

UCI Anti-Doping Tribunal

Judgment

case ADT 02.2019

UCI v. Mr Pier Paolo De Negri

Single Judge:

Mr. Jordi López Batet (Spain)

Aigle, 28 January 2020

I. INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (hereinafter referred to as “the Tribunal”) in application of the UCI Anti-Doping Procedural Rules (hereinafter referred to as “the ADT Rules”) in order to decide upon violations of the UCI Anti-Doping Rules (hereinafter referred to as “the UCI ADR”) committed by Mr Pier Paolo De Negri (hereinafter referred to as “the Rider”), as alleged by the UCI (hereinafter collectively referred to as “the Parties”).

II. FACTUAL BACKGROUND

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

1. The Rider

3. The Rider is a professional cyclist of Italian nationality who at the time of the alleged anti-doping rule violation (hereinafter “ADRV”), was affiliated to the Federazione Ciclista Italiana (hereinafter “FCI”), was a License-Holder within the meaning of the UCI ADR and was contracted to the UCI Professional Team Nippo-Vini Fatini until 31 December 2017, being thereafter contracted to UCI Continental Team MStina Focus.

2. The UCI

4. The UCI is the association of national cycling federations and a non-governmental international association with a non-profit-making purpose of international interest, having legal personality in accordance with articles 60 ff. of the Swiss Civil Code according to articles 1.1 and 1.2 of the UCI Constitution.

3. The Alleged ADRV

5. On 21 December 2017, the Rider provided a urine sample (number 4156904) during an out-of-competition doping control at his domicile in Brugnato, Italy. The Rider confirmed on the Doping Control Form that the sample had been taken in accordance with the applicable regulations and declared that he had taken no medications or supplements over the seven days preceding the test.
6. The urine sample provided by the Rider was then analysed in the WADA-accredited Laboratory in Lausanne, Switzerland (hereinafter referred to as “the Laboratory”).
7. On 2 February 2018, the Laboratory reported an Adverse Analytical Finding (hereinafter “AAF”) with regard to 19-Norandrosterone (hereinafter “19-NA”) and 19-Noretiocholanolone (hereinafter “19-NE”) in the Rider’s A-sample. These substances are prohibited substances listed under class S.1.1B (Endogenous Anabolic Androgenic Steroids) of the WADA Prohibited List (hereinafter the “Prohibited List”) adopted by the UCI when administered exogenously, and are not Specified Substances in the sense of the Prohibited List.
8. On 7 February 2018, the Rider was notified of the AAF and of the mandatory provisional suspension according to Article 7.9.1 UCI ADR with effect from the date of the notification.

9. On 13 February 2018, the Rider requested (i) the B Sample opening and analysis, (ii) to be present at this opening and analysis and (iii) the A Sample Laboratory Documentation Package. Furthermore, the Rider did not accept the AAF.
10. On 8 March 2018, the A Sample Laboratory Documentation Package was sent to the Rider.
11. On 12 March 2018, the opening and analysis of the B Sample took place at the Laboratory. This analysis confirmed the AAF established in the A Sample's analysis.
12. On 20 March 2018, the UCI informed the Rider of the results of the B Sample analysis, asserted that the Rider had committed an ADRV under articles 2.1 and/or 2.2 UCI ADR and invited him to provide an explanation and supporting documents with regard to the AAF within 14 days, which the Rider did.

In his letter to the UCI, the Rider basically contested the exogenous origin of the substances found in the samples and suggested that the AAF could be due to the ingestion of wild boar meat the day before the doping control (and in other previous days in November and December 2017, a period in which he alleged he was hunting as he still did not have a team), grounding this theory on a study (*"Consequences of boar edible tissue consumption on urinary profiles of nandrolone metabolites. I. Mass spectrometric detection and quantification of 19-nonandrosterone and 19-noretiocholanolone in human urine"*, LE BIZEC B. *et alia*), in accordance to which eating tissues of non-castrated male pork might induce some false accusations of the abuse of nandrolone in anti-doping.

In addition, the Rider provided an expert report issued by the Director of the Centro Interdipartimentale di Spettometria di Massa (CISM), Dr. Giuseppe Pieraccini, in which (i) it was excluded with high probability that two dietary supplements allegedly taken by the Rider and analysed by the CISM were the cause of the AAF and (ii) it was stated that the Rider had no apparent reason to voluntarily use nandrolone by oral way and that the intramuscular use of nandrolone could be excluded evaluating the analytical results and the timing of the previous doping controls passed by the Rider.

Moreover, the Rider also mentioned having drunk wine the night before the doping control, and provided a study named *"Urinary Concentrations of ethyl glucuronide and ethyl sulfate as thresholds to determine potential ethanol-induced alteration of steroid profiles"* (THIEME, D. *et alia*) in accordance to which *"there is a clear and quantitative and reproducible correlation between ethanol intake and steroids profiles... The duration of T/E-elevation is correlated with urinary EtG concentrations which are therefore potential markers for ethanol-induced alteration of steroids profiles in doping control analyses"*.

The Rider also mentioned having undergone a lot of doping controls in his career, always with negative result.

13. On 10 April 2018, the Team Manager of MStina Focus confirmed to the UCI in writing that in November 2017, the team had started discussions with the Rider to join him, discussions which were completed on 29 December 2017, when the Rider signed the relevant contract with the team. In addition, the aforementioned Team Manager informed the UCI that the contract with the Rider had been subsequently cancelled in accordance with article 8.3¹ of the same contract.

¹ Article 8.3. of this contract reads as follows : *Either part shall be entitled to terminate the present contract, without notice of liability for compensation, if the Rider should be rendered permanently unable to exercise the occupation of Professional Cyclist.*

14. On 13 April 2018, the Rider provided a copy of his contract with UCI Continental Team Mstina Focus, effective as of 1st January 2018, as requested by the UCI, and a copy of a job application that he sent to a cycling tour operator on 5 December 2017.
15. On 26 April 2018, the UCI offered an Acceptance of Consequences – according to Article 8.4 UCI ADR – to the Rider. The latter was also advised that if he did not agree with the proposed Acceptance of Consequences, the UCI would refer the matter to the Tribunal. In the same letter and *inter alia*, the UCI also asserted that after consulting with its scientific experts, it appeared simply impossible that the presence of exogenous 19-NA and 19-NE in the Rider's sample originated from the consumption of boar meat, and reiterated that the GC/C/IRMS analysis clearly established the exogenous origin of 19-NA in the Rider's sample.
16. This Acceptance of Consequences was rejected by the Rider, who in a communication sent to the UCI:
 - Made reference to the issues of the wild boar meat consumption and of the presence of Ethylglucuronide in the sample and its influence on the steroid profile already raised in his previous explanations to the UCI;
 - Pointed out an inconsistency between the concentration of 19-NA in the A and B sample, and that the B sample result was at the limit between endogenous and exogenous;
 - Referred again to some considerations made by Dr. Pieraccini's in his report; and
 - Affirmed (i) that when a rider takes a doping substance, it is for an objective, which in his case would be inexistent as at the time of the doping control, he had the intent of stopping his career and had no contract, (ii) that he could have refused to pass the doping control if he had been at fault but he did not, and (iii) that it made no sense to take doping substances when the risk of doping control at that time was high.
17. The UCI requested an opinion from the expert Prof. Martial Saugy to address some of the issues raised by the Rider on the AAF. Prof. Saugy issued the relevant expert report on 12 July 2018. This report was accompanied by additional information on the analyses of the Rider's A and B samples provided by the Director of the Laboratory Dr. Tiia Kuuranne.

In his report, Prof. Saugy established that:

- The nandrolone produced from the ingestion of boar meat is of natural origin and would then produce the same isotope ratio results than any other endogenous steroid, while in this case, the IRMS results clearly indicated the exogenous source of the 19-NA;
 - The Rider's samples A and B meet the WADA technical criteria to show the endogenous/exogenous origin of 19-NA;
 - The presence of ethylglucuronide in the Rider's sample is irrelevant with respect to the detection of exogenous 19-NA, as even if the consumption of alcohol can influence the endogenous steroid profile, it is absolutely not a confounding factor for the detection of the exogenous origin of nandrolone by IRMS;
 - The scenario of intramuscular injection of the substance cannot be excluded in this case.
18. On 13 July 2018, the UCI delivered a copy of Prof. Saugy's report to the Rider, told him again that after such supplementary scientific advice, it was still not satisfied with the explanations

provided by the Rider and offered him again the opportunity to subscribe an Acceptance of Consequences within 14 days.

19. On 2nd August 2018 and in light of the Rider's lack of response to the letter of 13 July 2018, the UCI granted the Rider a final deadline of 7 days to communicate his intention on the proposal made by the UCI in the letter of 13 July 2018.
20. On 11 August 2018, the Rider literally answered the UCI as follows: *"You take two months to answer to me and I must answer you in a few days? I don't accept nothing, I don't used (sic) so I can't accept"*.
21. On 13 August 2018, the UCI communicated to the Rider that if he needed more time to assess the proposal, it was ready to grant an additional one-week period of time.
22. On 28 August 2018 and in the absence of a response from the Rider to the communication of 13 August, the UCI provided the Rider a final deadline until 31 August 2018 to inform the UCI whether he agreed or not to the proposed Acceptance of Consequences. The Rider was further advised that if no response was received by such date, a case would be filed before the Tribunal.
23. On 24 September 2018, the Rider informed the Cycling Anti-Doping Foundation (hereinafter "CADF") that he retired from racing at the beginning of 2018, and that he would like not to receive more mail.
24. On 25 April 2019, the UCI provided the Rider a final deadline to inform whether he agreed or not to the proposed acceptance of consequences, and communicated the Rider that if UCI did not receive a response by 3rd May 2019, it would proceed to file a case before the Tribunal.
25. On 19 August 2019, the UCI referred the case to the Tribunal. In its referral to the Tribunal ("Petition"), the UCI requested an award be rendered in the following terms:
 - *Declaring that Mr. Pier Paolo De Negri has committed an Anti-Doping Rule Violation.*
 - *Imposing on Mr. Pier Paolo De Negri a Period of Ineligibility of 4 years, commencing on the date of the Tribunal's decision.*
 - *Holding that the period of provisional suspension served by Mr. De Negri since 7 February 2018 shall be deducted from the Period of Ineligibility imposed by the Tribunal.*
 - *Condemning Mr. Pier Paolo De Negri to pay a fine of [REDACTED].*
 - *Condemning Mr. Pier Paolo De Negri to pay the costs of results management by the UCI (2'500.- CHF), the costs incurred for Out-of-Competition Testing (1.500.- CHF), the costs of the B Sample analysis (510.- CHF) and the costs of the Laboratory Documentation Package (600.- CHF).*

III. PROCEDURE BEFORE THE TRIBUNAL

26. In accordance with article 13.1 ADT Rules, the UCI has initiated proceedings before this Tribunal through the filing of a Petition to the Secretariat on 19 August 2019. Before referring the case to the Tribunal, the UCI has tried to settle the dispute several times by offering the Rider an Acceptance of Consequences within the meaning of article 8.4 UCI ADR and article 2 ADT Rules. These offers have not been accepted by the Rider.
27. On 21 August 2019, the Secretariat of the Tribunal appointed Mr. Jordi López Batet to act as Single Judge in the proceedings in application of article 14.1 ADT Rules.

28. In application of article 14.4 ADT Rules, the Rider was informed with the same communication that disciplinary proceedings had been initiated against him before the Tribunal. Furthermore, the Rider was informed that he was granted a deadline until 5 September 2019 to submit his answer (hereinafter the "Answer") in conformity with articles 16 paragraph 2 and 18 ADT Rules.
29. On 5 September 2019, the Rider submitted his answer to the UCI's Petition, in which in essence, he reiterated the arguments and explanations previously referred to in this Judgment and claimed for his innocence.
30. On 10 September 2019, the Tribunal acknowledged receipt of the Rider's answer and stated that, in accordance with Article 17 of the ADT Rules, the Parties should not be authorized to supplement or amend their submissions after having filed the Petition and the Answer, unless so ordered by the Single Judge. Furthermore, the parties were informed that the Single Judge determined not to hold a hearing.

IV. JURISDICTION

31. The jurisdiction of the Tribunal follows from article 8.2 UCI ADR and article 3.1 ADT Rules according to which *"the Tribunal shall have jurisdiction over all matters in which an anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7 UCI ADR"*.
32. Furthermore, article 3.2 of the ADT Rules provides the following:

"Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal's attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal's jurisdiction."
33. Neither of the Parties raised any objection to the jurisdiction of the Tribunal within said time limit. Therefore, the Tribunal has jurisdiction to decide on the Petition.

V. APPLICABLE RULES

34. In accordance with article 25 ADT Rules, in rendering this Judgment, the Single Judge will apply the UCI UCI ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law.

VI. THE FINDINGS OF THE SINGLE JUDGE

35. Considering the submissions filed by the Parties in these proceedings, the main issues to be addressed and resolved by the Single Judge are the following:
 - (1) Whether the Rider committed an ADRV within the meaning of articles 2.1 and/or 2.2 UCI ADR or not; and if so,
 - (2) The consequences of such an ADRV.

1. The ADRV

36. The UCI submits that the Rider committed an ADRV within the meaning of article 2.1 and 2.2 UCI ADR, deriving from the AAF reported by the Laboratory as explained above. The Rider objects to this conclusion on the basis of the arguments succinctly explained in sections 12 and 16 above.

a) The relevant legal framework

37. The relevant legal provisions with respect to the establishment of an ADRV read as follows:

“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Rider’s Sample

2.1.1 *It is each Rider’s personal duty to ensure that no Prohibited Substance enters his or her body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*

[Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to a Rider’s Fault. This rule has been referred to in various CAS decisions as “Strict Liability”. A Rider’s Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]

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

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

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

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

2.2 Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method

2.2.1 *It is each Rider’s personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*

- 2.2.2 *The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.*

[Comment to Article 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Rider, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Rider Biological Passport, or other analytical which does not otherwise satisfy all the requirements to establish 'Presence' of a Prohibited Substance under Article 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.]

[Comment to Article 2.2.2: Demonstrating the 'Attempted Use' of a Prohibited Substance or a Prohibited Method requires proof of intent on the Rider's part. The fact that intent may be required to prove this particular anti-doping rule violation does not undermine the Strict Liability principle established for violations of Article 2.1 and violations of Article 2.2 in respect of Use of a Prohibited Substance or Prohibited Method. A Rider's 'Use' of a Prohibited Substance constitutes an anti-doping rule violation unless such substance is not prohibited Out-of-Competition and the Rider's Use takes place Out-of-Competition. (However, the presence of a Prohibited Substance or its Metabolites or Markers in a Sample collected In-Competition is a violation of Article 2.1 regardless of when that substance might have been administered)]".

38. As to the burden and standard of proof, article 3.1 UCI ADR reads as follows:

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

39. As to the methods of establishing facts and presumptions, article 3.2 UCI ADR stipulates in the pertinent part that:

"Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

[Comment to Article 3.2: For example, the UCI may establish an anti-doping rule violation under Article 2.2 based on the Rider's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Article 2.2, or conclusions drawn from the profile of a series of the Rider's blood or urine Samples, such as data from the Athlete Biological Passport.]

- 3.2.1 *Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid. Any Rider or other Person seeking to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge.*

CAS on its own initiative may also inform WADA of any such challenge. At WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge. Within 10 days of WADA's receipt of such notice, and WADA's receipt of the CAS file, WADA shall also have the right to intervene as a party, appear *amicus curiae*, or otherwise provide evidence in such proceeding.

3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Rider or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.

If the Rider or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

[Comment to Article 3.2.2: The burden is on the Rider or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. If the Rider or other Person does so, the burden shifts to the UCI to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.]

3.2.3 Departures from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Rider or other Person establishes a departure from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation". [...]

b) In casu

40. In the present case, the analysis of the Rider's A and B Samples at the Laboratory revealed the presence of 19-NA and 19-NE, which are Prohibited Substances when administered exogenously and are listed under class S.1.1B of the WADA Prohibited List adopted by the UCI. In accordance with the test reports conducted in the present case, "*the GC/C/IRMS results are consistent with of the exogenous origin of the target compound(s)*".
41. This leads the Single Judge to consider that at least *prima facie*, the UCI has discharged its burden of proof with respect to an ADRV (article 2.1 UCI ADR) committed by the Rider according to article 2.1.2 UCI ADR.
42. The Rider denies having committed an ADRV and has raised within the course of these proceedings a number of arguments and explanations to contest the UCI's establishment of the ADRV, basically addressed to challenge the exogenous origin of the substance found in the samples and to put certain analytical results in question, which the Single Judge has carefully examined together with the evidence brought by the Parties to these proceedings.
43. The result of this examination is that the Single Judge is not persuaded at all by the Rider's explanations and arguments aimed at contesting the establishment of the ADRV by the UCI, for the following reasons:

- With regard to the Rider's theory on the boar meat ingestion and its potential influence in the AAF, it shall be stressed that the Rider has not proven having made such a meat ingestion the night before the doping control or within the previous days as he affirms, and even if he had proven so, it shall be emphasized that his own expert, Dr. Pieraccini, declared in his report, while referring to the alleged ingestion of boar meat by the Rider the night before the doping control, that "*the origin of nandrolone metabolites is not related to this source*"².

For the sake of completeness, the Single Judge shall also point out in this respect that in accordance with Prof. Saugy's report, which has not been contested in this respect by the Rider and the Single Judge finds convincing, "*although nandrolone can be produced naturally by some species of animals (including boars and non-castrated pigs), it is essential to understand that the nandrolone produced from the consumption of boar meat for instance, **will be of natural origin and will then produce the same isotope ratio results than any other endogenous steroid. In the case of interest here, the IRMS results clearly indicate the exogenous source or the 19-nonandrosterone.** This means that **the nandrolone metabolites found in the rider's urine cannot originate from the consumption of boar meat,** which should have therefore given an IRMS result showing the endogenous origin of nandrolone"* (emphasis added).

- Concerning the ingestion of wine by the Rider the night before the doping control and the purported subsequent alteration of the urinary steroid profiles in his samples as regards of it, the Single Judge considers that the presence of Ethylglucuronide (a metabolite of ethanol) referenced in the A sample Test Report makes it at least possible that such a wine ingestion could have taken place. However, it is noted that in accordance with Prof. Saugy's report, the consumption of alcohol can influence the endogenous steroid profile, "*but it is absolutely **not a confounding factor for the detection of the exogenous origin of nandrolone by IRMS***" (emphasis added), which is precisely the case herein. The Rider has brought no convincing evidence to the contrary.
 - With respect to the difference between the concentration of 19-NA in the Rider's A and B samples and the allegation that the B sample results are at the limit between endogenous and exogenous, the Rider failed to explain how or to which extent these issues have an impact in the validity or reliability of the test results, while the UCI holds, based on Prof. Saugy's report, that the samples met the criteria to show the endogenous or exogenous origin of 19-NA in accordance with the WADA technical document TD2017NA. This assertion and Prof. Saugy's statements in this respect have not been specifically contested by the Rider. Even if the aforementioned allegations of the Rider could be interpreted as an attempt to rebut the presumption of article 3.2.2. UCI ADR, it is thus clear that this attempt has been unsuccessful.
44. Therefore, the Tribunal finds that these allegations of the Rider on the analytical results in no way affect their validity, which shall thus stand. The Single Judge hence considers that the UCI has established to his comfortable satisfaction that a violation of article 2.1. UCI ADR has taken place.
45. The Single Judge also notes that the UCI is sustaining that an ADRV of Presence under article 2.2. UCI ADR is to be also established. However, in light of the fact that the Single Judge has already held that the Rider committed a violation of article 2.1 UCI ADR, the question of whether the Rider also committed a violation of article 2.2 UCI ADR is of no practical

² See page 5, para 2 of this report.

consequence, since both bear the same consequences. Thus, it is considered unnecessary to address the issue of whether the Rider also committed a violation of article 2.2 UCI ADR.

2. The consequences of the ADRV

46. The UCI ADR provide for different types of consequences in case of an ADRV.
47. The UCI is requesting the Tribunal to impose the sanctions of ineligibility and monetary fine, and the costs of the proceedings in the terms established in the prayers for relief of its Petition. It is to be pointed out in this respect that the UCI is not requesting any results disqualification, as it seems that the Rider did not take part in any event between the date of the sample collection (21 December 2017) and the date he was provisionally suspended (7 February 2018).

a) The Period of Ineligibility

48. If the Rider's ADRV constitutes a first violation (which is the case herein), article 10.2 UCI ADR applies:

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

10.2.1 The period of Ineligibility shall be four years where:

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

...

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

10.2.3 As used in Articles 10.2 and 10.3, the term 'intentional' is meant to identify those Riders who cheat. The term therefore requires that the Rider or other Person engaged in conduct which he or 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. [...]"

49. Pursuant to this article, the standard period of ineligibility is 4 years, if the ADRV does not involve a Specified Substance and the Rider cannot establish that the ADRV was not intentional.
50. In the case at hand, the Rider's violation involves 19-NA and 19-NE, which are Prohibited Substances when administered exogenously and are not Specified Substances, being for the Rider to prove (by a balance of probability, as per article 3.1. UCI ADR) that the violation was not intentional.
51. After analysing the submissions and evidence brought to the proceedings by the Parties, the Single Judge concludes that the Rider failed to establish that the anti-doping violation was not intentional.
52. First of all, the thesis about the origin of 19-NA and 19-NE in the ingestion of boar meat is of no avail, for the reasons already explained in Section 43 above, and the same is to be said concerning the Rider's allegations on the purported intake by him of the dietary supplements sent for analysis to the CISM, which in any event has not been proven at all.
53. Secondly, the Single Judge, based on the technical evidence provided by the Parties, agrees with the UCI that the intramuscular injection of the prohibited substance cannot be

scientifically excluded in this case³, and that the use of the prohibited substance could be made by the administration of a small dose per os⁴.

54. Additionally, the explanations given by the Rider on the lack of incentive to take doping substances as he intended to put his career to an end are not only unsatisfactory but also unproven. Contrarily, it has become proven that the Rider, in November 2017, started conversations to join a team and that he signed an agreement with this team at the end of 2017 effective as of 1st January 2018. In any event, it shall be recalled that in accordance with this Tribunal's precedents, mere unproven statements or the simple denial of use of doping do not discharge the burden of proof on the Rider's lack of intentionality. For instance, in UCI ADT 09.2019 UCI vs Nicola Ruffoni, the Tribunal asserted that *"it is not sufficient for the Athlete to deny the use of doping. It is well established in CAS case law (See e.g. CAS 2014/A/3615, WADA v. Daiders, Award of 30 January 2015, para 51.) and confirmed on multiple occasions by this Tribunal (See e.g. ADT 02.2016, UCI v. Fabio Taborre, Judgment of 25 May 2016, para 85, ADT 03.2017, UCI v. Ms. Isabella Moreira Lacerda, Judgment of 17 August 2017, para 105 and ADT 05.2017, UCI v. Josemburg Nunes Pinho, Judgment of 15 August 2017, para 122) that a simple denial without any supporting evidence should be afforded at most limited evidentiary weight. Likewise, the Tribunal in the case at hand affords the Rider's denial only limited evidentiary weight"*.
55. Finally, the alleged clean records of the Rider, the fact that the Rider could have refused to pass the doping control but did not, or whether it made sense for the Rider or not to take risk by ingesting prohibited substances, are irrelevant in this case for the purposes of accrediting that the Rider's violation was not intentional.
56. Therefore, the allegations made by the Rider are definitively insufficient to establish that the violation was unintentional and consequently, the Single Judge finds that the standard period of ineligibility of 4 years shall apply to the Rider.
57. This being said, it shall be also noted that in accordance with the UCI ADR, a Rider may be entitled to the elimination or to the reduction of the period of ineligibility, if the prerequisites of articles 10.4 (No Fault or Negligence) or 10.5 (No Significant Fault or Negligence) UCI ADR are met. For this elimination or reduction to apply, the Rider shall establish how the Prohibited Substance entered his system. Additionally, it shall be also taken into account that article 10.6 UCI ADR sets out conditions under which a period of ineligibility may be eliminated, reduced or suspended for reasons other than fault.
58. In the case at stake, the Rider has not expressly requested the elimination or reduction of the sanction based on the aforementioned articles, and in any event, the Single Judge, after analysing the facts and evidence brought to the proceedings and in particular the fact that the Rider failed to validly establish how the Prohibited Substance entered his system, does not find that the Rider can qualify for such an elimination or reduction of the standard period of ineligibility. In consequence, it is reiterated that the period of ineligibility to be imposed on the Rider is of 4 years.

³ In accordance with Prof. Saugy's report, *"the late excretion of nandrolone after an injection of a normal dose (for muscle recovery), for example mid-October, is not incompatible with the results found 21 December"*.

⁴ Dr. Pieraccini mentions in his report that *"a second hypothesis is the intake of a small dose of nandrolone or its pro-hormones per os. This way of intake can produce urinary concentration of nandrolone metabolites as those measured in the sample of Mr. De Negri, in the 24-48 hours after the oral intake. The use of small doses ... was suggested to improve the recovery of an athletic performance or hard"*. However, the reasons adduced by Dr. Pieraccini to sustain that this practice is hardly credible in the case of the Rider (sport season being finished, no hard training period) are in the Single Judge's view merely speculative and not satisfactorily convincing.

59. In relation to the commencement of the period of ineligibility, article 10.11 UCI ADR stipulates in the pertinent part that:

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

10.11.3.1 If a Provisional Suspension is imposed and respected by the Rider or other Person, then the Rider 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, then the Rider 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. [...]”.

60. In accordance with this article, the period of ineligibility shall start on the date of the final decision imposing such Ineligibility, with credit given for the period of any provisional suspension if and to the extent it was respected by the Rider.

61. In the case at stake, on 7 February 2018, the Rider was informed of a mandatory provisional suspension imposed on him. It is undisputed between the Parties that the Rider observed the terms of such suspension and that, therefore, he must receive credit for the time so served.

b) Fine and Liability for Costs of the Procedures

62. Article 10.10.1 UCI ADR reads as follows:

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

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

[Comments: 1. A member of a Team registered with the UCI shall be considered as exercising a professional activity in cycling. 2: Suspension of part of a period of Ineligibility has no influence on the application of this Article].

The amount of the fine shall be equal to the net annual income from cycling that the Rider or other Person was entitled to for the whole year in which the anti-doping violation occurred. In the Event that the anti-doping violation relates to more than one year, the amount of the fine shall be equal to the average of the net annual income from cycling that the Rider or other Person was entitled to during each year covered by the anti-doping rule violation.

[Comment: Income from cycling includes the earnings from all the contracts with the Team and the income from image rights, amongst others.]

The net income shall be deemed to be 70 (seventy) % of the corresponding gross income. The Rider or other Person shall have the burden of proof to establish that the applicable national income tax legislation provides otherwise.

Bearing in mind the seriousness of the offence, the quantum of the fine may be reduced where the circumstances so justify, including:

- 1. Nature of anti-doping rule violation and circumstances giving rise to it;*
- 2. Timing of the commission of the anti-doping rule violation;*

3. *Rider or other Person's financial situation;*
4. *Cost of living in the Rider or other Person's place of residence;*
5. *Rider or other Person's Cooperation during the proceedings and/or Substantial Assistance as per article 10.6.1.*

In all cases, no fine may exceed CHF 1,500,000.

For the purpose of this article, the UCI shall have the right to receive a copy of the full contracts and other related documents from the Rider or other Person, the auditor or relevant National Federation.

[Comment: No fine may be considered a basis for reducing the period of Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules]."

63. The Rider is a professional rider which has committed an ADRV and that could not establish that this ADRV was unintentional, which leads the Single Judge to conclude that the prerequisites for a fine are, therefore, fulfilled and that such a fine shall be imposed.
64. With respect to the amount of the fine to be imposed, the UCI submits that the Rider was entitled to an annual gross income from cycling of ██████████, which is the one appearing in the employment contract dated 10 August 2015 that the Rider had signed with team Nippo-Vini Fantini for the period 1 January 2016 to 31 December 2017, a copy of which has been produced to the file. Therefore, according to the UCI, a mandatory fine of ██████████ (70% of ██████████) should be imposed according to article 10.10.1.1 UCI ADR. The Rider has not submitted specific allegations as to the fine's amount requested by the UCI.
65. The Single Judge finds that based on para. 3 of article 10.10.1.1 UCI ADR, the standard fine requested by the UCI shall be reduced in the present case, taking into account that (i) the Rider was entitled to a fairly modest salary (in this case the annual minimum gross amount as provided for in the CPA and AIGCP Joint Agreements), (ii) the Rider's new contract with MsTina Focus stipulated that the Rider would not receive any salary, but only the prizes it may win during competitions (15% of which were to be given to the team unless otherwise agreed) and (iii) the Rider, aged 33, has apparently retired from racing. Consequently and based on the aforementioned, the Single Judge decides to impose on the Rider a fine of ██████████ (██████████).
66. Finally, in relation to the Liability for Costs of the Procedures, article 10.10.2 UCI ADR reads as follows:

"10.10.2 Liability for Costs of the Procedures

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

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

The National Federation of the Rider or other Person shall be jointly and severally liable for its payment to the UCI.“

67. The UCI has provided the relevant invoice corresponding to the costs of the B Sample analysis (CHF 510) and the A Sample laboratory documentation package (CHF 600), for a total amount (applying a discount and VAT) of CHF 1'135,70.
68. The UCI is requesting the Tribunal to condemn the Rider to pay the following amounts in this respect:
- CHF 2'500.- for costs of the results management;
 - CHF 1'500.- for costs incurred for Out-Of-Competition Testing;
 - CHF 510.- for the costs of the B Sample analysis;
 - CHF 600.- for the costs of the A Sample laboratory documentation package.
69. The Single Judge considers that the Rider shall pay the amounts claimed by the UCI as listed in Section 68 above and condemns the Rider to pay them.

VII. COSTS OF THE PROCEEDINGS

70. Article 28 ADT Rules provides as follows:

1. *The Tribunal shall determine in its judgment the costs of the proceedings as provided under Article 10.10.2 para. 1 UCI ADR.*
2. *As a matter of principle the Judgment is rendered without costs.*
3. *Notwithstanding para. 1 above, the Tribunal may order the Defendant to pay a contribution toward the costs of the Tribunal. Whenever the hearing is held by videoconference, the maximum participation is CHF 7'500.*
4. *The Tribunal may also order the unsuccessful Party to pay a contribution toward the prevailing Party's costs and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and experts. If the prevailing Party was represented by a legal representative the contribution shall also cover legal costs.*

71. In application of article 28.2 ADT Rules, the Tribunal decides that the present Judgment is rendered without costs. In light of all of the circumstances of this case, the Tribunal finds it appropriate not to order the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

VIII. RULING

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

1. **Mr. De Negri has committed an Anti-Doping Rule Violation (article 2.1 UCI ADR).**
2. **Mr. De Negri is suspended for a period of Ineligibility of 4 years commencing on 7 February 2018.**
3. **Mr. De Negri is ordered to pay to the UCI the amount of [REDACTED] as monetary fine.**

4. **Mr. De Negri is ordered to pay to the UCI:**
 - a) the amount of CHF 2'500 for the costs of results management;
 - b) the amount of CHF 1'500 for costs incurred for Out-Of-Competition Testing;
 - c) the amount of CHF 510 for costs of the B Sample analysis; and
 - d) the amount of CHF 600 for costs of the A Sample laboratory documentation package.
 5. **All other and/or further-reaching requests are dismissed.**
 6. **This judgment is final and will be notified to:**
 - a) **Mr. De Negri;**
 - b) **NADO Italia**
 - c) **UCI; and**
 - d) **WADA**
73. This Judgment may be appealed before the CAS pursuant article 30.2 ADT Rules and article 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in article 13.2.5 UCI ADR.

Jordi López Batet
Single Judge