



DECISION of the FEI TRIBUNAL

dated 26 October 2011

Positive Anti-Doping Case No.: 2010/14

Horse: ASHLAN

FEI Passport No: ESP04190

Person Responsible: Jordi Arboix Santacreu / ESP

Event: CEI2* 130km -Rambouillet, FRA

Prohibited Substance: Testosterone (Banned Substance)

1. COMPOSITION OF PANEL

Mr. Patrick Boelens, Chair
Mr. Pierre Ketterer, member
Prof. Dr. Jens Adolphsen, member

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, as also made available by and to the PR.

2.3 Oral hearing: none

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, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23rd edition, 1 January 2009, updated 1 January

2010, Arts. 118, 143.1 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007, updated 1 February 2008.

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 1st edition, effective 5 April 2010.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 1st edition, effective 5 April 2010.

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th April 2010, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Jordi Arboix Santacreu

3.3 Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 - 2.7 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

4. DECISION

4.1 Factual Background

1. ASHLAN (the "**Horse**") participated at the CEI2* 130km in Rambouillet (FRA), from 5 to 6 June 2010 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Jordi Arboix Santacreu, who is the Person Responsible in accordance with Article 118 of the GRs (the "**PR**").
2. The Horse was selected for sampling on 5 June 2010.
3. Analysis of the urine sample no. FEI-5504289 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory ("**HFL**") in Newmarket, UK, by Ms. Ruth Schiller, Senior Scientist, under the supervision of Mr.

Clive Pearce – Sport Service Manager. The analysis of the urine sample revealed the presence of Testosterone at a concentration of 67 ng/ml of urine (Certificate of Analysis n° 61614 dated 6 July 2010).

4. The Prohibited Substance detected is Testosterone. Testosterone is an anabolic steroid and sex hormone which increases weight gain, energy levels and muscle mass. Testosterone may potentially be endogenously produced by male horses. The FEI has therefore implemented a threshold concentration in its anti-doping policy for Testosterone that is specific to geldings. The threshold concentration in urine for geldings is 20 ng of free and conjugated Testosterone per ml. If Testosterone is detected in a gelding's sample at a level above the 20 ng threshold it is classified as a Banned Substance under the FEI Equine Prohibited Substances List.

4.2 The Proceedings

5. By letter dated 28 July 2010, the FEI informed the PR through the Real Federacion Hípica Espanola ("**ESP-NF**") of the positive finding for Testosterone and invited him to officially inform the FEI of the gender of the Horse and – if applicable – the date of castration and the name of the veterinarian who had performed the castration.
6. By submission of 9 August 2010, the PR explained that he had learned from the Horse's owner that the latter had purchased the Horse in 2003, "*being a castrated male in the moment of its acquisition*". That neither him, nor the owner, knew the veterinarian that had performed the castration. That, in the context of a colic treatment of the Horse in March 2010, it had been discovered that some testicular material had remained in the Horse after the first castration. That therefore, the Horse had been operated again on 22 April 2010, to remove retained testicular material. Together with his explanations, the PR submitted several documents related to the April 2010 operation.
7. In the following, the PR and the FEI agreed that various tests would be performed on the Horse in order to exclude the possibility that, despite the two attempts of castration, it was still endogenously producing Testosterone. In September 2010, an hCG stimulation test was therefore performed on the Horse, and blood samples were taken in order to perform an oestrone sulphate test. FEI Veterinarian Manuel Rodriguez Sanchez undertook the testing of the Horse, and further verified the identity of the Horse using its FEI passport.
8. In the following, the blood samples taken in September 2010 were sent to HFL for analysis. HFL performed a routine screening protocol for FEI Prohibited Substances on the samples received, including the standard screening for Testosterone.

9. By email of the FEI Veterinary Department of 27 October 2010, the PR was informed that HFL had erroneously performed the wrong tests on the samples taken from the Horse in September 2010. That therefore, new samples needed to be taken from the Horse, in order to perform the correct tests. With the agreement of the PR, further samples were taken from the Horse, together with Mr. Gaspar C. Castelijn, in November 2010. Beaufort Cottage Laboratories ("BCL") in Newmarket, UK, performed an hCG test on the blood samples taken in November 2010. Furthermore, Cambridge Specialist Laboratory Services ("CSLS") performed both an oestrone sulphate radioimmunoassay as well as a Testosterone radioimmunoassay on the November 2010 blood samples. The November 2010 urine samples underwent anabolic steroid screening at HFL, which indicated the concentration of Testosterone to be less than 5ng/ml.
10. The results of the tests performed on the Horse in November 2010 were communicated to the PR by the FEI Legal Department together with the Notification Letter of 5 January 2011. In the Notification Letter, the PR was further formally informed of the presence of the Prohibited Substance in the samples taken from the Horse at the Competition, the possible rule violation and the consequences implicated.
11. The Notification Letter further included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
12. The PR did not request a Preliminary Hearing.

4.3 The B-Sample Analysis

13. Together with the Notification Letter of 5 January 2011, the PR also received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of his right to attend or be represented at the B-Sample analysis, and to request that the B-Sample be analysed in a different Laboratory than the A-Sample.
14. The PR confirmed on 12 January 2011 his request for a B-Sample confirmatory analysis to be performed at a different laboratory than HFL.
15. The B-Sample analysis was performed on urine from 19 to 24 January 2011 at the FEI approved laboratory Laboratoire des Courses Hippiques ("LCH") in Paris, France, by Ms. Beatrice Georges, Senior Analyst, under the supervision of Mr. Yves Bonnaire, Director of LCH.
16. The PR did not attend the B-Sample analysis and did not send a representative to the Laboratory on his behalf. Therefore, Mr. Frédéric Balssa, Quality Manager at LCH, witnessed the opening

and identification of B-Sample no. 5504289.

17. In his witness statement, Mr. Balssa certified that the sealed "B" Sample container "shows no signs of tampering" and "that the identifying number appearing on the sample to be tested by the LCH corresponds to that appearing on the collection documentation accompanying the sample".
18. The B-Sample analysis of the urine confirmed the presence of Testosterone at a concentration above the international threshold, specifically at 46,4 ng/ml (Certificate of Counter Analysis N° 5504289 dated 24 January 2011).
19. The results of the B-Sample Analysis were notified to the PR on 31 January 2011, through the ESP-NF.

4.4 The Further Proceedings

20. On 25 January 2011, following a request from the PR, the FEI submitted the September 2010 test results by HFL to the PR.
21. On 28 February 2011, the PR submitted his explanations through his counsel, Ms. Sonia Castro Lopez. Together with his explanations, the PR submitted several documents and expert reports related to further tests performed on the Horse upon his request in Spain, as well as other supportive evidence. The PR's arguments were the following: (i) Referring to Article 7.2 of the EAD Rules, the PR first argued that insofar as Testosterone may also be produced endogenously by horses, it is the responsibility of the FEI – before notifying a positive case – to carry out complimentary tests to determine whether there is a "real" case of doping, which, in the opinion of the PR, would only be the case if the substance detected in the sample in question had been exogenously supplied to the horse; (ii) Regarding the blood samples taken at the Event, the PR complained not having received the respective test results; (iii) With regards to the samples taken in September 2010, the PR contended that both an hCG test as well as an oestrone sulphate test had been requested by the FEI, and that he had not received the respective results. That moreover – in its decision to notify the case - the FEI had simply taken into account the results of the tests performed on the Horse in November 2010, and not the results of the tests performed in September 2010. That furthermore, only the results of the hCG test, not those of the oestrone sulphate test, had been considered; (iv) That the oestrone sulphate test would be the most reliable test, giving no false negatives and providing for the highest validity rate in horses of more than three (3) years of age; as to the hCG stimulation test, the PR contended that it was of "low reliability", arguing that it resulted in a recognized high percentage of false negatives; (v) With regards to the lower concentration of Testosterone in the B-Sample, the PR claimed that the samples taken at the Event had arrived at HFL later than required by the FEI Veterinary Regulations, and that the delay had

caused the different Testosterone concentrations detected in the A- and the B-Sample. In the opinion of the PR, the delivery irregularities alleged by him as well as the different concentrations detected in the A- and B-Sample rendered invalid the evidence relied upon by the FEI; (vi) Referring to a report by the World Anti-Doping Agency ("WADA") on Testosterone, the PR claimed that the FEI should have applied the procedures prescribed by WADA in the report, prior to the opening of the proceedings; and (vii) Lastly, with regards to the question of fault or negligence for the rule violation, the PR, relying on tests performed by him on the Horse in Spain, and the respective expert report by Dr. Jordi Miro Roig, argued that the Horse, despite its castration and follow up surgery, and even about six (6) weeks after the second castration, continued to endogenously produce Testosterone. That therefore, he first had established the source of the Prohibited Substance, and that furthermore he, as the rider, did not bear any fault or negligence for the rule violation.

22. The FEI responded to the PR's submission on 16 June 2011. In support of its allegations, the FEI submitted an Export Report by Prof. Sidney Ricketts, LVO, BSc, BVSc, DESM, DipECEIM, FRCPath, FRCVS, a statement by Mr. Steve Maynard, Director of HFL, and further documentation about the various tests performed on the Horse. The FEI argued that: (i) Article 7.2 of the EAD Rules only applied to "*Atypical Findings*", which were defined under the EAD Rules as laboratory reports that - prior to the determination of an Adverse Analytical Finding - required further investigation as provided by the FEI Standard for Laboratories or related technical documents. That however in the present case, the positive finding of Testosterone above the applicable threshold had been unequivocally reported by the HFL, and that - out of courtesy only and taking into account that the case at hand was one of the first under the new EAD Rules - the PR had been informed of the positive test results, and preliminary tests had been performed on the Horse prior to the formal notification of the case. That the FEI had however not been obliged under Article 7.2 to perform investigations prior to the formal notification of the case; (ii) In response to the PR's concerns about the results of the blood samples taken at the Event, the FEI explained that the PR had been informed that HFL had performed some screening on the blood. That however, due to insufficient scientific information about the variation and distribution of Testosterone levels in equine blood, no international threshold for Testosterone in a gelding's blood exists, and that consequently the screening results from the blood did not provide relevant information and therefore did not require further action. That therefore, HFL had advised that no further analysis was required on the blood samples. That according to the FEI, the results of the blood samples are therefore irrelevant and useless to the case at hand. The FEI further stressed that in light of Article 2.1.2 of the EAD Rules, a positive urine sample only was sufficient to establish a rule violation under Article 2.1 of the EAD Rules; (iii) In response to

the PR's contention that an hCG test and an oestrone sulphate test had been performed in September 2010, the FEI, supported by the statement of Mr. Maynard, explained that due to a misunderstanding, the blood samples taken in September 2010, instead of being sent to a laboratory specialising in reproductive medicine veterinary diagnostics, had been sent to HFL. That HFL, instead of performing the intended hCG- and oestrone sulphate test on the blood samples, had performed a routine screening protocol for FEI Prohibited Substances. That in light of the missing Testosterone benchmark for equine blood, the results of the tests performed by HFL in September 2010 did not have any value for the case at hand. The FEI further explained that following the recommendation of Mr. Maynard, and in agreement with the PR, the hCG test had been repeated in November 2010, and that the respective samples had been sent to BCL, a laboratory focusing on reproductive medicine veterinary diagnostics. That additional samples taken from the Horse in November 2010 had been sent to CSLS, for Testosterone radioimmunoassay. That the test results of CSLS were analyzed by BCL, which reported that the results were consistent with the Horse having no residual functional testicular tissue. The FEI further stressed that in evaluating the case, the FEI had taken into account the entirety of the test results, and had not disregarded the oestrone sulfate test; (iv) With regards to the PR's allegation that the oestrone sulphate test is superior to the hCG stimulation test in the determination of cryptorchism, the FEI highlighted that the PR had not submitted any supporting scientific evidence for that contention, and that furthermore, in the context of the further tests performed on the Horse upon request of the PR at the University of Barcelona, only an hCG test had taken place; (v) In response to the PR's allegation that the samples taken from the Horse had arrived belatedly at HFL, and that the late arrival of the samples had caused the different Testosterone concentrations in the A- and B-Sample, the FEI explained that both the A-Sample and the B-Sample had arrived at the same time at HFL, and that if at all, both samples would be affected in the same way. Relying on the statements of Prof. Ricketts and Mr. Maynard, the FEI further argued that the differences between the A-Sample and the B-Sample results would more likely result from a combination of the lapse of time between the two analyses resulting in a certain degradation of the sample over time, and an acceptable degree of analytical variation between the two laboratories. The FEI further underlined that the concentration of both the A-Sample and the B-Sample exceeded the internationally agreed threshold for Testosterone in geldings (urine) several times over. That furthermore, according to the Veterinary Regulations, Article 1020.1, samples "should" be "dispatched" within certain time frames to the laboratory, but that no deadlines exist for "delivery" to the laboratory, as alleged by the PR. Along with its arguments the FEI submitted laboratory dispatch documentation establishing that dispatch had taken place on 7 June 2011. Lastly, the FEI argued that the PR had not explained, as required under Article 3.2.2 of the EAD Rules, how

the alleged late arrival of the samples could have possibly "caused" the Adverse Analytical Finding for Testosterone, and that therefore, the test results should not be invalidated. That furthermore, the lower Testosterone concentration in the B-Sample did not render the entire test result negative under Article 7.1.6 of the EAD Rules insofar as the B-Sample revealed a Testosterone concentration of two (2) times above the international threshold, and did not, as required by Article 7.1.6 of the EAD Rules, prove negative; (vi) In response to the PR's contention that the FEI should have applied the WADA analytical technical procedures referred to by him to his case, the FEI stressed that the WADA report, as well as the entire WADA rules and regulations, apply to human samples only, not to equine samples. That, technically, it would not even be possible to apply the same analytical technical procedures as WADA did, taking into account the different nature of human and equine samples, and that consequently, and with the approval of WADA, the FEI had set up different, specific rules and regulations for equine anti-doping, and was not obliged to perform the analytical technical procedures developed by WADA for Testosterone positive cases; and (vii) In response to the PR's claim that he had established how the Testosterone had entered the Horse's sample, the FEI stressed that the PR had only performed an hCG test on the Horse, and that no oestrone sulfate test had been performed by the PR on the Horse, and no ordinary screening for Prohibited Substances on the samples taken had been performed either. The FEI further relied on the statement by Prof. Ricketts to argue that the concentration of Testosterone falls quickly after castration, i.e. rather within a matter of hours and not in terms of days or months. That this is because Testosterone is metabolised rapidly by the equine liver. That further, both BCL as well as the University of Barcelona reported very low levels of Testosterone production in the samples they analysed. The FEI further highlighted in this context that the Testosterone concentration detected in the A-Sample was three (3) times above the threshold level, and contended that the PR had not established, by a balance of probability, that the positive finding for Testosterone resulted from endogenous production by the Horse. In conclusion, the FEI contended that the PR had neither established how the Prohibited Substance had entered the Horse's system nor that he did not bear any fault or negligence for the rule violation.

23. The PR further responded to the FEI position by submission of 1 August 2011. Together with his submission, the PR provided a new statement by Dr. Roig. The PR maintained his previous arguments and contentions, and, relying on the new statement by Dr. Roig, in particular adhered to his contention that the Horse had produced the Testosterone endogenously. In response to the FEI's explanation for the different concentrations in the A-Sample and the B-Sample analysis, the PR criticised the FEI's argument of an acceptable degree of analytical variation between the two

laboratories. The PR furthermore contended that the samples should not have suffered from any degradation if they had been stored correctly. With regards to the WADA report on Testosterone, the PR recognised that the document in question applied to human athletes only, but criticised that the FEI had not developed a similar protocol for the determination of endogenously and exogenously produced Testosterone in equine samples.

4.5 Jurisdiction

24. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

4.6 The Person Responsible

25. The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event.

4.7 The Decision

26. The Tribunal is satisfied that the laboratory reports relating to the A- and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the HFL and the LCH are accurate. The Tribunal is satisfied that the test results both of the urine A- and the B-Sample evidence the presence of Testosterone above the international threshold in the samples taken from the Horse at the Event. Provided Testosterone is detected in a gelding's urine sample at a level above the 20 ng threshold, it is classified as a Banned Prohibited Substance by the FEI Prohibited Substances List.

27. The Tribunal accepts that an incomplete castration of a male horse may lead to some testicular tissue remaining in the body of the horse, resulting in the horse continuing to produce Testosterone, and being classified as a cryptorchid or "rig". Further, it notes that the science suggests that even the smallest amounts of tissue left behind might show some low levels of response to hCG stimulation tests. It is however the understanding of the Tribunal that under FEI Rules, it was not obligatory for the FEI in the case at hand to offer the "preliminary" examination of the Horse prior to the official notification of the positive case. The FEI is obliged to conduct "further investigations" in cases of "Atypical Findings" under Article 7.2 of the EAD Rules. An Atypical Finding is specifically defined in the EADCM Regulations as a laboratory report which - prior to the determination of an Adverse Analytical Finding - requires further investigation as provided by the FEI Standard for Laboratories or related technical documents. In the case at hand, HFL had however unequivocally reported a positive finding for Testosterone above the applicable threshold in the urine A-Sample, and therefore no preliminary investigations would have been

necessary. However, the Tribunal acknowledges that the FEI proceeded with an abundance of caution given that this case was one of the first under the new EAD Rules and that such caution was for the benefit of the PR. Put simply, the Tribunal acknowledges that the FEI did not push forward aggressively with a case before being certain of its position that the Testosterone could not have been produced endogenously, especially given the two-year sanction applicable under the EADCMRs which went into effect only two months after the sample in this case was taken.

28. As concerns the blood samples taken from the Horse at the Event, the Tribunal takes note that the FEI had provided explanations to the PR by email of 24 January 2011. The Tribunal understands from those explanations that screening analyses had been performed by HFL on the blood samples. That HFL had however advised that no further analysis was required on the blood samples insofar as – due to insufficient scientific information – no international threshold for Testosterone in geldings for blood existed. The PR has not contested the explanations by the FEI, and the Tribunal therefore determines that the results of the blood samples – whether taken at the Event or at a later stage – are irrelevant. Furthermore, it follows from the wording of Article 2.1.2 of the EAD Rules that a positive Anti-Doping case may be established by either a positive blood, or a positive urine sample. The FEI therefore correctly opened the procedure based on the positive urine sample only.

29. The Tribunal cannot follow the PR's objection to the delay in the sample transportation as affecting the accuracy of the A- and B-Sample test results. To start with, the FEI rules only foresee deadlines for samples to be dispatched to the respective laboratory. In particular, Article 1020.1 of the Veterinary Regulations stipulates that samples should be dispatched to the laboratory within twenty-four (24) hours of the conclusion of the Event. The Tribunal understands that the Event concluded on 6 June 2010 and it follows from the laboratory dispatch documents provided by the FEI that the samples taken from the Horse were dispatched to the laboratory on 7 June 2010. Therefore, the twenty-four (24) hour time deadline was complied with. The Tribunal is furthermore of the opinion that the wording "should" has to be interpreted as meaning "wherever possible under the circumstances", and that no hard deadline exists. That even if the time limit of twenty-four (24) hours was exceeded by a couple of hours –which has not been established by the PR in the opinion of the Tribunal – that would not have constituted a departure from the Veterinary Regulations. Furthermore, the Tribunal finds that the PR has not established, in accordance with Article 3.2.2 of the EAD Rules, how the alleged late arrival of the samples at the laboratory could have in all probability "caused" the Adverse Analytical Finding for Testosterone. Any delay in the dispatch or the delivery of the samples would have rather lead to degradation of the samples. And any degradation of the samples would have

led to a lower concentration of any substance detected in the sample. In the case at hand however, the levels of Testosterone detected in the samples taken from the Horse at the Event were considerably higher than the threshold in urine. The Tribunal therefore holds that the alleged departure from the Veterinary Regulations does not invalidate the test results under Article 3.2.2 of the EAD Rules.

30. With regards to the question of the different concentrations in the A-Sample and the B-Sample, the Tribunal finds first of all that it appears unlikely that the different concentration between the A- and B-Sample resulted from the alleged late arrival of the samples to the laboratory. As highlighted by the FEI, both the A- Sample as well as the B-Sample arrived at the laboratory at the same time and would therefore have been equally affected by any delay. Further, the Tribunal acknowledges that – due to the preliminary tests performed on the Horse - the B-Sample analysis took place more than six (6) months after the A-Sample analysis. The Tribunal follows in this context Mr. Maynard and Prof. Dr. Ricketts, who both explained in their respective statements that samples - even if stored under ideal conditions - degrade over time, and that the general degradation process leads to a degradation of the substances detected in the sample. That furthermore, the fact that the two analyses have taken place in different laboratories, might have led to an acceptable degree of analytical variation between the two laboratory results. The PR has not raised any convincing arguments against those explanations, and has not provided any evidence that the B-Sample was incorrectly stored or transported to LCH. The Tribunal therefore accepts that the different concentrations in the A- and B-Sample may be explained by a combination of sample degradation due to the long period of time between the A-Sample and the B-Sample analysis, as well as minor differences in the test results of two independent laboratories. More importantly however, and irrespective of the lower B-Sample concentration, it is decisive for the Tribunal that even after more than six (6) months of storage, the B-Sample concentration was two (2) times above the international threshold. The Tribunal therefore holds that, in accordance with Article 7.1.6 of the EAD Rules, the entire test result was correctly considered as positive, and not negative.

31. The Tribunal also has to reject the PR's claim that the FEI should have applied specific analytical technical procedures developed by WADA for Testosterone positive cases prior to deciding whether or not the case would be considered as a positive anti-doping case. It is the understanding of the Tribunal that the procedures implemented by WADA are designated to establish whether the Testosterone detected in a specific sample has been endogenously produced by the individual, or exogenously administered. However, the WADA rules, as well as any reports or other manuals issued by WADA, apply to human samples only, not to equine samples. Whereas the FEI is obliged to follow certain WADA rules

and principles in its human anti-doping program, it is only partially obliged to do so in the equine anti-doping cases. However, taking into account the different nature of human and equine samples, it would not have been possible to apply the same analytical technical procedures as WADA does. Therefore, the FEI was not obliged to perform – nor would it have been instructive to do so -- the analytical technical procedures developed by WADA for Testosterone cases prior to notifying the case at hand.

32. The Tribunal therefore concludes that the FEI has established an *Adverse Analytical Finding*, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
33. In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once a positive case has been established by the FEI, the PR has the burden of proving that he bears “No Fault or Negligence” for the positive findings as set forth in Article 10.5.1 of the EAD Rules, or “No Significant Fault or Negligence,” as set forth in Article 10.5.2 of the EAD Rules.
34. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EAD Rules, the PR must first establish how the Prohibited Substance entered the Horse’s system. This element is a prerequisite to the application of Article 10.5 of the EAD Rules. With regard to the standard of proof to be met by the PR, Article 3.1 of the EAD Rules, second sentence, stipulates that the PR has to establish “*specified facts or circumstances*” “*by a balance of probability*”.
35. In this context, it is the understanding of the Tribunal that the preliminary examinations performed on the Horse as agreed upon by the FEI and the PR, as well as the further tests performed on the Horse upon initiative of the PR only, were designated to establish whether or not the Horse, despite its castration, was still endogenously producing Testosterone – at the level detected in the Horse’s samples taken at the Event - at the time of the Event. Taking into account the explanations and evidence provided regarding all tests performed on the Horse, the Tribunal is of the opinion that the PR has not succeeded in establishing the above, and therefore has not established by a “*balance of probability*” how the Testosterone entered the Horse’s system.
36. With regards to the preliminary tests performed in agreement between the FEI and the PR, the Tribunal acknowledges first that some confusion existed as to the specific tests performed on the Horse’s samples taken in September 2010. However, Mr. Maynard’s statement, which was not contested by the PR, explains that due to a misunderstanding, the blood samples taken from the Horse in September 2010 were sent to HFL instead of BCL. That HFL did not connect the samples taken in September 2010 with the

samples taken from the Horse during the Event and as a result did not perform the specific clinical tests needed. That therefore, instead of performing an oestrone sulphate and an hCG stimulation test on the samples, HFL had performed a routine screening protocol for FEI Prohibited Substances, including the standard screening for Testosterone. The Tribunal acknowledges that insofar as no international threshold for gelding blood samples has been determined so far, the tests run by HFL on the September 2010 samples did not have any value for the determination of the presence of Testosterone in the Horse's sample. That moreover, HFL did not carry out clinical testing focusing on reproductive medicine veterinary diagnostics, and that therefore the tests run by HFL did not provide any answer to the question of whether the Horse still endogenously produced Testosterone. That insofar as, after the HFL tests, insufficient quantity of the September 2010 blood samples remained to perform an oestrone sulphate and an hCG stimulation test, upon recommendation by Mr. Maynard, and in agreement with the PR, new samples were taken in November 2010.

37. With regards the four tests performed upon request by Dr. Cooke on the samples taken from the Horse in November 2010, the Tribunal refers to the expert statement by Prof. Ricketts. The PR did not substantially contest the statement by Prof. Ricketts, and did not provide any counter-statement by an equally qualified expert as Prof. Ricketts either. According to Prof. Ricketts, the results of the hCG test performed on the November 2010 samples allowed the conclusion that no significant functional testicular tissue was present in the Horse at the time when the hCG test was performed. Further, with regards the oestrone sulphate radioimmunoassay, Prof. Ricketts stated that CSLS and BCL had reported a serum oestrone sulphate result that was at the very bottom limit of the CSLS cryptorchid range. But that CSLS and BCL had reported the results of the Testosterone radioimmunoassay as being consistent with no residual functional testicular tissue. And lastly, that HFL had reported that the results of the November 2010 urine tests showed a Testosterone concentration of less than 5ng/ml, i.e. four (4) times lower than the international threshold, and were therefore consistent with the sample being from a gelding. Therefore, the Tribunal would like to highlight that the results of three out of four tests performed in November 2010 lead to different experts' conclusion that the Horse was a gelding, and was not producing any Testosterone endogenously. That only one test, the oestrone sulphate radioimmunoassay, had resulted in very low signs of cryptorchism.

38. The Tribunal further considered the documents provided by the PR with his first and his second submission. Following the PR's second submission, the Tribunal understands that – as initially contested by the FEI – both an hCG test as well as an oestrone sulphate test has been performed on the Horse by the PR. However, it has to be noted here that from the documents provided, it is not clear to the

Tribunal when exactly the tests requested by the PR were performed on the Horse. The statement of Dr. Roig dated 2 March 2011 regarding the tests performed on the Horse upon request of the PR has been particularly carefully assessed by the Tribunal. In his statement, Dr. Roig explained that the results of the hCG test showed a response to hCG stimulation. That, whereas it could be concluded from the results that some testicular tissue was still present in the Horse, it could not be concluded that the Horse still was a cryptorchid. That an incorrect castration of a cryptorchid could be the reason for the results obtained from the hCG test performed upon request of the PR. The Tribunal particularly takes note of the statement by Dr. Roig that an incorrect castration of a cryptorchid horse could - after some other important stimulations - explain a little Testosterone production.

39. From the above results, the Tribunal understands that – despite the castration of the Horse and the follow –up surgery to remove remaining testicular tissue - both at the time of the tests performed on the Horse in November 2010, as well as when the later tests were performed upon request of the PR, some residual functional testicular tissue remained in the Horse’s body. The Tribunal further understands that both the PR’s expert, as well as the FEI’s expert, agree that at the time when the tests were performed (i.e. November 2011 and some time prior to March 2011) - the residual testicular tissue could have possibly lead to a little Testosterone production by the Horse. It is worth noting in this context that in the opinion of the PR’s expert, little Testosterone production would have required some other, prior stimulation. In the understanding of the Tribunal, the prior stimulation had taken place by means of the hCG stimulation test. The Tribunal considers however that according to both experts, at the time when the preliminary tests were performed, the Horse would not have been capable of producing such high levels of Testosterone as detected in the samples taken from the Horse during the Event.
40. Therefore, the Tribunal needs to address the question of whether the PR has established that at the time of the Event, the Horse was capable of producing the levels of Testosterone detected in both in the A- and B-Samples. The Tribunal takes note that between the follow up surgery of the Horse in April 2010 and the Event, about six (6) weeks had passed. The Tribunal does not however find any evidence in the record for the PR’s claim that - despite the time lapse between the follow up surgery and the Event - the Horse continued to endogenously produce Testosterone. The PR relies on very few scientific documents, and rather adduces various general quotes from the lay press, veterinary websites and non-peer reviewed articles. Most of the documents do not show the date of issuance, some not even the author. Therefore, the Tribunal must credit the expert opinion of Prof. Ricketts – who, after having studied the file of the specific case, and after having consulted several other professors of equine reproduction or equine endocrinology - explained that Testosterone concentration falls

quickly after castration, i.e. rather within hours than days or months. The Tribunal is further of the opinion that the fact that the Testosterone concentration detected in the A-Sample was three (3) times above the threshold level is an important factor that would speak against the Horse having endogenously produced the Testosterone, even less so after two attempts of castration. In conclusion, the Tribunal determines that the PR has not established by a balance of probability how the Testosterone entered the Horse's system.

41. Accordingly, the Tribunal does not even have to address the question of whether the PR had established that he bears "No Fault or Negligence" or "No Significant Fault or Negligence" for the rule violation. Nevertheless, the Tribunal takes note that the PR argued in this context that insofar as the positive test result had been caused by the Horse continuously producing endogenous Testosterone, he as the rider did not bear any fault or negligence for the rule violation. As set forth above, the Tribunal cannot follow this argument as it finds that the PR has not established that endogenous Testosterone caused the positive finding. Since the PR does not provide any other arguments as to his fault or negligence for the rule violation, the Tribunal cannot eliminate or reduce the sanctions under Article 10.5.1 or Article 10.5.2 of the EAD Rules.

42. According to Article 9 of the EAD Rules, a violation of the EAD Rules in connection with a test conducted at a Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained at that Competition.

43. According to Article 168.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

4.8 Disqualification

44. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won at that Competition must be forfeited, in accordance with Article 9 of the EAD Rules.

4.9 Sanctions

45. Under the newly promulgated EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period. The FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

- 1) The PR shall be suspended for a period of **two (2) years** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 5 January 2011 to 26 October 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible through 4 January 2013.
- 2) The PR is fined **CHF 1.000.-**.
- 3) The PR shall contribute **CHF 2.500.-** towards the legal costs of the judicial procedure as well as **CHF 1.000.-** for the B-Sample 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: No**

FOR THE PANEL



THE CHAIRMAN, Patrick A. Boelens