Anti-Doping Tribunal

UCI Anti-Doping Tribunal

Judgment

case ADT 02.2023

UCI v. Mr. Toon Aerts

Single Judge:

Mr. Ulrich Haas (Germany / Switzerland)

Aigle, 16 August 2023

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 in force in 2021 (hereinafter referred to as "the ADT Rules") in order to decide whether Mr. Toon Aerts (hereinafter referred to as "the Rider") has violated the UCI Anti-Doping Rules as alleged by the Union Cycliste Internationale (hereinafter referred to as "the UCI" and, together with the Rider, "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 its reasoning.

A. The UCI

3. The UCI is the association of national cycling federations and a non-governmental international association with a non-profit-making purpose of international interest, with a legal personality in accordance with Articles 60 et seq. Swiss Civil Code and according to Articles 1(1) and 1(2) of the UCI Constitution.

B. The Rider

4. The Rider is a professional cyclo-cross rider of Belgian nationality. At the time of the alleged anti-doping rule violation (hereinafter referred to as "ADRV") the Rider was affiliated to the Royale Ligue Vélocipédique Belge (hereinafter referred to as "RLVB"). He was, thus, a License-Holder within the meaning of the UCI Anti-Doping ules (hereinafter referred to as "UCI ADR").

5. The Rider was under contract with the UCI Cyclo-Cross Pro Team Baloise Trek Lions (hereinafter referred to as " the Team") from October 2013 until September 2022.

C. The alleged Anti-Doping Rule Violation

1. The Facts and the Collection of the Sample

6. On 19 January 2022, the Rider provided a urine sample as he was subject to an out-of-competition anti-doping-control in Rijkevorsel, Belgium (Sample Number 10300137087 – hereinafter referred to as the "Sample"). The Rider confirmed on his Doping Control Form (hereinafter referred to as "DCF") that the Sample had been collected in accordance with the relevant procedures. He made the comment "All ok" on the DCF and signed it.

7. The Rider further declared on the DCF that he had taken the following medications and/or supplements in the seven days prior to the sample collection:

> *"Potentiator, chromatonbic ferro, revitalose, erhthromax, lysomucil, paracetamol, piracetam, magnesium".*

2. The Analysis of the Sample

8. The analysis of the Sample was conducted by the World Anti-Doping Agency (hereinafter referred to as "WADA") accredited Laboratory of Cologne, Germany (hereinafter referred to as "the Cologne Laboratory"). The latter acknowledged receipt of the Sample on 20 January 2022.

9. On 4 February 2022 the Cologne Laboratory reported the Rider's A-Sample as an Adverse Analytical Finding (hereinafter referred to as "AAF") for letrozole metabolite Bis-4-cyano-phenyl-methanol (hereinafter referred to as "Letrozole").

10. Letrozole is a prohibited substance listed under Section S4 (Hormone and metabolic modulators), more specifically, in class S4.1 (Specified Substances, aromatase inhibitors) of the 2022 and 2023 versions of the WADA International Standard Prohibited List (hereinafter referred to as the "Prohibited List"). According thereto, Letrozole is prohibited at all times (in- and out-of-competition).

3. The UCI Results Management Procedure

11. Upon receipt of the AAF on 4 February 2022, the UCI conducted its initial review according to Article 5.1.1 of the UCI Results Management Regulations.

12. On 14 February 2022, the Rider was notified of the AAF for Letrozole. Furthermore, the Rider was

- informed of his right to request the opening and analysis of the B-Sample by the Cologne Laboratory;
- informed of his right to request a copy of the Laboratory Documentation Package (hereinafter referred to as "LDP") of the A-Sample;
- invited to inform the UCI whether he intended to be present and/or to have an appointed representative attending the opening and analysis of the B-Sample and to confirm his intention with respect to the B-Sample and the A-Sample LDP within seven days of receipt of the notification via electronic mail;
- informed that in case the B-Sample would confirm the presence of Letrozole in the A-Sample, the UCI would assert an ADRV under Articles 2.1 and/or 2.2 of the UCI ADR;
- informed of the possibility for him to accept and be granted credit for a voluntary provisional suspension, considering that Letrozole is qualified as a Specified Substance according to the Prohibited List, and that Article 6.2.2. UCI ADR does not require the UCI to impose a provisional suspension on the Rider in that case;
- invited to provide an explanation and supporting documents on how the prohibited substance entered his body within seven days of receipt of the notification; and, furthermore
- the Rider was informed about the upcoming course of action.

13. On 16 February 2022, the Rider requested the opening and analysis of his B-Sample and the A-Sample LDP. The Rider further confirmed his presence at the opening with his representative and requested the UCI to indicate a date for the opening at the Cologne Laboratory. In the same correspondence, the Rider informed the UCI of his voluntary acceptance of a provisional suspension.

14. On 22 February 2022, the UCI acknowledged receipt of the Rider's electronic mail and informed him that the Cologne Laboratory proposed the date of 8 March 2022 for the B-Sample opening and analysis. The UCI further invited the Rider to confirm his and his representative's presence by 28 February 2022.

15. On 24 February 2022, the Rider requested that the opening and analysis of the B-Sample be postponed due to unavailability of his representative on the date originally proposed.

16. After some exchange of communication between the Rider and the UCI the opening and analysis of the B-Sample was set for 6 April 2022.

17. On 6 April 2022, the opening and analysis of the B-Sample took place at the Cologne Laboratory in the presence of the Rider and his representative, Dr. Douwe de Boer.

18. On 12 April 2022 the Cologne Laboratory reported to the UCI an AAF for the Rider's B-Sample for Letrozole.

19. On the same day, the UCI notified the Rider of the results of the analysis of the B-Sample. The UCI further

- asserted that the Rider had committed an ADRV under Articles 2.1 and/or 2.2 of the UCI ADR;
- informed the Rider of his right to request the B-Sample LDP within seven days upon receipt of the letter; and
- invited the Rider to provide explanations regarding the asserted ADRV, in particular how the prohibited substance entered his body, within 14 days of receipt of the letter.

20. On 25 April 2022, the Rider submitted

- an expert opinion report from Dr. Douwe de Boer (hereinafter referred to as "the First De Boer Report"). The First De Boer Report provided – *inter alia* – as follows:

  "1) It must be concluded, that no indications were found that LETROZOLE METABOLITE was identified inadequately;

  2) It must also be concluded, that the reported concentration of LETROZOLE METABOLITE was low, namely in the range of 2,4 ng/mL;

  3) As a result and if LETROZOLE would have reached any therapeutic level after repetitive administration, it must be deducted that based on the fact that at the time of sample collection merely a LETROZOLE METABOLITE concentration of 2,4 ng/mL was reported, that LETROZOLE did not have any pharmacological significance at the time of collection;

  4) Assuming that the analysis for LETROZOLE in hair can distinguish incidental and repetitive administration, it must be concluded that such an analysis is essential in this specific case. After all, proof of repetitive therapeutic administration will make scenarios such as medication, supplements and milk contaminated with LETROZOLE residues implausible; consequently, analysis of hair of the athlete is justified and because of that, analysis was performed by X-Pertise Consulting, France;

  5) Hair analysis demonstrated that the athlete had been incidentally exposed to minute amounts of LETROZOLE within the last months before the relevant urine sample collection; accordingly, it must be concluded that no indications were found that therapeutic administration was likely;

  6) Assuming that LETROZOLE had not been applied by therapeutic administration, it must be concluded that it was justified to verify scenarios of incidental contaminations; scenarios checked were medication and supplements contaminated with LETROZOLE; and analyses was performed by X-Pertise Consulting, France as well as the University Hosiptal Leuven, Belgium;

  7) Supplement analysis by the University Hosiptal Leuven, Belgium, 'Trisport Pharma Recup Shake Choco' showed a small analytical signal indicative of the presence of a trace of LETROZOLE;

  8) It must be concluded that hair analysis indicated non-therapeutic administration of and exposure to small traces of LETROZOLE and that medication and supplement analysis proved that the dietary supplement 'Trisport Pharma Recup Shake Choco' was the source of that exposure;

  9) It must also be concluded that the dietary supplement 'Trisport Pharma Recup Shake Choco' contained a significant amount of a cow's milk ingredient; as LETROZOLE can be linked to cow's milk, it is not illogical that the supplement is contaminated; as the athlete used the supplement for several months, the results of the hair analysis are consistent with that use.

  10) Finally, it must be concluded that the athlete and his employer have done all that may reasonably be expected and acted in good faith; the manufacturer of the dietary supplement 'Trisport Pharma Recup Shake Choco' incorrectly claims that the supplement was free of illegal substances and/or doping."

- An analysis report issued by the UZ Leuven Laboratory dated 1 April 2022 (hereinafter referred to as "the UZ Leuven Report"), which had analyzed various samples of the Rider's dietary

supplements including Trisport Pharma Recup Shake Choco ("the Supplement") sold by the company Trisport Pharma . The UZ Leuven Report concluded:

> *"In conclusion, there was no quantifiable amount of letrozole in any of the analyzed samples. Trisport Pharma recup shake showed a small signal indicative of the presence of a trace of letrozole."*

- A hair test analysis report by Prof. Pascal Kintz dated 26 February 2022, which examined head hair collected from the Rider for the presence of Letrozole (hereinafter referred to as "the First Kintz Report"). The First Kintz Report states – *inter alia* – that:

> *"[…] The concentrations measured in the hair specimens of Toon Aerts are much lower than what can be expected after a single exposure to letrozole.*
>
> *In conclusion, these results demonstrate that Toon Aerts has been incidentally exposed to minute amounts of letrozole within the last months."*

- The results of a test ordered by Trisport Pharma and conducted by the Cologne Laboratory on the Supplement. Such test was conducted prior to the taking of the Sample. The test results from the Cologne Laboratory showed that none of the anabolic androgenic steroids and stimulants in the Prohibited List were detected. The report, however, does not state that the Supplement was also tested for Letrozole.

21. On 23 May 2022, the UCI invited the Rider to provide clarifications concerning his explanations and the expert opinion reports by 2 June 2022.

22. On 1 June 2022, the Rider provided the UCI with the requested information and documents. These included, *inter alia*, the following clarifications:

- The Rider's explanation on why he had not declared the Supplement on the DCF:

> *"The reason why the recup shake was not mentioned on the doping control form is mainly because I thought in good faith that it did not need to be mentioned. I assumed that only medication and supplements had to be mentioned. I mentioned: Potentiator, chromatonbic ferro, revitalose, erythromax, lysomucil, paracetamol, piracetam and magnesium. I did not immediately see the Recup Shake - that was provided by the team and where the producer of the supplement gave us an explicit guarantee that the products are doping free and that each batch has been checked for prohibited substances (see attachment no. 1) - as a supplement or a risk. My good faith can be proven by the fact that I remember that at certain doping controls after a race, I was drinking the Recup Shake in front of the doping control officer while waiting for the actual doping control. I realise that I am responsible for what I declare, but at no time I was told that I also had to mention the Recup Shake on the form. I can only repeat that I was acting in good faith."*

- A declaration of the director of the Team, Mr Robert Verbeek ("Team Director") describing the purchase of the Supplement with the batch number 20J26RS by the Team. The declaration reads – *inter alia* – as follows:

> *"The Team, in accordance with the provisions of the Team's employment agreement with riders, provides a limited amount of supplements to each of its riders. The Team finds it important for its riders to have access to certified and safe supplements. As employer of Toon Aerts, supplements have been provided by the Team to Toon Aerts.*
>
> *As a Team, we do a screening on all our suppliers. This was also the case with Trisport Pharma. We have carefully checked Trisport Pharma's claims on its website, stating that they only release supplements once they are carefully screened on presence of substances of the WADA list and certified to be clean […]."*

- The details of the Rider's use of the Supplement before the doping control, including a summary table of the use of the Supplement with batch number 20J26RS since November 2021.

Furthermore, the Rider described the use of the Supplement on the day of the doping control as follows:

> *"On the day of the doping control I did not use the recup shake yet. The doping control happened in the morning at 7.55 am when I was still in bed. I had been awake for half an hour and had already gone to pee.*
>
> *The last intake of the shake happened after the training of 18 January 2022 around 14:45.*
>
> *I used 2 scoops of +-50 grams with about 500ml of water."*

- The exact batch number of the Supplement package he was using at the time of the AAF, i.e. 20J26RS.
- Pictures of the relevant Supplement packages.
- The Rider also described the measures he took to ensure that the Supplement did not contain any Prohibited Substances as follows:

> *"The measures I have been taking all my career is not to order any supplement online if I do not know the origin of it. In this case, the supplements were provided to me by the team. The team screened the products based on the certificates they could present from a WADA certified laboratory and the information that could be found on their website off the supplier. I don't know what additional measures I could have taken in this regard."*

- The raw data of the analysis conducted by the UZ Leuven Laboratory.
- Another expert report from Dr. Douwe de Boer dated 1 June 2022 (hereinafter referred to as "the Second De Boer Report"). The Second De Boer Report states – inter alia – as follows:

> *"Mr. Aerts used the specific batch number of the supplement contaminated with traces amounts of LETROZOLE since November 2021.*
>
> *The traces of LETROZOLE in the athlete's hair sample as well as the daily intake of a trace amount in the food supplement match with each other. The subsequent presence of the trace amount of LETROZOLE METABOLITE In his respective urine sample one day after the last intake also matches with that intake. The understanding of the presence in urine of trace amounts of LETROZOLE METABOLITE can be a challenge, because if near the detection limit of the respective analytical method, the metabolite may be detected on one day and not another day depending on several physiological and also analytical conditions. Apparently, those conditions on 19 January 2022 were such, that the LETROZOLE METABOLITE could be detected."*

- A further expert report from Dr. Douwe de Boer dated 30 May 2022 on how Letrozole can be linked to "whey protein" (hereinafter referred to as "the Third De Boer Report"). The Third De Boer Report reads – *inter alia* – as follows:

> *"The milk product, on which the investigation of this specific LETROZOLE case is focussed, is based on "whey protein" or "whey powder" (see expert opinion 12aAERTS22). This powder is a mixture of proteins isolated from whey, the by-product of cheese production. Whey protein is commonly marketed as a protein supplement, and various health claims have been attributed to it. …*
>
> *The safety of dairy products in general is regulated by governmental guidelines and amongst others is mainly focussed on micro-organisms. After all, milk and milk products can contain a variety of microorganisms, which can affect the health of milk consumers. Another issue is the potential presence of residues in dairy products of which LETROZOLE is an example. …*
>
> *The overall concept of safety of dairy products is in EU a combination of strict compliance to EU hygiene legislation and special standards specific to dairy sector. As such, the EU policy aims mainly at preventing and controlling the contamination of dairy products. This way legally allowed veterinary drugs and pesticides are subjected to strict authorisation requirements …*
>
> *LETROZOLE has economical value as an approach for controlling ovarian function in cattle. As far as known, in the EU the application of LETROZOLE is not yet permitted nor investigated. Therefore,*

the only possibility to find LETROZOLE in dairy products consumed in the EU is when it is applied illegally within the EU or when it is imported from outside the EU without any verification for the presumed or actual presence of LETROZOLE. However, there is no official limit for residue of LETROZOLE in dairy products. Consequently and as far as known, it could not be retrieved from official EU documents, that dairy products in the EU are controlled at all for the presence of LETROZOLE. …

In this particular case there is no reasonable way for the athlete to definitely prove whether LETROZOLE is being applied illegally in the EU or even somewhere else in the world. If the governmental authorities are not controlling this despite the economic driven interest, the athlete certainly cannot achieve the impossible challenge and provide any evidence … As stated … non-intentional and passive intake is becoming of an increasing concern as analytical technologies in sport doping control are becoming more and more sensitive and are able the detect traces not any more at 'nanogram' level, but also on 'picogram' level."

- Finally, the Rider informed the UCI of his intention to have the unused and sealed packages of the Supplement (all with the same batch number) analysed by the Cologne Laboratory for the presence of Letrozole. The Rider requested the UCI to inform the Cologne Laboratory accordingly.

23. On 13 June 2022, the UCI requested the Rider to confirm by 15 June 2022 that he was willing to have both the opened and the sealed packages sent for analysis to the Cologne Laboratory.

24. On 14 June 2022, the Rider confirmed that (i) he wished to have both the opened and the sealed packages analyzed by the Cologne Laboratory, (ii) he would like to deliver the packages to the Cologne Laboratory himself to avoid any shipment issues and (iii) that he is in possession of three sealed and one opened package.

25. On 15 June 2022, the UCI issued a request via electronic mail to the Cologne Laboratory for the analysis of the four (i.e. one opened and three sealed) packages of the Supplement. In particular, the UCI requested the Cologne Laboratory to provide details of the condition of the products received, including (i) all ingredients listed on the products and if there is any indication of Letrozole, (ii) whether the products were sealed upon arrival, (iii) the quantity of the products available for testing and (iv) a visual description of the product packaging as well as the product itself. Concerning the analysis of the packages of the Supplement, the UCI requested a report including (i) any prohibited substances identified in the products, (ii) the relevant concentrations of any prohibited substances identified in the products, (iii) the method(s) used to analyze the products and (iv) how much product remains after conducting the relevant testing.

26. On 21 June 2022, the Rider informed the UCI that he had delivered the four (i.e. one opened and three sealed) packages of the Supplement to the Cologne Laboratory on 17 June 2022.

27. On 23 June 2022, the Cologne Laboratory confirmed receipt of the Supplement packages on 17 June 2022 and advised the UCI that it would take approximately four weeks to perform the analyses requested.

28. On 27 July 2022, the UCI requested the Cologne Laboratory to provide an update on the analyses.

29. On 28 July 2022, the Cologne Laboratory informed the UCI that the Letrozole analysis was in progress, that the delay was due to delivery problems of standards and that the results will be expected in the next week.

30. On 8 August 2022, the UCI again requested the Cologne Laboratory to update it on the analyses.

31. On 9 August 2022, the Cologne Laboratory informed the UCI that the results would most likely be available within the week.

32. On 10 August 2022, the Cologne Laboratory confirmed to the UCI that all the four Supplement packages received had the same charge number and the same expiry date. It further informed the UCI

that it had only analyzed the opened package and two of the sealed packages. The third sealed package was still originally packed.

33. On the same day, the Cologne Laboratory issued a report of the analysis for Letrozole of the three (i.e. two sealed and one opened) Supplement packages (hereinafter referred to as "the Cologne Report"). The Cologne Report concluded that "[n]o Letrozole was detected" in any of the analyzed packages provided by the Rider.

34. On 12 August 2022, the Rider's counsel wrote to the UCI that "*it must be noted that it already took a very long time for the WADA accredited laboratory to carry out the analysis of the B- sample and that again almost two months have passed and there is apparently still no analysis available of the (sealed and opened) batches provided*" and reminded the UCI that the current situation has a major impact on the Rider's life. He therefore requested the UCI to deal with the Rider's file "as soon as possible".

35. On 15 August 2022, the UCI acknowledged receipt of the Cologne Report and requested further information concerning the Supplement analysis from the Cologne Laboratory, in particular (i) a description, together with relevant photographs, of the products received by the Laboratory and the state in which they arrived at the Laboratory, (ii) the list of ingredients displayed on the products and if there is any indication of Letrozole, (iii) whether any other prohibited substance was identified in the products based on the method of analysis used and (iv) the amount of product remaining after conducting the analysis.

36. On the same day, the UCI provided the Rider with the Cologne Report and invited the Rider to supplement his explanations on how the prohibited substance entered his body by 29 August 2022.

37. On 16 August 2022, the Cologne Laboratory provided the additional information requested by the UCI.

38. On 25 August 2022, Dr. Douwe de Beor on behalf of the Rider wrote to the UCI that "*the results of the analyses of the supplements by the WADA Laboratory of Cologne laboratory are in full contrast to those of the Academic Hospital of Leuven*". Therefore, Dr. de Boer requested the UCI to respond to the following questions: (i) what were he quantities of the Supplements analysed?, (ii) could hair analysis be repeated by the WADA laboratory in Dresden? and (iii) is there a fourth analytical report for the last sealed batch?

39. On the same day, the UCI acknowledged receipt of Dr. de Boers inquiry and informed him and the Rider that the deadline to submit his supplementary explanations is suspended for the time being.

40. On 13 September 2022, the UCI provided the answers to the above questions. According thereto the Cologne Laboratory had confirmed on 16 August 2022 by electronic mail that (i) the quantity of Supplement analyzed from each package was 12g. Furthermore, (ii) the UCI confirmed that the fourth package of the Supplement (i.e. one of the three sealed ones) has not been analyzed yet. (iii) As to the hair analysis and prior to answer the question posed by Dr. de Boer, the UCI invited the Rider to provide the raw data related to the hair analysis conducted by Prof. Kintz on 26 February 2022. Consequently, the UCI invited the Rider to (i) inform the UCI by 16 September 2022 whether he wishes the Cologne Laboratory to analyze the fourth package of the Supplement and (ii) to provide the raw data related to the hair analysis conducted by Prof. Kintz on 26 February 2022.

41. On 16 September 2022, Dr. de Boer on behalf of the Rider

- confirmed that the Rider wishes to have the fourth package of the Supplement analyzed by the Cologne Laboratory;
- informed the UCI that the Rider was able to obtain two additional (sealed) packages of the Supplement from the same batch number and requested to have them analyzed by the WADA-accredited laboratory of Ghent (hereinafter referred to as "the Ghent Laboratory"); and
- provided the raw data of the hair analysis conducted by Prof. Kintz.

42. On 22 September 2022, the UCI informed the Rider that

- the UCI has instructed the Cologne Laboratory to conduct the analysis of the fourth package of the Supplement;
- the UCI does not object to having the two additional (sealed) packages of the Supplement be analyzed by the Ghent Laboratory, that the UCI will request the Ghent Laboratory to do so and that the UCI will instruct the Ghent Laboratory to follow the same protocol as the one followed by the Cologne Laboratory with respect to the analysis of the Supplement;
- the UCI does not object to the Rider having his hair analyzed by the Dresden Laboratory for the presence of Letrozole and requested whether the Rider wishes the UCI to give prior notice to the Dresden Laboratory in this regard;
- the UCI has no control over how long analyses conducted by WADA-accredited laboratories can take and that the newly requested analyses will inevitably have an impact on the length of the proceedings; and
- that the UCI invites the Rider to submit a signed statement from the UZ Leuven Laboratory providing further details of the "*small signal indicative of the presence of a trace of Letrozole*" identified in the analysis performed on 1 April 2022 by 28 September 2022.

43. On 22 September 2022, the Cologne Laboratory issued the results of the analysis of the fourth package of the Supplement delivered by the Rider, which concluded that no Letrozole had been detected.

44. On 23 September 2022, the UCI requested the Ghent Laboratory to conduct the analysis of the two additional packages of the supplement for the presence of Letrozole and instructed the Ghent Laboratory to provide (i) details of the condition of the products received, (ii) a description of the visual comparison of the different products received and (iii) provide a report on the analysis of the products received.

45. On the same day, the UCI

- informed the Rider of the results of the analysis of the fourth package by the Cologne Laboratory; and
- invited the Rider to contact the Ghent Laboratory directly, since the Ghent Laboratory had confirmed its availability to conduct the analysis of the two additional packages of the Supplement to the UCI.

46. On the same day, the UCI requested the Cologne Laboratory to provide further information on the analysis of the fourth package of the Supplement. In particular, the UCI requested

- information on the amount of product tested and the amount of product remaining after conducting the analysis;
- a scientific opinion by the Cologne Laboratory on the analysis performed by the UZ Leuven Laboratory and on its reliability (considering the conclusion by the UZ Leuven Report that it had identified a "*small signal indicative of the presence of a trace of Letrozole*" in its analysis of the opened package of the Supplement); and
- to submit the raw data relating to the analyses of the opened and sealed packages of the Supplement.

47. On 26 September 2022, the Cologne Laboratory provided the requested additional information concerning the amounts of the analyzed and the remaining product to the UCI and listed the costs for providing the LDP. Concerning the scientific opinion on the UZ Leuven Report, the Cologne Laboratory wrote the following:

"It is our understanding that the report issued by the laboratory of the University of Leuven concluded similarly as our analytical report. Letrozol could neither be identified nor quantified in the nutritional supplement.

If an evaluation of the reliability of the data of the University of Leuven is desired, it is recommended to consult a third party with such request. For instance, Dr. Tiia Kuuranne, the director of the WADA accredited laboratory in Lausanne or WADA science, could be an excellent option."

48. On 28 September 2022, the Rider

- submitted a statement from the UZ Leuven Laboratory providing further details on the "*small signal indicative of the presence of a trace of Letrozole*" identified in the analysis performed on 1 April 2022, which contained, *inter alia*, the following remarks:

  "[…] The limit of quantification for solutions was 0.8 µg/L. Considering the weighed amount of 312 mg, this corresponds to a limit of 2.6 ng/g below which we cannot accurately estimate the concentration.

  The signal in the sample of Trisport pharma recup shake had a matching mass transition and retention time to letrozole and a signal-to-noise ratio of 33. The relative response was approximately 15 times lower compared to the relative response of the calibration standard of 0.8 µg/L.";

- informed the UCI that he only considers performing extra analyses in Dresden if the UCI does not take the already performed hair analyses of Prof. Kintz into account, and thus sought the UCI's position on whether it considered it necessary to carry out additional hair analyses by the Dresden Laboratory; and
- confirmed that he would deliver the two additional packages of the Supplement to the Ghent Laboratory on 28 September 2022.

49. On 29 September 2022, the UCI responded that it leaves it to the Rider "*to determine whether an additional analysis from the WADA-accredited Laboratory of Dresden is necessary to best assist him in his defense*" and further confirmed that "*Dr. Kintz' analysis is in any event already part of the case file and will be taken into account when assessing Mr. Aerts' explanations*".

50. On the same day, the Rider confirmed that he had delivered the two additional packages of the Supplement to the Ghent Laboratory and provided pictures of the delivery.

51. On 7 October 2022, the Cologne Laboratory issued the LDP for the four analyzed packages of the Supplement.

52. On 11 October 2022, according to the UCI, it provided the Rider with the LDP.

53. On 31 October 2022, the Ghent Laboratory provided the Parties with the results of the analysis of the additional packages, which concluded that "*Letrozole could NOT be detected in the supplement*".

54. On 1 November 2022, the UCI requested the Ghent Laboratory to provide additional information on the analysis performed, including (i) a description, together with relevant photographs, of the products received by the Laboratory and the state in which they arrived at the Laboratory, (ii) the list of ingredients displayed on the products and if there is any indication of Letrozole, (iii) a visual description of the product packaging as well as the product itself, (iv) the amount of the product tested and (v) the amount of product remaining after conducting the analysis.

55. On 2 November 2022, the UCI informed the Rider that it has requested additional information on the analysis from the Ghent Laboratory. Considering the results of the analysis by the Ghent Laboratory, the UCI further invited the Rider to provide his final explanations on how the prohibited substance (i.e. Letrozole) entered his body by 9 November 2022.

56. On the same day, "*in view of inaccurate and/or incomplete information that has been made public*" concerning the proceedings, the UCI issued a statement on its website to clarify the occurrence of the provisional suspension and the status of the proceedings.

57. On 7 November 2022, the Ghent Laboratory provided the UCI with the requested information and pictures from 1 November 2022.

58. On 8 November 2022, the UCI provided the Rider with the information and pictures obtained by the Ghent Laboratory.

59. On the same day, the Rider submitted his final explanation for the AAF. In particular, the Rider

- argued the following:

  "We refer to our previous explanations (sent by mail) and documents already provided to the UCI.

  […]

  We would like to conclude with the statement that Mr. Aerts has been cooperating and transparent the whole procedure and did everything reasonable possible to find the reason for the AAF.

  With the expert opinion of Dr. Douwe de Boer we can confirm that the supplied evidence in general and the reported low concentration of letrozole metabolite combined with the hair samples as well as the possible trace amount in the food supplement in particular justifies a minimal sanction whereas the athlete bears no significant fault or negligence.

  As Mr. Aerts has accepted voluntarily a provisional suspension and is therefore withheld from participating in cycling races as from 14 February 2022, we (and Mr. Aerts in particular) would be very grateful if the UCI could continue with this procedure as soon as possible.";

- submitted a declaration from the Team's doctor Jan Mathieu ("Team's Doctor") from 29 October 2022, which, according to a free translation, confirmed that (i) he had assisted the Rider in the 2021-2022 season, (ii) he had advised the Rider to take a recovery shake immediately after races and training, (iii) the Supplement was suggested to the members of the Team because it has the right composition and is a sponsor of the Team and that (iv) the Rider had used the Supplement almost daily during the busy New Year period; and

- submitted a new expert opinion from Dr. Douwe de Boer from 6 November 2022 (hereinafter referred to as "the Fourth de Boer Report"), stating, *inter alia*, the following:

  "Merely based on the presence of LETROZOLE in urine, there is no way to make a distinction between the non- and intentional intake of LETROZOLE. Obviously, this way the intentional intake can not be fully excluded, while the non-intentional and passive intake through drugs and supplements contaminated or not, kissing, breathing, touching etc. cannot be confirmed exclusively, although some scenarios are likely and other less likely. However, in this specific case was observed by the UZ Leuven that a contaminated supplement based on "whey protein" may have caused the AAF. However, the result of the analysis could not be confirmed by analyzing other batches of the same supplement by the WADA anti-doping laboratory of Cologne as well as not by the WADA anti-doping laboratory of Ghent. Moreover, the WADA anti-doping laboratory of Cologne analyzed also the same as UZ Leuven and also could not confirm the presence of the observed contamination. We can only speculate why and how such a discrepancy should be interpreted …

  [I]t must be concluded that the athlete and his employer have done all that may reasonably be expected and acted in good faith; the manufacturer of the dietary supplement "Trisport Pharma Recup Shake Choco" incorrectly claims that the supplement was free of illegal substances and/or doping, because the supplement was not analyzed for LETROZOLE.

  […] The balance between the liability of an athlete and a sanction as potentially is given after an AAF should be kept in our mind.

I believe sincerely that such a balance should result in this particular case in a minimal sanction. The supplied circumstantial evidence such as the reported low concentration of LETROZOLE metabolite in the respective urine sample, the traces of LETROZOLE in the athlete's hair sample as well as the possible trace amount in the food supplement and although not confirmed by other laboratories justifies the balance with no sanction at all."

60. On 19 December 2022, following a request by the UCI, Prof. Martial Saugy issued an expert report (hereinafter referred to as "the First Saugy Report") on the results of the Sample and the Rider's explanation, which concluded the following:

> *"In summary, the laboratory of UZ Leuven reported that for the supplement 'TriSport Pharma Recup', a small signal was indicative of the presence of Letrozole, whereas both the Köln and Ghent Laboratories found no traces of Letrozole in the various supplement batches analysed.*
>
> *[…] the raw data of the analyses of UZ Leuven reveal that it is not possible to definitively conclude that Letrozole was found in the supplement. In any case, even assuming that the traces found by UZ Leuven in the supplement were indeed traces of Letrozole, the estimated quantity (based on calculation with the peak areas) that was found would not explain the AAF. Indeed, to explain the AAF, we would need at least 25μg of Letrozole in a dose of the supplement (100g), which is at least 1000 times more than the estimated quantity of the traces of Letrozole found by UZ Leuven. It is therefore my conclusion that it is highly unlikely that the source of the AAF is the supplement 'TriSport Pharma Recup shake'. On the other hand, a single or multiple intake of moderate doses of Letrozole at the beginning of January 2022 is a likely scenario."*

61. On the same day, the UCI informed the Rider that in view of the First Saugy Report, it could not accept his explanation for the AAF and thus offered him an Acceptance of Consequences (hereinafter referred to as "AoC") in accordance with Article 2 of the ADT Rules. Specifically, the UCI offered the Rider the following sanction:

- *2 years of ineligibility under Article 10.2.2 and 10.13.2.2 of the UCI ADR starting on 16 February 2022 (i.e. date of the Rider's voluntary provisional suspension).*
- *Disqualification of all the results obtained from the date the positive sample was collected (19 January 2022) to 6 February 2022 and forfeiture of prizes and medals during said timeframe.*
- *Reimbursement of the costs incurred by the UCI for the results management of the case (CHF 2'500) and for out-of-competition testing (CHF 1'500) as per Article 10.12.2 of the UCI ADR.*
- *Reimbursement of the costs advanced by the UCI regarding the Supplements' analyses requested by your client (EUR 2'630).*

62. On 9 January 2023, the Rider informed the UCI that he does not accept the AoC and requested the UCI to refer the case to the Tribunal.

63. On 17 January 2023, the Rider informed the UCI that he wished the Ghent Laboratory to conduct further analyses on the Supplements referred to in his explanation and other supplements he had used at the time of the AAF. He, thus, requested approval of the UCI for such testing.

64. On 18 January 2023, the UCI informed the Rider that it has no objection to these additional analyses. The UCI further noted that the UCI nevertheless intends to file its Petition with the Tribunal based on the evidence on record, and that any new analyses results must be filed together with the Rider's answer to the Petition.

III. PROCEDURE BEFORE THE TRIBUNAL

65. In accordance with Article 13.1 of the ADT Rules, the UCI has initiated proceedings before this Tribunal through the filing of a Petition to the Secretariat on 30 January 2023. In its Petition, the UCI has filed the following requests:

- *Declaring that Mr. Toon Aerts has committed an Anti-Doping Rule Violation.*
- *Imposing on Mr. Toon Aerts a period of ineligibility of two years starting on 16 February 2022.*
- *Disqualifying all the results obtained by Mr. Toon Aerts from 19 January until 6 February 2022.*
- *Condemning Mr. Toon Aerts to pay a contribution toward the costs of the Tribunal that the Tribunal deems equitable.*
- *Condemning Mr. Toon Aerts to pay the costs of results management by the UCI (CHF 2'500), the costs incurred for the Out-of-Competition testing (CHF 1'500) and the costs advanced by the UCI in relation to the analyses of the Supplement by the Cologne Laboratory (EUR 2'630).*
- *Condemning Mr. Toon Aerts to pay a contribution toward the UCI's legal costs.*

66. On 2 February 2023, the Secretariat of the Tribunal appointed Prof. Ulrich Haas to act as Single Judge in the proceedings in application of Article 14.1 of the of the ADT Rules.

67. On the same day, and in application of Article 14.4 of the ADT Rules, the Secretariat of the Tribunal informed the Rider via electronic mail that disciplinary proceedings had been initiated against him and that Prof. Ulrich Haas had been appointed as Single Judge of the Tribunal. Furthermore, the Rider was informed that (i) in case he wished to challenge the appointment of the Single Judge he would have to do so within seven days of receipt of the present correspondence and (ii) he would be granted a deadline until 17 February 2023 to submit his answer to the Petition in conformity with Articles 16.1 and 18 of the ADT Rules.

68. On 15 February 2023, the Rider requested for an extension of the time limit to submit an answer (hereinafter referred to as "Statement of Defense") until 28 February 2023 pursuant to Article 9.6 of the ADT Rules.

69. On the same day, the Secretariat of the Tribunal informed the Rider that the Single Judge agreed to extend the deadline granted to submit his Statement of Defense to the UCI's Petition until 28 February 2023.

70. On 28 February 2023, the Rider submitted his Statement of Defense and annexes. In his Statement of Defense, the Rider has filed the following requests:

- *In principal order, to accept that a contaminated product was the cause of the AAF and that Mr. Aerts has No Significant Fault or Negligence (light degree) and therefore issue a sanction between a reprimand and 12 months of Ineligibility;*
- *In subsidiary order, in the event the UCI-Anti-Doping Tribunal is in the opinion that Mr. Aerts has a "normal degree" of No Significant Fault or Negligence, a sanction of maximum 18 months of Ineligibility has to be imposed;*
- *To order the UCI to pay the costs;*
- *To relieve Mr. Aerts of the UCI administration and procedural fees, if any.*

71. With his Statement of Defense, the Rider submitted an expert witness statement by Prof. Kintz from 27 February 2023 (hereinafter referred to as "the Second Kintz Report"), which concluded the following:

> *"I strongly maintain that the hair test results of Mr Toon Aerts is more likely due to repetitive exposures to minute amounts of letrozole (probably less than 0.01 mg) which do not have a pharmacological activity. This statement is supported by data on single dose administration (Favretto et al)."*

72. On 3 March 2023, the Secretariat of the Tribunal informed the Parties that in consideration of the Rider's argumentation and annexes, the Single Judge decided to open a second round of submissions, which shall be restricted to the contents of the Second Kintz Report of 27 February 2023 and the consequences that follow therefrom. Therefore,

- the UCI was granted until 17 March 2023 to provide its final comments as well as any exhibits in relation to the Second Kintz Report; and
- the Rider was granted until 31 March 2023 upon receipt of the UCI's comments to provide his final comments on the UCI's submission.

73. On 13 March 2023, the UCI requested for an extension of 5 days, i.e. until 22 March 2023, to file its comments.

74. On 14 March 2023, the Secretariat of the Tribunal informed the Parties that in accordance with Article 9.6 of the ADT Rules, the Single Judge agreed to extend the deadline granted to the UCI until 22 March 2023 for the submission of the UCI's final written comments. The Rider was granted until 5 April 2023 to submit his final written comments on the UCI's submission.

75. On 22 March 2023, the UCI submitted its comments on the Second Kintz Report and the consequences that follow therefrom (hereinafter referred to as "the Reply"). In its Reply, the UCI

- maintained the requests from its Petition;
- provided the results of the additional analyses performed on the various supplements by the Ghent Laboratory dated 15 February 2023 (which the Rider had requested on 17 January 2023). The Ghent Laboratory concluded that "*Letrozole could NOT be detected in the supplements*"; and
- submitted an additional expert opinion report from Prof. Martial Saugy (hereinafter referred to as "the Second Saugy Report"), which addresses the contents of the Second Kintz Report.

76. On 23 March 2023, the Secretariat of the Tribunal on behalf of the Single Judge informed the Parties of the receipt of the Reply and reminded the Rider of the deadline until 5 April 2023 to submit his final written comments (hereinafter referred to as "the Final Written Comments").

77. On 3 April 2023, the Rider requested for an extension of 7 days, i.e. until 12 April 2023, to file his Final Written Comments on the Reply filed by the UCI.

78. On 4 April 2023, the Secretariat of the Tribunal informed the Parties that in accordance with Article 9.6 of the ADT Rules, the Single Judge agreed to extend the deadline granted to the Rider until 12 April 2023 for the submission of his Final Written Comments.

79. On 12 April 2023, the Rider submitted his Final Written Comments. In his Final Written Comments, the Rider

- maintained the requests from his Statement of Defense;
- submitted an expert witness statement from Prof. Kintz from 31 March 2023 (hereinafter referred to as "the Third Kintz Report") on axial diffusion in hair;
- submitted an expert opinion report from Prof. Donata Favretto (hereinafter referred to as "the Favretto Report"), commenting on the urine and hair test results; and
- submitted another report from Prof. Pascal Kintz from 23 December 2022 on a new hair analysis for Letrozole of the Rider's hair and the hair of Mrs. Sarah Janssens (hereinafter referred to as "the Fourth Kintz Report"), which concluded that no Letrozole was identified for the segments corresponding to the months after the AAF.

80. On 17 May 2023, the Secretariat of the Tribunal on behalf of the Single Judge informed the Parties that (i) in consideration of the submissions made by the Parties and the evidence on record, no oral hearing would be held in this case and (ii) should there be any outstanding issues that need to be clarified by the Parties before the Judgment is rendered, the Single Judge would issue appropriate procedural instructions in accordance with Article 17 (2) of the UCI ADT.

81. On 6 June 2023, the Rider wrote to the Tribunal as follows:

> *"As this weekend the news got out that another cyclist (Miss Shari Bossuyt) tested positive on the substance "Letrozole" we wanted to share this information with the UCI Anti-Doping Tribunal.*
>
> *Please find in attachment the conclusions of the press conference of Miss Shari Bossuyt.*
>
> *Seen the fact that the levels of the substances detected of Letrozole are in both cases very low and the fact that both riders tested positive after staying an racing in the same region (Normandy – France) we felt that there might be a connection between both cases …".*

82. On 12 June 2023, the Secretariat of the Tribunal acknowledged receipt of the Rider's letter and decided to include it in the case file. Furthermore, the letter granted the UCI until 15 June to provide its comments on the Rider's submission.

83. On 14 June 2023, the UCI informed the Tribunak that it did not object that the Rider's letter including the presse release be admitted into the record and stated that it "*is unaware of any evidence that would support the suggestion that staying in Normandy should somehow explain the AAF*".

IV. APPLICABLE RULES

84. Article 27 of the UCI ADR provides the following:

> *"27.1 These Anti-Doping Rules shall apply in full as of 1 January 2021 (the "Effective Date").*
>
> *27.2 Any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occured prior to the Effective Date shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred, and not by the substantive anti-doping rules set out in the Anti-Doping Rules or the Code, unless the panel hearing the case determines the principle of "lex mitior" appropriately applies under the circumstances of the case.[…]"*

85. Considering that the Rider's sample was collected on 19 January 2022, the UCI ADR 2021 apply to the merits of the case at hand.

86. As for the procedural rules applicable before the Tribunal, Article 36 of the ADT Rules provides the following:

> *"These Rules come into force on 4 February 2021 and apply to all procedures initiated by the Tribunal on or after such date."*

87. Considering that the present proceedings had been initiated by the Tribunal on 2 February 2023, the ADT Rules in force in 2021 apply in this case.

V. JURISDICTION

88. The jurisdiction of the Tribunal follows from Article 8.3.2 of the UCI ADR and Article 3.1 (a) of the ADT Rules according to which "*the Tribunal shall have jurisdiction over all matters in which [a]n anti-doping rule violation is asserted by the UCI based on a Results Management or investigation process under Article 7 ADR".*

89. 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."*

90. Neither party raised any objection to the jurisdiction of the Tribunal within said time limit, thus the Single Judge confirms the jurisdiction of the Tribunal.

91. Part C of the Introduction of the UCI ADR addresses its scope of application as follows:

> *"These Anti-Doping Rules shall apply to (a) the UCI […] (b) National Federations […] (c) the following Riders, Rider Support personnel and other Persons: i) any License Holder […]"*

92. Said conditions are fulfilled in the case at hand. The Rider was a UCI cycling License Holder in 2022 within the meaning of the UCI ADR and, thus, bound by the UCI ADR at the relevant time.

93. Finally, the Rider has not objected to the jurisdiction of the Tribunal, rather he expressly requested the UCI to refer the case to the Tribunal.

VI. THE FINDINGS OF THE SINGLE JUDGE

94. The main issues for the Single Judge to decide are:

A) Did the UCI establish that the Rider committed an ADRV within the meaning of Articles 2.1 and/or 2.2 of the UCI ADR? and, if so,

B) What are the appropriate consequences of such an ADRV?

A. Did the UCI establish that the Rider committed an ADRV within the meaning of Articles 2.1 and 2.2 of the UCI ADR?

95. The relevant urine sample of the Rider (sample number 10300137087) was collected on 19 January 2022.

1. The applicable provisions

96. Article 26 of the ADT Rules provides that *"[…] the Single Judge shall apply the* [UCI] *ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law"*.

97. Article 2.1 of the UCI ADR defines the relevant ADRV as follows:

> *"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample*
>
> *2.1.1 It is the Riders' personal duty to ensure that no Prohibited Substance enters their bodies. 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 A or B Sample is split into two (2) parts and the analysis of the*

confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Rider waives analysis of the confirmation part of the split Sample.

[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 Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported 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, International Standards or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances."

98. Article 2.2 of the UCI ADR qualifies the "*Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method*" as an ARDV. The term "Use" is defined in the Appendix 1 of the UCI ADR as follows:

"The utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method."

99. Furthermore, Article 2.2 of the UCI ADR states as follows:

"2.2.1 It is the Riders' personal duty to ensure that no Prohibited Substance enters their bodies 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."

100. As to the burden and standard of proof, Article 3.1 of the 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, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability."

[Comment to Article 3.1: This standard of proof required to be met by the UCI is comparable to the standard which is applied in most countries to cases involving professional misconduct.]"

101. As to the methods of establishing facts and presumptions, Article 3.2 of the UCI ADR provides:

"Facts related to anti-doping rule violations may be established by any reliable means, including admissions.

[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.]

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

3.2.1 Analytical methods or Decision Limits approved by WADA after consultation within the relevant scientific community or which have been the subject of peer review are presumed to be scientifically valid. Any Rider or other Person seeking to challenge whether the conditions for such presumption have been met or 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. The initial hearing body, appellate body or CAS, on its own initiative, may also inform WADA of any such challenge. Within ten (10) days of WADA's receipt of such notice and the case file related to such challenge, WADA shall also have the right to intervene as a party, appear as amicus curiae or otherwise provide evidence in such proceeding. In cases before CAS, at WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge.

[Comment to Article 3.2.1: For certain Prohibited Substances, WADA may instruct WADA-accredited laboratories not to report Samples as an Adverse Analytical Finding if the estimated concentration of the Prohibited Substance or its Metabolites or Markers is below a Minimum Reporting Level. WADA's decision in determining that Minimum Reporting Level or in determining which Prohibited Substances should be subject to Minimum Reporting Levels shall not be subject to challenge. Further, the laboratory's estimated concentration of such Prohibited Substance in a Sample may only be an estimate. In no event shall the possibility that the exact concentration of the Prohibited Substance in the Sample may be below the Minimum Reporting Level constitute a defense to an anti-doping rule violation based on the presence of that Prohibited Substance in the Sample.]

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.

3.2.3 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 3.2.3: 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. Thus, once the Rider or other Person establishes the departure by a balance of probability, the Rider or other Person's burden on causation is the somewhat lower standard of proof – "could reasonably have caused." If the Rider or other Person satisfies these standards, 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.]

3.2.4 Departures from any other rules set forth in these Anti-Doping Rules, UCI Regulations, any International Standard or other anti-doping rule or policy set forth in the Code shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation; provided, however, if the Rider or other Person establishes that a departure from one of the specific UCI Regulations or International Standard provisions listed below could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, an Adverse Passport Finding or whereabouts failure, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the whereabouts failure:

(i) a departure from the UCI Testing & Investigation Regulations or International Standard for Testing and Investigations related to Sample collection or Sample

handling which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or an Adverse Passport Finding, in which case the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;

(ii) a departure from the UCI Results Management Regulations, UCI Testing & Investigations Regulations, International Standard for Results Management or International Standard for Testing and Investigations related to an Adverse Passport Finding which could reasonably have caused an anti-doping rule violation, in which case the UCI shall have the burden to establish that such departure did not cause the anti-doping rule violation;

(iii) a departure from the UCI Results Management Regulations or International Standard for Results Management related to the requirement to provide notice to the Rider of the B Sample opening which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, in which case the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;

[Comment to Article 3.2.4 (iii): The UCI would meet its burden to establish that such departure did not cause the Adverse Analytical Finding by showing that, for example, the B Sample opening and analysis were observed by an independent witness and no irregularities were observed.]

(iv) a departure from the UCI Results Management Regulations or International Standard for Results Management related to Rider notification which could reasonably have caused an anti-doping rule violation based on a whereabouts failure, in which case the UCI shall have the burden to establish that such departure did not cause the whereabouts failure.

[Comment to Article 3.2.4: Departures from an International Standard or other rule unrelated to Sample collection or handling, Adverse Passport Finding, or Rider notification relating to whereabouts failure or B Sample opening – e.g., the International Standards for Education, Data Privacy or TUEs – may result in compliance proceedings by WADA but are not a defense in an anti-doping rule violation proceeding and are not relevant on the issue of whether the Rider committed an anti-doping rule violation. Similarly, the UCI's violation of the document referenced in Article 20.7.7 of the Code shall not constitute a defense to an anti-doping rule violation.] […]*"*

2. The burden and standard of proof

102. It follows from Article 3.1 of the UCI ADR that the UCI bears the burden of proof to establish that the Rider committed an ADRV. The ADRV of the Rider must be established to the "comfortable satisfaction" of the Tribunal, 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 any reasonable doubt".

103. According to Article 3.2.2 of the UCI ADR, "*WADA-accredited Laboratories* [...] *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 of a valid analysis of the sample by establishing that a deviation from the International Standard for Laboratories (or other applicable regulations) occurred which could reasonably have caused the AAF (cf. Article 3.2.2 UCI ADR). "*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 AAF, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding"* (cf. Article 3.2.3 UCI ADR).

3. The presence of a prohibited substance

104. Article 2.1 of the UCI ADR incorporates the principle of strict liability. According thereto (Appendix 1 of the UCI ADR) *"it is not necessary that intent, Fault, Negligence, or knowing Use on the Rider's part be demonstrated by the Anti-Doping Organization in order to establish an anti-doping rule violation"*. Thus, sufficient proof of an ADRV is established – *inter alia* – by the "*presence of a Prohibited Substance or its Metabolites or Markers in the Rider's A Sample where the Rider waives the 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*" (cf. Article 2.1.2 of the UCI ADR). According to Article 6.1 of the UCI ADR the analysis must be conducted by a WADA-accredited Laboratory or a Laboratory otherwise approved by WADA.

105. In the case at hand, the A- and the B-Sample collected from the Rider on 19 January 2022 were analyzed by the Cologne Laboratory, which is WADA-accredited. The analysis of the A-Sample revealed the presence of Letrozole. The B-Sample analysis confirmed the presence of Letrozole found in the Rider's A-Sample. Consequently, according to Article 2.1.2 of the UCI ADR, there is sufficient proof of an ADRV under Article 2.1 UCI ADR. The evidence used to establish an ADRV under Article 2.1 of the UCI ADR may also be used to establish an ADRV under Article 2.2 UCI ADR for "Use of a Prohibited Substance", since the presence of a prohibited substance in the bodily specimen of the Rider is not possible without prior use of such prohibited substance.

106. Thus, in the case at hand, the UCI has discharged its burden of proof that an ADRV for Articles 2.1 and 2.2 of the UCI ADR has been committed by the Rider by submitting the respective analyses reports for the A- and the B-Sample. Consequently, the burden of proof shifts to the Rider to rebut this presumption by showing on a balance of probabilities that (i) there was a departure from the International Standad for Laboratories ("ISL") or the applicable provision; and (ii) that such departure could have reasonably caused the AAF (see Articles 3.2.3 and 3.2.4 of the UCI ADR).

107. In conclusion, the Single Judge holds that the UCI successfully discharged its burden of proof that the Rider committed a violation of Articles 2.1 and 2.2 of the UCI ADR.

4. No Challenge of the Analytical Methods or of the Analytical Results

108. In the case at hand the Rider neither challenged the scientific validity of the analytical method for detecting the presence Letrozole nor the analytical results of the Cologne Laboratory. Instead, Dr. de Boer confirmed in the First de Boer Report submitted by the Rider on 25 April 2022 that after having examined the A-Sample LDP "*no indications were found at first sight that LETROZOLE METABOLITE was identified inadequately*". Furthermore, the Rider stated in his Statement of Defense that he does not dispute the AAF and that the A- and the B-Sample analyses show the presence of Letrozole.

109. In conclusion, the Single Judge is comfortably satisfied that the Rider has committed an ADRV pursuant to Articles 2.1 and 2.2 of the UCI ADR.

5. A single ADRV

110. Article 10.9.3.1 of the UCI ADR provides as follows:

> *"For purposes of imposing sanctions under Article 10.9, except as provided in Articles 10.9.3.2 and 10.9.3.3, an anti-doping rule violation will only be considered a second violation if the UCI can establish that the Rider or other Person committed the additional anti-doping rule violation after the Rider or other Person received notice pursuant to Article 7, or after the UCI made reasonable efforts to give notice of the first anti-doping rule violation. If the UCI cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction, including the application of*

Aggravating Circumstances. Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in Article 10.10."

111. Consequently, both ADRV (Presence and Use) will be considered – legally – as one single ADRV.

B. What are the appropriate consequences of such an ADRV?

1. The standard Period of Ineligibility: Did the Rider commit the ADRV intentionally?

112. In the case at hand, the ADRV relating to Letrozole constitutes the Rider's first ADRV. Article 10.2 of the UCI ADR reads as follows:

> *10.2.1 The period of Ineligibility […] shall be four (4) years where:*
>
> > *10.2.1.1 The anti-doping rule violation does not involve a Specified Substance of a Specified Method, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.*
> >
> > *[Comment to Article 10.2.1.1: While it is theoretically possible for a Rider or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 a Rider will be successful in proving that the Rider acted unintentionally without establishing the source of the Prohibited Substance.]*
> >
> > *10.2.1.2 The anti-doping rule violation involves a Specified Substance, or a Specified Method and the UCI can establish that the anti-doping rule violation was intentional.*
>
> *10.2.2 If Article 10.2.1 does not apply, […] the period of Ineligibility shall be two (2) years.*

113. In the case at hand, Letrozole is a Specified Substance. Accordingly, Article 10.2.1.2 of the UCI ADR provides that the standard period of ineligibility is four years, if the UCI can establish that the ADRV was committed intentionally. However, if the UCI cannot establish that the ADRV was committed intentionally, the standard period of ineligibility is two years according to Article 10.2.2 of the UCI ADR.

a) The term "intentional"

114. The term "intentional" is defined in Article 10.2.3 of the UCI ADR. The provision provides as follows:

> *"As used in Article 10.2, the term "intentional" is meant to identify those Riders or other Persons who engage in conduct which they 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. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Rider 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 Rider can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.*
>
> *[Comment to Article 10.2.3: Article 10.2.3 provides a special definition of "intentional" which is to be applied solely for purposes of Article 10.2.]"*

b) The burden of proof and the standard of proof

115. The UCI bears the burden to prove that the ADRV was committed intentionally pursuant to Article 10.2.1.2 of the UCI ADR.

116. The applicable standard of proof in relation to whether or not the ADRV (involving a Specified Substance) was committed intentionally is "comfortable satisfaction" (as per Article 3.1 of the UCI ADR).

c) The position of the Parties

117. The Parties both agree that the current file does not contain any element from which one can deduce that the ADRV was committed intentionally. The Rider further notes that he never engaged in any conduct which he should know that constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV.

d) The position of the Single Judge

118. The Single Judge concurs with the view expressed by the Parties that there are no facts on file which indicate that the Rider acted intentionally when committing the ADRV. Consequently, the Single Judge accepts that the standard period of ineligibility of two years (cf. Article 10.2.2 UCI ADR) serves as a starting point to determine the appropriate period of ineligibility.

2. Possible elimination or reduction of the Period of Ineligibility

a) The applicable provisions

119. Articles 10.5 and 10.6 of the UCI ADR read as follows:

> *"10.5 Elimination of the Period of Ineligibility where there is No Fault or Negligence*
>
> *If a Rider or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.*
>
> *[Comment to Article 10.5: This Article and Article 10.6.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example, where a Rider could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Riders are responsible for what they ingest (Article 2.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Rider's personal physician or trainer without disclosure to the Rider (Riders are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Rider's food or drink by a spouse, coach or other Person within the Rider's circle of associates (Riders are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.6 based on No Significant Fault or Negligence.]*
>
> *10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence*
>
> *10.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Article 2.1, 2.2 or 2.6.*
>
> *All reductions under Article 10.6.1 are mutually exclusive and not cumulative.*
>
> *10.6.1.1 Specified Substances or Specified Methods*
>
> *Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Rider or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Rider's or other Person's degree of Fault.*
>
> *10.6.1.2 Contaminated Products*

In cases where the Rider or other Person can establish both No Significant Fault or Negligence and that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Rider or other Person's degree of Fault.

[Comment to Article 10.6.1.2: In order to receive the benefit of this Article, the Rider or other Person must establish not only that the detected Prohibited Substance came from a Contaminated Product but must also separately establish No Significant Fault or Negligence. It should be further noted that Riders are on notice that they take nutritional supplements at their own risk. The sanction reduction based on No Significant Fault or Negligence has rarely been applied in Contaminated Product cases unless the Rider has exercised a high level of caution before taking the Contaminated Product. In assessing whether the Rider can establish the source of the Prohibited Substance, it would, for example, be significant for purposes of establishing whether the Rider actually Used the Contaminated Product, whether the Rider had declared the product which was subsequently determined to be contaminated on the Doping Control form.

This Article should not be extended beyond products that have gone through some process of manufacturing. Where an Adverse Analytical Finding results from environment contamination of a "non- product" such as tap water or lake water in circumstances where no reasonable person would expect any risk of an anti-doping rule violation, typically there would be No Fault or Negligence under Article 10.5.]

10.6.1.3 Protected Person or Recreational Rider

Where the anti-doping rule violation not involving a Substance of Abuse is committed by a Protected Person or Recreational Rider, and the Protected Person or Recreational Rider can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Protected Person or Recreational Rider's degree of Fault.

10.6.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.6.1

If a Rider or other Person establishes in an individual case where Article 10.6.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced based on the Rider or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years.

[Comment to Article 10.6.2: Article 10.6.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8, 2.9 or 2.11) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Rider or other Person's degree of Fault.]"

120. According to Article 26.7 of the UCI ADR, the Appendix 1 shall be considered an integral part of the UCI ADR. The terms "No Fault or Negligence" (hereinafter referred to as "NF") and "No Significant Fault or Negligence" (hereinafter referred to as "NSF") are defined as follows in Appendix 1 of the UCI ADR:

"No Fault or Negligence: The Rider or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or

Recreational Rider, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered the Rider's system.

No Significant Fault or Negligence: The Rider or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Rider, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered the Rider's system."

121. Therefore, for the Athlete to benefit from the provisions in Article 10.5 or 10.6.1. of the UCI ADR and be able to request a reduced sanction, he must first establish the source of the Prohibited Substance.

122. Furthermore, Appendix 1 defines the term "Contaminated Product" as follows:

"A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search."

b) The burden of proof and the standard of proof

123. According to Articles 10.5 and 10.6.1 of the UCI ADR, the Rider bears the burden of proof to establish NF or NSF. According to the definitions of NF and NSF in the Appendix, Articles 10.5 and 10.6.1 of the UCI ADR both require the Rider to establish how the prohibited substance entered his system.

124. The applicable standard of proof in relation to whether or not the ADRV (involving a Specified Substance) was committed with NF or NSF is the balance of probability (Article 3.1 of the UCI ADR). Accordingly, the Rider must convince the Single Judge that the version of events presented by him (and indicating a reduced level of fault) appears more likely than not.[1] Thus, the Single Judge will accept the Rider's version of events, if he is persuaded by more than 50%.[2]

125. The above percentages, however, are not to be mistaken with objective probabilities. Instead, it is the subjective conviction of the Single Judge that is relevant when applying the standard of proof. This is not to say that the Single Judge will not take into account objective probabilities or the general likelihood of the occurrence of a given fact. Instead, it is widely accepted that general experience is an important factor when assessing the evidence and determining the facts of a case. Consequently, the Single Judge will – as a general rule – need more cogent evidence to establish a certain event in case the occurrence of the latter is unlikely.[3]

c) How did Letrozole get into the Rider's system?

126. The Rider claims that the source for his AAF was the contaminated Supplement, i.e. the "Trisport Pharma Recup Shake Choco". The UCI objects to this scenario submitted by the Rider.

(i) The position of the Rider

127. The Rider submits – in essence as follows:

- He has consumed the Supplement on a daily basis since 11 November 2021 until the AAF occurred. In this regard, the Rider notes the following:

  "I use the recup shake from the beginning of the road season (in preparation for cx season) after heavy training (endurance training or intensive training) and after the road races.

[1] BJÖRN HESSERT, «Fehlleistung des CAS im Dopingverfahren Jarrion Lawson», Causa Sport, 2020, 155 (158).

[2] CAS 2009/A/1926 & 1930, no.31; CAS 2011/A/2384 & CAS 2011/A/2386, no. 55 et seq; BJÖRN HESSERT, «Fehlleistung des CAS im Dopingverfahren Jarrion Lawson», Causa Sport, 2020, 155 (158).

[3] Contrary to CAS 2019/A/6313, no. 86.

From September, the start of the cx season, i use the recup shake on all training sessions longer than 2 hours and after all races.
From November, intensive cx race period, I use the recovery shake daily after training sessions and all cx races until the end of the season.
I always use 2 scoops of +-50 grams (which is delivered along in the jar) with about 500ml of water.
[…]
On the day of the doping control I did not use the Trisport Pharma recup shake yet. The doping control happened in the morning at 7.55 am, when I was still in bed. I had been awake for half an hour and had already gone to pee.
The last intake of the shake happened after the training of 18 January 2022 around 14:45. I used 2 scoops of +-50 grams with about 500ml of water.";

- The Rider further submits that the Supplement was contaminated with Letrozole. In this regard he relies on the UZ Leuven Report, which states – *inter alia* – that

  "One extract showed a trace with transition and retention time corresponding to letrozole. Because the signal was below the limit of quantification, it was not possible to estimate its concentration.

  In conclusion, there was no quantifiable amount of letrozole in any of the analyzed samples. Trisport Pharma recup shake showed a small signal indicative of the presence of a trace of letrozole.

  For therapeutic use, typical letrozole doses are 2.5 mg daily. Based on the detection of letrozole at a concentration of <2.6 ng/g and doses of 200 g trisport product a day, minimal exposure could occur, though the exposure would be three orders of magnitude lower compared to therapeutical doses."

- The Rider also provides an explanation how Letrozole might have found its way into the Supplement. In this respect he relies, in particular, on the First de Boer Report and the Third de Boer Report. The First de Boer Report identifies whey powder as a possible source of contamination of the Supplement:

  "For veterinary applications, LETROZOLE may have economical value as an approach for controlling ovarian function in cattle. Recent results revealed that irrespective of the stage of the reproductive cycle, a 4-day LETROZOLE-based protocol induced ovulation in a significantly greater proportion of animals and with significantly greater synchrony than the control treatment. It should be stated that pregnant cows are not slaughtered by obvious reasons. This way, LETROZOLE through contamination of meat is not likely to enter the market for human meat consumption. However, any cow that does not become pregnant or that becomes ill during that process might be slaughtered due to economic reasons. That way, meat of such cows might become available incidentally for human consumption.

  In contrast to that, contamination of cow's milk is a more likely way that LETROZOLE may enter the market for human consumption. As in humans, cows only produce milk after they have given birth to a calf. Those dairy cows must give birth to a calf regularly in order to continue producing milk. Typically, they are artificially inseminated 3 or more months after giving birth. Much like humans, a cow's pregnancy lasts about 9 months and 10 days.

  Because of that, there might be an overlap between the period of producing milk and being inseminated again. As LETROZOLE may play a role to control the ovarian function and thus ovulation in cows, this means that dairy cows still might produce milk, if their ovarian function is controlled by LETROZOLE just before artificially inseminated.

  Unfortunately, the European Union (EU) does not monitor until now meat and milk products for the presence of LETROZOLE as part of the monitoring program for residues of veterinary residues in food for human consumption […]. Consequently, it is impossible to establish the extent of this problem in the EU. […]

  One of the ingredients [of the dietary supplement "Trisport Pharma Recup Shake Choco"] is Whey protein hydrolyzate. This is a mixture of partially digested whey proteins that are made by separating the whey protein from the other nutrients as found in cow's milk and breaking down the whey protein into peptides. Therefore, a significant part, approximately 17% of the powder, is based

on cow's milk. As indicated previously there is a link between milk and LETROZOLE. Therefore, it is not illogical that respective batch of the dietary supplement "Trisport Pharma Recup Shake Choco" is contaminated." (First de Boer Report)

"[…] As far as known, in the EU the application of LETROZOLE is not yet permitted nor investigated. Therefore, the only possibility to find LETROZOLE in dairy products consumed in the EU is when it is applied illegally within the EU or when it is imported from outside the EU without any verification for the presumed or actual presence of LETROZOLE. However, there is no official limit for residue of LETROZOLE in dairy products. Consequently and as far as known, it could not be retrieved from official EU documents, that dairy products in the EU are controlled at all for the presence of LETROZOLE.

[…] it can be concluded that worldwide there is an economically driven interest in drug-induced protocols for ovarian synchronization in dairy cows. Moreover, LETROZOLE- induced protocols are being investigated. However, legally approved protocols in Europe, North America, Australia and New Zealand are not yet available. Therefore, application of LETROZOLE-induced protocols is limited to illegal use. […]

Regarding 'whey protein' the export and import of 'whey protein' in the countries of the EU is monitored by The Observatory of Economic Complexity (OEC). The OEC has constructed for example a map that shows which countries export or import "whey protein" to which country […] The Netherlands and Belgium are relatively small, but also net importers of "whey protein". Economically considered, it must be concluded that the market of "whey protein" is large and complex. A small part comes form South America (for example Argentina) and a significant part from North America (for example USA and Canada), where drug-induced protocols for ovarian synchronization in dairy cows are either common use or at least of special interest. […]

In this particular case there is no reasonable way for the athlete to definitely prove whether LETROZOLE is being applied illegally in the EU or even somewhere else in the world. If the governmental authorities are not controlling this despite the economic driven interest, the athlete certainly cannot achieve the impossible challenge and provide any evidence. The fact that the market of "whey protein" is large, complex and thus not transparent makes it even more impossible. This way, the athlete can never provide confirmation whether and how the contamination of the respective supplement is due to the application of LETROZOLE ovarian synchronization in dairy cows." (Third De Boer Report)

- Furthermore, the Rider submits that the intake of Letrozole via the contaminated Supplement is the only plausible route of ingestion:

  - This follows from the results of the analysis of the urine samples:

    "[I]t must be concluded that the reported concentration of LETROZOLE METABOLITE was low, namely in the range of 2.4 ng/mL, which after estimation and correction for SG was 3.1 ng/mL. […]

    [I]f LETROZOLE would have reached any therapeutic level after repetitive administration, it must be deducted that based on the fact that at the time of sample collection merely a LETROZOLE METABOLITE concentration of 2.4 ng/mL was reported, that LETROZOLE did not have any pharmacological significance at the time of collection.

    Therefore, it not unlikely that LETROZOLE might have been administered unconsciously. Moreover, if LETROZOLE indeed has been administered unconsciously, it is implausible that the way of administration was by ingesting tablets. It would be more likely and logically to suppose other way of administrations such as for example by an incidental contamination. Amongst others, the scenarios of milk, medication or supplements contaminated with LETROZOLE residues should be verified.

    Consequently, if LETROZOLE METABOLITE had been administered unconsciously, it must be concluded that the origin of LETROZOLE METABOLITE is unlikely to originate from tablets; therefore, incidental contaminations must be considered and looked for in a broad way."; (First De Boer Report)

- The hair analysis performed by Prof. Kintz indicates that the Rider was exposed over a period of time to minute amounts of Letrozole, which is compatible with the contaminated Supplement scenario:

"[…] The concentrations measured in the hair specimens of Toon Aerts are much lower than what can be expected after a single exposure to letrozole.

In conclusion, these results demonstrate that Toon Aerts has been incidentally exposed to minute amounts of letrozole within the last months." (First Kintz Report)

"I strongly maintain that the hair test results of Mr Toon Aerts is more likely due to repetitive exposures to minute amounts of letrozole (probably less than 0.01 mg) which do not have a pharmacological activity. This statement is supported by data on single dose administration (Favretto et al)." (Second Kintz Report)

"In the hair of the athlete, we obtained a chromatographic signal that is below the limit of quantitation (1 pg/mg), on the 4 x 1 cm segments.

With limited scientific background on hair testing for drugs, this can be interpreted as repetitive exposures to minutes amount of letrozole within the last 4 months prior specimen collection, a situation that introduces speculation on the period of exposure." (Third Kintz Report)

- The hair analysis performed by Prof. Kintz indicates that the exposure to minute amounts of Letrozole stopped once the Rider ceased to use the Supplement:

"In conclusion, these results demonstrate that Toon Aerts … were not exposed to letrozole within the last months (6 and 12 months, respectively)."

- Finally, the Rider backs the contaminated Supplement scenario with an expert opinion of Prof. Favretto according to which any other route of ingestion than contamination does not make sense:

"The scenario that I can figure out, taking in account both urine and hair results, is that of a systemic contamination of Mr Toons Aerts body by involuntary exposure to repeated, low, non-therapeutic amounts of Letrozole as could originate by the ingestion of a contaminated supplement, or a contaminated medicinal drugs or a contaminated food in the 4 month period before hair collection including the period of urine test.

The unintentional contamination of Mr. Aerts by living/eating/sleeping/sharing bathroom with someone using Letrozole as a medicinal was excluded by Mr Toon Aerts himself.

The intentional contamination of Mr. Aerts food/beverage sources by someone else in order to make him positive at the anti-doping test, we cannot either prove or exclude.

It is my strong belief that the test results are not consistent with the intentional use of Letrozole.

In order for Letrozole to be effective to enhance androgen levels or mitigate AAS adverse effects there must be regular use of the product, not a single ingestion of a pill.

The regular use of Letrozole in January 2022 would be detected in the Athlete's hair sample and in the Athlete's urine sample (which it was not).

Even the single ingestion of a pill or a portion of a pill (an active dosage) in January 2022 would be detected in the Athlete's hair sample (which it was not)."

(ii) The position of the UCI

128. The UCI submits – in essence – as follows:

- The Rider's whey protein respectively milk contamination scenario is not based on any reliable or concrete evidence, but is highly if not merely speculative in nature. There is – according to the UCI – simply no data indicating that there is any widespread milk contamination issue with Letrozole in Europe (or elsewhere):

  "As described by Dr de Boer in his report of 22nd April 2022, there are recent publications revealing the existence of LETROZOLE-based protocols inducing ovulation in dairy cows. […]

  To our knowledge, the use of this product is not authorized in the EU, but also, does not seem to be monitored systematically.

  Nevertheless, I am not aware of any cases involving milk contaminated with Letrozole, and no peer-reviewed literature or official reports indicating that milk is contaminated with letrozole could be found.

  In conclusion, in my view, it is highly unlikely that milk (and therefore the supplement) would be contaminated through such path."; (First Saugy Report)

  WADA provided – upon the UCI's request – the information according to which (i) it was not aware of any case of Letrozole where a contamination scenario has been put forward and/or admitted. Furthermore, WADA pointed to a doctoral thesis in Canada, where Letrozole was used experimentally to synchronize ovulation to make cows pregnant. However, the study showed that milk production decreased. Finally WADA stated that between 17 November 2021 and 28 November 2022 it had recorded 22 AAFs involving Letrozole and or its metabolite worldwide. However, if there was an issue with widespread use of Letrozole in milk production, one would expect far higher numbers.

- The UZ Leuven Report cannot be relied upon in order to establish that the Supplement was contaminated with Letrozole:

  "[…] The method used by the UZ Leuven Laboratory was a validated liquid chromatography tandem mass spectrometry method, which is an appropriate method for that type of analysis. …

  The analysis has been performed by using tandem Mass spectrometry. The peak of interest is in this case corresponding to a single diagnostic ion for the SRM transition (286.1->217.1 for Letrozole; 290.1-> 221.1 for Letrozole-D4, the Internal Standard).

  While this allows to have a good sensitivity and can be used for quantification purposes and/or for screening procedures, a single SRM transition would not meet the identification criteria of the substance. For a proper identification of the Letrozole, at least two diagnostic Ions [i.e. two precursor-product ion transitions (SRM transitions)] are required (as it is notably established in the WADA TD2021IDCR5).

  Even if there is a 'small signal at the same retention time than Letrozole', this is not sufficient to affirm that this signal corresponds to Letrozole. We can only describe this signal as a suspicion of presence of Letrozole in the sample. […]

  [T]he peak [corresponding to the 'small signal' at the Letrozole retention time] is in fact a triple peak, which may be indicative of an interference from another impurity in the extract. Without a proper MS/MS analysis (with at least two SRM transitions) for the identification of Letrozole for this peak, it is difficult to conclusively confirm that this is a trace of Letrozole." (First Saugy Report)

- The contaminated Supplement scenario is further contradicted by the analyses performed by the Cologne and Ghent Laboratory on the Supplement . The Cologne Laboratory analysed the same opened package as the UZ Leuven Laboratory and an additional three sealed packages of the same batch. The Ghent Laboratory analysed two additional sealed packages from the same batch. The Cologne and Ghent Laboratories did not find any traces of Letrozole in the Supplement. The UCI submits that the findings by both laboratories are reliable and are to be followed. In particular, the Cologne Laboratory had analysed a significantly greater amount of the Supplement than the UZ Leuven Laboratory (i.e. 12 g v. 312 mg). In addition, the Cologne Laboratory is more performant than the UZ Leuven Laboratory, since it has a lower limit of detection (hereinafter referred to as "LOD") (i.e. 0.13 ng/g v. 2.6 ng/g) and produced more specific results:

"The methods of both laboratories [Ghent and Cologne] *are fully validated and accredited. They constitute the relevant methods for that type of analyses.*

The limit of detection (LOD) of the Köln laboratory is defined at 0.13 ng/g and the limit of quantification (LOQ) is 0.52 ng/g.

The limit of detection (LOD) of Letrozole of the Ghent Laboratory has been determined at less than 0.5 ng/g.

The Laboratory Documentation Packages of the analyses, describing the analyses of several packages (sealed and open, including the same supplement package analyzed by the UZ Leuven Laboratory) of the Trisport Pharma Recup Shake clearly show that there is no Letrozole in the extracts of the supplement.

There is no peak in the four diagnostic ions windows, which could be considered as a trace of Letrozole." (First Saugy Report)

- The UCI provides the following explanation for the differing results of the various laboratories:

"Clearly, both results of the Köln Laboratory and the Ghent laboratory showed negative results (or at least, results under their detection limits).

The UZ Leuven laboratory considered that a relatively unspecific peak in their analysis of the supplement Tri Pharma Recup shake does correspond (without any proper analytical confirmation) to a trace of Letrozole.

After estimation of the quantity based on the raw data of the UZ Leuven, we can say that the traces detected are close to the LOD of the Köln laboratory (0.13 ng/g). But it must be noted that Köln works with several SRM transitions, which give more specific results, whereas, as mentioned above, the UZ Leuven laboratory only used one SRM transition.

We can therefore conclude that the results from the Köln laboratory, which has a more specific and more sensitive method of analysis, confirm that the traces found by the UZ Leuven, at the same retention time of Letrozole, are likely not actual traces of Letrozole, but possibly interferences from the supplement." (First Saugy Report)

- There are – according to the UCI – also several other factors that speak against the Supplement contamination theory:

  - The Rider claims to have used the Supplement almost daily since 11 November 2021 until February 2022. The Rider provided urine samples on 11 November 2021, on 15 November 2021, on 4 December 2021, on 2 January 2022, on 19 January 2022 and on 6 February 2022. All these samples reported negative for Letrozole except for the one collected on 19 January 2022. If, however, the Supplement was contaminated with Letrozole, it would have been reasonable to expect that the Rider would have returned an AAF for Letrozole already prior to the 19 January 2022:

"At this stage, it would be difficult to explain why all urines (except the one of 19th January 2022) were reported negative for Letrozole in a scenario of regular exposure to Letrozole through a contaminated supplement. […]

The results in the rider's urine speak more in favor of a single or several intakes of Letrozole after the 2nd January and before the day of the AAF (19th January 2022)." (First Saugy Report)

  - The Team Director has confirmed that the entire Team was using the "Trisport Pharma Recup Shake Choco". However, no other members of the Rider's team returned an AAF in the period between November 2021 and February 2022 for Letrozole.

- The analysis of the hair samples does not provide any insights into the source of Letrozole in the Rider's specimen. Furthermore, the UCI states that the results of the Rider's hair analysis must be interpreted with care:

  - It cannot be determined with certainty that Letrozole was found in the hair of the Rider:

    "[A] careful review of the raw data of Dr. Kintz' analyses shows that there is a peak at the same retention time than Letrozole in the hair segments. […]

    The peak of interest is in this case corresponding to a single diagnostic ion of the MS/MS transition […].

    While this allows obtaining a good sensitivity, as mentioned above in the context of the discussion of the analysis of the supplements by the UZ Leuven laboratory, it would not meet the identification criteria of the substance established in the WADA TD2021IDCR.

    This means that there is also only a suspicion of the presence of Letrozole in the hair, the substance having not been conclusively identified. […]" (First Saugy Report)

  - Passive axial diffusion in the hair of the Rider cannot be ruled out in the present case. Thus, it is not clear whether in case Letrozole was found in the segments of the hair that correspond to the time period before the collection of the sample:

    "[I]t appears [from a publication by Prof. Kintz from 2013] that a diffusion of the substance may occur to several segments of the hair even after a single intake of a substance. Such an occurrence cannot be excluded in the present case in light of the rider's overall testing history in the months preceding the AAF. […]

    [T]he hair analysis does not put into question my conclusion because while Dr. Kintz' conclusion is that "these results demonstrate that the Rider has been incidentally exposed to minute amounts of letrozole within the last months", it is not possible in this case to exclude a diffusion effect […]." (First Saugy Report)

    "[T]he Favretto et al publication does not rule out the possibility that passive axial diffusion occurred in the present case.

    Moreover, as Prof. Kintz himself stated in one of his publications of 2013: 'Another explanation for broadening the band of positive hair from a single dose is that drugs and metabolites are incorporated into hair during formation of the hair shaft via diffusion from sweat and other secretions'.

    Based on this, it is my opinion that the passive axial diffusion of Letrozole in hair through sweat cannot be excluded in the case of a cyclist who is regularly doing exercise." (Second Saugy Report)

  - The hair testing results by Prof. Kintz are not compatible with the AAF and the Rider's testing history:

    "First of all, from 1 November 2021 to 2 January 2022, four urine samples were collected from the rider for anti-doping purposes and they were all clearly negative for the presence of Letrozole.

    After the AAF of 19 January 2022, one more urine sample was collected on 6 February 2022 and was also reported negative.

    In his report, Prof. Kintz maintains that the rider's hair test results is 'more likely due to repetitive exposure to minute amounts of letrozole (probably less than 0.01mg)'. However, Prof. Kintz totally disregards the urine sample results as well as the rider's testing history and ultimately does not explain a concentration of 2.3 ng/ml (3.1 ng/ml with s.g. correction) in the rider's sample of 19 January 2022.

    As already expressed in my previous report, it is my position that the rider was exposed to one single dose (e.g. of 25μg a day before the sample collection of 19 January 2022) between 2 January and 19 January 2022.

However, considering that all urines (except the one of 19th January 2022) were reported negative for Letrozole between 1 November 2021 and 6 February 2022, it is in my opinion unlikely that the rider has been repetitively exposed to amounts between 0.01 mg and 0.1 mg of Letrozole prior to the period between 2 and 19 January 2022, as this would have been detected in the previous urine samples." (Second Saugy Report)

- Finally, the UCI submits that the contaminated Supplement scenario advanced by the Rider cannot be reconciled with the amounts of Letrozole allegedly found in Supplement (according to the UZ Leuven Report), the amounts of Letrozole found in the Rider's urine sample and the amounts of the Supplement allegedly consumed by the Order in the period leading up to the taking of the sample:

"In order to be able to compare the estimated concentration of the letrozole metabolite in the rider's urine (estimated at 2.3 ng/ml) with the pharmacokinetic data which are described in the Favretto et al paper, Dr. De Boer did the usual correction with the s.g. in order to normalize the concentration.

A 'normal' urine is considered to have a s.g. of 1.020. In this case, the calculation is the following: 2.3 ng/ml X (1.020 – 1.000) / (1.015 -1.000) = 3.1 ng/ml.

[…] If we assume that this is a trace of Letrozole and by comparing with the analytical results of the LOD/LOQ fixed at 2.6 ng/g and the peak traces found in the extract of the Trisport Pharma Recup shake, the signal in the supplement extract has an intensity approximately 20 times lower than the LOD extract (adjusted with the internal standard).

In other words, if the traces found in this supplement extract are really traces of Letrozole, the amount of that substance in the supplement can be estimated between 0.1 to 0.2 ng/g of Trisport Pharma Recup Shake.

[…] If 100 g of the supplement was taken the day before the AAF (intake at 14:45 on 18.01.2022; urine collection at 8:25 on 19.01.2022), this means that, based on an estimation of the raw data of the UZ Leuven analysis, the rider would have ingested approximately 10 to 20 ng of Letrozole.

In the Favretto et al publication, the maximum concentration of Letrozole metabolite reported for the male volunteer (A) after the intake of 2.5 mg was of 285 ng/ml. The maximum concentration of Letrozole metabolite reported for the second male volunteer (B) after the intake of 1.25 mg was of 128 ng/ml.

By extrapolation, we can deduct that after an intake of 10 to 20 ng, the maximum concentration reached by the rider would be of ca 1 to 2 pg /ml, i.e. at least 1000 times less than what has been found in the athlete's urine.

To be compatible with this estimated concentration of 3.1 ng/ml in urine, an intake of at least 25 µg (or 25'000 ng) of Letrozole the day before the AAF would have been necessary.

Therefore, even if we accept the results of the UZ Leuven analysis that a "small signal" of letrozole was identified in the supplement, it is highly unlikely for the supplement to be the source of the AAF with an estimated concentration of 3.1 ng/ml of Letrozole metabolite." (First Saugy Report)

(iii) The position of the Single Judge

129. The Single Judge accepts that the Rider consumed the Supplement in the period between November 2021 until February 2022. He does so – however – with some hesitation, since the Rider did not record the Supplement on the DCF in the context of the various doping controls. In doing so, the Single Judge is aware of the explanation provided by the Rider (cf. no. 22).

130. The Single Judge, however, does not accept – on a balance of probabilities – that Letrozole was contained in the Supplement. It is true that the UZ Leuven Laboratory issued a report, in which it

recorded a small signal of Letrozole when analyzing the "Trisport Pharma Recup Shake Choco". However, when examining the raw data of the UZ Leuven Report, both the Cologne Laboratory and Prof. Saugy found that the analysis performed by the UZ Leuven Laboratory was not conclusive for Letrozole. The finding of the UZ Leuven Report is further called into question by the fact that the (open) package of the Supplement analyzed by the UZ Leuven Laboratory was also examined in the Cologne Laboratory, which did not find any traces of Letrozole in this package. This is important considering that the Cologne Laboratory has a better LOD, performed the analysis – contrary to the UZ Leuven Laboratory – according to WADA standards and taking into account that the Cologne Laboratory analyzed a greater quantity of the Supplement. The finding of the Cologne Laboratory is further corroborated by the analysis of the other (closed) packages of the Supplements of the same batch. These analyses were performed both in the Cologne and the Ghent Laboratory and did not reveal traces of Letrozole.

131. The UZ Leuven report is not corroborated by any other evidence on file. The Single Judge has taken note of the Rider's explanation how Letrozole may have found its way into the Supplement. However, the submission that Letrozole is allegedly used in milk production and thereby finds its way into whey protein / milk powder (that is being used for the Supplement) is mere speculation. The Rider was unable to back this theory with any evidence whatsoever. However, there is evidence to the contrary. First, it is undisputed that the use of Letrozole in milk production (at least in European Union) is forbidden. Secondly, the statistical data provided by WADA indicates that contamination via whey protein or milk powder with respect to Letrozole is highly unlikely. Thirdly, the Rider submitted that he consumed +/- 100 g of the Supplement on a daily basis since November 2021. However, all the other five doping controls conducted between November 2021 and February 2022 did not report AAFs for Letrozole. Finally, the finding of the UZ Leuven Laboratory does not match up with the estimated concentration of Letrozole found in the Rider's urine sample. Prof. Saugy has submitted a calculation that – in essence – was not disputed by the Rider according to which the Rider would have had to consume 1000 times more of the Supplement than the indicated 100g/day in order to reach the concentration levels detected in his urine.

132. The Single Judge has carefully read the various reports by Prof. Kintz. However, the hair analysis does not support the Rider's case. The reports by Prof. Kintz (that are further supported by Prof. Favretto) find that the Rider did not use Letrozole in therapeutic quantities. Even if the Single Judge would agree with this finding, the only conclusion to be drawn from this is that the Rider could not have acted intentionally, i.e. to enhance his performance. However, as stated previously, this issue is not at stake here, since the starting point of determining the appropriate period of ineligibly is Article 10.2.2 UCI ADR, i.e. a provision that presupposes that the Rider acted negligently. What is at stake here, however, is whether the Rider acted with low or no degree of negligence. In order to demonstrate this, the Rider must show – on a balance of probabilities – how the prohibited substance entered his system, i.e. what the source for the analytical finding is. The hair analysis does not provide an answer to this question. The reports of Prof Kintz merely state that the Rider over a certain period of time was exposed to minute amounts of Letrozole. However, the hair test cannot reveal the source of the Prohibited Substance. This is also acknowledged by the expert report of Prof. Favretto, who states as follows:

> *"The scenario that I can figure out, taking in account both urine and hair results, is that of a systemic contamination of Mr Toons Aerts body by involuntary exposure to repeated, low, non-therapeutic amounts of Letrozole as could originate by the ingestion of a contaminated supplement, or a contaminated medicinal drugs or a contaminated food in the 4 month period before hair collection including the period of urine test."*

b) Evidentiary difficulties ("Beweisnotstand")

133. The Rider claims that he cannot be expected to do the impossible, that he cannot provide further evidence and that he did everything he could to meet his burden of proof. From the question what needs to be established (how the prohibited substance entered the Rider's system) one must distinguish the means of evidence available to a party to persuade the adjudicatory body from the

occurrence of the event. It is a common phenomenon that a party may run into difficulties when trying to prove its case. In principle, "normal difficulties" in presenting evidence are dealt with by the onus of proof. The latter shifts the risk of not being able to prove a certain fact to the party bearing the onus of proof. This risk shifting is a political decision by the legislator that must be respected in the absence of particular circumstances. The question, however, arises what to do with evidentiary problems that exceed a certain threshold (serious evidentiary problems).

134. (Serious) evidentiary problems may have different causes. It may be that there is no direct evidence available or that the fact that needs to be proven is – by its very nature – difficult to establish (e.g. proving of negative facts). Evidentiary problems may also be due to the behaviour of the opposing party (e.g. frustration of evidence). In all these instances where the threshold of "normal difficulties" is exceeded, the legal order must react in order to ensure procedural fairness. There is, however, not one size-fits-all approach. In case the evidentiary difficulties are unrelated to the behavior of the opposing party, the approach to be followed is, in principle, to impose a duty of cooperation on the party (not bearing the onus of proof). This is at least the approach of the Swiss Federal Tribunal (hereinafter referred to as "SFT") (ATF 106 II 29, 31 E. 2; 95 II 231, 234; 81 II 50, 54 E 3; FT 5P.1/2007 E. 3.1):

> « *Dans une jurisprudence constante, le Tribunal fédéral a précisé que la règle de l'**art. 8 CC** s'applique en principe également lorsque la preuve porte sur des faits négatifs. Cette exigence est toutefois tempérée par les règles de la bonne foi qui obligent le défendeur à coopérer à la procédure probatoire, notamment en offrant la preuve du contraire (ATF 106 II 31 consid. 2 et les arrêts cités). L'obligation, faite à la partie adverse, de collaborer à l'administration de la preuve, même si elle découle du principe général de la bonne foi (**art. 2 CC**), est de nature procédurale et est donc exorbitante du droit fédéral - singulièrement de l'**art. 8 CC** -, car elle ne touche pas au fardeau de la preuve et n'implique nullement un renversement de celui-ci. C'est dans le cadre de l'appréciation des preuves que le juge se prononcera sur le résultat de la collaboration de la partie adverse ou qu'il tirera les conséquences d'un refus de collaborer à l'administration de la preuve.* »

135. It follows from the above that the contesting party in the case of a "Beweisnotstand" must cooperate in the investigation and clarification of the facts of the case. However, according to the SFT, the above difficulties do not lead to a re-allocation of the risk if a specific fact cannot be established. Instead, such risk will always remain with the party having the burden of proof. Furthermore, the SFT states that, in assessing and determining whether a specific fact can be established, the court must take into account whether the contesting party has fulfilled its obligations of cooperation.

136. The Single Judge can leave open the question whether the evidentiary problems faced by the Rider are exceptional or serious within the above meaning. Even if this were true, the Single Judge finds that in the case at hand the UCI has discharged its duty of cooperation in establishing the facts and that, therefore, there is no room to apply a different or more lenient standards in favor of the Rider in the context of the assessment of the evidence.

c) Other possible contamination

137. The Rider claims that even in case the Single Judge does not accept that "Trisport Pharma Recup Shake Choco" is the source for the AAF, the hair analysis reports by Prof. Kintz and the expert witness opinion by Prof. Favretto still prove that the AAF can only be caused by a "contaminated product", and thus Article 10.6.1.2 of the UCI ADR should be applied, which states the following:

> *"In cases where the Rider or other Person can establish both No Significant Fault or Negligence and that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Rider or other Person's degree of Fault."*

138. The arbitrator in CAS 2019/A/6541 (no. 72) held that "*it is not sufficient for an athlete merely to make protestations of innocence and to suggest that the Prohibited Substance must have entered his body*

inadvertently from some supplement, medicine or other product. An athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question".

139. The Single Judge notes that all the other supplement analyses (i.e. all the supplements except for the "Trisport Pharma Recup Shake Choco"), which were conducted by the UZ Leuven Laboratory and the Ghent Laboratory on various supplements the Rider had consumed in the weeks/months prior to the AAF, showed that no Letrozole had been detected in any of the supplements. The Rider has in fact not brought forward any other concrete scenario of contamination except for the "Trisport Pharma Recup Shake Choco". The Rider only states, alternatively, that some product contamination must have occurred due to the results of the hair analysis, without identifying a specific source. This, however, cannot be deemed enough to satisfy the Rider's burden of proof.

140. In this regard, the Single Judge follows the panel in CAS 2021/A/8215 (no. 183), which held the following:

> *"In the present case, as was the case in CAS 2020/A/7579 & 7580, conclusive evidence of contamination in some ultimately unidentifiable way is practically impossible. And still, while the Panel accepts that such contamination did conceivably occur, there remains an obligation to identify a source of origin of the prohibited substance."*

141. The definition of NSF in Annex 1 for all paragraphs contained in Article 10.6. UCI ADR is the same. The Rider must establish the source. The submissions of the Rider are not specific enough in relation to an alleged "other source" than the Supplement.

d) Proportionality of the Period of Ineligibility

142. The Rider claims that a two-year period of ineligibility would be manifest disproportionate and thus should be reduced. In particular, he claims (i) that he bears basically no fault and seems to be a victim of the rigid regulations, (ii) that he is the victim of a contamination, (iii) that he has accepted a provisional suspension and therefore is already sanctioned very severely since he is without a Team/employer and lost the opportunity to earn his salary during the period of ineligibility, (iv) that the timing of the sporting calendar in cyclo-cross would imply that in the event he faces a period of two years of ineligibility, he would lose three cyclo-cross seasons and would de facto be sanctioned for three instead of two years, (v) that the proportionality of sanctions must be dealt with in this exceptional case, (vi) that sanctions must not be automatic but adjustable depending on the circumstances, and (vii) that he did everything reasonably possible in this situation.

143. The Single Judge notes that the CAS case law confirms that the principle of proportionality has already been considered and incorporated in the drafting of Articles 10.5 and 10.6 of the World Anti-Doping Code (hereinafter referred to as "WADC") and consequently also into the respective provisions of the UCI ADR that are based on the WADC.[4]. As stated in CAS 2008/A/1489 & CAS 2008/A/1510 (no 24):

> *"the no fault or negligence and no significant fault or negligence exceptions to otherwise strict liability anti-doping rule are themselves embodiments of the principle of proportionality"[5].*

144. In CAS 2019/A/6541 (no. 94), the panel ruled that

> *"even an 'uncomfortable feeling' regarding a sanction mandated in the rules, had there been one, would not have been sufficient to involve the principle of proportionality where the applicable rules include a sanctioning regime which is proportionate and contains clear and concise mechanism which allows for a reduction of the applicable sanction".*

[4] CAS 2021/A/8125, no. 191; CAS 2017/A/5015 & CAS 2017/A/5010, no. 227; CAS 2017/A/5546 & CAS 2018/A/5571, , nos. 86 et seq.

[5] CAS 2008/A/1489 & CAS 2008/A/1510, , no. 24.

145. The panel in CAS 2006/A/1025 (no. 90) further found that only

> *"[i]n very rare cases in which the WADC […] exceptions do not provide a just and proportionate sanction, i.e. when there is a gap or lacuna in the WADC, the gap or lacuna must be filled by the Panel […] applying the overarching principle of justice and proportionality".*

146. The Single Judge does not exclude that there might be (exceptional and rare) cases, which warrant a deviation from or a supplementation of the rules for reasons of proportionality. However, in light of the world-wide consensus underlying the WADC and the inclusive procedure, in which these provisions were adopted, the necessity to deviate from the clear wording of the rules must be assessed with great care. Be it as it may, the Single Judge finds that the case at hand cannot be qualified as a rare and exceptional case that necessitate a further development of the law. Thus, the Single Judge does not reduce the period of ineligibility based on general considerations of proportionality.

e) The right of a fair trial

147. The Rider claims that his basic rights have been violated, since the Cologne Laboratory took more than two months to provide the results of the analyses of the provided Supplements, whereas other laboratories were able to provide the results within a few days or weeks. Furthermore, the Cologne Laboratory had unilaterally postponed the opening of the B-Sample, which, according to the Rider, complicated the gathering of evidence since time is of the essence "when searching for a needle in a haystack". The Rider thus is of the view that these delays violate his right to a fair trial, including the analysis-actions and decisions within a reasonable time.

148. The Single Judge notes that according to Article 7.1.1 of the UCI ADR, the Results Management Procedure falls within the responsibility of the UCI. The Single Judge further observes that there have been minor delays by the Cologne Laboratory in the opening of the B-Sample and the analysis of the Supplement. The opening of the B-Sample was initially scheduled for 16 March 2022, but had to be moved to 6 April 2022. The supplements were delivered by the Rider to the Cologne Laboratory on 17 June 2022 and the results were reported on 10 August 2022. The Cologne Laboratory explained the delays with a positive Covid-19 test within its personnel and delivery problems of standards. These circumstances were clearly out of the sphere of control of the UCI. Furthermore, the Rider failed to establish any concrete harm he faced due to these very minor delays. The Rider was granted the right to be heard and was given the opportunity to collect evidence for over a year. The UCI assisted the Rider to get the different packages of the Supplement analysed in WADA-accredited laboratories. Therefore, the Single Judge cannot find any violation of the Rider's right to a fair trial in the case at hand.

f) Conclusion

149. In view of all of the above, the Single Judge finds that the Rider has not discharged his burden of proof how – on a balance of probability – the prohibited substance entered his system. Consequently, the period of ineligibility cannot be eliminated or reduced on the basis of Articles 10.5 and 10.6 of the UCI ADR.

3. Commencement date of the Period of Ineligibility and Credit for provisional Suspension

150. In relation to the commencement of the period of ineligibility, Article 10.13 of the UCI ADR provides as follows:

> *"[…] Otherwise, 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.*
>
> *10.13.1 Delays Not Attributable to the Rider or other Person*

Where there have been substantial delays in the hearing process or other aspects of Doping Control, and the Rider or other Person can establish that such delays are not attributable to the Rider or other Person, the UCI may start the period of Ineligibility 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.

[Comment to Article 10.13.1: In cases of anti-doping rule violations other than under Article 2.1, the time required for an Anti-Doping Organization to discover and develop facts sufficient to establish an anti- doping rule violation may be lengthy, particularly where the Rider or other Person has taken affirmative action to avoid detection. In these circumstances, the flexibility provided in this Article to start the sanction at an earlier date should not be used.]

10.13.2 Credit for Provisional Suspension or Period of Ineligibility Served

10.13.2.1 If a Provisional Suspension is 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 the Rider or other Person does not respect a Provisional Suspension, then the Rider or other Person shall receive no credit for any period of Provisional Suspension served. 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.

10.13.2.2 If a Rider or other Person voluntarily accepts a Provisional Suspension in writing from the UCI and thereafter respects the Provisional Suspension, the Rider or other Person shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. A copy of the Rider or other Person's voluntary acceptance of a Provisional Suspension shall be provided promptly to each party entitled to receive notice of an asserted anti-doping rule violation under Article 14.1.

[Comment to Article 10.13.2.2: A Rider's voluntary acceptance of a Provisional Suspension is not an admission by the Rider and shall not be used in any way to draw an adverse inference against the Athlete.] […]"

151. Thus, as a general rule, 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. On 14 February 2022, the Rider was informed of the AAF and offered the possibility to accept a provisional suspension, which the Rider voluntarily did on 16 February 2022. There is no indication on file that the Rider did not observe the terms of such suspension. The Single Judge, thus, finds that the Rider must receive credit for the time so served.

4. Disqualification

152. Article 10.10 of the UCI ADR provides as follows:

"In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider obtained from the date a positive Sample was collected (whether In-Competition or Out-of- Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes."

153. The Single Judge notes that the Rider voluntarily accepted a provisional suspension and thus the commencement of the period of ineligibility was 16 February 2022. However, the Single Judge also notes that the Rider tested negative for Letrozole on 6 February 2022. Fairness thus requires that any

results obtained by the Rider between 6 February 2022 and the commencement date of the provisional suspension, i.e. 16 February 2022, are not disqualified.

154. Therefore, only all the results obtained – if any – by the Rider between the date of the sample collection on 19 January 2022 until before the negative urine test, i.e. 5 February 2022, are disqualified.

5. Mandatory Fine and Costs under the UCI ADR

155. Article 10.12.1.1 of the UCI ADR provides that "[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*".

156. The Single Judge holds that the Rider did not commit the ADRV intentionally and that, therefore, Article 10.12.1.1 of the UCI ADR does not apply to him and consequently, no mandatory fine is imposed.

157. The UCI requests that the Rider pays the costs of the results management conducted by the UCI in the amount of CHF 2'500.00, the costs for the out-of-competition testing in the amount of CHF 1'500.00 and the costs advanced by the UCI in relation to the analyses of the Supplement by the Cologne Laboratory requested by the Rider in the amount of EUR 2'630.00.

158. The Single Judge notes that Article 10.12.2 of the UCI ADR reads as follows:

> *"10.12.2 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.*
>
> *If the Rider or other Person admits the anti-doping rule violation in accordance with the requirements provided under Article 10.8, the UCI may waive the reimbursement of these costs in whole or in part. The factors listed under 10.12.1.3 may also be considered in relation to a possible reduction of costs under this provision.*
>
> *The National Federation of the Rider or other Person shall be jointly and severally liable for its payment to the UCI."*

159. In application of the above provision, the Single Judge holds that the Rider shall reimburse to the UCI the following amounts:

- CHF 2'500.00 for costs of the results management (Article 10.12.2 (2) of the UCI ADR);
- CHF 1'500.00 for B-Sample analysis (Article 10.12.2 (3) of the UCI ADR); and
- EUR 2'630.00 for the costs advanced by the UCI in relation to the analyses of the Supplement by the Cologne Laboratory requested by the Rider.

6. Costs of the proceedings

160. Article 29 of the ADT Rules provides as follows:

"1. The Tribunal shall determine in its judgment the costs of the proceedings as provided under Article 10.12.2 para. 1 ADR.

2. As a matter of principle the Judgment is rendered without costs.

3. Notwithstanding the 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."

161. In application of Article 29.2 of the ADT Rules, the Single Judge decides that the present Judgment is rendered without costs. In light of all of the circumstances of this case, the Single Judge finds it appropriate to not order the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

VII. RULING

162. In consideration of all of the above, the Tribunal decides as follows:

1. **Mr. Toon Aerts has committed an Anti-Doping Rule Violation.**

2. **Mr. Toon Aerts is suspended for a period of ineligibility of two years. The period of Ineligibility shall commence on the date of the decision, i.e. 16 August 2023. However, considering the credit for the period of the Provisional Suspension already served by Mr. Toon Aerts since 16 February 2022, Mr. Toon Aert's period of Ineligibility effectively began on 16 February 2022, and shall end two years from this date, i.e. 15 February 2024.**

3. **All results obtained by Mr. Toon Aerts from 19 January 2022 until 5 February 2022 are disqualified.**

4. **Mr. Toon Aerts is ordered to pay to the UCI:**

   a) the amount of CHF 2'500.00 for the costs of the results management;
   b) the amount of CHF 1'500.00 for the costs of the Out-of-Competition testing; and
   c) the amount of EUR 2'630.00 for the costs of the analyses of the supplement by the Cologne Laboratory.

5. **All other and/or further-reaching requests are dismissed.**

6. **This judgment is final and will be notified to:**

   a) **Mr. Toon Aerts;**
   b) **National Anti-Doping Organisation of Flanders;**
   c) **UCI; and**
   d) **WADA**

163. This Judgment may be appealed before the CAS pursuant Article 31.2 of the 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 of the UCI ADR.

_____

Ulrich HAAS
Single Judge