

DECISION of the FEI TRIBUNAL

dated 29 August 2012

Positive Anti-Doping Case No.: 2011/BS15

Horse: WINDY BOY ROCKET

FEI Passport No: SWE40356

Person Responsible/NF/ID: Susanne Ankermark/SWE/10036596

Event/ID: CHMPA1, Lipica (SLO)/2011_CH_M_0008_A_P1_01

Date: 21 - 25 September 2011

Prohibited Substances: Paracetamol; Theobromine

I. COMPOSITION OF PANEL

Mr. Patrick A. Boelens, Chair
Ms. Randi Haukebø, Panel Member
Mr. Vladan Jevtic, Panel Member

II. SUMMARY OF THE FACTS

- 1. Memorandum of case:** By Legal Department.
- 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 and at the oral hearing, as also made available by and to the PR.
- 3. Oral hearing:** 19 June 2012 - Telephone conference

Present:

The FEI Tribunal Panel
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Ms. Susanne Ankermark, PR
Mr. Jan Olof Wannius, Counsel for the PR
Ms. Lotta Pålsson, Witness
Mr. Christer Pålsson, Witness
Ms. Ingrid Hesslo Levin, Witness
Ms. Rebecca Kristiansen, Witness

For the FEI: Ms. Carolin Fischer, FEI Legal Counsel

Mr. Mikael Rentsch, FEI Senior Legal Counsel
Prof. Roberto Busetto, Witness

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 23rd edition, effective 6 May 2011 ("**Statutes**"), Arts. 1.4, 34, 36 and 37.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2011, Arts. 118, 143.1, 168.4 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal 2nd edition, 1 January 2012 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th April 2010, updates effective 1 January 2011, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Susanne Ankermark

3. Justification for sanction:

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

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."

IV. DECISION

1. Factual Background

1.1 WINDY BOY ROCKET (the "Horse") participated at the CHMPA1 in Lipica, Slovenia, from 21 to 25 September 2011 (the "Event"), in the discipline of Driving. The Horse's carriage was driven by Ms. Susanne Ankermark, who is the Person Responsible in accordance with Article 118.3 of the GRs (the "PR").

1.2 The Horse was selected for sampling on 25 September 2011.

1.3 Analysis of urine and blood sample no. FEI-5509897 taken from the Horse at the Event was performed at the FEI approved laboratory, the Sport Science Laboratory (UK) ("HFL"), by Mr. Karl Woodward, Senior Scientist, under the supervision of Mr. Steve Maynard, Director. The analysis of the urine sample revealed the presence of Paracetamol and Theobromine in both the urine and the blood sample (Certificate of Analysis no. 70925 dated 21 October 2011).

1.4 Paracetamol is an analgesic and antipyretic used for pain relief and to reduce fever. Paracetamol is classified as a Banned Substance under the Equine Prohibited Substances List. Theobromine is a vasodilator and diuretic that decreases blood pressure and increases urination. Theobromine is qualified as a Controlled Medication Substance in accordance with the Equine Prohibited Substances List. The positive finding for Paracetamol and Theobromine gives rise to an Anti-Doping rule violation, in accordance with Article 10.7.5 of the FEI Equine Anti-Doping Rules ("EAD Rules").

2. The Proceedings

2.1 The presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 14 November 2011, through the SVENSKA RIDSPORTFÖRBUNDET ("SWE-NF"). The Notification Letter included notice that the PR was provisionally suspended and granted her the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.

2.2 Upon request by the PR, a Preliminary Hearing took place on 22 November 2011. During the Preliminary Hearing, the PR argued in a nutshell that the time indicated on the FEI Medication Control Form as "Time horse held" had been modified without her knowledge by the testing veterinarian after the testing, and that she had not been notified of the sample collection within the time limits foreseen in the FEI Veterinary Regulations ("VRs"). The Preliminary Hearing panel orally maintained the Provisional Suspension, pending the further written submissions of the PR and the FEI.

3. The B-Sample Analysis

3.1 The PR was also informed in the Notification Letter of 14 November 2011 that she was entitled to: (i) the performance of the B-Sample confirmatory analysis on the positive sample; (ii) attend or to be represented at the B-Sample analysis; and/or (iii) request that the B-Sample be analysed in a different laboratory than the A-Sample.

3.2 By email of 29 November 2011, the PR waived her right to have the B-Sample confirmatory analysis performed.

4. The Further Proceedings

4.1 By letter dated 1 December 2011, the PR submitted that she had not been notified in time of the sample collection, and that furthermore, the Horse was tested later than permitted under Articles 1016 and 1017 of the VRs. In this context, the PR argued that on the day the Horse was tested, the final results were announced at 10:58am, and that she was only notified around 12:00 noon. That after she had finished competing, she first went to her stable together with the Horse, and that thereafter she went to the spectator stands. That only when she returned to the stable shortly before 12:00 noon, did an official of the organisation notify her of the testing. The PR further submitted that the time indicated under "Time horse held" on the Medication Control Form was modified from "12:10 AM/PM" to "11:10 AM/PM", that she was not consulted on that change, and that "12:10 AM/PM" was the correct time.

4.2 Together with her submission, the PR provided witness statements by Ms. Lotta Pålsson, Chef d'Equipe of the Swedish team; Ms. Rebecca Kristiansen, a Swedish driver; Ms. Ingrid Hesslo Levin and Mr. Thorbjörn Ankermark, groom of the PR. All witnesses provided detailed information regarding the timing of their own, and the PR's actions on the day of the sampling. In a nutshell, all witnesses concluded that the PR could have only taken the Horse to the Doping Box after 12:00 noon. The PR further submitted a copy of a list of results, printed at 10:58 on 25 September 2011 and signed by the President of the Ground Jury.

4.3 On 14 December 2011, the FEI submitted its Response to the PR's submission. Together with its submission, the FEI provided a statement by the FEI Testing Veterinarian Prof. Roberto Busetto, who was in charge of the sampling of the Horse at the Event. Dr. Busetto explained that the Horse arrived at the testing stable shortly after another horse, "Pluto Callisto". That according to the Medication Control Form of Pluto Callisto, Pluto Callisto arrived at the testing stable at 11:00am. That the entire process of sampling of the Horse, including the relevant paper work, was terminated very quickly. With regard to the alleged modification on the Medication Control Form, Prof. Busetto explained that he had simply written the time badly in the first place, and that he had thereupon improved the writing. And that the PR had signed the version with the improved writing without any questions.

4.4 With reference to the Medication Control Form, the FEI argued that it clearly indicated that the sample had been taken from the Horse at 11:15am, instead of sometime after 12:00 noon, and that this was further established by the statement of Prof. Busetto and the Medication Control Form of the horse Pluto Callisto. In response to the witness statements provided by the PR, the FEI contended that they did not present credible evidence, since it was unlikely that the witnesses, several months after the testing, could provide very specific and detailed time references. That furthermore, and in light of the fact that according to Prof. Busetto the sampling process had been completed quickly, it was possible that no members of the entourage of the PR had noticed the sampling, and that it had taken place without disrupting the PR's other actions. Relying on the statement by Dr. Busetto, the FEI further argued that the Medication Control Form had not been amended, but simply the writing improved. Further that since the PR had not made any remarks or raised any objections at the time of sampling, and had also signed the Medication Control Form, the PR had accepted the sampling process, as set forth in Article 1018 para 4 of the VRs. The FEI therefore argued that the PR had not established any apparent departure from the testing procedures of the VRs or the FEI Standard for Laboratories that would have caused the Adverse Analytical Finding.

4.5 The FEI also argued that even if the Tribunal found that the PR had established a departure from the sampling process, it had to take into consideration that she had not established, as required under Articles 7.4.1(b) (ii) and 7.1.2 of the EAD Rules, how that departure could have reasonably caused the positive findings. That therefore, the test results could not be invalidated.

4.6 By letter dated 12 January 2012, the PR, pointing out the alleged departures from the testing procedures, requested that the Provisional Suspension be lifted and no sanction be imposed. The PR further requested that the second Preliminary Hearing be postponed until after 6 March 2012.

4.7 On 13 June 2012, the PR provided several photo shots of a horse together with a driver, taken somewhere on the Event grounds. All pictures include some indications of the time at which they have been taken, all at around 11am or 12 noon, on 25 September 2011. Referring to the photo shots, the PR argued that the horse shown in the pictures was Pluto Callisto, and that therefore, it was not possible that Pluto Callisto had been tested at around 11am on 25 September 2011. The PR further explained that whereas she and her team had bought headache pills on their way to the Event, those pills did not contain any Paracetamol, and that therefore, it was not possible that the Horse had been in contact with Paracetamol. That further, following her investigations with her feed- and supplement supplier, it could be excluded that the Horse had come in contact with Theobromine through contamination. That following the competition, she had not been notified of the testing, and that therefore, the Horse had been washed down, and taken back to its stable, where it

was left on its own, for about 40 minutes. That around 12:00 noon only, she was informed by another Athlete, Ms. Rebecca Kristiansen, that she had to present the Horse for the doping control, and that no official had accompanied the Horse to the testing stable. The PR further submitted a statement by Mr. Christer Pålsson, trainer of the Swedish team, details of which will be addressed below insofar as relevant.

4.8 On 15 June 2012, the FEI provided its Response to the PR's submissions. Together with its second submission, the FEI provided a copy of the results of the Event, printed out at 15:29 on 25 September 2011. In essence the FEI submitted:

- a) That sufficient proof of the presence of the two Prohibited Substances in the Horse's A-Sample had been provided. That in light of the fact that the PR had waived her right to the B-Sample analysis, a violation of Article 2.1 of the EAD Rules had been established.
- b) That selection of horses for sampling could be made at any time during an Event and whilst under FEI Rules, and that moreover, horses could be tested several times during one Event, according to Articles 1016.3 and 1017 of the VRs. That the time of sample collection was at the discretion of the Veterinary Commission/Veterinary Delegate and the Testing Veterinarian present at the respective Event. That therefore, under the VRs, the Horse could have been tested at any time, prior to, or after the competition, at any day of the Event, without any restrictions in terms of time whatsoever. That the final results had only been printed out at 15:29, and that accordingly, the PR could have been notified of sampling until 15:59 on 25 September 2011, when the Event terminated.
- c) That the PR had not met her burden of proving, as required under Article 3.2.2 of the EAD Rules that a departure of another FEI standard or EAD Rule violation had occurred. But even if the Tribunal accepted the PR's contention that there was a departure, the PR had failed to establish that this departure had in all probability caused the Adverse Analytical Finding. In this regard, the FEI explained that it had consulted Ms. Victoria E. Unt, Veterinary Advisor with the FEI Veterinary Department, who had explained that it was very unlikely that the positive test result had been caused by the alleged departure. The FEI made clear that Ms. Unt could provide further explanations during the Final Hearing. In conclusion, the FEI argued that the PR had not provided any credible bases for the invalidation of the positive test results under Article 3.2.2 of the EAD Rules.
- d) That in cases involving both the presence of Controlled Medication Substances and Banned Substances in one Sample, the respective PR is considered to have committed an EAD Rule violation, and that the sanction imposed shall be based on the Prohibited Substance that carries the most severe sanction – Paracetamol in this case.

- e) That there were no grounds for any elimination or reduction under Article 10.5 of the EAD Rules since the evidence adduced by or on behalf of the PR had not established how the Prohibited Substances had entered the Horse's system, and that the PR had therefore not fulfilled the first prerequisite in order to eliminate or reduce the otherwise applicable sanctions. That even if the PR had established the source of the Prohibited Substances, there were no grounds for the Tribunal to consider the question of Fault or Negligence, since the PR had not provided any information on that point.

4.9 In conclusion, the FEI requested that the Tribunal consider increased sanctions due to the finding of multiple Prohibited Substances, as set forth in Articles 10.7.4 and 10.6 of the EAD Rules. That in addition to the automatic disqualification of the Horse's results at the Competition under Article 9 of the EAD Rules, all results obtained by the PR at the Event together with the Horse should be disqualified, in accordance with Article 10.1 of the EAD Rules.

4.10 The Final Hearing took place on 19 June 2012. During the Final Hearing, the Tribunal and the Parties accepted that both a sheet with the Final Results of the Competition, printed at 10:58, as well as a sheet showing the Final Results of the entire Event, printed at 15.29, had been submitted in the course of the proceedings.

4.11 Furthermore, all witnesses for the PR confirmed their witness statements. In addition, Ms. Pålsson explained that she had been the Chef d'Equipe for the Swedish team at the Event, and that a meeting with the team had been organised prior to the Event, to inquire about the horses' feed and any medication being taken by the drivers. At the meeting, Ms. Pålsson confirmed that no medication had been brought to the Event. Ms. Pålsson further explained that following the finalisation of the single class for ponies, she had gone up to the stands, and had started sending a couple of text messages and making phone calls, the timing of which could be deduced from an invoice from her telephone company. That she had then bought some food at 11.29am, which could be seen on the respective invoice. That from the invoice and the receipt she could conclude that she had only met the PR after the latter had been to the Doping test with her horse, which was after 12:00 noon.

4.12 Mr. Pålsson, trainer for the Swedish team, explained that he had drafted his written statement following a meeting held with the PR and Ms. Pålsson, approximately two months after the Event. That when the PR had finished her competition, he had first been on his own for about ten to fifteen minutes and that only afterwards, he and the PR together watched the preparation for the "Pony Pair" Competition, and at least the first two pairs of the "Pony Pair" Competition, which started at 11.40am. That further, based on pictures taken from the PR at the Event, and a Youtube video taken of the PR at the Event, he could conclude that the PR had only left him after 11.40am.

4.13 During the hearing, Ms. Rebecca Kristiansen testified that she had represented the Swedish national team in Driving at the Event, that she had watched the last competitors of the cone competition, including Ms. Kristina Klindt, before she went to see her sister. That her husband had taken the photo shots submitted by the PR earlier in the proceedings, and that it was Kristina Klindt that was shown on the pictures. That pictures taken with the camera of her husband would always show the time at which they were taken. Lastly, that shortly before 12:00 noon on 25 September 2011, she had been approached by an official of the Event, who asked whether she was Ms. Susanne Ankermark, since he was looking for the latter in order to perform an MCP test on the Horse.

4.14 Similar to their previous written statements, all witnesses confirmed that the PR could not have been in the Doping Box before 11.40am - the time when the Pony Pair Competition started.

4.15 Prof. Busetto confirmed that he was the testing veterinarian in charge at the Event. That it was the Ground Jury who selected the horses to be tested, and that all medal winners - where possible - were tested. That however, since there had been only two testing veterinarians, a maximum of three horses could be tested at the same time. He confirmed that testing procedures had been strictly followed from the time the Horse had entered the Doping Box. That he believed that it was him who had tested the Horse. Prof. Busetto finally admitted that he did not remember at what time exactly the Horse had been tested, but that he believed that it was tested at the time indicated on the Medication Control Form.

4.16 The PR herself explained that she had been competing with the Horse for seven years, that she had been a member of the Swedish national team since 2007 and that the Horse was tested once before at a national competition, when her daughter had competed with it. That she was familiar with the FEI Equine Anti-Doping Rules and the FEI Prohibited Substances List, and that she received information on changes to the Prohibited List from her National Federation. That neither herself, nor anybody else on her team had given any Paracetamol or Theobromine to the Horse, and that no medication, either for horses or humans, containing both substances Theobromine and Paracetamol, could be bought in Sweden. That following some research, she had found a cold medication called "Tylenol", available in the US, which contained both substances. In conclusion, the PR submitted that the positive results came as a shock to her, and that she had no idea how the substances had entered the Horse's system.

4.17 With regard to the timing of the testing, the PR explained that a Finish photographer had taken pictures of her leaving the arena at 10:52am, and that afterwards, she had first met up with the Chef d'Equipe of the Swedish team, had thereupon walked all up to the stables, where her husband took care of the Horse, and she had a shower. That afterwards, she went up to the stands again, to find her trainer, who had not congratulated her yet. That she had then watched the course being prepared for the next class, the Pair Competition, which started at 11:40 am, as well as at least the first two

competitors of the Pair Competition. That only when she went to the toilet after that, she met Ms. Kristiansen, who informed her that some Event official had asked for the Horse, in order for it to be submitted to the doping control. That she had never been notified of the MCP testing by any FEI Steward or official, and had only learned from Ms. Kristiansen that an FEI Steward was looking for her. The PR further testified that Ms. Kristina Klindt, who had won gold at the competition, had not been notified by an official of the testing either. Further that since she had not noticed anything wrong during the sampling process, she had not made any comments in the "comment box" of the Medication Control Form, and that she had therefore signed the Medication Control Form after the sampling had been completed. That she was not sure which time had been entered on the Medication Control Form under "Time horse held", at the time when she had signed the form. The PR further argued that the Final Results of the "Single Pony" Competition were the relevant results for the questions in the case at hand, since for her, the "Event" had terminated after that competition. Further that the fact that horses could be sampled at any time during an Event, and more than once during the same Event, was in contradiction to the protocol for sampling as foreseen under Article 1017, third sentence of the VRs, and therefore was of no relevance. That furthermore, there was a direct contradiction between Article 3.2.2 of the EAD Rules, and Article 1017, third sentence of the VRs. Finally that no sanction at all, or in the alternative the period of Provisional Suspension already served by her should be imposed. That insofar as she only works part-time, and since almost no prize money is awarded in the Driving discipline, the fines requested by the FEI would be disproportionate.

4.18 The FEI argued that the final results of the entire Event, printed at 15:29, were the relevant results, and that the final results printed out at 10:58 were only the results of the "Singly Pony" Competition, i.e. of one of several competitions of the Event. That the Medication Control Form had not been amended by Prof. Busetto, and that insofar as on the Medication Control Form, the time under "Time sample taken" clearly indicated 11:15am, the time at which the Horse had been held must have been 11:10am, and not 12:10. That further, the PR's witnesses had referred to pictures, invoices and videos on Youtube, in order to calculate the exact timing of the notification to the PR, but that most of those references had not been submitted to the Tribunal or the FEI. The FEI further highlighted that the PR had first claimed that she had been notified of the testing by an official of the organisation, and had later on claimed that Ms. Kristiansen had notified her of the testing. That furthermore, even if the PR could have established a departure from the FEI testing procedure, the PR did not establish that this departure had caused the positive finding. In this context, the PR and the Tribunal accepted that it was therefore not necessary to hear Ms. Unt on the likelihood of any causation of the positive test result by the alleged belated testing of the Horse.

5. Jurisdiction

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

6. The Person Responsible

6.1 The PR is the Person Responsible for the Horse, in accordance with GRs Article 118.3, as she competed with the Horse at the Event.

7. The Decision

7.1 As set forth in Article 2.1.2 of the EAD Rules, sufficient proof of an EAD Rule violation under Article 2.1 is established by the presence of a Banned Substance in the Horse's A Sample where the PR waives analysis of the B-Sample and the B-Sample is not analysed. The same principle applies to cases in which both Controlled Medication Substances and Banned Substances are detected. The Tribunal is satisfied that the laboratory reports relating to the urine and blood A-Sample reflect that the analytical test was performed in an acceptable manner and that the findings of the HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Paracetamol and Theobromine in the urine and blood Sample taken from the Horse at the Event.

7.2 Since the PR contested the validity of the Sample taking, alleging that she was notified "too late" of the Doping and Medication Control, the Tribunal has to determine whether a departure from an FEI standard (other than the FEI Standard for Laboratories) or other EAD Rule or policy has been established. The Tribunal finds that the PR has failed to establish, by a balance of probability as required under Article 3.1 of the EAD Rules, that she was notified of the testing later than 30 minutes after the announcements of the final results. The Tribunal takes note that according to the interpretation of the PR, the relevant results are those of the Competition she had competed in. According to the definition of the term "Competition" in Appendix A – Definitions, of the GRs, the term "Competition" refers to each individual class in which Athletes are placed, here the Single Pony Competition. This is because all witnesses provided by the PR and testifying on the question did not remember the exact time of the notification/testing, but only recalculated the time based on telephone invoices, videos on Youtube etc, most of which were never submitted to the Tribunal. Furthermore, most of the witnesses who testified on behalf of the PR are from her entourage and are therefore likely to be interested in the outcome and could potentially benefit from the PR retaining the silver medal won at the Event. The Tribunal must therefore assess the witness statements in that context. On the other hand, Prof. Busetto drew clear conclusions regarding the timing of the sampling from the Medication Control Form of Pluto Callisto, which had been transmitted to the Tribunal.

7.3 Notwithstanding the above, the Tribunal finds however that ultimately the one hour dispute over the exact time at which the PR was notified of the

testing is irrelevant and does not absolve the PR of an anti-doping rule violation and its consequences. This is because notification under Article 1017 of the VRs has to be made within 30 minutes of the announcement of the final results of the Event, not the respective Competition. Specifically, at the time when the PR claims she was notified of the testing, i.e. at about 12:00 noon, the Event had not yet finished, and the Horse could have been tested at any time while under FEI Rules, as follows from Article 1017 of the VRs. In this context, the Tribunal finds that a horse is subject to FEI Rules during the entire duration of an Event, provided it is still present on the Event grounds.

7.4 According to the definition of the term 'Period of an Event' in Appendix A – Definitions, of the GRs, an Event commences one hour before the beginning of the first Horse Inspection and terminates half an hour after the announcement of the final results in that Discipline, here the discipline of Driving. The Tribunal understands that the exact time of the announcement of the final results of the Competition as of the Event is unknown, and that therefore, the Parties refer to the time at which the Final results have been printed out, which is accepted by the Tribunal. It is further determined by the Tribunal, that the results printed out at 15:29 are the relevant results for the case at hand, since the results sheet printed out at 10:58 refers to the results of the cones' Competition only. That therefore, the Event only terminated at 15:59 on 25 September 2011, and that as set forth in Article 1017 of the VRs, the Horse could have been selected for testing at any other time throughout the Event.

7.5 The Tribunal further takes note of the PR's claim that the sampling procedure had not been followed, since she had never been notified of the MCP testing by any FEI Steward or official, and since no FEI Steward or official had "chaperoned" the Horse to the Doping Control Box. However, the Tribunal also understands that the PR had not made any remarks or raised any objections at the time of sampling, and had also signed the Medication Control Form. The Tribunal therefore determines that the PR accepted the sampling process, as set forth in Article 1018 para 4 of the VRs. Accordingly, the Tribunal finds that the PR has not established any apparent departure from the testing procedures of the VRs or the FEI Standard for Laboratories that would have caused the Adverse Analytical Finding.

7.6 The Tribunal further finds that the VRs have to be read together with the EADCMRs, and that they have to be interpreted by taking into consideration the rationale of both sets of rules. There is no question that the rules intend for horses to be subject to In-Competition testing at any time during the Period of an Event. According to the definition of the term 'In-Competition' in Appendix 1 – Definitions, of the EADCMRs, the term In-Competition refers to the period commencing one (1) hour before the beginning of the first Horse inspection and terminating half an hour after the announcement of the final results of the last Competition at the Event. Accordingly, the Tribunal finds that no departure from any FEI standard or other EAD Rule or policy has occurred.

7.7 In a second step – even if a departure from any FEI standard or other EAD Rule or policy had been established by the PR – the Tribunal still has to find that the PR successfully established that this departure caused the positive test result. In line with Court of Arbitration for Sport (CAS) case law (CAS 2001/A/337 B. v FINA, Final Award dated 22 March 2002), the Tribunal holds that departures from procedures by themselves do not invalidate the findings of the presence of (a) Prohibited Substance(s), unless such departure was such as to cast genuine doubt on the reliability of such finding(s). The Tribunal finds that the PR did not provide specific facts that were likely to call into question the validity of the test results. Further, the PR did not establish how the alleged late notification could have caused the positive finding. In this regard, the Tribunal takes note that the PR has not contested the FEI's claim, based on the opinion of Ms. Unt that it was very unlikely that the positive test result had been caused by the alleged departure, i.e. the alleged late notification of the PR/testing of the Horse. The Tribunal therefore determines that the PR has not established any link between the alleged departure from the testing procedures and the positive test result, and therefore determines that there is no basis on which to invalidate the positive test results in this case.

7.8 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once a EAD Rule violation has been established by the FEI, the PR has the burden of proving that he bears "No Fault or Negligence" 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 for the positive findings. 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. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".

7.9 The Tribunal finds that the PR has provided no reliable evidence on how the Paracetamol and the Theobromine entered the Horse's system. In fact the PR herself even admitted that she has no explanation for the presence of the Prohibited Substances in the Horse's system. The Tribunal therefore finds that the PR failed to establish how the Prohibited Substances entered the Horse's system.

7.10 Accordingly, the Tribunal does not have to address the question whether any elimination or reduction of the otherwise applicable sanctions by virtue of Article 10.5.1 or Article 10.5.2 of the EAD Rules should be applied.

8. Disqualification

8.1 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 must be forfeited, in accordance with Article 9 of the EAD Rules. The Tribunal is further disqualifying all other results obtained

by the PR together with the Horse at the Event, in accordance with Article 10.1 of the EAD Rules.

9. Sanctions

9.1 Under the EAD Rules, in cases involving both the presence of Controlled Medication Substances and Banned Substances in one sample, the respective PR is considered to have committed an EAD Rule violation, and the sanction imposed shall be based on the Banned Substance that carries the most severe sanction, in accordance with Article 10.7.5 of the EAD Rules. In the case at hand, Paracetamol is the only Banned Substance detected. Further, the sanction for an Adverse Analytical Finding for any Banned Substance is a two-year Ineligibility period for first time offenders. 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 14 November 2011, the date of Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible through **13 November 2013**.
- 2) The PR is fined **CHF 1'500**.
- 3) The PR shall contribute **CHF 1'000** towards the legal costs of the judicial procedure.

9.2. No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorized or organized by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organization (Article 10.10.1 of the EAD Rules). Under Article 10.10.2 of the EAD Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

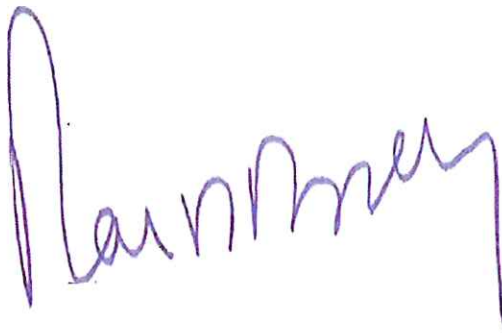
9.3. According to Article 168.4 of the GRs, the present Decision is effective from the day of written notification to the persons and bodies concerned.

9.4. In accordance with Article 12 of the EAD Rules, the PR and the FEI may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport within 30 days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL



THE CHAIRMAN, Patrick A. Boelens