, or any Signatory, Signatory's member organisation, or club or member organisation of that Signatory's member organisation; (iii) any Event or Competition authorised or organised by any professional league or any international or national-level Event or Competition organisation; or (iv) any elite or national-level sporting activity funded by a governmental agency. Nor will he be given accreditation for or otherwise granted access to any Event referred to at points (i) and (ii). In

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<sup>6</sup> See <https://www.itftennis.com/news/229701.aspx> (Marcelo Demoliner) and <https://www.itftennis.com/news/277955.aspx> (Thomaz Bellucci). The Thomaz Bellucci case was also widely reported in the media: see e.g. an ESPN article at [http://www.espn.co.uk/tennis/story/\\_/id/21961711/thomaz-bellucci-gets-5-month-ban-doping](http://www.espn.co.uk/tennis/story/_/id/21961711/thomaz-bellucci-gets-5-month-ban-doping).

accordance with TADP Article 10.11.1(b)(ii), the Player may use the facilities of a club or other member organisation of a Signatory's member organisation in the last two months of his period of ineligibility, i.e., from 8 October 2018 on.

### **III.B Disqualification of results**

31. The results obtained by the Player at the Event and in subsequent events are disqualified pursuant to TADP Articles 9.1 and 10.8, and the points and prize money that he won at those events are forfeited in accordance with the same provisions. The Player is required to pay the forfeited prize money to the ITF by no later than 7 December 2018, as a condition of reinstatement following his period of ineligibility.

### **III.C Costs**

32. Each party shall bear its own costs of dealing with this matter.

### **III.D Publication**

33. In accordance with TADP Article 8.8, this decision will be publicly reported by being posted (in full or summary form) on the ITF's website.

### **III.E Acceptance by the Player**

34. The Player has accepted the consequences proposed above by the ITF for his anti-doping rule violation, and has expressly waived his right to have those consequences determined by the Independent Tribunal at a hearing.

## **IV. Rights of appeal**

35. This decision constitutes the final decision of the ITF, resolving this matter pursuant to TADP Article 8.1.4.
36. Further to TADP Article 12.2.1, each of WADA and the Autoridade Brasileira de Controle de Dopagem (ABCD) has a right to appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at TADP Article 12.6.
37. As part of this resolution of the matter, the Player has waived his right to appeal against or otherwise challenge any aspect of this decision (both as to the finding that the Player has committed an anti-doping rule violation and as to the imposition of the consequences set out above), whether pursuant to TADP Article 12.2.1 or otherwise. However, if an appeal is filed with the CAS against this decision either by WADA or ABCD, the Player will be entitled (if so advised) to exercise his right of cross-appeal in accordance with TADP Article 12.6.3.

London, 11 September 2018