

**DECISION OF THE INTERNATIONAL TENNIS FEDERATION  
PURSUANT TO ARTICLE 8.1.4 OF THE 2019 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 2019 Tennis Anti-Doping Programme (**TADP** or **Programme**), which sets out Code-compliant anti-doping rules applicable to players competing in '**Covered Events**' (as defined in TADP Article 1.10).<sup>1</sup>
2. Luciano Tacchi (the **Player**) is an 18-year old tennis player who is a national of and resident in Argentina. He has competed on the Junior and Futures circuits since 2017, and, from 2019, on the ITF World Tennis Tour. When he registered online for an International Player Identification Number (IPIN) on 5 November 2018, and again when he upgraded his membership from 'Junior' to 'Men's' on 19 February 2019, the Player expressly agreed to be bound by and to comply with the Programme. By virtue of that agreement, and by virtue of his participation in ITF World Tennis Tour events (which fall within the definition of '**Covered Events**' under the TADP), the Player became bound by and was required to comply with the 2019 TADP.
3. The ITF charged the Player with the commission of an anti-doping rule violation under the TADP and has proposed certain Consequences based on its analysis of the degree of fault that the Player bears for that violation. The Player has admitted the anti-doping rule violation charged and acceded to the Consequences proposed. The ITF therefore 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 26 March 2019, while competing in the singles competition at the Pro Circuit M15 Pinamar tournament held in Pinamar, Argentina, from 25 to 31 March 2019 (the **Event**), the Player was required to provide a urine sample for drug testing pursuant to the TADP. The Player was 17 years and 11 months old at the time, and therefore a Minor for the purposes of the TADP. The sample he provided was assigned reference number 3135556 and split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the WADA-accredited laboratory in Montreal (**Laboratory**) for analysis. The Laboratory detected the presence of benzoylecgonine (**BZE**), a metabolite of cocaine, in the A sample at an estimated concentration of 76 ng/mL. Cocaine is a stimulant prohibited in-competition under Section S6.a of the 2019 WADA Prohibited List. It is not a Specified Substance. The Player did not have a therapeutic use exemption permitting use of cocaine.
5. The Adverse Analytical Finding reported by the Laboratory in respect of the A sample was considered by an independent Review Board in accordance with TADP Article 7.3. The Review Board did not identify any apparent departures from the applicable sample collection or sample analysis procedures that could have caused this Adverse Analytical Finding, and

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<sup>1</sup> Any term in this Decision that begins with a capital letter and that is not otherwise defined in this Decision has the meaning given to it in the Programme.

therefore decided that the Player had a case to answer for breach of TADP Article 2.1. Accordingly, on 7 May 2019, the ITF sent the Player a formal Notice of Charge, asserting that the presence of BZE in his sample collected on 26 March 2019 constituted an anti-doping rule violation under TADP Article 2.1.

6. The Laboratory subsequently analysed sample B3135556, and reported on 18 May 2019 that it had detected the presence of BZE, which confirmed the Adverse Analytical Finding made in respect of the A sample.
7. Given that cocaine is not classified as a Specified Substance under the TADP, the Player was subject to a mandatory provisional suspension under TADP Article 8.3.1, which came into effect on 21 May 2019.
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 initial response to the Notice of Charge, dated 16 May 2019, the Player accepted that the BZE was present in his sample, and therefore admitted that he had committed the Article 2.1 anti-doping rule violation with which he was charged, but denied intentional ingestion of cocaine or BZE.

### III. Consequences

#### III.A **Period of Ineligibility**

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

10. In his initial response, the Player asserted that he did not intend to cheat and that his positive test must have been caused by inadvertent ingestion of cocaine through passive exposure through one or both of two possible sources:
  - 10.1 the Player's attendance at a cousin's 15<sup>th</sup> birthday party held during the evening of 23 March 2019 (three days before the sample was collected) in the house of the Player's aunt, at which he shook hands, hugged and used a mobile phone screen to watch videos with another guest at the party, a family friend who was a cocaine user and who subsequently admitted to – unbeknownst to the Player – using cocaine on a number of occasions during the course of the party (**Party Explanation**); and
  - 10.2 the Player's regular attendance at his aunt's house in the weeks and months prior to the sample collection, given that – unbeknownst to the Player – the Player's late uncle had a cocaine addiction, regularly consumed cocaine in the house and therefore the environment in the house was contaminated with cocaine (**Contaminated House Explanation**).
11. Initially, no supporting evidence was provided in support of the Contaminated House Explanation. In support of the Party Explanation, the Player provided (amongst other things): evidence demonstrating that he and the family friend were both at the birthday party; a statement from the family friend, who admitted that he ingested cocaine on the evening of the party and interacted with the Player at the party; and a report from an experienced toxicologist, Professor Luis Ferrari, who had reviewed the relevant literature, analysed hair taken from the Player (which 'showed negative results [for cocaine/BZE], that is, quantitative

values below the limit of detection'), and concluded that the BZE detected in the Player's urine sample 'corresponded to a passive systematic contamination, whose origin could be caused ... by dermal contact' and 'has its origin in an unknowing and accidental contamination'.

12. The ITF consulted Professor A. R. W. Forrest, an experienced toxicologist, whose view was that it was not possible from the analytical evidence alone to determine how much cocaine was ingested by the Player, when, or by what means. Professor Forrest concluded that the Party Explanation for the presence of BZE in the Player's sample was unlikely, but that it was possible to be 'fairly definitive' that: (i) the presence of BZE in the Player's sample meant that at some point prior to sample collection, he ingested its parent, cocaine; and (ii) the non-detection of cocaine itself in the urine sample meant that the cocaine was probably ingested more than 24 hours before sample collection.
13. Consequently, the ITF informed the Player that it did not consider that he had met his burden to demonstrate the source of the BZE was inadvertent ingestion as a result of social contact with the family friend, a cocaine user, in accordance with the Party Explanation.
14. On 23 August 2019, the Player provided to the ITF evidence in support of the Contaminated House Explanation, including a report dated 10 August 2019 from an experienced toxicologist, Dr Pascal Kintz (the **First Kintz Report**). The First Kintz Report contained the results of analyses conducted on hair and toenail samples taken from the Player, using a more sensitive method (limit of detection: 10 pg/mg) than that used by Professor Ferrari. The hair samples were eight centimetres long and split into eight one-centimetre segments, each – based on an assumed growth rate of one centimetre per month – corresponding to one of the eight months prior to the hair sample being taken. According to Dr Kintz's analyses, each hair segment contained low concentrations of cocaine (between 15 and 142 pg/mg, depending on the segment), seven of the eight segments contained low concentrations of BZE (between 12 and 37 pg/mg, depending on the segment), the solution in which the hair was washed was found (following washing) to contain about 50 pg/mg of cocaine, and no cocaine or BZE was detected in the toenail samples. Based on these analyses, Dr Kintz concluded that the Player 'is not a cocaine addict, nor a recreational cocaine user' and the hair analysis results 'are more likely to indicate that the player can be in contact with an environment where cocaine is being used'.
15. The ITF consulted Professor Forrest in respect of the analyses and conclusions of the First Kintz Report. Professor Forrest agreed that the results suggested that the Player was not a cocaine addict or a recreational (ie, regular) user of cocaine, and that the results were consistent with exposure to cocaine over a period of time. Professor Forrest noted that the results did not rule out a small 'one-off' consumption of cocaine, or 'microdosing' (ie, the use of very small quantities of cocaine), but that environmental exposure to cocaine can result in the ingestion of small amounts of cocaine or the deposition of cocaine in the hair (and studies had been published in which cocaine and its metabolites had been found in the hair of the spouses and children living with cocaine users, sometimes in levels higher than that found in the hair of the cocaine user themselves, indicating that –in specific circumstances – environmental contamination and ingestion can be a random event).<sup>2</sup> Professor Forrest further noted that the

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<sup>2</sup> Chatterton, 'External Contamination: Still a Debate?' in Hair Analysis in Clinical and Forensic Toxicology (ed, Kintz, Salomone and Vincenti), 2015, Academic Press; Scholz et al, 'Cocaine Hydroxy Metabolites in Hair: Indicators for Cocaine Use Versus External', 2019, Journal of Analytical Toxicology, 2019;43:543–552; Ropero-Miller et al, 'Cocaine Analytes in Human Hair: Evaluation of Concentration Ratios in Different Cocaine Sources, Drug-User Populations and Surface-Contaminated Specimens Contamination', 2012, Journal of Analytical Toxicology 2012;36:390–398.

fact that the Player's hair is dark in colour means the hair would have a high melanin content, which facilitates the binding of drugs such as cocaine within the hair.

16. While recognising the science potentially supported the Contaminated House Explanation, the ITF informed the Player that it required further evidence before it could be satisfied that the Player had met his burden to demonstrate the source of the BZE was inadvertent ingestion through environmental contamination in accordance with the Contaminated House Explanation, and asked the Player to provide such further evidence as he could obtain in support of that explanation.
17. On 31 October 2019, the Player provided further evidence in support of the Contaminated House Explanation, including:
  - 17.1 a statement from the Player's aunt, who confirmed that:
    - 17.1.1 the Player frequently stays in her house whenever he has something to do in the city of Buenos Aires (such as a tournament, training session or other professional or personal appointment) because his immediate family live in a different province 800 km away and the Player himself lives and trains 50 km outside of the city of Buenos Aires;
    - 17.1.2 the length of time that the Player spends in the house on each visit varies from a few hours up to four days;
    - 17.1.3 her husband (the Player's uncle) lived with her in the house until he passed away in May 2018, having suffered with a cocaine addiction for many years; and
    - 17.1.4 before his death, her husband sometimes consumed cocaine in the house and since his death, she has found deposits of cocaine in the house (for example in CD boxes and in a bathroom cabinet), apparently hidden by her husband;
  - 17.2 the medical records of the Player's uncle, which confirm his date of death and detail a number of emergency medical admissions in the four years prior to his death, his treatment by (among others) a psychologist specializing in drug addiction, an ear, nose and throat specialist, and a rehabilitation clinic for people with drug addictions;
  - 17.3 a statement from the psychologist specializing in drug addiction who worked with the Player's uncle, which confirmed that the psychologist treated the Player's uncle during 2012 and 2017 in relation to his consumption of cocaine;
  - 17.4 a report dated 30 October 2019 by Dr Kintz (the **Second Kintz Report**), which contained the results of analysis of a hair sample taken from the Player's aunt, using a limit of detection of 5 pg/mg. The Player's aunt's hair sample was 24 centimetres long and was cut into eight three-centimetre segments. The hair was blond/brown in colour and had been treated cosmetically with dye. Six of the segments contained cocaine (between 6 and 20 pg/mg, depending on the segment) and BZE (between 6 and 14 pg/mg, depending on the segment). Dr Kintz concluded that the 'results are consistent with environmental exposure' and explained that the reason for the lower concentrations of cocaine and BZE in the hair sample from the Player's aunt (as compared to the concentrations in the hair sample from the Player) was that 'blond hair incorporates much less cocaine than black hair when exposed to the same

concentrations' and 'cosmetic treatments, such as dying [...] produce a large decrease in drug concentrations, due to loss of binding during the chemical process';<sup>3</sup> and

- 17.5 a statement from a tennis coach, who confirmed that he had coached the Player for six years up until April 2019 (ie, one month after sample collection), that sometimes the Player trained at the Asociación Argentina de Tenis academy or with other academies in Buenos Aires rather than his usual training location outside of Buenos Aires, and that sometimes when the Player trained or competed at locations in Buenos Aires the coach gave the Player a lift in his car to those locations (because the coach lives in Buenos Aires and the Player did not yet hold a driving licence) and often picked up and dropped off the Player at the house. The coach stated 'it is hard to tell how many times I picked [the Player] up or dropped him off at [the house] but, just in the last year before the adverse finding, no less than 20 times for sure'.
18. The ITF has reviewed all of the detailed evidence provided by the Player in support of the Contaminated House Explanation and obtained expert evidence in respect of the relevant issues arising. Based on all of that evidence, and in the unique and exceptional circumstances of this case, the ITF accepts the Player has established that it is more likely than not that the presence of BZE found in his urine sample 3135556 was due to his inadvertent ingestion at some point prior to the date of sample collection of cocaine that was present as an environmental contaminant in the Player's aunt's house.

**(b) TADP Article 10.2**

19. This is the Player's first doping violation.
20. 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. If the prohibited substance in question is classified as a non-Specified Substance (as here), TADP Article 10.2.1 also specifies that the player has the burden of proving that the violation was not 'intentional'. If the player can do so, then TADP Article 10.2.2 provides for a two-year period of ineligibility, 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.
21. Since the ITF has accepted that the Player has shown it was more likely than not that the presence of BZE in his sample was due to inadvertent ingestion of cocaine caused by his presence in his aunt's house, which was an environment contaminated with cocaine, the ITF accepts that the Player has met his burden of demonstrating that his commission of the violation was not '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 therefore applies, subject to possible reduction in accordance with TADP Article 10.4 or Article 10.5.

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

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<sup>3</sup> Professor Forrest agreed that these two mechanisms would likely mean that the concentrations found in light-coloured, cosmetically-treated hair would be less than the concentrations found in dark-coloured, untreated hair (assuming that the level of exposure had been similar).

22. In order to get the sanction eliminated or reduced below two years, the Player must show that he bears 'No Fault or Negligence' for the violation under TADP Article 10.4, or (alternatively) that he bears 'No Significant Fault or Negligence' for the violation under TADP Article 10.5.
23. 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'.
24. TADP Article 10.5.2 provides that where TADP Article 10.5.1 (in relation to Specified Substances and Contaminated Products) does not apply, if a player can establish that they bear No Significant Fault or Negligence for the presence of the Prohibited Substance in their 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 Fault.
25. A plea of No Fault or Negligence or No Significant Fault or Negligence is assessed by considering how far the player departed from their duty under the TADP to use 'utmost caution' to ensure that they would not ingest any prohibited substances or otherwise do anything that might constitute or result in the commission of an anti-doping rule violation.<sup>4</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>5</sup>
26. The Player asserted in his initial response to the Notice of Charge and subsequent correspondence that a finding that he committed the violation with No Fault or Negligence would be 'appropriate' because the exposure to cocaine was 'purely accidental' and 'by way of environmental exposure'. The ITF accepts, in the exceptional circumstances of this case and in light of all of the evidence provided by the Player, that the Player acted with No Fault or Negligence in relation to his violation because the Player has established that he did not know or suspect and could not reasonably have known or suspected even with the utmost caution that he had used cocaine or was at risk of ingesting cocaine simply by being present in his aunt's house. In particular, the Player was not aware that his uncle was a cocaine user. Even if the Player had been aware that his uncle was a cocaine user, the uncle passed away ten

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<sup>4</sup> See, e.g., *Kutrovsky v ITE*, 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>5</sup> *IBAF v Luque*, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

months prior to the sample collection that led to these proceedings, and the ITF accepts that the Player could not reasonably have known or suspected even with the exercise of utmost caution that simply by spending time in the house after his uncle had passed away that the Player would himself be at risk of ingesting cocaine. The Player did not engage in any behaviour that could be said to be risky in the sense of exposing him to the possibility of ingesting a prohibited substance.<sup>6</sup>

27. Where a finding of No Fault or Negligence is made, TADP Article 10.4 provides that any otherwise applicable period of Ineligibility shall be eliminated entirely. Therefore, the Player's provisional suspension is lifted with immediate effect, and he will not serve any period of Ineligibility for his violation.

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

28. 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 any points and prize money that he won at those events are forfeited in accordance with the same provisions.

### **III.C Costs**

29. Each party shall bear its own costs of dealings with this matter.

### **III.D Publication**

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

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

31. 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**

32. This decision constitutes the final decision of the ITF, resolving this matter pursuant to TADP Article 8.1.4.
33. Further to TADP Article 12.2.1, each of WADA and the Comisión Nacional Antidopaje (**CNAD**) has a right to appeal against this decision to the CAS in Lausanne, Switzerland, in accordance with the procedure set out at TADP Article 12.6.
34. 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 CNAD, the Player will be entitled (if so advised) to exercise his right of cross-appeal in accordance with TADP Article 12.6.3.

London, 9 December 2019

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<sup>6</sup> CCES v Barber, SDRCC Doping Tribunal decision dated 11 August 2016, para 37.