DECISION of the FEI TRIBUNAL

dated 7 May 2008

Positive Medication Case No.: 2007/19

Horse: CASTLE FORBES MAIKE **FEI Passport No:** POR01335

Person Responsible: Mrs Jessica Kürten, IRL

Event: CSIO 5* La Baule (SSL), FRA, 10-13 May 2007

Prohibited Substance:

Etoricoxib

1. COMPOSITION OF PANEL

Prof Dr Jens Adolphsen
Mr Patrick A. Boelens
Mr Ken E. Lalo

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by Person Responsible (PR): The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file until the last set deadline 10 April 2008, as also made available by and to the PR. The PR provided a brief, dated 12 November 2007, together with three experts reports and other annexes. The FEI answered on 17 January 2008 with a brief and three witness statements and the complete FEI case file. The PR replied on 21 February with a new brief and three new experts reports to which the FEI sent a rejoinder on 11 March 2008. The case was forwarded to the FEI Tribunal on 11 March 2008. The PR claimed to have the right to provide the last submissions and was granted a deadline for an answer until 10 April 2008. Outside the set deadline for 10 April, on 11 April, the PR submitted further arguments and a new expert report. The Tribunal has taken this last submission into consideration when deciding the case. On 15 April, the FEI confirmed that no additional time extension would be granted and that no hearing would be held. On the same date, the PR requested again a time extension, to file a final statement and to revoke the PR's waiver of a hearing. The

Tribunal did not accept these requests, as they were delivered late and would have further delayed the procedure.

2.3 Oral hearing: None: by correspondence.

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/Regulations which are applicable or have been infringed:

Statutes 22nd edition, effective 15 April 2007, ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 21st edition, effective 1 June 2006, Arts. 142, 146.1 and 174 and General Regulations, 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174 ("**FEI General Regulations**" or "**GR**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Rules ("**EADMCR**"), effective 1 June 2006.

Veterinary Regulations ("**FEI Veterinary Regulations**" or "**VR**"), 10th edition, effective 1st June 2006, Art. 1013 and Annex III (the Equine Prohibited List).

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Mrs Jessica Kürten

3.3 Justification for sanction:

GR Art. 146.1: "The use of any substance or method that has the potential to harm the horse or to enhance its performance is forbidden. The precise rules concerning Prohibited Substances and Medication Control are laid down in the EADMCRs."

EADMCRs Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples."

4. DECISION

4.1 Factual Background

a. Castle Forbes Maike (the "**Horse**") participated in CSIO 5* La Baule

(SSL), FRA, from 10 to 13 May 2007 (the "**Event**"). The Horse was ridden by Mrs Jessica Kürten who is the Person Responsible in accordance with GR Article 142 (the "**PR**").

b. The Horse was selected for sampling on 13 May 2007. Analysis of the urine sample no. FEI-0039559 taken from the Horse performed by the approved central laboratory of the FEI, the Laboratoire des Courses Hippiques ("**LCH**"), in France, under the supervision of Murielle Jaubert, Senior Analyst, revealed the presence of Etoricoxib (Certificate of Analysis N° 0039559 dated 5 June 2007).

c. On 8 August 2007 the PR submitted a request for a confirmatory analysis. The confirmatory analysis was carried out on urine at LCH on 25 September 2007 under the supervision of Pascal Maciejewski, Senior Analyst. Dr Laurent Bigler, from the University of Zurich, Switzerland, witnessed the identification and opening of the sample at the request of the PR. It confirmed the presence of Etoricoxib (Counter-Analysis Report dated 26 September 2007).

d. Etoricoxib is a Non Steroidal Anti-Inflammatory Drug ("**NSAID**"), having an analgesic and anti-inflammatory effect (Certificate of Analysis 0039559 dated 5 June 2007 and Veterinary Department's Statements dated 19 June and 10 October 2007) and accordingly is a substance classified in the second section of the Equine Prohibited List (VR Annex III) as a "Medication Class A" Prohibited Substance.

e. Further to receipt of the A sample result on 19 June 2007, the FEI Legal Department, pursuant to established procedure for cases including this type of substance, provided the PR, through her NF, on 28 June 2007, with the opportunity to accept administrative sanctions as follows:

    1.1. "Disqualification from the event and forfeiture of all prizes and prize money won at the event with the horse in question; and

    1.2. Fine of CHF 750.-; and

    1.3. Costs of CHF 500.-."

f. The Legal Department reiterated its offer on 8 October 2007. The PR refused to accept the administrative sanctions on 12 November 2007.

g. The PR is a professional rider and has been successfully competing at an international level for many years.

4.2 The PR's Arguments

4.2.1 The Laboratory of the Confirmatory Analysis

a. The confirmatory analysis was carried out on urine at LCH on 25 September 2007. The PR had requested that the confirmatory analysis be carried out by a WADA-accredited European Laboratory and had objected to it being performed by LCH, the same laboratory that performed the A analysis.

b. The FEI has argued that WADA accredited laboratories do not test equine samples for the FEI. At present there are four laboratories for equine samples which are accredited by the FEI. Apart from LCH in France, the three others are overseas (in Ithaca, USA; Sydney, Australia; Hong Kong, China). Since the entry into force of the EADMCR on 1 June 2006, the B-sample analyses are usually performed by the same laboratory as for the A sample.

c. Following the PR´s repeated request, the FEI in the meantime nevertheless agreed to ask the USA Laboratory, The Equine Drug Testing and Research Laboratory ("**EDTRL**"), whether it would be in a position to perform the confirmatory analysis. EDTRL replied that it would not be since it "*did not have an analytical standard of the drug etoricoxib nor had the laboratory had benefit of an administration study of the drug to a horse*" (see letter of Mr Thomas F. Lomangino, Director of EDTRL dated 28 November 2007).

4.2.2 The Doping Kit

a. The PR submitted that the sample collection doping kit used for the Horse was not tamper-resistant because the urine bottles were not stored in a "*weld together, dated and signed security bag*". This, according to the PR, would constitute a sufficient ground for the conclusion that a post-collection exchange or contamination of the urine sample could not be excluded.

b. The FEI stated that the kit used in this case was the official, standard FEI-approved kit, Berlinger. The urine sample bottles are engraved with the sample identification number and closed with a tamper proof cap.

c. The handling of the doping kit is prescribed in Annex IV of the FEI Veterinary Regulations and specifically refers to the Testing Manual for veterinarians as the document setting out "*precise instructions as to the correct use*" of the kits. The Manual expressly directs testing veterinarians not to place the urine bottles in the security bags, as the latter are to be used exclusively for blood tubes.

d. This was confirmed by Dr Frits Sluyter's statement mentioning that "[t]*his standard FEI sampling kit contains two plastic urine bottles,*

which are closed with a tamper proof cap. Once closed, the cap can only be opened by using specific equipment that is available in the laboratory. Alternatively, the cap has to be destroyed with a hammer, which would leave clear evidence of tampering. [...] *Such sampling kits do not require a security bag around the urine bottles.* [...] *Penetration of the bottle would in any event leave evidence that such manipulation took place. The current version of the FEI Manual for Testing Veterinarians (p. 8) specifically states that urine bottles should not be placed in security bags."*

4.2.3 The Chain of Custody

a. The PR has argued that the chain of custody had not been documented, especially "*on which way and by whom the samples have been transported from the event to the laboratory and how the B-sample was stored in the laboratory*" and that such a lack of documentation would constitute a breach of Article 5.2.2 of the WADA Standard as well as a breach of Annex III of the FEI Veterinary Regulations.

b. The FEI argued that the chain of custody had been duly documented, entirely proved and unbroken.

c. This was to be confirmed by the description of every step of the collection, storage and dispatch of the sample in the written statement of Prof. Jean-François Bruyas, the Testing Veterinarian who carried out the collection and sealing of the samples and, by the written statement of Dr Yves Bonnaire, Director of LCH, who also confirmed that the chain of custody was unbroken when the samples arrived at LCH and that the internal chain of custody was respected throughout the analysis of the samples.

d. The FEI argued that the burden of proving a break in the chain of custody lies upon the PR who only argued that the chain of custody was not documented but without explaining whether and how that chain would have been broken.

4.2.4 The Analysing Procedure

a. The PR argued that the analysing procedure was incorrect, unfair and that the presence of the substance was not evidenced.

4.2.4.1 The Presence of a Witness at the Confirmatory Analysis

a. The PR argued that her representative, Dr Laurent Bigler, was not allowed by LCH to survey the confirmatory analysis when he was present at LCH on the pre-decided date, but only the identification and opening of the sample.

b. In her earlier submission (PR submission dated 12 November 2007, p. 5) the PR had claimed that Dr. Bigler was not properly informed in

time that he would not be allowed to supervise the analysis process and was "*very astonished*" about this fact. The FEI has shown, that the PR had been duly informed of the specific rights of the witness, well in advance of the date fixed for its performance (FEI submission dated 17 January 2008 p. 27). The PR has not reiterated this argument in her reply (PR Reply, dated 21 February 2008, p. 37 ff.). Therefore the Tribunal considers it an undisputed accepted fact that the PR was properly informed about the witnesses' rights during the analysis procedure.

4.2.4.2 The In-House Method of LCH

a. The PR also argued that the laboratory was using an unknown in-house method that did not comply with the requirements of the WADA International Standards.

b. The FEI argued that the in-house method used for the analysis of the A and B samples was validated, accredited, periodically submitted to regulatory assessments and in full compliance with the requirements of the FEI Standard for Laboratories (including the relevant ISO 17025, ILAC-G7:1996 and AORC guidelines and rules). It added that "[t]*he PR's allusions to the fact that an unpublished method would necessarily be non-validated and not as scientifically sound as a published one runs counter to all generally accepted principles in veterinary forensic practice. In fact, in-house methods for anti-doping testing are more frequently used than published ones, as this is an area in constant evolution, both for human and animal tests. In any event, since etoricoxib is not designed for administration to horses, there are no published methods for the detection of etoricoxib in horse urine*".

4.2.4.3 Scientific and Forensic Integrity in the Analysis Process

a. The PR stated that her fundamental rights under Swiss Law and the FEI Rules, such as fairness and fair procedure, had been violated by the FEI Legal Department when dismissing some of her requests, such as the determination of the quantity and concentration of the substance in the A and B samples.

b. The FEI denied this request as, according to Article 2.1.2 EADMCR, "*the detected presence of any quantity of a prohibited substance in a horse's sample shall constitute a rule violation*", except for those substances for which a quantitative threshold is specifically identified in the Equine Prohibited List. As the Prohibited Substance is an NSAID, not being a threshold substance, the absence of quantification does not affect the validity of the analysis.

c. The PR submitted as well that the FEI and LCH did not act in a transparent manner in withholding information and not providing various documents, such as internal documents of LCH (validation of the method LCH-12, Standard Operating Procedure ("**SOP**")).

d. The FEI explained that all the relevant data have been provided in the analysis and counter-analysis reports issued by LCH on 5 June and 26 September 2007. As to internal documents of LCH, the FEI justified that they do not have to be produced under the applicable rules and that LCH proposed however to make them available provided that their use was limited to these proceedings and that they would not be disclosed to third parties, as access to these internal documents is strictly regulated and controlled even within LCH. This request for a confidentiality agreement has been rejected by the PR, who, in consequence, did not obtain these internal documents.

4.2.5 The Prohibited Substance

a. Relying on her three expert reports, the PR argued that "*the data produced gives no evidence for the presence of the alleged substance*", basing herself on the assumption that "*the data of the A-sample and the B-sample analysis show only ion chromatograms for two ions* [...] *with corresponding mass spectrum*" instead of the minimum of three ions as required in the International Standards such as WADA, ILAC and AORC.

b. The FEI affirmed that "*both of LCH's analysis reports summarised the data obtained for <u>three</u> ions. Dr Bonnaire further explained in his witness statement that, whilst the reports only showed the chromatograms of two ions for illustrative purposes, the results clearly took account of all diagnostic ions, and thus fully complied with international standards*".

c. Through the media, the PR also contended that the blood had been analysed and tested negative.

d. However, Dr Sluyter explained that "[i]*n the FEI system, blood is being collected as the testing matrix for some specific substances which are difficult to detect in urine. However, degradation of substances is faster in blood.* [...] *If urine is available, the laboratory will carry out the screening and confirmation on the urine sample; blood will be analysed but used only for specific substances. When these substances are not detected, blood samples are not mentioned in the LCH analysis.* [...] *When the urine A analysis has resulted in a positive test result, no further analysis of blood is required for the same substance in the B analysis.*" (statement dated 17 January 2008, p. 3). It means that Etoricoxib, as an NSAID, was only tested in urine.

e. The PR's experts noted in the reports attached to the first PR Submission that there was no evidence that any metabolites of Etoricoxib had been detected in the sample 0039559, on which basis they concluded to the absence of proof that the substance had actually passed through the Horse.

f. The FEI argued that Dr Bonnaire had commented on this point in his witness statement, by observing that a metabolite of Etoricoxib had indeed been detected during the sample screening process. Since the parent drug was also screened and subsequently analytically confirmed by the laboratory, the presence of the metabolite was not the subject of a confirmatory analysis and was thus not reported. The FEI argued that "[s]*uch confirmation is not required under the FEI rules and its absence has no bearing on the validity of the positive identification of the parent drug, which is in itself sufficient to establish a medication rule violation*".

4.3 Tribunal's Reasoning

4.3.1 Applicable Rules

a. In the present case the Tribunal sees the need to clarify the question of which rules apply in cases related to horse sport.

b. First, the Tribunal highlights that distinct rules apply to horses and human athletes with respect to anti-doping controls and analytical procedures. The riders themselves are subject to the FEI Anti-Doping Rules for Human Athletes ("**ADRHA**"), which are based on the WADA Code, including the WADA International Standard for Laboratories ("**WADA Standard**") and related Technical Documents. By contrast, the provisions applicable to equine anti-doping and medication control tests are an entirely different set of rules. On the basis of Art. 16 WADA Code, the FEI has adopted the EADMCR and the FEI Standard for Laboratories ("**FEI Standard**"). Only these rules, read in conjunction with the FEI General Regulations and FEI Veterinary Regulations, shall apply to equine matters.

c. Secondly, no right derives from the WADA Code itself. The WADA Code is not self executing. It creates an obligation for signatories to adopt rules (Art. 20.3.2 WADA Code). If an International Federation does not comply with these obligations, WADA can make use of the rules of the Code (Art. 23 WADA Code) regarding non-compliance. This would not change the fact that the athletes are bound by the rules of their respective International Federations and not by the WADA Code.

4.3.2 Procedural Matters

a. In reference to point 2.2. and to the PR's final request, dated 15 April 2008, to an extension of time in order to submit a further statement and to revoke her waiver to a hearing, the Tribunal considers that there is a need of timely decisions as part of the fight against doping and to ensure a fair playing field, on the one hand, and the right of the PR to be heard on the other. The PR was granted several time extensions and the FEI has provided the PR with sufficient opportunity to be heard. It was the expressed decision of the PR, in a letter dated

28 January 2008, to be heard by way of written submissions and evidence instead of a hearing before the Tribunal. The PR tried to revoke the waiver of the hearing by a filing made after the last extended deadline. To be effective, any legal system must have finality. Even the extensions granted in this case, at the requests of the PR, may have overly prolonged the proceedings. There was no legitimate reason to allow the PR to revoke her earlier hearing waiver and to allow additional extensions. Accepting such requests may have completely made a mockery of the legal system itself questioning the fairness to riders competing against the PR during the interim period before a decision. The Tribunal determines that the PR received an extended opportunity to present its case and that the PR has made use of such opportunity by submitting extended arguments, documents and written evidence. The Tribunal thus determines that the due process rights of the PR have not been prejudiced in any way.

4.3.3 The Laboratory of the Confirmatory Analysis

a. Art. 6.1 EADMCR states that the choice of laboratory used for the Sample analysis shall be determined exclusively by the FEI. There is neither a right of the PR to choose a specific laboratory in the EADMCR nor in the WADA Code that states in Art. 6.1 as follows: "*The choice of the WADA-accredited laboratory (or other laboratory or method approved by WADA) used for the Sample analysis shall be determined exclusively by the Anti-Doping Organization responsible for results management.*"

b. The Tribunal further highlights that the FEI Standard for Laboratories is in line with the WADA International Standard for Laboratories (Version 4.0, August 2004) for human samples, which provides as follows: "*The "B" Sample confirmation must be performed in the same Laboratory as the "A" Sample confirmation. A different analyst must perform the "B" analytical procedure. The same individual(s) that performed the "A" analysis may perform instrumental set up and performance checks and verify results*" (Article 5.2.4.3.2.2).

c. In the present case, it is not disputed between the parties that two different analysts were involved in the A and B analysis. The Tribunal considers it a reasonable solution of the FEI, to have only one laboratory analysing the A and B samples. Using one laboratory is in the interest of a rapid procedure since additional transportation time to another lab is avoided. The use of two laboratories would also include more risks to the integrity of the chain of custody.

4.3.4 The Doping Kit

a. The treatment of the samples was in line with the applicable rules. The applicable rules in the case are solely FEI Rules, here the FEI Veterinary Regulations Annex IV. Any reference made by the PR to a WADA Standard (PR submission dated 12 December 2007, p. 4) is without merit as neither the WADA Code nor a WADA Standard are

directly applicable in this case. The Tribunal cannot see any reason that could constitute a ground for the conclusion that the samples could be exchanged or contaminated after the collection. The PR has not tried to prove this. The PR has raised some suppositions, which is clearly not enough. The labelling on urine bottles with stickers and engraved numbers is an appropriate method against exchange and contamination of samples. The FEI has strictly followed the FEI Rules which the PR had previously accepted by competing in an FEI Event, governed by the FEI Rules, according to Art. 100.2 GR.

b. The Tribunal notes that reliability and tamper-proof character of the Berlinger test kits were extensively discussed and considered as conclusively established in two CAS Awards (CAS 2004/A/607, Galabin Boevski v. IWF, quoted in CAS 2005/A/908, WADA v. Wium, paras. 6.6 and 6.7, p. 11-12: "*In the case CAS 2004/A/607, Galabin Boevski v. IWF, another CAS Panel dealt extensively with the reliability of the Berlinger kits and were convinced having heard experts that a Berlinger bottle cannot be opened without leaving a trace of it having been tampered*".

4.3.5 The Chain of Custody

a. The burden of proving a break in the chain of custody rests on the PR. The Tribunal is of the opinion that the chain of custody has been well described by the FEI. It is neither visible that any mistake has occurred nor that a mistake could have led to an incorrect result of the analysis. It is important to note that it is the PR who has to present substantive facts that a departure from the rules has occurred and to prove that a departure has lead to an incorrect test result. The PR claimed that the chain of custody has not been documented, but has failed to substantiate such claim.

4.3.6 The Analysing Procedure

4.3.6.1The Presence of a Witness at the Confirmatory Analysis

a. Firstly, the Tribunal underlines that Dr Laurent Bigler, as witness analyst for the PR, was present at the identification and the opening of the sample. In his Witness Statement duly signed and attached to the counter analysis report as Appendix III, Dr Bigler certified that the B-sample container showed no signs of tampering and that the identifying numbers appearing on the sample to be tested by LCH corresponded to those appearing on the collection documentation accompanying the sample.

b. Secondly, it must be stressed that the proceedings were in line with the applicable rules (Articles 7.1.3 (d) / 7.1.5 EADMCR). These rules do not grant a right for the witness to survey the analytical procedure. Articles 7.1.5 EADMCR limits this right also for representatives of the PR´s National Federation and for representatives of the FEI. All representatives are only allowed to

attend the identification and opening of the B Sample and not the analytical procedure. This is also compatible with Article 16 of the WADA Code governing the doping control for animals competing in sport, as Art. 16 does not mention Art. 7.2. WADA Code which includes the right to participate in the analytical procedure in cases concerning human athletes.

c. Thirdly, no right derives from the WADA Code itself, as the WADA Code is not self executing.

d. Fourthly, the Tribunal makes use of the clear CAS ruling in CAS 2005/A/985, L. et al v. FEI and H., 9.3.2006 (the "**Hachim case**"). In that case the CAS has stated that it was the deliberate choice of the FEI not to give to the PR the right to be represented at the B sample testing procedure.

e. The PR has argued that the CAS only "*took notice of the FEI Veterinary Regulations applicable at that time*", which "*did not refer to the witnessing analyst and his role*" (PR Reply dated 21 February 2008, p. 38 para. 149). It is right and undisputed that these rules have changed. The EADMCR applicable in this case do grant a right to the PR to have a witness analyst present at the identification and opening of the B Sample.

f. If there was no obligation for the FEI to grant this right, there is logically a right of the FEI to limit this right to the identification and the opening of the B Sample. This arises *a fortiori* from the CAS ruling in the Hachim case. The arguments against this *a fortiori* conclusion presented by the PR (PR Reply dated 21 February 2008, p. 38 para. 149) are not accepted by the Tribunal.

g. The reference to the older case - CAS 2004/10 - does not change this ruling. The case CAS 2004/10 precedes the Hachim case, the case is also an interim order without *res iudicata* effect and the relevant sentence is *obiter dictum*. In the Hachim case the CAS had reviewed this question in depth and came to the conclusion mentioned under 4.3.6.1 (n), which is applied by the Tribunal in the present case.

h. The PR has argued that the applicable rules violate mandatory law, i.e. Swiss Law, the Swiss Constitution, Swiss Cartel Law and the European Convention on Human Rights (PR Submission dated 12 November 2007, p. 7; PR Reply dated 21 February 2008, p. 38). The arguments are without merit in light of the case law of the CAS and Swiss Supreme Court (e.g. CAS 2005/A/895, L. et al v. FEI and H., 9 March 2006 and decision of 4 August 2006, X. v. Y., Fédération Française d'Equitation, Emirates International Endurance Racing & FEI, 4P.105//2006).

4.3.6.2 The In-House Method of LCH

a. The arguments against an "unknown in-house-method" are without merit. As explained by Dr. Bonnaire (Witness statement p. 3) the analysis method was validated and accredited and did comply fully with the FEI Standard for Laboratories, as well as the relevant ISO 17025, ILAC-G7:1996 and AORC guidelines and rules. The CAS has ruled in the case 2005/A/884 that laboratories were free to develop tests based on appropriate scientific principles to demonstrate the existence of a prohibited substance. This is the case here.

4.3.6.3 Scientific and Forensic Integrity in the Analysis Process

a. The Analysis Process did not lack integrity. The FEI acted in a transparent manner. The FEI has not violated PR´s fundamental rights by denying a second analysis in a different Laboratory: see above 4.3.3.

b. There was no legal requirement for the FEI to determine the quantity of the substance as it is not a threshold substance (Art. 2.1.2 EADMCR).

c. All available documents were distributed in the analysis and counter-analysis reports issued by LCH on 5 June and 26 September 2007. Under current rules there is no obligation of the FEI to disclose internal documents of the laboratory. Nevertheless, in the present case, LCH had proposed to make internal documents available under certain reasonable conditions, i.e. confidentiality. As the reasonable request for a confidentiality agreement had been voluntarily rejected by the PR, she did not obtain these internal documents.

4.3.7 The Prohibited Substance

a. PR´s argument, that only two ions have been examined, is without merit. As Dr. Bonnaire has stated, both reports summarised the data for three ions. This was in compliance with international standards.

b. The PR´s argument, that a blood test was negative, is without merit. As Dr. Sluyter indicated in his written statement, in the present case Etoricoxib was only tested in urine and the blood sample was not submitted to an analysis for Etoricoxib. It is common practice of the FEI to use blood samples only for some specified substances and not to mention the blood sample if theses substances are not detected.

c. The PR's argument, that not confirming the presence of the metabolites of Etoricoxib had invalidated the positive finding, is without merit. When a parent drug is also screened and its presence is subsequently analytically confirmed, confirmation of the metabolite of the parent drug is not required and its absence has no bearing on the validity of the positive identification of the parent drug.

4.3.8 The FEI has Proven the Objective Elements of an Offence

a. For the reasons set out above, the FEI Tribunal is satisfied that the laboratory reports reflect that the tests were accurately performed in an acceptable method and that the findings of LCH are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of the Prohibited Substance. The FEI has thus sufficiently proven the objective elements of a doping offence in accordance with EADMCRs Article 3.

4.4 The Explanation of the PR Regarding the Presence of the Prohibited Substance

a. Considering that a *Medication Class A* substance is involved in the present case, a suspension of up to one year, as a first offence, and a fine of up to CHF 15,000.- could be imposed on the PR, according to Art. 10.2 EADMCR.

b. After the establishment of the objective elements of a doping offence the PR has the opportunity to seek to eliminate or reduce the otherwise applicable period of ineligibility and other sanctions, establishing that she bears no fault and no negligence or no significant fault and no significant negligence, in accordance with EADMCRs Article 10.5.

c. The PR assured that neither the Horse nor any other horse in her stable has ever been treated with Etoricoxib or the like. She mentioned that the Horse had been operated at the end of 2006 and thereafter needed further therapeutics but none of the substances administered to the Horse contained Etoricoxib. The only explanations the PR has put forward before the Tribunal were: i) a possible contamination of the Horse's samples at the Event, at which a heavy storm blew away the tent-stables in which the PR's Horse was stabled, requiring her move to a permanent box, in which another horse had been previously stabled, without the prior cleaning of that box or ii) the exchange, mix up or contamination of the sample on the way to the laboratory.

d. The FEI emphasized that the PR did not establish how the Prohibited Substance entered the Horse's system and that "[m]*ere conjectures and hypotheses ("possible causes") are entirely insufficient to exculpate the PR from her liability*". The FEI explained that all other 14 samples collected at the Event tested negative and, to the FEI's knowledge, none of the other participants/riders had complained about the stabling conditions during the storm. The FEI concluded that the PR had been unable to discharge her burden of proof that she bore no fault and no negligence for the violation, or at least no significant fault and no significant negligence, according to Article 10.5.2 EADMCR.

e. The PR should be aware of the FEI Rules and Regulations when

competing at an international level and it should therefore be known by the PR that she must keep her horses under strict veterinary control to avoid the presence of prohibited substances. That includes the responsibility of the PR for the supervision of her Horse at all times and in particular for the security at the stables, pursuant to articles 142 GR, 1006.9 VR and 1013.6 VR. The Tribunal has repeatedly expressed the view that it is the responsibility of competitors to ensure that their horses do not have any prohibited substances in their systems.

f. The FEI argued that the use for Etoricoxib (the worldwide brand name of which is Arcoxia) in horses and its possible effects were unknown and that "[i]*n view of the problems and risks identified for humans,* [clinical trials and meta-analysis showed that treatments with Coxib led to increased incidence of adverse cardiovascular events] *it cannot be excluded that such adverse effects could also exist for horses. In any event, it cannot be assumed without further evidence at this point that Etoricoxib is an entirely safe substance for horses*." The FEI added that in April 2007, the US Food and Drug Administration issued a "*non-approval letter*" for Arcoxia, for which test results needed to show that Arcoxia's benefits outweighed its risks before it had another chance of getting approved on the American market.

g. In his witness statement dated 17 January 2008, Dr Frits Sluyter stated that by selecting a substance like Etoricoxib, "*which is <u>not registered</u> for use in horses, the treatment provider chooses to ignore the relevant research on recommendations as to detection times and, consequently, a risk for testing is being taken*." He added that "[t]*he FEI has categorised this test result as a Medication A rule offence (comparable to equine NSAIDs such as phenylbutazone or flunixin), which gives the rider the benefit of the doubt. In fact, the test result could equally have been placed in a more serious category*."

h. Under Art. 10.5.1 and Art. 10.5.2 EADMCR it is necessary for the PR to establish how the Prohibited Substance entered the Horse's system. The PR has not presented any other explanation for the presence of the prohibited substance. To rebut the presumption of intent the standard of proof is a balance of probability (Art. 3.1. EADMCR). The Tribunal concludes that the PR has not met this standard.

i. In deciding the sanctions the FEI Tribunal considered, on the one hand, the type of substance involved which is not normally used for the treatment of horses, the PR's "professional status" and the level of the Event and, on the other hand, the fact that this matter involves a violation of 'Medication A' type prohibited substance which may give rise to administrative sanctioning.

j. The PR has the right to refuse the administrative sanctions proposed

by the FEI and have the case brought before the Tribunal. By doing so the PR expresses her desire that the full procedures are followed and this implies that the full range of sanctions for a 'Medication A' case is applicable. Art. 25.8 Internal Regulations of the FEI Tribunal (published on the FEI website, www.fei.org, under Athletes & Horses/Tribunal/Regulations and Information) reads as follows: "*Should the Administrative Procedure not be accepted by the Person Responsible, within the time limit fixed, the administrative sanctions shall be considered as declined and the case shall be circulated to the FEI Tribunal. The FEI Tribunal may impose penalties and costs which may be more or less severe than the ones offered administratively*." This is confirmed by similar decisions issued by the Tribunal in the cases 2007/37 (2 month suspension) and 2007/28 (4 month suspension), both cases published on the FEI website, and was communicated to the PR on 28 June 2007.

k. The administrative process allows decisions to be issued quickly in cases that involve "first time offenders" using "medication" type substances and not committed at "major events". This process, when timely accepted by the rider, assumes, for the purposes of decisions so taken, that the FEI has proven the violation and that the rider can explain the presence of the prohibited substances. Once this process is declined (as in the present case through the PR Submission dated 12 November 2007), these assumptions are no longer valid and the regular legal process including the burdens of proof apply. It is then up to the FEI to prove the medication/doping violation and up to the rider to establish that he or she bears no fault and no negligence, or at least no significant fault and no significant negligence, for the violation. The case is then decided based on the evidence presented and in due regard to the applicable burdens of proof.

l. It should be noted that the fight against doping is a cornerstone of any sporting activity and is crucial to ensure a level and fair playing field. In equestrian sports it has the additional most important factor of safeguarding the health of the horses. Suspension in any doping related matter has the effect of limiting the athlete's ability to participate in sporting events. Had the decision been issued a number of weeks earlier it would have resulted in the inability of the PR to participate at the Rolex FEI World Cup™ Final. It must be stressed that the PR was very much in control of the timing of the decision, as a result of the PR's numerous submissions, the request to present additional submissions and the request that the FEI extend deadlines. The Tribunal is issuing the decision within 28 days of the date of the last submissions.

4.5 Disqualification

As a result of the foregoing, the Tribunal decides to disqualify the horse CASTLE FORBES MAIKE and the PR from the Event and that all medals, points and prize money won at the Event must be forfeited, in accordance with EADMCR Article 9.

4.6 Sanctions

As a consequence of the foregoing, the Tribunal decides to impose on the PR the following sanctions, in accordance with GR Article 174 and EADMCR Article 10:

4.6.1 The PR shall be suspended for a period of **two (2) months** to commence immediately and without further notice at the expiration of the period in which an appeal may be filed (30 days from the date of notification of the written decision) or earlier if the appeal is waived in writing by or on behalf of the PR.

4.6.2 The PR is fined **CHF 1'000.-**.

4.6.3 The PR shall contribute **CHF 2'000.-** towards the legal costs of the judicial procedure and **CHF 750.-** towards the cost of the confirmatory analysis.

5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

5.2 The President of the NF of the person sanctioned: Yes

5.3 The President of the Organising Committee of the event through his NF: Yes

5.4 Any other: Yes, Counsel

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 7 May 2007 Signature: .....