DECISION of the FEI TRIBUNAL

dated 3 March 2014

Positive Anti-Doping Case No.: 2012/BS04

Horse: DAKAR DE FONTNOIRE  FEI Passport No: 103EK59

Person Responsible/NF/ID: Miguel Caeiro/POR/10041538

Event/ID: CEI2* 120 km, Lagoa de Antela (ESP), 2012_CI_0995_E_S_02

Date: 15 July 2012

Prohibited Substance: Testosterone

I. COMPOSITION OF PANEL

Mr. Henrik Arle, Chair
Ms. Jane Mulcahy, Panel Member
Mr. Pierre Ketterer, 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, as also made available by and to the PR.

3. Oral hearing: none

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2012, Arts. 118, 143.1, 161.2, 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 2012.


Veterinary Regulations ("VRs"), 12th edition, effective 5th April 2010, updates effective 1 January 2012, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

2. **Person Responsible:** Mr. Miguel Caeiro

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**

Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.
1. Factual Background

1.1 DAKAR DE FONTNOIRE (the “Horse”) participated at the CEI2* 120 km in Lagoa de Antela, Spain, on 15 July 2012 (the “Event”), in the discipline of Endurance. The Horse was ridden by Mr. Miguel Caeiro 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 15 July 2012.

1.3 Analysis of the A portion of urine and blood sample no. 5511144 taken from the Horse at the Event was performed at the FEI approved laboratory, the Sport Science Laboratory (“HFL”) in the United Kingdom, by Mr. Adam Clarke, Senior Scientist, under the supervision of Mr. Steve Maynard, Director. The analysis of the A portion of the urine sample revealed the presence of Testosterone, at a concentration of free and conjugated Testosterone of 49 ng/ml.

1.4 The Prohibited Substance detected is Testosterone. Testosterone is an anabolic steroid and sex hormone, which has the effect of stimulating weight gain, energy levels and muscle development. Testosterone may potentially be endogenously produced by male horses. The FEI has established a threshold concentration for Testosterone specific to geldings that yields a positive test if exceeded. The threshold concentration in urine for geldings is 0.02 micrograms (20 ng) of free and conjugated Testosterone per millilitre. The Horse is reported to be a gelding, and therefore the above threshold applies. The concentration of free and conjugated Testosterone detected in the Horse’s urine sample is 49 ng per millilitre. Therefore, the concentration of free and conjugated Testosterone found in the A portion of the Horse’s urine sample was above the threshold, which gives rise to an Anti-Doping Rule Violation under the EAD Rules.

2. The Further Proceedings

2.1 On 29 August 2012, the FEI Legal Department officially notified the PR, through the Federacao Equestre Portuguesa (“POR-NF”), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the Tribunal.

2.2 The Notification Letter further included notice to the owner of the Horse – the Al Shahania Stud – that in accordance with Article 7.4 of the EAD Rules, the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, i.e. 29 August 2012, until 28 October 2012. The above Provisional Suspension of the Horse has not been challenged by the owner, and the Horse has served the entire period of Provisional Suspension.
3. The B-Sample analysis

3.1 Together with the Notification Letter of 29 August 2012, the PR was also informed that he was entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.

3.2 On 10 September 2012, the PR requested the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis. Further, the PR requested that a representative attended the B-Sample analysis.

3.3 From 9 to 11 October 2012, the B-Sample analysis was performed at the Laboratoire des Courses Hippiques ("LCH"), France by Mr. Philippe Plou, Head of Technical Division, under the supervision of Dr. Yves Bonnaire, Director of LCH. The representative of the PR, Mr. Juan Manuel Alonso Hernández, witnessed the identification and the opening of the B-Sample.

3.4 The B-Sample analysis of the urine confirmed the presence of Testosterone at a concentration of 33.5 ng of free and conjugated Testosterone per millilitre.

3.5 The results of the B-Sample analysis were provided to the PR and to the owner of the Horse through their respective NFs on 18 October 2012.

4. Written submissions by the PR

4.1 On 13 November 2012, the PR submitted his explanations for the positive finding. Together with his explanations, the PR submitted various reports by the Horse’s veterinarian Dr. Victor Manuel Díaz Padin, L.V. Dr. Padin explained that two follow up tests had been performed on samples taken from the Horse in the Horse’s stable on 11 September and 30 October 2012, with the aim of establishing that the positive test result had been caused by endogenous production by the Horse of Testosterone. The PR explained that the first test - a basal testosterone test (on blood) - had been performed at Böse Labor in Germany (“Böse Laboratory”) and the second test - measurement of oestrone sulphate after stimulation with human Chorionic Gonadotrophin (hCG) - had been performed at DLV Veterinary Laboratory in Spain. The PR further provided a one page report by Böse Laboratory, and Dr. Padin explained that according to the values of reference used by Böse Laboratory, the results of the blood test of 10ng/ml in serum were within the range for a cryptorchid horse. The PR further submitted the results of the hCG test on oestrone sulphate, details of which will be addressed below to the extent necessary.

4.2 The PR also submitted a report by Dr. Jordi Miró Roig of Equine Reproduction Service Veterinary Faculty of the Autonomous University of Barcelona. Dr. Roig contended that the measurement of oestrone
sulphate in the plasma of horses has been shown to be a good method to determine whether testicular tissue was still present in the horse. Further, that the results of the hCG test on oestrone sulphate in the case at hand seemed to be evidence that possibly testicular tissue was still present in the Horse’s system, despite its castration. In addition, the PR also submitted a statement by the Horse’s breeder, Ms. Catherine Faure of Élevage de Font Noire. Ms. Faure testified that even after the castration of the Horse, mares had been ready to be bred when the Horse was around. Lastly, the PR also provided testimony of another competitor of the Event, Mr. Felix Lorente Permuy who confirmed that the Horse had shown obvious signs of nervousness when his horse, a mare, had approached him.

4.3 The PR provided another statement by Dr. Padin in which the latter stated he had been the Horse’s veterinarian since it had been purchased in France. That the only veterinary treatment the Horse had ever received was for a hoof wound, and that at the time, Enrofloxacin had been used for five days.

4.4 Lastly, the PR provided a declaration from the feed manufacturer Versele-Laga of “CAVALOR” horse feed, stating that CAVALOR horse feed did not contain any Prohibited Substances, in particular Testosterone.

4.5 In summary, the PR submitted that:

a) the Horse had been acquired as a gelding, but that despite its castration, it had continued to show pronounced cryptorchid-like temperament, or the temperament of a badly castrated male. That this had been confirmed by Dr. Roig, who, based on his analysis of the follow up tests performed on the Horse, had concluded that the Horse still had remains of testicular tissue in its body.

b) no Testosterone had been administered to the Horse, and that a combination of various facts together had lead to the positive test result, including (i) that the Horse could be a cryptorchid horse, but more importantly, that the Horse had testicular tissue debris and had therefore reacted to oestrone sulphate stimulation tests; (ii) that the Horse had competed in high temperatures and was therefore dehydrated at the Event; (iii) that the Horse had competed in the presence of mares in heat.

c) therefore, and as according to the PR, the positive finding for Testosterone had been caused by endogenous production by the Horse, an exception from the strict liability concept for positive findings was applicable, as set forth in Article 2.1.4 of the EAD Rules. That the latter rule allowed to establish special criteria for the evaluation of Banned Substances that can also be endogenously produced.

d) the Horse’s owner, Al Shahania Stud, was one of the most prestigious centres in the world for breeding and training of Arabian horses, and
that the products used at Al Shahania Stud – animal feed and vitamin supplements – were of the highest quality and certified free of Prohibited Substances. Further that none of the horses owned by Al Shahania Stud had ever tested positive for Prohibited Substances.

e) finally, no Provisional Suspension should have been imposed on him automatically and without prior notice, as the case at hand concerned a positive finding for a Banned Substance that had resulted from endogenous production of that Banned Substance by the Horse. That insofar as the imposition of a Provisional Suspension was optional under the EAD Rules, the Provisional Suspension should not have been imposed prior to confirmation of the A-Sample results by the B-Sample results. That further he had been deprived of the right of a Preliminary Hearing as he had only received the Notification Letter shortly prior to the expiry of the deadline given to him to accept the proposed Preliminary Hearing date.

5. The further proceedings

5.1 In the following – and following concerns expressed by the FEI that the submission by the PR did not allow any determination whether the follow up tests performed had indeed been undertaken on samples taken from the Horse - the Parties agreed to take new urine and blood samples from the Horse, in the Horse’s home stable, and in the presence of both Parties. Further agreed upon were the type of tests to be performed as well as the specific laboratories to be used. The Parties further agreed that any arguments related to seasonality (an argument raised by the PR during the negotiations regarding the details of the tests and analyses) would be addressed in the later submissions.

5.2 Therefore, on 14 January 2013, samples were taken from the Horse as agreed, both prior to stimulation of the Horse with hCG, and in several sequences after stimulation with hCG. The sampling was performed by an FEI Veterinarian, Dr. Manuel Rodriguez, assisted by Dr. Paloma Forés Jackson and in the presence of several representatives for the PR.

5.3 On some of the blood samples (taken from the Horse both prior to and in sequences after stimulation with hCG) an hCG test on Testosterone was performed at the Beaufort Cottage Laboratories in the UK. Beaufort Cottage Laboratories further performed an oestrone sulphate test on basal samples (i.e. samples taken without prior stimulation of the Horse with hCG) taken from the Horse on 14 January 2013. Following the two analyses Beaufort Cottage Laboratories suggested the absence of functional testicular tissue.

5.4 Basal blood and urine samples taken from the Horse on 14 January 2013 were further analysed by HFL, which – following standard analysis for Prohibited Substances – reported that no Prohibited Substances were found in the samples.
5.5 The test results of both Beaufort Cottage Laboratories and HFL were notified to the PR on 6 February 2013.

6. Additional submission by the PR

6.1 On 4 March 2013, the PR provided an additional submission. Together with his submission, the PR provided an additional report by Dr. Padin. In his report Dr. Padin, referring to the outcome of the tests by Beaufort Cottage Laboratories and HFL explained that the results of the hCG test were dependent on seasonality, and that this would be the reason for the difference between the results performed by the PR in September 2012, and the results of the tests performed in collaboration with the FEI in January 2013. Dr. Padin further argued that an oestrone sulphate test performed on samples after stimulation was the more reliable test for horses older than three years, and underlined that the respective test, performed by the PR on the samples taken from the Horse in September 2012, had resulted in a positive finding.

6.2 In essence, the PR additionally submitted that:

a) as stated by Dr. Padin, the results of the hCG test were dependent on seasonality.

b) with regards to the tests performed in collaboration with the FEI in January 2013, it had been agreed that the hCG test had to also include testing for oestrone sulphate, i.e. oestrone sulphate levels had to be measured after a series of stimulation.

c) therefore, the tests performed in collaboration with the FEI had to be repeated again under similar conditions, as the Horse had originally tested positive following the PR’s tests; that alternatively, an oestrone sulphate test had to be performed on samples taken after stimulation.

6.3 On 15 March 2013, the PR clarified that – contrary to what had been agreed with the FEI prior to the tests performed on the Horse in January 2013 – no hCG stimulation test on oestrone sulphate had been performed on the samples taken from the Horse in collaboration with the FEI in January 2013.

6.4 On 20 September 2013, the FEI provided the PR with the results of an hCG stimulation test on oestrone sulphate performed by Beaufort Cottage Laboratories on the samples of the Horse taken in January 2013. Beaufort Cottage Laboratories reported the concentration of pre hCG oestrone sulphate to be of less than 0.01 ng/ml, and the post hCG oestrone sulphate to be of 0.07 ng/ml. The report by Beaufort Cottage Laboratories further contained a note that pre and post hCG oestrone sulphate is not a valid test for the detection of cryptorchidism in horses, and that therefore it was impossible to draw any meaningful information from the hCG stimulation test on oestrone sulphate. The report further concluded that although after stimulation, the level of
oestrone sulphate had slightly increased over the resting level, neither result was high enough to suspect the presence of functional testicular tissue.

7. Written submissions by the FEI

7.1 On 13 December 2013, the FEI provided its Response to the PR’s submissions. Together with its explanations, the FEI provided an expert statement by Dr. Annalisa Barrelet BVetMed, MS, CertESM MRCVS of Rossdales and Partners MsRCVS. Dr. Barrelet explained that the standard and most established test in the detection of cryptorchidism was a basal oestrone sulphate test (as opposed to an hCG stimulation test on oestrone sulphate) which may – depending on the circumstances – be combined with an hCG stimulation test on Testosterone. She further explained that no published literature existed regarding the hCG stimulation test on oestrone sulphate and that it was not recognised by the industry as leading to meaningful results. That it was therefore not possible to meaningfully interpret the results of the tests, neither the one performed by the PR, nor the one performed by Beaufort Cottage Laboratories on the samples taken from the Horse in January 2013. Regarding the question of the potential impact of seasonality on the tests, Dr. Barrelet explained having discussed the matter with Dr. John Cox BVetMed, BSc, PhD, FRCVS, who was internationally-respected by his peers as an authority on equine cryptorchidism and equine steroid hormones. Dr. Barrelet further provided a statement by Dr. Cox in which the latter explained that he had worked for over thirty years at the University of Liverpool and that his research interest for most of those years had been the effects of season on reproductive parameters, including hormones, in stallions. Dr. Cox further stated that seasonality does not adversely affect the interpretation of the industry standard hormone tests for cryptorchidism. Regarding the results of the tests performed on the Horse Dr. Cox further came to the conclusion that in his belief, the Horse was a gelding. In response to the allegations by the PR that other circumstances at the Event (e.g. dehydration after long ride in high temperatures; geldings and mares present together in limited space) might have led to the increased Testosterone result, Dr. Barrelet highlighted that the PR had not provided any scientific proof for the allegations.

7.2 In essence the FEI submitted:

a) That the PR had not disputed that the Banned Substance Testosterone above the international threshold was present in the sample collected from the Horse at the Event, and that it had therefore discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.

b) That the PR had not established the source of the Banned Substance, as he had not proven, by a balance of probability, as required by Article 3.1 of the EAD Rules, that the elevated Testosterone found in the
Horse’s sample had been caused by endogenous production by the Horse of elevated levels of Testosterone, or that the Horse was a cryptorchid. Relying on the statement by Dr. Barrelet, the FEI argued that an hCG stimulation test on oestrone sulphate was not an industry recognised test, and that therefore no meaningful interpretation of the respective results was possible.

c) That secondly, and in case the Tribunal would consider that the results of the autumn 2012 tests would be of any value despite the fact that it was not established that the underlying samples had been taken from the Horse, the report by Böse Laboratory was meaningless in the context of determining whether or not the Horse was a cryptorchid, as (i) Böse Laboratory had performed a different test than the standard tests typically performed in order to detect cryptorchidism; (ii) that it followed from the results reported by Böse Laboratory that the tests in question had been performed by an external entity, but that no details regarding those tests and their results had been provided by the PR; as (iii) Böse Laboratory - in order to distinguish between stallions, geldings and cryptorchids - had used ranges which differed considerably to published ranges. That therefore, according to the Böse Laboratory test results, the Horse had been considered as a cryptorchid, whereas based on the results achieved by Beaufort Cottage Laboratories and HFL, the Horse had to be clearly classified as a gelding; and finally as (iv) the results of the basal Testosterone tests performed by Böse Laboratory (in September 2012) and Beaufort Cottage Laboratories (in January 2013) differed significantly between the Böse Laboratory finding (0,10ng/ml) and the Beaufort Cottage Laboratories’ finding (less than 0,029ng/ml).

d) That Beaufort Cottage Laboratories had performed three different industry approved tests on the samples taken from the Horse in January 2013 and that the results indicated the absence of functional testicular tissue in the Horse at the time of sampling. That further, and solely on the repeated request by the PR, Beaufort Cottage Laboratories had also performed an oestrone sulphate assay on the post hCG sample that had been taken from the Horse in January 2013, and that the respective results were clearly below the range expected in a horse with residual testicular tissue.

e) That the seasonality claim by the PR and the other aspects raised by him (dehydration after long ride; geldings and mares present together in limited space), had been rejected by Dr. Barrelet, supported by Dr. Cox, as not having caused the presence of the elevated Testosterone in the Horse’s sample at the time of the Event.

f) That a period of Ineligibility of two (2) years had to be imposed in accordance with Article 10.2 of the EAD Rules, as the PR had not established the source of the Banned Substance and that therefore, there was no basis to determine whether he bore No (or No Significant) Fault or Negligence for the rule violation. That he had therefore not satisfied the pre-condition for any elimination or reduction under Article 10.5 of the EAD Rules.
8. Rebuttal submission by the PR

8.1 On 27 January 2014, the PR submitted his Rebuttal Submission.

8.2 In essence the PR further submitted:

a) That he maintained his position that the positive finding for Testosterone had been caused by endogenous production by the Horse. That he had not received approval from the FEI to perform the test to assess oestrone sulphate after stimulation, as previously proposed by him and accepted by the FEI. That further, the Tribunal had to duly evaluate the tests performed in autumn 2012 and its results, as those tests were “grounded in globally reviewed studies”, even though they were not in line with the criteria adopted by the FEI.

b) That he did not request the lifting of the Provisional Suspension, but “would be interested to apply for an authorisation to suspend any penalty that may apply to him during the months of April to September 2013”.

c) Finally, that any imposition of sanctions had to be in line with the infraction committed, and that therefore the criteria of proportionality had to be taken into consideration.

8.3 On 11 February 2014, the PR clarified that he requested for a further oestrone sulphate concentration stimulation test to be conducted under similar circumstances as the oestrone sulphate concentration stimulation test performed on the sample taken in September/October 2012. That alternatively, the counter-samples should be analysed in order to determine the oestrone sulphate levels. Regarding the question of the Provisional Suspension the PR repeated that he did not request the lifting of the Provisional Suspension under Article 7.4 of the EAD Rules, but that he requested that once the sanction is imposed, and insofar as the greater part of the suspension will have been served by then, that he be allowed to comply with the rest of the suspension in instalments.

8.4 On 11 February 2014, the FEI replied that it seemed that it had initially misunderstood the PR’s request, insofar as the FEI had understood that an hCG stimulation test on testosterone (and not an hCG test on oestrone sulphate) had been requested. That the misunderstanding surely resulted from the fact that an hCG stimulation test on testosterone (and not an hCG test on oestrone sulphate) is the standard and industry recognized test in the detection of cryptorchidism. That therefore it did not agree for any further tests to be performed on the Horse, unless the Tribunal would deem this necessary. That furthermore it had not been agreed by the Parties that the tests to be performed in January 2013 would have to be under the same circumstances as the tests performed in autumn 2012, as in particular, a different point of time in the season had been agreed upon by the Parties as the sampling date. With regards to the PR’s request to be granted the possibility to serve any rest of a period of suspension in instalments the FEI further informed the PR that serving a suspension
in instalments was not possible under the applicable rules.

8.5 On 25 February 2014, the PR waived his right to a Final Hearing.

9. Jurisdiction

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

10. The Person Responsible

10.1 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.

11. The Decision

11.1 The Tribunal is satisfied that the laboratory reports relating to the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of both HFL and LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Testosterone above the FEI threshold for geldings of 0.02 micrograms (20 ng) of free and conjugated Testosterone per millilitre in the urine sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. Testosterone – provided it is detected in a gelding’s urine sample at a level above the FEI threshold - is classified as a Banned Substance under the Equine Prohibited Substances List.

11.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Articles 2.1 of the EAD Rules.

11.3 In cases brought under Article 2.1 of the EADCMRs, the so-called strict liability principle, as described in Article 2.1.1 of the EAD Rules, applies. This means that once a positive finding of a Prohibited Substance has been established, an EAD Rule violation has been established by the FEI and 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. 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 “pre-requisite” 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”.

11.4 The Tribunal has taken note of the claim by the rider that in the case at hand, an exception should be made from the strict liability concept
insofar as Testosterone would qualify as a Banned Substance that can also be endogenously produced under Article 2.1.4 of the EAD Rules. The Tribunal however notes at the same time that Testosterone is listed on the applicable FEI Prohibited Substances list as any other Prohibited Substance, and that no special criteria had been established for Testosterone in accordance with Article 2.1.4 of the EAD Rules. Accordingly the strict liability concept applies in the case at hand.

11.5 The Tribunal has further considered the PR’s claim that the Provisional Suspension should not have automatically been imposed on him, without prior notice. The Tribunal however holds that pursuant to Article 7.4 of the EAD Rules, the FEI “shall” provisionally suspend a PR prior to a full hearing based on an Adverse Analytical Finding from the A-Sample or A- and B-Samples. It is at the discretion of the FEI to impose a Provisional Suspension based on the results of the A-Sample analysis only, and the Tribunal does not find that the PR has brought forward any convincing argument as to why the Provisional Suspension should not have been imposed based on the A-Sample finding. The Tribunal further finds that the PR, by means of the Notification Letter, had been made aware that he may request for a Provisional Hearing at a different time and date as initially proposed in the Notification Letter, in order to challenge the Provisional Suspension, and that – up and until the date of the present decision – the PR has not made use of this possibility.

11.6 Regarding the PR’s obligation to establish how the Prohibited Substance had entered the Horse’s system, the Tribunal understands that according to the PR, the Horse had been bought as a gelding, but that despite castration, it had continued to show pronounced cryptorchid-like temperament, or the temperament of a castrated male.

11.7 Therefore, and in a first step, the Tribunal needs to decide whether the PR has established that despite the Horse’s castration, the positive finding had been caused by the Horse producing the Testosterone endogenously, prior to or at the time of the sampling.

11.8 In this respect the Tribunal takes note of the tests performed by the PR in September 2012, specifically an hCG stimulation test on oestrone sulphate and a basal Testosterone test. The Tribunal takes also note of the tests performed in January 2013 following agreement between the Parties, specifically an hCG stimulation test on Testosterone, a basal oestrone sulphate test and a basal Testosterone test. Lastly the Tribunal understands that following the repeated request by the PR and despite the FEI’s argument that an hCG stimulation test on oestrone sulphate was not an industry recognised test for the detection of cryptorchidism, Beaufort Cottage Laboratories had undertaken oestrone sulphate tests on the pre- and post-stimulation samples taken from the Horse in January 2013. The Tribunal understands that the results of the tests performed in September 2012 are the only results suggesting that testicular tissue had remained in the Horse’s body.

11.9 Taking into account the explanations and evidence provided of all tests performed on the Horse, the Tribunal finds that the PR has not succeeded
in establishing that the Testosterone has been endogenously produced, and therefore has not established, by a balance of probability, how the Testosterone had entered the Horse’s system.

11.10 The Tribunal comes to this conclusion for a number of reasons. Firstly, the Tribunal finds that the PR has not established that the samples analysed in autumn 2012 had indeed been taken from the Horse in question. No information is provided by the PR regarding the identity of the horse of which those samples had been taken, and therefore the Tribunal will have to disregard the results of these tests.

11.11 However, even if the Tribunal would consider the results of the autumn 2012 tests as reliable evidence despite the fact that it has not been established that the underlying samples had been taken from the Horse, the Tribunal still finds that these tests would not lead to any meaningful results. The Tribunal comes to this conclusion based on the expert statement of Dr. Barrelet. In the opinion of the Tribunal, Dr. Barrelet convincingly explained that an hCG stimulation test on oestrone sulphate is not recognised by the industry as leading to meaningful results. The Tribunal further finds that the PR has not provided any evidence or published literature which suggested otherwise. Specifically, whereas the expert by the PR, Dr. Roig, contended that the “measurement of oestrone sulphate” in the plasma of horses has been shown to be a good method to determine whether testicular tissue was present in a castrated horse, Dr. Roig does not specify that the measurement of oestrone sulphate should be made prior to and after stimulation of the Horse with hCG. In conclusion, the Tribunal finds that it is of utmost importance that in the context of the detection of cryptorchidism, industry recognized testing methods are used, and is therefore disregarding the hCG stimulation test on oestrone sulphate performed by the PR in 2012.

11.12 Furthermore, even if despite the above the Tribunal would accept the tests performed by the PR in 2012 as reliable evidence, the Tribunal is not convinced that the results reported by Böse Laboratory establish that the Horse is a cryptorchid. The Tribunal understands that – as undisputed by the PR - Böse Laboratory, in order to define cryptorchids, has used ranges which differ considerably from published ranges. The Tribunal however finds that it can only consider results and the interpretation thereof which are based on published and industry recognised ranges. Exclusively on this basis the possibility exists to compare past and future data, and it is essential to treat all cases, including the case at hand, equally.

11.13 The Tribunal is further convinced that the results of the tests performed on samples taken from the Horse in January 2013 unequivocally establish that the Horse does not qualify as cryptorchid.

11.14 In this respect the Tribunal further takes note of the PR’s claim that the results of the tests performed on samples taken from the Horse in January 2013 would have been different depending on the season, and that further other aspects, such as dehydration after the long ride and geldings and mares present together in limited space also influenced the elevation of Testosterone in the Horse at the Event. However, the PR
has not provided any supporting scientific documentation in this respect, and neither of the experts otherwise relied upon by him, Dr. Padin or Dr. Roig, bring forward any arguments in this respect. To the contrary, the Tribunal finds that Dr. Barrelet, supported by Dr. Cox, has convincingly explained that seasonality and the other aspects raised by the PR could not have caused the presence of elevated Testosterone in the Horse’s sample. Therefore the claims by the PR regarding the impact of seasonality and others on the test results are rejected.

11.15 With regards to the PR’s request for further tests to be conducted on the Horse, repeated the last time on 11 February 2014, the Tribunal decides to reject this request. The Tribunal comes to this conclusion for various reasons already detailed above, including the necessity for the use of industry recognized testing methods and the finding that seasonality would not influence the outcome of any hCG test.

11.16 As a result – and in the absence of any other explanation provided by the PR - the Tribunal holds that the PR has not established how the Testosterone entered the Horse’s system.

11.17 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 may be applied.

11.18 The TribunalLastly considers that the Provisional Suspension of the Horse of two (2) months, imposed by the FEI at the beginning of the proceedings, had been rightfully imposed in accordance with Article 7.4 of the EAD Rules, as the Horse’s A Sample had tested positive for a Banned Substance. Under Article 7.4 of the EAD Rules, the FEI has the discretion to impose a Provisional Suspension of any period of time on the Horse.

12. Disqualification

12.1 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.

13. Sanctions

13.1 Under the current EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year period of Ineligibility, for first time offenders. The Tribunal finds that based on the Case File, the PR is a first offender in the meaning of the EAD Rules, since he has not yet violated those EAD Rules. Further as there are no reasons for reducing the period of Ineligibility, the Tribunal is imposing a period of Ineligibility of two years on the PR.

13.2 The Tribunal takes further note of the request by the PR to serve any rest of a period of Ineligibility in instalments. The Tribunal holds that it
has no legal basis to grant such a request. The Tribunal however holds that the period of Provisional Suspension will be credited against any suspension imposed.

13.3 The 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 of the present decision. The period of Provisional Suspension, effective from 29 August 2012, the date of the imposition of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible through **28 August 2014**.

2) The PR is fined **three thousand Swiss Francs (CHF 3,000)**.

3) The PR shall contribute **two thousand Swiss Francs (CHF 2,000)** towards the legal costs of the judicial procedure, as well as the cost of the B-Sample analysis, including the costs of the transport of the sample from HFL to LCH. In addition, the PR shall bear the costs of all follow up tests conducted by the Beaufort Cottage Laboratories and HFL with regards to the samples taken on 14 January 2013.

13.4 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity at an Event, or 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 at an Event or in a Competition 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.

13.5 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned.

13.6 In accordance with Article 12 of the EAD Rules, the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport ("CAS") 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: the owner of the Horse

FOR THE PANEL

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THE CHAIR, Mr. Henrik Arle