



**Arbitration CAS 2016/A/4596 Fédération Internationale de Football Association (FIFA) v. Saudi Arabian Olympic Committee (SAOC) & Saudi Arabian Anti-Doping Committee (SAADC) & Mohammed Mohammed Noor Adam Hawsawi, award of 1 March 2017 (operative part of 15 December 2016)**

Panel: Prof. Martin Schimke (Germany), President; Prof. Luigi Fumagalli (Italy); Mr Jeffrey Benz (USA)

*Football*

*Doping (amphetamine)*

*Admissibility of new arguments presented after the hearing*

*Obligation to report the concentration of a non-threshold substance*

*Differing concentrations of the prohibited substance in the A and B samples*

*Intent*

*Out-of-competition ingestion*

*Context unrelated to sport performance*

*Effect of a partly respected provisional suspension on the period of ineligibility*

- 1. Arguments that were not contained in the answer and do not appear to have been advanced in any of the proceedings before the first instance body but were submitted for the first time after the conclusion of the CAS hearing in a document which the CAS panel in charge directed should be strictly limited to responding to the arguments and expert evidence adduced at that hearing are late and inadmissible.**
- 2. For a non-threshold substance, it is the mere presence of the substance in an athlete's body rather than the amount or concentration of the substance, that constitutes an anti-doping violation. There is nothing in the WADA International Standard for Laboratories (ISL) or the WADA Code that requires a laboratory to specify the concentration of a non-threshold substance in an A-sample or B-sample as a precondition to recording an adverse analytical finding. Article 6 (2) and (3) of the FIFA Anti-Doping Regulations also makes it clear that, in the case of a non-specified substance such as amphetamine, it is the mere presence of the substance in a player's bodily sample that establishes an anti-doping violation.**
- 3. The analysis of a B-sample is intended to confirm the presence of a prohibited substance. However this does not mean that it is either intended or expected to yield identical values as the A-sample. The WADA ISL makes clear that, in the case of a non-threshold substance, the laboratory method for analysing the B-sample is not aimed at having identical results or at gaining information on the background or quantification, but only at confirming the presence of the prohibited substance. In other terms, the ISL only requires the identification in the B-sample of the same prohibited substance that was found in the A-sample, and it does not require the chromatograms or the quantities**

or the ‘background noises’ to be exactly the same.

4. An athlete who is aware that the substance s/he is consuming has powerful pharmacological properties but takes no steps to verify the origin or content of the substance, purchases it from unknown vendors in unlabelled packages, with no indication of the ingredients or origin must know or have known that there is a significant risk that his/her consumption of the substance involves a significant risk of anti-doping violation.
5. It is extremely difficult, if not impossible, to infer the date of ingestion from the level of concentration in a sample without also knowing the size of the dose and further information about the individual’s metabolic rate. Therefore, the mere fact that the concentration of a substance in a sample is relatively low does not establish that it was ingested out of competition.
6. The ingestion of a prohibited substance such as amphetamine with a view to alleviate chronic joint pain is not *“unrelated to sport performance”*. Professional footballers are regularly required to engage in high impact, high intensity cardiovascular exercise which places considerable physical demands upon the individual’s body and joints. The effect of a chronic joint condition is likely to be at its most acute – and to have the greatest inhibiting impact – during such periods of intense physical activity. Against this backdrop, the deliberate use of a powerful artificial stimulant to reduce or remove chronic joint pain is likely to have a significant and non-incidental effect on sport performance. Accordingly, the consumption of the substance cannot be characterised as being *“unrelated to sport performance”*.
7. If an athlete only respected some but not all of a provisional suspension, s/he is not entitled to receive credit for *any* period of the provisional suspension. An athlete’s obligation to respect a provisional suspension in order to receive credit for that period of ineligibility applies to the provisional suspension as a whole and not merely to a portion of it. It is incumbent upon the athlete, as the subject of a provisional suspension, to abide by the terms of the suspension and to exercise due care and responsibility in ascertaining what sporting activities and events fall within its scope.

## I. PARTIES

1. The Fédération Internationale de Football Association (“FIFA”) is an international association of national and international football associations/federations and is the worldwide governing body of the sport of football. The FIFA has its seat in Zurich, Switzerland and maintains legal personality under Swiss law.

2. The Saudi Arabian Olympic Committee (“SAOC”) is the National Olympic Committee representing Saudi Arabia.
3. The Saudi Arabian Anti-Doping Committee (“SAADC”) is a national committee responsible for implementing the national anti-doping programme and undertaking anti-doping functions in Saudi Arabia. The SAADC is tasked with implementing the World Anti-Doping Code (the “WADA Code”) in accordance with its responsibilities under that instrument.
4. Mr. Mohammed Mohammed Noor Adma Hawsawi (the “Player”) is a professional football player with Al-Ittihad FC (the “Club”), a team in the Saudi Professional League, the top football division in Saudi Arabia.

## **II. FACTUAL BACKGROUND**

5. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and the evidence adduced at the CAS hearing on 1 December 2016. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, the Panel refers in the Award only to the submissions and evidence it considers necessary to explain the reasoning for the Panel’s decision.

### **A. Background Facts**

6. On 3 November 2015, the Player was subjected to a doping control test following a football match between the Club and Al-Fateh SC (another club in the Saudi Professional League). The test was conducted by the SAADC.
7. On 24 November 2015, the Swiss Laboratory for Doping Analysis (the “Laboratory”) sent a Doping Control Report to the SAADC. The report notified the SAADC of an adverse analytical finding in respect of the presence of amphetamine in the Player’s A-sample. The concentration of amphetamine in the A-sample was reported to be 56 ng/ml. The report was signed by the Director of the Laboratory, Professor Martial Saugy, who confirmed he had personally read and approved the report.
8. On 29 November 2015, the SAADC wrote to the Club stating that the results of the doping control test indicated the presence of a prohibited substance in the Player’s A-sample. The letter stated that the Player would be temporarily suspended from participating in national and international competitions until his case had been considered in accordance with the applicable WADA rules. The letter invited the Player to attend a hearing with representatives of the SAADC.
9. On 30 November 2015, the Player was provisionally suspended from competition.

10. On 17 February 2016, the Laboratory produced a Doping Control Report in respect of the Player's B-sample. The Doping Control Report recorded an adverse analytical finding concerning the presence of amphetamine in the B-sample. In contrast to the report on the Player's A-sample, the report did not state the concentration of amphetamine in the B-sample. Professor Saugy again signed the report to confirm he had read and approved its findings.

**B. Decision of the SAADC Hearing Panel**

11. On 28 February 2016, the SAADC's Hearing Panel (the "Hearing Panel") held a hearing in respect of the Player's adverse analytical finding. The Player, his legal representatives and a scientific consultant attended the hearing, as did representatives of the SAADC.
12. According to the SAADC's minutes of the hearing, the Player's evidence before the Hearing Panel established the following facts and matters:
- (a) The Player denied that he had used amphetamine.
  - (b) The Player did object to the sample collection procedures that were followed during the doping control test.
  - (c) In the Doping Control Form completed during the sample collection procedure on 3 November 2015, the Player did not record that he had taken any medication or food supplements during the week prior to the doping control test.
  - (d) The Player told the Hearing Panel that he did not take any vitamins or food supplements without the knowledge of the Club's physician. He did, however, take vitamins or supplements with the physician's knowledge prior to testing. The Player had not recorded this fact in the Doping Control Form.
  - (e) The Player stated that he had been taking the vitamins and supplements intermittently for more than three years. He had previously been subjected to several doping control tests while he was taking those supplements (The Hearing Panel indicated that it had conducted its own checks and confirmed that the Player had been tested twice during the previous season, while he was playing with Al-Nassr FC. Neither test returned an adverse analytical finding).
  - (f) In response to a question about whether he had taken any other medications or supplements, the Player stated that he had been taking "*Arabic Gum*" as a herbal treatment for joint pain caused by a high level of uric acid. The Player confirmed that he had not been using this substance pursuant to medical advice.
  - (g) The Player explained that he had previously used medicine from abroad to treat his joint pain. However, since that medicine was no longer available, and since the alternative medicine available in Saudi Arabia was not effective at treating his symptoms, he had decided to use the herbal Arabic Gum treatment.

- (h) The Player explained that he used to send someone to purchase the Arabic Gum from different herbal stores; however he was uncertain of the vendors' exact locations. He stated that the herb used to arrive in different forms (either powder or leaves). It was delivered in wrapped bags or preserved in packs. The Player could not recall whether the packages were labelled with the ingredients and/or directions for use.
  - (i) The Player stated that he did not know the exact content of the bags/packs and did not know if the product was mixed with any other herbs or substances. He did not take any steps to ascertain these matters. Nor did he check what herbs he was taking.
  - (j) The Player did not consult the team physician about his use of the herbs, since the physician would not be consulted about "*the use of natural herbs which are normally take in everyday's life [sic]*". The Player never recorded his consumption of the herbs in the Doping Control Form.
  - (k) In response to a further question, the Player stated that he had participated in two competitions following the commencement of his provisional suspension on 30 November 2015. He stated that he had never read or asked about the effect of a provisional suspension under the Saudi Anti-Doping Rules in Sport 2015 (the "Saudi Anti-Doping Rules"). He had believed that the suspension did not prevent him from participating in such competitions. The Player believed that if he was not allowed to participate in the matches, then the organiser of the competition ought to have informed him that he should not take part.
13. In addition to hearing from the Player, the Hearing Panel also received evidence from a "*scientific consultant*", Mr Tarek Hasan. According to the minutes of the hearing:
- (a) Mr Hasan stated that procedural mistakes had been made during the analysis of the Player's A-sample and B-sample in the Laboratory. The machines and devices at the Laboratory were out-dated and a machine had broken down during the analysis of the Player's B-sample, meaning the sample had to be re-analyzed.
  - (b) Ms Hasan specifically criticised (i) the Laboratory's failure to specify the amphetamine ratio in the Player's B-sample; and (ii) the Laboratory's failure to specify the "*uncertainty ratio*" in the documents concerning the outcome of the A-sample analysis.
  - (c) Mr Hasan stated that the Player's consumption of the Arabic Gum could have been responsible for the finding that amphetamine was present in the Player's urine. According to the minutes of the hearing, Mr Hasan "*supported his claim with a scientific study*" (the full name of the study is not provided in the minutes).
14. The minutes of the Hearing Panel further recorded that according to information received from WADA:

- (a) The Laboratory was properly accredited. There was no reason to send the Player's urine sample to another facility.
  - (b) The Laboratory had not departed from the testing standards contained in the WADA International Standards for Laboratories.
  - (c) The Player's B-sample was tested twice. Both times the analysis established the presence of amphetamine. The testing process complied with WADA standards.
  - (d) The Laboratory had properly documented the testing method and the repetition of that process. The Laboratory was not required to specify the substance ratio in its analysis of the B-sample.
15. After receiving the parties' evidence and submissions, the Hearing Panel unanimously decided that the Player had committed an anti-doping violation and should be suspended for a period of four years. In reaching this conclusion, the Hearing Panel stated that:
  - (a) The Laboratory is a WADA-accredited laboratory.
  - (b) Under the WADA Prohibited List 2015, amphetamine is a prohibited substance regardless of any threshold matter.
  - (c) As a result, the Hearing Panel did not consider that the substance ratio was necessary in order to confirm that the Player had committed an anti-doping violation.
  - (d) Accordingly, the Hearing Panel adopted the results of the A-sample and B-sample analysis provided by the Laboratory. On the basis of those results, it concluded that the Player had committed an anti-doping violation.
16. The Hearing Panel went on to explain that conditions for reducing the applicable sanction on a "No Intent" basis were not satisfied in the Player's case. It noted that the Player had not recorded his use of the Arabic Gum on the Doping Control Form and was unable to provide a convincing explanation of how the prohibited substance had entered his body. It added that the Player had *"bought herbal stores in a significant risky way that might constitute an anti-doping rule violation without making any least effort to make sure not to commit anti-doping rule violations whether by informing the team physician or writing it down in the DC Form"*.
17. The Hearing Panel further stated that:
  - (a) None of the features of the Player's case fell within the conditions required to reduce the applicable sanction in accordance with Article 10.6 of the Saudi Anti-Doping Rules.
  - (b) The Player had violated the provisional suspension by participating in an official organised competition. The Saudi-Anti Doping Rules are publicly available and the provisions concerning violations of a period of ineligibility are clearly described in

Article 10.12.1-3. The Player must therefore bear responsibility for his actions and for his ignorance of the rules.

18. Accordingly, the Hearing Panel unanimously concluded that the four-year period of ineligibility should commence on the date of the hearing, rather than the date of the Player's provisional suspension.

### C. The Player's appeal to the Appeal Panel

19. On 20 March 2016, the Player filed an "*appellate statement*" before the SAOC Appeal Panel (the "Appeal Panel"). The Appeal Panel is formally an organ of the SAOC, although it exercises a high degree of operational autonomy in carrying out its appellate functions.

20. The Player advanced a number of procedural and substantive criticisms of the Hearing Panel's approach and decision:

- (a) **Impermissible constitution of the Hearing Panel** – The Hearing Panel had violated the WADA principles and guidelines governing the establishment of a hearing panel. In particular, the fact that the Chair of the Hearing Panel (who was a medical doctor) did not have legal experience contravened the WADA Model Rules for National Anti-Doping Organizations (Version 3.0). This provides that: "*The anti-doping hearing panel formation must consist of a Chair and two Vice-Chairs, each of whom shall be legal practitioners of not less than five years standing*".
- (b) **The Hearing Panel's failure to follow the correct procedures for delivering a fully reasoned decision** – The Player submitted that the procedures adopted by the Hearing Panel led it to reach the wrong decision. Article 8.3.1 of the Saudi Anti-Doping Rules provides: "*At the end of the hearing, or on a timely basis thereafter, the Doping Hearing Panel shall issue a written, dated and signed decision (either unanimously or by majority) that includes the full reasons for the decisions and for any period of Ineligibility imposed, including (if applicable) a justification for why the greatest potential Consequences were not imposed*". Article 8.3.2 provides that: "*The decision shall be provided by SAADC to the Athlete or other Person, to his National Federations, and to Anti-Doping Organizations with a right to appeal under Article 13.2.3*". The Player submitted that:
- (i) The SAADC's decision letter dated 28 February 2016 "*did not include resolution of the hearing panel. It referred to that decision only*".
- (ii) In any event, the SAADC was not competent to issue that decision. The Hearing Panel failed to notify the signed decision in accordance with the prescribed procedures under the Saudi Anti-Doping Rules.
- (c) **Hearing Panel's failure to address certain issues and failure to give due consideration to all relevant evidence and arguments** – The Player contended that the Hearing Panel's decision did not address the issue of "*causation*" and "*did not include*

any reference that panel had examined and discussed [the Player's] legal defences" or the supporting scientific evidence adduced on his behalf. The Player further submitted that the Hearing Panel had delivered its decision just one and a half hours after the hearing ended. According to the Player, this demonstrated that it had not properly considered the documents advanced on behalf of the Player.

- (d) **The Laboratory's violation of international standards and regulations** – The Player submitted that the Laboratory had breached mandatory international standards and regulations. The SAADC was unable to establish that those departures did not cause the adverse analytical finding. In these circumstances, the adverse analytical finding should not have been upheld. In support of this argument, the Player relied on Article 3.2.2 of the Saudi Anti-Doping Rules, which provides: "*WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and other custodial procedures in accordance with the International Standard for Laboratories. The Athlete 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 Athlete 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 SAADC shall have the burden to establish that such departure did not cause the Adverse Analytical Finding*".
- (e) **Hearing Panel's failure to require the Laboratory to provide the concentration ratio of the B-sample** – The Player submitted that the Hearing Panel wrongly failed to grant the Player's request for the Laboratory to provide SAADC with the concentration of the prohibited substance in the B-sample.
- (f) **No proof that the Player's samples were collected by a doctor** – The Player submitted that in accordance with the FIFA Anti-Doping Regulations, doping control samples must be collected by a doctor unless an exception has been granted by the FIFA Anti-Doping Unit. The Player submitted that the SAADC had not provided any proof that the Player's samples were collected in the presence of a doctor, nor had it established that any exception was granted by FIFA.
21. In addition to those criticisms, the Player submitted that the Hearing Panel made an error of law when determining the appropriate period of ineligibility for the anti-doping violation that it concluded had occurred. Article 10.2.1.2 of the Saudi Anti-Doping Rules states: "*The period of Ineligibility shall be as follows: The anti-doping rule violation involves a Specified Substance and SAADC can establish that the anti-doping rule violation was intentional*". The Player submitted that the Hearing Panel's reliance on that provision was wrong for two reasons:
- (a) First, the Player stated that amphetamine is a non-specified substance according to Article 4.2.2 of the Saudi Anti-Doping Rules and the WADA Code. Since amphetamine is classified under S6a of the International Standard for the WADA 2015 Prohibited List as a non-specified substance, the Hearing Panel erred in its approach to the issue of causation.

(b) Secondly, the Player submitted that nothing in the Hearing Panel's decision established that the anti-doping rule violation was intentional. Establishing that the violation was intentional is a necessary condition in the application of Article 10.2.1.2. According to the Player, the Hearing Panel's decision did not contain any proof that the Player intended to cheat.

22. On 4 April 2016, the Appeal Panel held a hearing of the Player's appeal. The Player gave evidence and answered questions put to him by the panel. During the course of his evidence, the Player was asked how the prohibited substance had entered his body. He responded that he had "*no idea*" how the substance entered his body. He added that during his career he had undergone doping tests "*more than 25 times*". All of the tests were negative. The Player repeated that he did not know how or when the prohibited substance had entered his body.

#### **D. The Appeal Panel's decision**

23. On 17 April 2016, the Appeal Panel delivered its decision on the Player's appeal.

##### **1. The Player's anti-doping violation**

24. The Appeal Panel held that the Player's argument that the Laboratory had departed from mandatory international standards was "*not within the jurisdiction of the Appeal Panel*". The Appeal Panel held that the Hearing Panel had correctly concluded that the Player committed an anti-doping violation, but had been wrong to determine the case on the basis that the Player had violated the anti-doping rules in-competition. The Appeal Panel held that, having regard to the concentration of the prohibited substance in the Player's A-sample, it was clear that "*this substance had entered the body at least 3-5 days prior to the competition*". Accordingly, it was "*evident*" that "*the substance entered the player's body during (Out of competition) not In-competition*". Moreover, it was clear from the concentration of the substance in the sample that, "*it would not have a stimulating effect and it had no effect on the player's performance in the competition*".

25. Based on these facts, the Appeal Panel concluded that the Player had not breached the objective of maintaining fair play, which the Saudi Anti-Doping Rules seek to protect. In the circumstances, the Appeal Panel concluded that the presence of the prohibited substance was "*unintentional*" for the purposes of Article 10.2.3 of the Saudi Anti-Doping Rules.

26. The Appeal Panel went on to note that the Hearing Panel had refused the Player's requests to be provided with the concentration of the prohibited substance in his B-sample. The Hearing Panel had failed to appreciate that the concentration of the prohibited substance in the B-sample was necessary in order to confirm whether the prohibited substance was consumed in-competition or out-of-competition. In the Appeal Panel's view, this had important consequences for considering whether the Player's use of the prohibited substance was intentional or unintentional. The concentration ratio of the prohibited substance was "*one of the most important indicators related to detecting prohibited substances and methods*" and "*is no less important*".

than the result of the sample". Accordingly, "The final result of the analysis report cannot be adopted without referring to such results".

27. The Appeal Panel concluded that the Hearing Panel's refusal to determine the concentration of the prohibited substance in the B-sample analysis was an unjustified breach of the Player's rights. The Appeal Panel said the Hearing Panel had committed "an unjustified legal error" by concluding that the concentration ratio of the B-sample was not important in establishing a doping violation. This error vitiated the Hearing Panel's decision to impose a four-year suspension.
28. At the end of its decision, the Appeal Panel noted that, "the player did not deny the presence of the substance in his body, but he denied how it entered the body". It added that the Player had no previous record of any anti-doping violations, despite having been tested "many times during many sport competitions and events". In the Appeal Panel's view, the evidence confirmed that the Player "did not commit any significant fault or negligence".
29. The Appeal Panel dismissed the Player's arguments concerning the identity of the Chair of the Hearing Panel, the manner in which the Hearing Panel communicated its decision, and the identity of the person who collected the sample from the Player.

## **2. The Player's breach of the provisional suspension**

30. The Appeal Panel went on to hold that the Hearing Panel had failed to follow the correct procedure in its treatment of the Player's breach of the provisional suspension. In particular, by asking the Player about the breach of the provisional suspension at a hearing concerned with another violation (viz. the anti-doping violation), the Hearing Panel had violated Articles 8 and 10.2.2 of the Saudi Anti-Doping Rules. The Appeal Panel held that any procedure that breaches these provisions is void, even if a player has admitted the relevant violation.
31. The Appeal Panel went on to observe that the Hearing Panel "did not describe the aspects of the violation" caused by the Player's alleged breach of the provisional suspension. In particular, it failed to state (i) the date of the participation; (ii) the name of the official competition during which the violation occurred; or (iii) the official organising authority. In the Appeal Panel's view, the Hearing Panel had addressed the matter "in an ambiguous way lacking accuracy and objectivity that do not [sic] comply with the importance of the decision it made".

## **3. The Appeal Panel's conclusions and order**

32. In light of these findings, the Appeal Panel partially allowed the Player's appeal and made an order which:
  - (a) Confirmed the Hearing Panel's finding regarding the presence of a prohibited substance in the Player's samples;
  - (b) Revoked the four-year suspension imposed by the Hearing Panel.

- (c) Held that the period of provisional suspension already served between 30 November 2015 and the date of the Appeal Panel's decision on 17 April 2016 was "*sufficient*" and therefore the Player had the right to resume competing from the date of the Appeal Panel's decision.

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

33. On 9 May 2016, FIFA filed its Statement of Appeal with the CAS Court Office in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). In its statement of appeal, FIFA nominated Prof. Luigi Fumagalli as arbitrator.
34. On 24 May 2016, FIFA filed its Appeal Brief in accordance with Article R51 of the Code.
35. On 20 June 2016, the Player nominated Mr Edward Canty as an arbitrator.
36. On 24 June 2016, the Player submitted his Answer to FIFA's appeal in accordance with Article R51 of the Code.
37. On 15 July 2016, the Player nominated Mr Jeffrey Benz as an arbitrator (in place of Mr Canty, who had recused himself from the procedure).
38. On 27 November 2016 the Second Respondent signed and returned the Order of Procedure in this case; the Appellant and First Respondent signed and returned the Order of Procedure on 28 November 2016; the Third Respondent did not sign or return the Order of Procedure, or otherwise object to its contents.
39. On 30 November 2016 (the day before the hearing was scheduled to take place) the Player informed the CAS Court Office that he has terminated his relationship with his counsel and sought an adjournment of the hearing so as to retain new counsel. He also noted that his expert, Dr. Tarek Hassan, had not received his Swiss entry visa and therefore was unable to attend the hearing the following day.
40. On 30 November 2016, the law firm of Squire Patton entered an appearance on behalf of the Athlete.
41. On 1 December 2016, an oral hearing took place before the CAS in Lausanne, Switzerland. The Panel was assisted at the hearing by Mr. Brent J. Nowicki (Counsel to the CAS) and Mr. Edward Craven (*ad hoc* clerk).
42. The following witnesses gave evidence at the hearing:
- Professor Martial Saugy
  - Professor Peter Van Eenoo
43. In addition, the following persons attended the hearing:

- Dr. Volker Hesse, counsel for FIFA
- Mr. Alexis Weber, representative of the FIFA Anti-Doping Unit
- Ms. Monika Keller, representative of the FIFA Anti-Doping Unit
- Mr. Ahmed E. Aboemarah, SAOC Legal Affairs Manager
- Dr. Ahmad Bin Nasser, Chairman of the SAADC Hearing Panel
- Mr. Abdulaziz Almasaed, Secretary General of SAADC
- Mr. Lloyd Thomas, counsel for the Player

44. At the outset of the hearing, the Player's counsel made an application for the hearing to be adjourned. In the alternative, he stated that if the application for an adjournment was denied, the Player requested the opportunity to file written submissions after the hearing to advance his positive case and to respond to the points made at the hearing. No further requests were made on behalf of the Player. After considering the applications, the Panel declined to adjourn the hearing. Instead, the Panel granted the Athlete permission to file a post-hearing written submission strictly limited to the arguments and expert evidence elaborated at the CAS hearing.
45. At the conclusion of the hearing, the parties confirmed that there were no objections to the manner in which the procedure was conducted.
46. On 8 December 2016, the Player filed a post-hearing written submission. Contrary to the Panel's express direction, the Player's submission sought to advance several new arguments that did not respond to the submissions and expert evidence advanced by FIFA at the CAS hearing.
47. On 13 December 2016, FIFA filed a short written response to the Player's post-hearing submission.

#### **IV. THE ISSUES IN THE APPEAL**

48. The issues that arise for determination by the CAS Panel in this appeal may be summarised as follows:
- (a) Issue 1: Did the Player commit an anti-doping rule violation?
  - (b) Issue 2: If the Player did commit an anti-doping rule violation, what is the correct sanction that should be imposed in respect of that violation?
  - (c) Issue 3: When calculating the duration of any period of ineligibility that the Player must serve, should the Player receive credit for the provisional suspension that he served between 30 November 2015 and 17 April 2016?
49. The parties' submissions, in essence, may be summarized as follows.

**A. The Appellant – FIFA**

50. FIFA's Statement of Appeal requested the CAS to determine that:

- 1) *The appeal of FIFA is admissible.*
- 2) *The decision rendered by the Saudi Anti-Doping Appeal Panel No. 3/37 on 17 April 2016 (10/07/1437 H.) is set aside.*
- 3) *Mr Mohammed Mohammed Noor Adam Hawsawi is sanctioned with a four-year period of ineligibility starting the date on which the CAS award enters into force. Any period of ineligibility already served by the Player shall be credited against the total period of ineligibility imposed.*
- 4) *The costs of the proceedings shall be borne by the Respondents.*

**1. Issue 1: The alleged anti-doping rule violation**

51. Article 6 of the FIFA Anti-Doping Regulations is entitled "Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample". It states:

1. *It is each Player's personal duty to ensure that no prohibited substance enters his body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping violation under art. 6.*
2. *Sufficient proof of an anti-doping rule violation under art. 6 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Player's "A" Sample where the player waives analysis of the "B" Sample and the "B" Sample is not analysed; or where the Player's "B" Sample is analysed and the analysis of the Player's "B" Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Player's "A" Sample; or where Player's "B" Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*
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 Player's Sample shall constitute an anti-doping rule violation.*
4. *As an exception to the general rule of art. 6, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously".*

52. Article 67(2)(b) of the FIFA Anti-Doping Regulations states:

*"The following rules of proof shall be applicable in doping cases:*

*[...]*

*b. 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 Player 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 Player 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, FIFA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding”.*

53. FIFA stated that the Laboratory reported the presence of amphetamine in the Player’s sample. Amphetamine is a prohibited substance. It is classified as a non-specified stimulant under class S6 of the 2015 WADA Prohibited List. It is not a threshold substance. The presence of amphetamine in a player’s bodily sample is therefore a violation of Article 6, regardless of its quantity.
54. FIFA contended that the analysis of the Player’s B-sample, which was examined at the Player’s request, confirmed the results of the A-sample. FIFA submitted that in the Player’s Answer he did not identify any basis for establishing a departure from the International Standard for Laboratories. Nor did he suggest that an alleged departure could reasonably have caused the Adverse Analytical Sample.
55. In his post-hearing written submission, the Player alleged various deficiencies in the methodology used by the Laboratory. These included a suggestion that the internal chain of custody had been broken and a suggestion that there had been an inappropriate overlap in the responsibilities of two certified scientists at the Laboratory. FIFA submitted that these new arguments were inadmissible as they were raised for the first time in the Player’s post-hearing submissions. In any event, FIFA noted that the Player had not adduced any documentary or scientific evidence in support of these arguments, which were entirely uncorroborated.
56. In support of its case, FIFA relied on the evidence of Professor Saugy and Dr Norbert Baume, who confirmed that that the analysis of the Player’s samples had been conducted in full compliance with the WADA ISL. In a jointly signed letter dated 20 May 2016, Professor Saugy and Dr Baume stated that:

*“We undersigned, Martial Saugy and Norbert Baume, respectively Director and Chief of the operations of the Swiss Laboratory for doping analyses, confirm that the analyses of sample A-6166324 and sample B-6166324 were done according to the International Standards for Laboratories (ISL) and without any problems in the process.*

*We can then attest that the presence of amphetamine in those two samples was clearly shown”*  
(emphasis original).

57. In addition, FIFA relied on the evidence of Professor Peter Van Eenoo, who confirmed that the analyses of the Player’s A-sample and B-sample were performed in compliance with the

WADA ISL and the relevant WADA Technical Documents. In a letter dated 21 May 2016, Professor Eeno stated:

*“I have verified the contents of the laboratory documentation package by LAD for the sample A-6166324 (A2015-11196).*

*The data in the laboratory documentation package and annexes provide in my opinion all required information to confirm that in this sample amphetamine was unequivocally detected. Hence, this documentation package supports the laboratory’s decision to report an adverse analytical finding for amphetamine.*

*It is noteworthy that the LAD used two orthogonal methods, namely an LC-MS/MS method for screening and a GC-MS method for confirmation. Although this is not required by any regulation, the orthogonal nature of the methods further eliminates any potential doubt on specificity of the methodology.*

*The data presented in the documentation package is in agreement with the WADA regulations, as per the International Standard for Laboratories and WADA’s applicable Technical documents”.*

58. In a second letter of the same date, Professor Eeno stated:

*“I have verified the contents of the laboratory documentation package by LAD for the sample B-6166324 (B2015-11196).*

*The data in the laboratory documentation package and annexes provide in my opinion all required information to confirm that in this sample amphetamine was unequivocally detected. Hence, this documentation package supports the laboratory’s decision to report an adverse analytical finding for amphetamine.*

*The data presented in the documentation package is in agreement with the WAA regulations, as per the International Standard for Laboratories and WADA’s applicable Technical documents”.*

59. FIFA rejected the Player’s argument that the Laboratory was required to specify the concentration of amphetamine in the Player’s B-sample. Since amphetamine is a non-threshold substance, it is the mere presence of the substance in a player’s body – rather than any particular quantity of amount – that constitutes an anti-doping violation.

60. FIFA also referred to the definition of “*In-competition*” in the FIFA Anti-Doping Regulations. This states:

*“In-Competition: commences 24 hours before the kick-off of a single Match or the first Match of a Competition and terminates 24 hours after completion of the Sample collection that takes place after the final whistle of a single Match or the final Match of such Competition”.*

61. FIFA noted that the doping control test took place directly after a professional match on 3 November 2015. Accordingly, the test was within the period defined as “*in-competition*” under

the FIFA Anti-Doping Regulations. FIFA submitted that the point in time when a prohibited substance was ingested is irrelevant for the purposes of establishing an anti-doping rule violation. The mere presence of a non-threshold substance in a player's bodily specimen, detected at an in-competition doping control, constitutes an anti-doping rule violation under Article 6. FIFA submitted that this is precisely what occurred in this case.

## 2. **Issue 2: Appropriate sanction**

62. Article 19 of the FIFA Anti-Doping Regulations states:

- “1. *The period of ineligibility shall be four years where:*
  - a) *The anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional;*
  - b) *The anti-doping rule violation involves a Specified Substance and FIFA can establish that the anti-doping rule violation was intentional.*
2. *If art 19 para. 1 does not apply, the period of Ineligibility shall be two years.*
3. *As used in arts 19 (Ineligibility for presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method) and 20 (Ineligibility for other anti-doping rule violations), the term ‘intentional’ is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he 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. With regard to anti-doping violations resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition, there shall be rebuttable presumption that said violations are not intentional if the substance is a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance”.*

63. Article 66 of the FIFA Anti-Doping Regulations provides that:

- “1. *FIFA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FIFA has established an anti-doping rule violation to the comfortable satisfaction of the FIFA Disciplinary Committee, bearing in mind the seriousness of the allegation which is made. In all cases, this standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*
2. *Where these Regulations place the burden of proof upon the Player 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 balance of probability”.*

64. FIFA emphasised that according to Article 66 of the FIFA Anti-Doping Regulations, the Player bears the burden of establishing (a) that the anti-doping rule violation was not intentional; (b) that the prohibited substance was used in a context unrelated to sport; and (c) how the prohibited substance entered his body. FIFA submitted however that:
- (a) The Player could not show that he used the prohibited substance unintentionally.
  - (b) The Player could not show that he used the prohibited substance in a context unrelated to sport performance.
  - (c) The Player could not show that he used the substance out-of-competition.
65. Accordingly, FIFA submitted that a four-year period of ineligibility is the only appropriate sanction for the Player's anti-doping violation.

### **3. Issue 3: Commencement of any period of ineligibility**

66. Article 28 of the FIFA Anti-Doping Regulations provides:

*“Except as provided below, the period of Ineligibility shall start as soon as the decision providing for ineligibility is communicated to the Player or other Person concerned.*

1. *Where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the Player or other Person, the FIFA Disciplinary Committee may decide that the period of Ineligibility shall start at an earlier date, commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be disqualified.*
2. *Where the Player promptly (which, in all events, for a Player means before the Player competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by FIFA, the period of Ineligibility may start as early as the date of sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this article is applied, the Player or other Person shall serve at least one half of the period of Ineligibility going forward from the date the Player or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This shall not apply where the period of Ineligibility has already been reduced under art. 23 par. 3 (Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault).*
3. *Credit for Provisional Suspension or period of Ineligibility served*
  - a. *If a Provisional Suspension is imposed and respected by the Player or other Person, the Player or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a*

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

67. FIFA submitted that, on the basis of that principle, the period of the Player’s ineligibility should commence in principle upon the date of the CAS’s award. FIFA further submitted that:

- (a) There were no substantial delays in the hearing process. The authorities in Saudi Arabia delivered a decision within three months of the date of the sample collection. The Appeal Panel delivered its award within two months after that. Accordingly, there were no delays in the procedure that would justify a different starting date for the period of ineligibility.
- (b) The Player was provisionally suspended by the SAADC from 30 November 2015. Despite being suspended, however, the Player subsequently participated in two football competitions and in an official league match on 8 May 2016. In these circumstances, the provisional suspension should have no effect on the commencement date of the four-year period of ineligibility.

## **B. The Player**

68. In his Answer the Player invited the CAS to make the following order:

*“75.2 Asks the CAS to find that there has been no anti-doping rule violation;*

*75.3 Alternatively, asks the CAS to uphold the SAADAP decision and impose no sanction;*

*75.4 Alternatively, asks the CAS to limit the period of ineligibility to two years and give the Player credit for the period of provisional suspension that he has already served;*

*75.5 Asks the CAS to order that FIFA pay the Player’s costs”.*

69. In overview, the Player submitted that:

- (a) **He did not commit an anti-doping violation** – FIFA and/or the SAADC failed to prove that the Player’s B-sample showed a concentration of amphetamine of greater than 50 ng/ml. They have therefore failed to establish an anti-doping rule violation. Further or alternatively, the Player contended that the Laboratory erred in identifying amphetamine in his sample in the first place.
- (b) **Even if he did commit an anti-doping violation, CAS should not impose any period of ineligibility** – In any event, as the Appeal Panel correctly found, the decision of the Hearing Panel was manifestly unfair. Accordingly, even if the CAS

finds an anti-doping rule violation, it should not impose any period of ineligibility in respect of the violation.

- (c) **Alternatively any period of ineligibility should be calculated on a ‘no intention’ basis** – The Player denied that he committed an anti-doping rule violation intentionally. Accordingly, he submitted that if CAS found that he committed an anti-doping rule violation, the relevant period of ineligibility should be two years, rather than four years.
- (d) **If a suspension is imposed, the Player should receive credit for the period of provisional suspension that he has already served** – If the CAS decides to impose a period of suspension, the Player should be given credit for the period of provisional suspension that he has already served.

### 1. *Issue 1: The alleged Anti-Doping Rule violation*

70. The Player denied that he committed an anti-doping violation. In particular, he submitted that:
- (a) The Laboratory’s failure to specify the concentration of amphetamine in the Player’s B-sample invalidated the adverse analytical finding; and
  - (b) The Laboratory misidentified the presence of amphetamine, which is easily confused with a non-prohibited substance,  $\beta$ -Methylphenethylamine, if incorrect parameters are used during chemical analysis of a urine sample.
71. In support of the first argument, the Player referred to WADA Technical Document TD2015MRPL (the “Technical Document”), which provides that the minimum required performance level (“MRPL”) for stimulants such as amphetamine listed in S6 of the WADA 2015 Prohibited List is 100 ng/ml. Section 4.0 of the Technical Document concerns “*Reporting of Non-Threshold Substances*”. It provides:
- “A confirmed identification of a Non-Threshold Substance at any concentration shall be reported as an Adverse Analytical Finding, with the following exceptions:*
- *Non-Threshold Substances in classes S6, S7, S8 and P2, which are prohibited In-Competition only, should not be reported below 50% of the MRPL”.*
72. Accordingly, the Player submitted that a finding recording the presence of amphetamine in an in-competition sample should only be reported as an adverse analytical finding if the concentration of amphetamine in that sample is above 50 ng/ml (i.e. over half the MRPL for amphetamine).
73. In his Answer, the Player expressly “*admit[ted] that the laboratory correctly reported a presence of amphetamine in the Player’s A-sample*”. In addition, the Player’s Answer stated that, “*the Player does not deny the finding of amphetamine at a concentration of 56 ng/ml in his A-sample*”. (In contrast, in his

post-hearing submission the Player submitted that the analysis of the A-sample was “*fundamentally flawed*” and that it was “*wholly unclear how the laboratory concluded a concentration finding of 56 ng/ml*”. The Player did not provide any explanation for this late and radical change of position.)

74. In both his Answer and his post-hearing submissions the Player denied that the analysis of the B-sample confirmed the results of the A-sample. He stated that FIFA is required to prove the concentration of amphetamine in the B-sample, which it is unable to do.
75. The Player stated that he repeatedly requested details of the B-sample concentration; however these requests were refused. The Player submitted that, in accordance with Article 6(2) of the FIFA Anti-Doping Regulations and Article 2.1.2 of the Saudi-Anti Doping Rules, where a player asks for their B-sample to be analysed it is the result of that analysis that the anti-doping organisation must rely on in order to prove an anti-doping rule violation. Accordingly, in order to establish an adverse analytical finding, the SAADC had to prove that the Player’s B-sample had a concentration of amphetamine of over 50 ng/ml. The SAADC failed to do that. It therefore failed to prove an anti-doping rule violation.
76. The Player submitted that if a B-sample analysis proves negative the entire doping control test shall be considered negative and no adverse analytical finding will be reported, regardless of the outcome of the A-sample analysis. In this regard, the Player relied on Article 5.2.4.3.2.3 of the WADA International Standard for Laboratories (“WADA ISL”), which provides that:

*“If the ‘B’ Sample confirmation proves negative, the entire test shall be considered negative”.*

77. Alternatively, the Player contended that it is possible that if the Arabic Gum he was using was derived from non-authenticated acacia then it may have resulted in findings of the non-natural compound  $\beta$ -Methylphenethylamine (“MePEA”). This is a positional isomer of amphetamine which, during LC-MS analysis, can be misidentified as amphetamine. To determine whether an adverse analytical finding is the result of amphetamine or an erroneous misidentification of MePEA as amphetamine, it is necessary to conduct an independent GC-MS analysis. The Player submitted that the Laboratory did not use appropriate parameters during the GC-MS analysis. Consequently, the adverse analytical finding resulted from the misidentification of MePEA as amphetamine. In connection with this submission, the Player stated that the conduct and practices of the Laboratory (and of Professor Saugy in particular) were recently criticised in a report dated 9 November 2015 by an Independent Commission to the President of WADA.

## **2. Issue 2: Appropriate sanction**

78. The Player further submitted that the Appeal Panel was correct to annul the four-year period of ineligibility imposed by the Hearing Panel.

(i) *Manifest unfairness*

79. The Player submitted that the Hearing Panel's failure to consider the concentration ratio in the B-sample deprived him of the opportunity to fully argue his defence and to benefit from the lower ineligibility period of two years. The Appeal Panel was fully justified in setting aside the Hearing Panel's decision on the basis it was manifestly unfair. The Player therefore requested the CAS to uphold the Appeal Panel's decision on the same basis.

(ii) *Use of prohibited substance was not intentional*

80. Alternatively, the Player submitted that his use of amphetamine was not intentional. As a result, if the CAS finds that he committed an anti-doping violation, then the appropriate sanction is a two-year suspension rather than a four-year suspension.

81. In support of this argument the Player submitted that, for the purposes of Article 19(3) of the FIFA Anti-Doping Regulations, the Player must have had *subjective* knowledge of the anti-doping rule violation or the risk of the violation in order for the violation to be "*intentional*". The Player acknowledged that there is no CAS authority on the meaning of "*intentional*" in this context. In the absence of directly applicable authority, the Player cited various decisions of national disciplinary bodies that support the existence of a test based on *subjective* knowledge. In particular, the Player relied on the decisions in *UKAD v Adam Buttifant* SR/NADP/508/2016, *Rugby Football Union v Connor Stapley* (11 April 2016) and *International Tennis Federation v Maria Sharapova* (6 June 2016). The Player submitted that the CAS should adopt the same approach.

82. The Player denied that he bore the burden of establishing how the prohibited substance entered his body. Instead, he was only required to establish *when* the substance entered his body, if he wished to argue that the use of the substance was out-of-competition and therefore not intentional.

83. The Player contended that he lacked any subjective knowledge that he was committing an anti-doping violation or was at significant risk of doing so. He explained that:

- (d) He had been taking Arabic Gum to ease joint pain. He did not appreciate that the use of this herbal treatment constituted a "*supplement*" or a "*medicine*".
- (e) Because he did not believe Arabic Gum was a medicine or a supplement, the Player did not seek the advice of a doctor or the club physician in respect of his use of the herb. Nor did he think it was necessary to disclose the herb on his doping control.
- (f) The Player was tested twice during the three-year period when he was regularly using Arabic Gum. The tests did not return any adverse analytical finding. This confirmed the Player's understanding that the use of the herb was not a doping violation and it was unnecessary to disclose it on his Doping Control Form.

84. As a result, the Player submitted that there were only two possible explanations for the adverse analytical finding. Either (a) one package of the Arabic Gum was contaminated by a prohibited substance; or (b) the Laboratory erroneously mistook the MePEA in the Arabic Gum for amphetamine. The Player submitted that, in view of these two exhaustive possibilities, he plainly did not know he was committing an anti-doping rule violation by consuming the Arabic Gum.
85. Moreover, since the Player was entirely ignorant of the possibility that consuming the Arabic Gum may have constituted a doping violation, he did not appreciate that his conduct created any risk of committing an anti-doping rule violation. He therefore lacked any subjective appreciation that his use of the Arabic Gum created a significant risk of committing an anti-doping violation. In these circumstances, the Player submitted that he lacked the requisite intent to justify the imposition of a four-year period of ineligibility. Instead, a two-year period of ineligibility should be imposed.
- (iii) *Out of Competition use in a context unrelated to sport performance*
86. Alternatively, the Player submitted that the Appeal Panel was correct to find that he had consumed the substance out-of-competition in a context unrelated to sport performance.
87. He accepted that the Appeal Panel was wrong to define “*in-competition*” as beginning 12 hours before kick-off. Instead, it begins 24 hours before kick-off. This mistake was, however, immaterial and had no bearing on the correctness Appeal Panel’s findings, since the Player’s A-sample indicated use several days before the competition. That was the basis for Appeal Panel’s finding of unintentional use.
88. The Player accepted that the doping control test was administered immediately after the match on 3 November 2015, within the in-competition period. The Player submitted, however, that the concentration of 56 ng/ml in his A-sample is a low concentration, which is consistent with ingestion between three to five days before the competition (i.e. ingestion during the out-of-competition period).
89. Moreover, the Player stated that he used Arabic Gum as a remedy for joint pain. The Player’s Answer stated that while the Player “*accepts that severe joint pain would inhibit his career as a football player, easing the pain was solely for the purposes of maintaining his general health and well-being, not for improving his sport performance*”. Accordingly, the Player submitted that the amphetamine had entered his body out-of-competition and in a context which was unrelated to sport performance.
- 3. *Issue 3: Commencement of any period of ineligibility***
90. The Player disputed FIFA’s submission that the period of provisional suspension imposed between 30 November 2015 and 17 April 2016 should be disregarded. He admitted that he played in two football matches during the suspension period. The Player contended, however,

that he only played in those matches because he did not believe that the provisional suspension prevented him from doing so. In particular, the Player did not understand the term “*competition*” to include the two matches he had participated in. With the exception of that “*misunderstanding*”, the Player submitted that he fully complied with the terms of the provisional suspension. In his view, it would be unfair and disproportionate not to credit at least some period of the provisional suspension against any ineligibility imposed by the CAS.

91. The Player noted that since his provisional suspension came to an end on 17 April 2016 it is irrelevant that he participated in a match three weeks later on 8 May 2016. He did not understand why FIFA had referred to his participation in that match in support of its argument that the period of provisional suspension should be disregarded.

## V. JURISDICTION

92. Article R47 of the Code provides:

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

93. Article 57(1) of the FIFA Statutes states:

*“FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players’ agents”.*

94. Article 58(5) of the FIFA Statutes states:

*“FIFA is entitled to appeal to CAS against any internally final and binding doing-related decision passed in particular by the Confederations, Members or Leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations”.*

95. CAS jurisdiction is also supported by Article 75(1) of the FIFA Statutes as well as Article 13.2.2.2 of the Saudi Anti-Doping Rules.

96. FIFA submitted that the CAS has jurisdiction over this matter on the basis that the Player is an international-level player. Alternatively, FIFA submitted that it would also have jurisdiction against national-level players under Article 75 of the FIFA Anti-Doping Regulations. Although there was a disagreement between the parties about whether the Player was a national or international-level Player, the Player agreed that the CAS has jurisdiction. Moreover, the Appellant, First Respondent, and Second Respondent signed the order of procedure confirming CAS jurisdiction (the Third Respondent did not object to its contents). Accordingly, the CAS Panel concludes that it has jurisdiction with respect to the appeal.

**VI. ADMISSIBILITY**

97. Article R49 of the Code states:

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

98. Article 80.1.1 of the FIFA Anti-Doping Regulations:

*“The time to file an appeal to CAS shall be 21 days from the date of receipt of the motivated decision in an official FIFA language by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed:*

- a) Within 15 days from notice of the decision, such party/ies shall have the right to request a copy of the case file translated in an official FIFA language from the body that issued the decision;*
- b) If such a request is made within the 15-day period, the party making such request shall have 21 days from receipt of the file to file an appeal to CAS”.*

99. Article 13.7.1 of the Saudi Anti-Doping Rules provides in materially identical terms that:

*“Appeals to CAS*

*The time to file an appeal to CAS shall be twenty-one days from the date of receipt of the decision by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed:*

- (a) Within fifteen days from the notice of the decision, such party/ies shall have the right to request a copy of the case file from the body that issued the decision;*
- (b) If such a request is made within the fifteen-day period, then the party making such request shall have twenty-one days from receipt of the file to file an appeal to CAS”.*

100. FIFA received the decision under appeal on 21 April 2016. FIFA submitted its Statement of Appeal on 9 May 2016. FIFA submitted its Appeal Brief on 24 May 2016, which was within the time limit specified by the CAS in its letter dated 11 May 2016. FIFA therefore submitted that the appeal is admissible.

101. The Player accepted that the appeal is admissible. Accordingly, the CAS Panel concludes that the appeal is admissible.

## VII. APPLICABLE LAW

102. Article R58 of the Code states:

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

103. Article 57(2) of the FIFA Statutes states:

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

104. Article 80(3) of the FIFA Anti-Doping Regulations provides:

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

105. The parties agreed that, by virtue of these provisions, the applicable law is the FIFA Regulations (in particular, the FIFA Anti-Doping Regulations) and additionally Swiss law. In light of the provisions summarised above, the Panel concludes that the parties are correct. The appeal is therefore governed by the FIFA Anti-Doping Regulations and, additionally, Swiss law.

## VIII. MERITS

### A. Issue 1: Anti-doping violation

#### (i) *The accuracy of the Laboratory’s analysis of the Player’s samples*

106. The first issue requires the Panel to consider whether the Player committed an anti-doping violation. The Panel begins its consideration of this issue by noting that the Laboratory is a WADA-accredited laboratory and is widely recognised as one of the world’s most sophisticated doping analysis facilities. The Player has failed to identify any coherent basis for impugning the reliability or accuracy of the Laboratory’s analysis of the Player’s A-sample and B-sample. In particular, he has not identified any particular deviation from the WADA ISL.

107. The Panel notes in this regard that in his further written submissions filed on 8 December 2016 the Player made several new criticisms of the processes followed by the Laboratory during the analysis of the Player’s A-sample and B-sample. The Panel notes that these criticisms were not contained in the Player’s Answer and do not appear to have been advanced

in any of the proceedings before the Hearing Panel or the Appeal Panel in Saudi Arabia. Instead, the criticisms were made for the first time after the conclusion of the CAS hearing in a document which the Panel directed should be strictly limited to responding to the arguments and expert evidence adduced at that hearing. In these circumstances, the Panel agrees with FIFA that the new arguments that the Player belatedly seeks to advance are inadmissible. Furthermore and in any event, the Panel notes that the Player's new criticisms of the testing procedures are not substantiated by any cogent documentary or scientific evidence put before the CAS. The criticisms of the A-sample analysis also directly contradict the Player's earlier written submissions, which explicitly disavowed any challenge to the accuracy of the Laboratory's finding that the A-sample contained 56 ng/ml of amphetamine. Consequently, even if the new arguments were admissible, the Panel would have no hesitation in rejecting them on the merits.

108. The Panel has carefully considered the evidence adduced by FIFA, in particular the oral evidence of Professor Saugy and Professor Van Eenoo. Both experts provided a clear, credible and consistent explanation of the testing procedures followed at the Laboratory during the analysis of the Player's A-sample and B-sample. The Panel accepts the experts' evidence that the testing processes correctly identified the presence of amphetamine in those samples. The Panel does not consider that there is any room for doubt concerning the accuracy of those findings. In particular, the Panel is satisfied by the experts' explanation as to why there is no realistic possibility that the testing procedures mistakenly identified MePEA as amphetamine.

**(ii) *The Player's criticism of the Laboratory's decision not to specify concentration of amphetamine in the B-sample***

109. The Panel turns, therefore, to the Player's submission that the failure to specify a concentration of amphetamine in the B-sample invalidated the adverse analytical finding. The Panel is satisfied that the Laboratory was not under any obligation to specify the concentration of the B-sample. Amphetamine is a non-threshold substance for the purposes of the WADA Prohibited List. Accordingly, it is the mere presence of the substance in an athlete's body – rather than the amount or concentration of the substance – that constitutes an anti-doping violation. There is nothing in the WADA ISL or the WADA Code that requires a laboratory to specify the concentration of amphetamine in an A-sample or B-sample as a precondition to recording an adverse analytical finding. Indeed, Article 5.2.6.7 of the WADA ISL provides:

*“The Laboratory is not required to quantify or report a concentration of an analyte of non-threshold Prohibited Substances in urine Samples. The Laboratory shall report the actual Prohibited Substance(s), Metabolites) of the Prohibited Substance(s) or Prohibited Method(s), or Marker(s) detected in the urine Sample. Upon request of the Testing Authority, Results Management Authority or WADA and where the detected level of a Prohibited Substance is relevant to the result management of an anti-doping case, the Laboratory shall provide an approximate concentration”.*

110. Furthermore, the analysis of a B-sample is intended to confirm the presence of a prohibited substance. However this does not mean that it is either intended or expected to yield identical values as the A-sample (see CAS 2012/A/2857 at para 182). As the CAS Panel explained in

CAS 2010/A/2296, the WADA ISL “*make clear that, in the case of a non-threshold substance ... the laboratory method for analysing the B sample is not aimed at having identical results or at gaining information on the background or quantification, but only at confirming the presence of the prohibited substance. In other terms, the ISL only requires the identification in the B sample of the same prohibited substance that was found in the A sample, and it does not require the chromatograms or the quantities or the ‘background noises’ to be exactly the same*” (para 165).

111. The Panel is fortified in this conclusion by paragraph 5.2.4.3.2 of the WADA ISL, which expressly provides that, in the context of threshold substances, there is no obligation to calculate or stipulate the concentration of the prohibited substance present in an athlete’s B-sample:

*“For exogenous Threshold Substances, the “B” Sample results shall only confirm the “A” Sample identification for the Adverse Analytical Finding to be valid. No quantification of such Prohibited Substance shall be performed”.*

112. The Panel considers that it would be illogical and paradoxical for a laboratory to be *required* to specify the B-sample concentration of a non-threshold substance, in circumstances where the laboratory is expressly *prohibited* from calculating the B-sample concentration of a threshold substance.
113. Article 6(2) and (3) of the FIFA Anti-Doping Regulations makes it clear that, in the case of a non-specified substance such as amphetamine, it is the mere presence of the substance in a player’s bodily sample that establishes an anti-doping violation. Article 6(3) expressly provides that, with the exception of specified substances, “*the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample shall constitute an anti-doping rule violation*”. The mere presence of amphetamine in the Player’s A-sample and B-sample therefore constitutes a violation of the FIFA Anti-Doping Regulations.
114. The Panel does not accept the Player’s argument based on the WADA Technical Document:
- (a) First, the Panel considers that section 4.0 of the Technical Document does not establish a binding prohibition against reporting the presence of amphetamine at levels below 50% of the MRPL. An obligation of that nature would effectively transform amphetamine from a non-threshold substance to a threshold substance. This would collapse the distinction between threshold and non-threshold substance in the WADA Code. Moreover, the language of section 4.0 (which uses the expression “*should*” rather than “*shall*”) is consistent with the creation of a recommendation, rather than a mandatory direction.
  - (b) Secondly and in any event, the Panel notes that the concentration of amphetamine recorded in the Player’s A-sample was 56 ng/ml – 6 ng/ml *above* the 50 ng/ml MRPL for amphetamine. Accordingly, even if the Player was correct that a concentration below 50 ng/ml should not be reported, that restriction would not apply in this case. The Panel

therefore rejects the Player's submission based on the Laboratory's approach to the MRPL.

115. Accordingly, the Panel concludes that:
- (a) the Laboratory carried out the tests of the Player's A-sample and B-sample in accordance with the WADA ISL and did not mistakenly identify a non-prohibited substance as amphetamine; and
  - (b) the Laboratory was not required to specify the concentration of amphetamine in the Player's B-sample, which was irrelevant to the question whether he had committed an anti-doping violation.
116. For all these reasons, the Panel concludes that the Laboratory was correct to record an adverse analytical finding concerning the presence of amphetamine in the samples obtained from the Player at the doping control test on 3 November 2015. The Player therefore committed an anti-doping rule violation for the purposes of Article 6 of the FIFA Anti-Doping Regulations.

**B. Issue 2: Period of ineligibility**

117. Having established the existence of an anti-doping violation, the Panel turns to consider the appropriate sanction in respect of the violation.

**(i) *Manifest unfairness***

118. For the reasons set out above, the Panel does not accept that the Laboratory's decision not to specify the concentration of amphetamine in the Player's B-sample was contrary to any applicable regulations or gave rise to any unfairness. Accordingly, there is no reason to reduce the applicable sanction for the Player's anti-doping violation on this basis.

**(ii) *Use of prohibited substance was not intentional***

119. Having regard to the terms of Article 19 of the FIFA Anti-Doping Regulations, the Panel considers that the onus is on the Player to establish that the anti-doping violation was not intentional. For these purposes, Article 19(3) provides that the term 'intentional' "*requires that the Player ... 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 anti-doping rule violation and manifestly disregarded that risk*".
120. For the following reasons, the Panel concludes that the Player's anti-doping rule violation was intentional for the purposes of Article 19.
121. First, the Player claimed that he used Arabic Gum as a substitute for pain relief medication he had been taking until 2012. On the Player's case, the Arabic Gum had a sufficiently powerful

physiological effect to enable him to continue playing professional football notwithstanding his chronic joint pain. Accordingly, the Player was aware that the substance he was consuming had powerful pharmacological properties. Despite his awareness of that fact, however, by his own admission the Player took no steps to verify the origin or content of the Arabic Gum. On the Player's version of events, he regularly consumed a substance which was purchased from unknown vendors, and which arrived in powder or leaf form in unlabelled packages, with no indication of the ingredients or origin of the product. If true, the Panel considers the Player's repeated consumption of the substance to be highly reckless, particularly since the substance was acquired and used precisely because of its apparent pharmacological properties. In the Panel's view, he must therefore have known that there was a significant risk that his consumption of the Arabic Gum involved a significant risk of anti-doping violation.

122. Secondly, there are a number of facts that substantially undermine the credibility of the Player's version of events. In particular:

- (a) The Panel notes that despite claiming that he used the Arabic Gum for palliative purposes for three years, the Player failed to notify his team physician that he was using the Arabic Gum for medicinal purposes. The Player similarly failed to record his use of the Arabic Gum in the Doping Control Form, where he was required to list all medication he had taken in the period immediately before the match on 3 November 2015. His failure to mention the Arabic Gum to the physician or on the Doping Control Form cannot be reconciled with the fact that, on his own case, he used Arabic Gum for medicinal purposes.
- (b) Secondly, the Player has not adduced any credible evidence in support of the suggestion that he could have inadvertently consumed amphetamine by using Arabic Gum which had been adulterated with that prohibited substance without his knowledge. The Player has not put forward any scientific or basic factual evidence to support an adulteration hypothesis. He has not adduced any evidence from the (unnamed) individual who he claims purchased the Arabic Gum on his behalf. Nor has he submitted any of the packages that any of the Arabic Gum was supplied in. Aside from the Player's own testimony, there is a total absence of credible corroborating evidence in support of this theory.

**(iii) *Out of Competition use in a context unrelated to sport performance***

123. Under Article 19(3) of the FIFA Anti-Doping Regulations the Player bears the burden of establishing that the substance was used out of competition and in a context unrelated to sport performance. The Panel concludes that the Player has not discharged that burden:

- (a) The Player has not adduced any cogent evidence to indicate that he ingested the prohibited substance more than 24 hours before the match on 3 November 2015. The Player merely relies on the "low concentration" of 56 ng/ml, which he contends demonstrates that the substance was ingested three to five days before the match. However, the expert evidence establishes that it is extremely difficult, if not impossible,

to infer the date of ingestion from the level of concentration in a sample without also knowing the size of the dose and further information about the individual's metabolic rate. In addition, the expert evidence establishes that even a relatively low dose can have performance enhancing benefits. In these circumstances, the Panel concludes that the mere fact that the concentration of amphetamine was relatively low does not establish that it was ingested out of competition.

- (b) According to the Player, he consumed Arabic Gum in order to alleviate chronic joint pain. He maintains, however, that the purpose of doing so was not to aid his sporting performance but merely to palliate the persistent discomfort that he experienced in his everyday life. The Panel considers, however, that the ingestion of a prohibited substance such as amphetamine in this context is not *“unrelated to sport performance”*. Professional footballers such as the Player are regularly required to engage in high impact, high intensity cardiovascular exercise which places considerable physical demands upon the individual's body and joints. The effect of a chronic joint condition is likely to be at its most acute – and to have the greatest inhibiting impact – during such periods of intense physical activity. Against this backdrop, the deliberate use of a powerful artificial stimulant to reduce or remove chronic joint pain is likely to have a significant and non-incident effect on sport performance. Accordingly, even if the Player ingested amphetamine out of competition, the Panel does not consider that the consumption of the substance could be characterised as being *“unrelated to sport performance”*.

**(iv) Conclusion on appropriate sanction**

124. Accordingly, for the reasons set out above, applying Article 19 of the FIFA Anti-Doping Regulations the Panel considers that the Appeal Panel was wrong to overturn the four-year ineligibility imposed by the Hearing Panel. The Panel concludes that the Player must serve a four-year period of ineligibility for the anti-doping violation.

**C. Issue 3: Commencement date of the period of ineligibility**

125. Under Article 28(3) of the FIFA Anti-Doping Regulations the Player is entitled to receive a credit for a provisional suspension that is *“respected by the Player”*. In CAS 2014/A/3820 the CAS held that where an athlete respected some but not all of a provisional suspension, they were not entitled to credit for *any* period of the provisional suspension. As the Panel explained, *“an athlete's obligation to respect a provisional suspension in order to receive credit for that period of ineligibility applies to the provisional suspension as a whole and not merely to a portion of it. Accordingly, even though [the athlete] respected approximately half of the provisional suspension, he did not respect it in its entirety and the Panel therefore concludes that he cannot receive credit for the provisional suspension”* (para 111).
126. The Panel notes that there is no dispute that the Player participated in two matches during the period of his provisional suspension. A provisional suspension is a serious measure that must be respected by the individual concerned. The Panel does not consider that the Player's explanation, which relies on his professed ignorance of the effect of the suspension, is an

acceptable excuse for breaching the terms of the suspension on two separate occasions. It was incumbent upon the Player, as the subject of a provisional suspension, to abide by the terms of the suspension and to exercise due care and responsibility in ascertaining what sporting activities and events fell within its scope. In the circumstances, the Panel concludes that the Player cannot receive credit for the period of the provisional suspension imposed between 30 November 2015 and 17 April 2016. Accordingly, the Player's four-year period of ineligibility will run from the date of this Award.

## **ON THESE GROUNDS**

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

1. The appeal filed by the Fédération Internationale de Football Association on 9 May 2016 is upheld.
2. The decision rendered by the Appeal Panel of the Saudi Arabian Olympic Association dated 17 April 2016 is set aside.
3. Mohammed Mohammed Noor Adam Hawsawi is suspended for a period of four (4) years as from 15 December 2016, with credit given for any period of suspension already served.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.