

**DECISION of the FEI TRIBUNAL
dated 8 April 2020**

Positive Banned Substance Case No.: 2018/BS11

Horse: BOLOTA DE ALCANTARA

FEI Passport No: 105MF17/POR

Person Responsible/NF/ID: Rodrigo Picão Abreu/POR/10064534

Event/ID: CEI2* 120 Reguengos de Monsaraz (POR), 2018_CI_1341_E_S_02_01

Date: 17 February 2018

Prohibited Substance: O-Desmethyl Venlafaxine

I. COMPOSITION OF PANEL

Ms. Harveen Thauli, one member panel

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: 23 March 2020, via telephone conference call.

Present:

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

For the PR:

- Mr. Rodrigo Picão Abreu, PR
- Mr. João Abreu, PR's father & Owner of the Horse
- Ms. Isabel Abreu, PR's mother (observer)
- Ms. Marisa Chamorro, witness
- Ms. Sofia Magarreiro, witness
- Mr. António Saldanha, witness

For the FEI:

- Ms. Anna Thorstenson, Legal Counsel
- Ms. Ana Kricej, Junior Legal Counsel

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2018.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2018, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Rodrigo Picão Abreu.

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)."

GRs Art. 118.3: "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

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 – 2.8 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.”

EAD Rules Art. 10.2: “The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

A Fine of up to CHF 15,000 shall also be imposed and appropriate legal costs.”

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions, pleadings and evidence adduced during the hearing. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in this decision.

1. Factual Background

- 1.1 BOLOTA DE ALCANTARA (the “**Horse**”) participated at the CEI2* 120 in Reguengos de Monsaraz, on 17 February 2018 (the “**Event**”), in the discipline of Endurance. The Horse was ridden by Mr. Rodrigo Picão Abreu, who is the Person Responsible in accordance with Article 118.3 of the GRs (the “**PR**”).
- 1.2 The Horse was selected for sampling during the Event on 17 February 2018. The sample was divided into an A-sample and B-sample.
- 1.3 The FEI-approved Laboratory, The LGC, in Fordham, United Kingdom (the “**Laboratory**”) analysed the Horse’s urine and blood sample number 5557322 (the “**A-sample**”) and reported an adverse analytical finding for O-Desmethyl Venlafaxine in the urine sample. According to the FEI, the approximate concentration of O-Desmethyl Venlafaxine (“**ODV**”) in the sample was between 15 to 30ng/mL.
- 1.4 ODV is the major metabolite of Venlafaxine, which is an anti-depressant used to treat major depression and generalised anxiety disorder in humans, and categorised as a serotonin and noradrenaline re-uptake inhibitor (SNRI). It is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the “**FEI List**”). The positive finding for this substance in the A-sample gives rise to an EAD Rule violation

under the EADCMRs.

2. Initial Proceedings

- 2.1 On 19 March 2018, the FEI Legal Department officially notified the PR, through the National Federation of Portugal (“**POR-NF**”), of the presence of the Prohibited Substance, the rule violation and the potential consequences (the “**Notification Letter**”). 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 also included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 19 March 2018, until 18 May 2018. The Provisional Suspension of the Horse was not challenged, and the Horse has served the entire period of the Provisional Suspension.

3. The B-Sample analysis

- 3.1 The PR and the Owner of the Horse were informed in the Notification Letter that they were entitled to request an analysis of the B-sample, which neither of them requested. They also did not challenge the results of the A-sample.

4. Further proceedings

- 4.1 On 18 May 2018, a Preliminary Hearing was held via telephone conference call. On the same day, the Preliminary Hearing Panel issued a Preliminary Decision in which the Panel decided to maintain the Provisional Suspension of the PR as he had not satisfied the requirements of Article 7.4.4 of the EAD Rules for the lifting of the Provisional Suspension.
- 4.2 On 27 July 2018, the PR submitted another request for the lifting of the Provisional Suspension. The FEI opposed the lifting based on the PR’s apparent lack of evidence compared to the credible explanation of the FEI’s expert.
- 4.3 On 8 August 2018, the FEI asked the PR the following questions:
 - *When were the hay samples collected?*
 - *How long after the event was the samples collected?*
 - *How were the samples collected?*
 - *How many samples were collected?*
 - *Was it collected at several places in the paddock?*
 - *Was it only from the paddock?*
 - *Was the paddock indoor or outdoor?*
 - *How could the organiser still have hay in the paddock?*

- *How much did it rain on the paddock if it was an outdoor paddock?*
- *How can we be sure that the hay samples collected are hay from the event in question?*
- *Did the person collecting the sample use gloves?*
- *How were the samples sealed before being sent to the lab?*
- *Did you collect any other material from the area?*
- *How were the samples sent to the lab?*
- *Could there have been any breach of the integrity of the samples after sample collection?*
- *Could anyone have interfered with the samples before it arrived at the lab?*

- 4.4 On 17 October 2019, over a year later and after having received a reminder from the FEI, the Owner, who is also the PR's father, provided explanations about the positive finding. The majority of the questions in section 4.3 remained unanswered.
- 4.5 On 22 January 2020, the FEI submitted its Response as well as the Case File to the Tribunal for a Final Decision.
- 4.6 On 24 January 2020, the FEI Tribunal Chair nominated a one member panel. Neither party raised any objections to the constitution of the panel.
- 4.7 On 3 February 2020, the PR provided a further explanation about the positive finding and requested a final hearing. His explanation answered many of the FEI's questions in section 4.3 (discussed further below).
- 4.8 On 1 March 2020, the PR submitted three witness statements in advance of the final hearing.
- 4.9 On 23 March 2020, a final hearing was held via telephone conference call.

5. Written submission by and on behalf of the PR

- 5.1 The PR has been riding since he was six years old and has been a member of Portuguese teams since he was 14 years old. The PR participated in three World Championships and three European Championships as a young rider.
- 5.2 The PR (and the Owner) submitted two different explanations for the source of the Prohibited Substance: (i) accidental environmental contamination and (ii) sabotage.

- 5.3 More specifically, the PR submitted the following before and during the Preliminary Hearing:
- a) The Horse is stabled in a private barn at the PR's and the Owner's residence. They take care of the Horse and nobody else has access to their horses. They are extremely careful to comply with the FEI Rules and Regulations.
 - b) The Horse is given the same feed as their other horses. They produce their own hay and are very careful with supplements. Their horses have been tested many times, always with negative results.
 - c) On 1 May 2018, the PR and the Owner submitted general scientific articles on accidental environmental contamination, including contamination from anti-depressants. They found that accidental environmental contamination of the Banned Substance could happen from ODV because it is very stable in the environment, is absorbed by consumption, and is eliminated by urination.
 - d) The PR and the Owner explained that Portugal is ranked number one in Europe for people taking anti-depressants (including ODV). They do not take anti-depressants and nobody on their team takes them.
 - e) In their view, the alleged contamination could have only occurred at the Event. They confirmed the Horse drank only the water provided by Event organisers and the Horse grazed at the Event site.
 - f) They began thinking the Horse stalls and paddocks at the Event may have been used as toilets and that human urine could have been the source of the contamination. They stated it is very common in Portugal that stalls and paddocks are used as toilets.
 - g) When they were notified of the positive result, the Owner and the PR's veterinarian returned to the Event site and the PR's veterinarian took hay samples from where the Horse's stall had been located. This collection of samples occurred two (2) months after the Event. The PR's veterinarian personally delivered the samples to a Spanish laboratory for analysis.
 - h) On 27 July 2018, the PR and the Owner submitted an analysis, which showed a concentration of 17.3 µg/Kg Venlafaxine in the analysed hay.
 - i) In an email of 17 October 2019, the Owner explained the result of the analysis identified the existence of the substance, Venlafaxine in its pure state (i.e., without being metabolized). This meant that

accidental environmental contamination was not possible. The PR and the Owner, therefore, suspected sabotage.

- j) The Owner explained he had a “strong discussion” with someone the day before the Event and he and the PR suspected this person was the saboteur. They claimed the alleged saboteur takes anti-depressant medication; has a history of doping as a rider, trainer and owner; used a cocktail of various substances in one particular instance that resulted in a positive finding; and is a conflicted person who has had disagreements with others.

6. Written Response by the FEI

- 6.1 On 22 January 2020, the FEI provided its Response in this case.
- 6.2 To start with, the FEI submitted the following about the science in this case:

"O-Desmethyl Venlafaxine (ODV) is the major metabolite of Venlafaxine which is an anti-depressant agent used for treatment of major depression and generalised anxiety disorder in humans, and categorised as a serotonin and noradrenaline re-uptake inhibitor (SNRI).

Venlafaxine, is a human prescription drug which is not licensed for any veterinary use and it only exists in the form of tablets. There is very little science available for the use of Banned Substances in horses, since those substance should not be found in the horse in the first place. The FEI has seen many positive cases where typically human drugs have been used for horses and it is not unusual to find substances for human use only, also in horses.

Venlafaxine is highly metabolized in humans with a urinary excretion of the unchanged compound between 1-10 %. Metabolism to O-Desmethyl Venlafaxine is the primary route of the first pass metabolism and gets excreted unchanged or as its glucuronide in the urine.

Therefore, if there is no O-Desmethyl Venlafaxine detected in the hay it cannot have been contaminated from someone urinating on the hay after they took Venlafaxine.

The analysis of the hay confirmed the presence of Venlafaxine, the parent drug, not the major metabolite ODV.

This indicates that the drug has not passed a human body and ending up in the hay i.e. by a human taking Venlafaxine urinating on the hay.

Instead the evidence suggests that tablets of the drug Venlafaxine have been dropped directly on the hay.

The Event in question was on 17 February 2018, and the hay was analysed on 25 April 2018, more than two months later. The FEI has doubts as to how much of the substance that can remain in the rest paddocks at the event site, presumably outdoors, considering weather conditions such as rain and wind after this time.

The PR has not clarified from where exactly the hay samples were taken (i.e. by pictures), how the hay samples were collected, nor how many samples that were taken and analysed. Neither has he clarified how many of the analysed hay samples that were positive or negative for Venlafaxine.

The FEI Veterinary Department has also evaluated the evidence of this case and consider it as an unlikely scenario.

Due to the lack of the above information, the FEI does not find this scenario as the plausible source of the positive finding of ODV."

6.3 More specifically, the FEI argued that:

- a) Article 3.1 of the EAD Rules makes it the FEI's burden to establish all of the elements of the EAD Rule violation, to the comfortable satisfaction of the Tribunal.
- b) The elements of an Article 2.1 violation are straightforward: *"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."* Instead it is a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-sample taken from the Horse at the Event confirmed the presence of ODV and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR does not dispute the presence of ODV in the Horse's sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
- c) Where a Prohibited Substance is found in a horse's sample, a clear and unequivocal presumption arises under the EAD Rules that it was administered to a horse in a deliberate attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provides that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the EAD Rules, is subject to a period of Ineligibility of two (2) years, unless he is able to rebut the

presumption of fault. If the PR fails to do so, the two (2) year period of Ineligibility applies.

- d) The EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse's system. Indeed, this requirement is strictly applied because without such proof, it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of a Banned Substance in the Horse. The FEI submitted in this context that the PR has to provide clear and convincing evidence that proves how the ODV entered the Horse's system.
- e) In this case, the PR provided two possible scenarios for the source of the positive finding. There were no other positive findings of ODV at this Event, which made accidental environmental contamination unlikely.
- f) The FEI argued that the only scientific explanation for the finding of Venlafaxine (and not the metabolite ODV) in the hay analysis suggested that tablets of the drug, Venlafaxine had been dropped directly on the hay. However, the FEI's expert questioned this theory and questioned the timing of the collection, the temperature changes and the stability of the Venlafaxine.
- g) The FEI submitted the PR did not provide any evidence about the alleged saboteur sabotaging the Horse and his use of Venlafaxine. The FEI stated there was no causal link of Venlafaxine to the alleged saboteur or of the alleged saboteur to the Horse, and this theory was, therefore, only mere speculation for the positive finding.
- h) Therefore, the FEI was of the opinion that the PR had not fulfilled, on a balance of probability, how the ODV entered the Horse's body.
- i) The FEI highlighted that Banned Substances should never be found in a competition horse, they are substances with no legitimate use, and they have a high potential for abuse.
- j) It was the PR's personal duty to ensure that no Banned Substance was present in the Horse's body. Since the PR did not establish how the ODV entered the Horse's body, there would not be any reduction of the standard sanction for Banned Substances, namely a two (2) period of Ineligibility.
- k) Finally, the FEI submitted that the FEI agreed to apply Article 10.10.2 of the EAD Rules, which provides that the period of Ineligibility may

start from the date of sample collection. The FEI agreed to this because there were delays in these proceedings that were not attributable to the PR.

l) The FEI requested the following prayers for relief:

- (i) upholding the charge that the PR violated Article 2.1 of the EAD Rules;*
- (ii) disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the EAD Rules;*
- (iii) imposing a period of Ineligibility of two (2) years on the PR;*
- (iv) fining the PR in the amount of 7 500 CHF; and*
- (v) ordering the PR to pay the legal costs of 500 CHF that the FEI has incurred in these proceedings.*

7. Further submission by or on behalf of the PR

7.1 In its further submission of 3 February 2020, the Owner confirmed that he and the PR did not contest the positive finding. They intended, however, to prove that the PR bore No (Significant) Fault or Negligence for the rule violation. They believed they had been victims of sabotage. They also lodged a complaint against the alleged saboteur with the POR-NF.

7.2 The Owner clarified that the laboratory report indicated "rest paddock" instead of "box" (i.e., stall), which was where he collected the sample. He also provided the following additional information about the actual collection in response to the FEI's questions in section 4.3:

"So (we were in April), we called Mr Miguel Pinheiro (vice-president of our National Federation at that time and living in the event's city) to know if the boxes were still there, and he told me that the rented boxes were removed just a few days ago and that they weren't used after the event. He also told us that the places were marked on the floor and that the hay was still there in each box place, making it possible to collect a sample from the exact place where it was our mare box [...]."

The samples were collected by our veterinary, JF, who came with the PR father to the place even, and collected several samples with chirurgical gloves from different places of the mare box place, and then mixed up. One (mixed) sample was sent to the lab and the other one is still in PR's possession. The veterinary took the usual and right procedures in collecting the sample in order to prevent its contamination, and he took himself the sample to the laboratory."

- 7.3 The Owner submitted that he and his family are passionate about the sport, strongly condemn the abuse and use of drugs, and always gave priority to their horses' welfare. His family has had long riding careers and they have never been involved in any doping case.
- 7.4 On 1 March 2020, the PR and the Owner provided three witness statements. One witness stated he heard the Owner calling the alleged saboteur a "thief" a day before the Event. The second witness stated she has known the alleged saboteur for many years and advised he takes anti-depressants. The last witness previously lived with the saboteur and claimed the alleged saboteur began taking Effexor for anxiety when they lived together.

8. Final Hearing

- 8.1 During the hearing, and where not mentioned otherwise in the following, both Parties maintained their previous submissions.
- 8.2 At the outset of the hearing, and at the Tribunal's request, the FEI confirmed that both Parties caused delays in the proceedings. The Owner and the PR informed the Tribunal that the POR-NF had not acted or made any decision about their complaint.
- 8.3 In responding to the FEI's question about whether it was possible that some pills of this drug could have been dropped by accident on the hay that was tested, the Owner advised this was not possible as he and the PR's veterinarian were the only ones at the Event site to take the samples. Furthermore, the veterinarian took all precautions when collecting the samples by wearing surgical gloves and delivered them personally to the laboratory. He was not very hopeful that the samples would still test positive considering the amount of time that had passed between the Event and the sample collection, but they did. He further explained that during competition, all horses were in their paddocks and returned to their stalls in the evening. Therefore, in his view, sabotage was only possible during the night. He confirmed all competitors had their own staff at the Event.
- 8.4 The PR's witnesses confirmed what they stated in their witness statements. However, none of them could name the medication the alleged saboteur took. Finally, one witness stated that he has known the alleged saboteur for 30 years and witnessed him doing "badly things" about three or four times. The witness speculated the alleged saboteur may have sabotaged the Horse.
- 8.5 The Owner stated that he always thought that his horses would be immune to the problem of doping as he and the PR have always been

very careful with them and feed them only hay and basic concentrate. The Owner mentioned he was previously involved with the POR-NF to establish drug testing protocols.

- 8.6 The PR mentioned he had only recently finished his university studies and started his job six months earlier. His monthly salary amounted to 600 Euros, and the fine requested by the FEI was too high.
- 8.7 The FEI submitted that the EAD Rules are constructed in such a way that the burden is on the PR to establish how the source of the Prohibited Substance entered the Horse's system. It was the FEI's position that the PR did not satisfy his burden of proving that he bears No (Significant) Fault or Negligence.
- 8.8 The FEI acknowledged the PR and his family are hard-working and honest farmers with a long tradition of breeding horses and who treat their horses with the utmost care.
- 8.9 At the conclusion of the hearing, the Parties acknowledged that the Tribunal had respected their right to be heard and their procedural rights.

9. Post-hearing submissions

- 9.1 On 27 March 2020, and having been asked by the Tribunal to do so during the hearing, the PR provided a receipt showing his monthly income as 634,35 Euros per month.

10. Jurisdiction

- 10.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs as well as Article 18 of the IRs.

11. The Person Responsible

- 11.1 In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in this case as he competed with the Horse at the Event.

12. The Decision

- 12.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A Sample. The Tribunal is satisfied that the laboratory reports relating to the A Sample reflect that the analytical tests were performed

in an acceptable manner and that the finding of the Laboratory is accurate. The Tribunal is satisfied that the test results evidence the presence of ODV in the Horse's urine sample taken at the Event. The PR accepts the accuracy of the test results and the positive finding. ODV is a Banned Substance on the FEI List and the presence of this substance in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.

- 12.2 As a result, the FEI has established an adverse analytical finding and has sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
- 12.3 Pursuant to Article 10.2.1 of the EAD Rules, the period of Ineligibility for an Article 2.1 EAD rule violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample is two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 12.4 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the EAD Rules.
- 12.5 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.
- 12.6 The Tribunal found the PR and the Owner to be credible during the hearing, and the Tribunal has no reason to doubt that the PR and his family carefully manage their horses. The Tribunal has carefully considered the PR's theory that the alleged saboteur dropped an anti-depressant onto the Horse's hay, which ultimately led to the positive finding of ODV in the Horse. The Tribunal finds, however, the PR's theory is based on mere speculation. The PR did not provide any concrete evidence linking the ODV to the alleged saboteur or the alleged saboteur to the Horse. The Tribunal was not convinced for the following reasons:
 - a. the hay samples were collected two months after the Event after being exposed to changes in temperature and other human traffic during that timeframe at the site of the Horse's stall;
 - b. the PR answered many but not all of the questions asked by the FEI about the sample collections. For example, the Tribunal does not know: how many samples were collected and analysed; why there was still hay at the Event site two months later; and whether some samples tested negative. The stalls were apparently moved a few days before the Owner and PR's veterinarian collected the samples.

The Tribunal also queries whether they were certain they collected hay from the Horse's stall and if so, whether the workers who moved the stalls damaged the integrity of the site;

- c. the scientific articles provided general information only; and
- d. the testimony of the witnesses was based primarily on speculation and conjecture. None of them could name the medication that the alleged saboteur apparently takes. However, even if they could name the medication, this still would not prove sabotage by the alleged saboteur.

12.7 As confirmed by various CAS panels as well as FEI Tribunals, the PR has to present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the PR. The PR's scenario has to reach a 51% threshold for it to be successful.¹

12.8 The Tribunal finds the PR has not provided any concrete evidence that the alleged saboteur sabotaged the Horse with anti-depressants. Given the lack of such evidence, the sabotage theory remains mere speculation. As a result, the Tribunal finds that the PR has not established – on a balance of probability – how the Banned Substance entered the Horse's system.

12.9 Where the first hurdle has not been met, *i.e.*, establishing the source of the Banned Substance, the Tribunal cannot continue with the second step and evaluate the PR's degree of fault. The Tribunal finds that no reduction under Articles 10.4 and 10.5 of the EAD Rules is warranted in this case. The Tribunal further notes that Article 10.6 of the EAD Rules was not invoked.

12.10 The Tribunal notes that the PR has been provisionally suspended for two (2) years already. If the PR respected the conditions of his provisional suspension, which is presumed, as nothing to the contrary has been submitted, the period of the Provisional Suspension is credited against the final period of Ineligibility.

12.11 Finally, the Tribunal notes that the FEI agreed to apply Article 10.10.2 of the EAD Rules so that the period of Ineligibility may start from the date of sample collection from the Horse (17 February 2018) instead of the imposition of the Provisional Suspension (19 March 2018). However, given

¹ See for example Viret, M., "Evidence in Anti-Doping at the Intersection of Science & Law", Asser International Sports Law Series, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWBF v. UKAD & Gibbs. See for example also Case 2017/BS32 SAURA DE FONDCOMBE, Final Tribunal Decision dated 24 February 2020.

the PR's contribution to the delays in these proceedings, the Tribunal does not find that Article 10.10.2 of the EAD Rules is applicable in this case. In any event, the only difference is that the period of Ineligibility would have started a month earlier, but the PR has already been provisionally suspended for two (2) years.

12.12 Regarding a fine and costs, the Tribunal has taken note of the PR's submission about his financial situation. Taking this into account, the Tribunal decides to impose a fine of 1200 CHF and costs of 500 CHF.

12.13 Any other claims by the Parties shall be dismissed. While the Tribunal has taken them into account, the Tribunal finds they were not decisive to the outcome of this decision.

13. Disqualification

13.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

14. Sanctions

14.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation is two (2) years.

14.2 The Tribunal 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 is for a period of **two (2) years**. The period of the Provisional Suspension, effective from 19 March 2018 until the date of this decision is credited against the period of Ineligibility imposed in this decision. Therefore, the PR is now eligible to compete from the date of this decision.

2) The PR is fined **one thousand two hundred Swiss Francs (CHF 1,200)**.

3) The PR will contribute **five hundred Swiss Francs (CHF 500)** for the cost in these proceedings.

14.3 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 authorised or organised 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 organisation (Article 10.11.1 of the EAD Rules).

- 14.4 Where a Person Responsible who has been declared Ineligible violates the conditions in section 14.3 during Ineligibility, the results of any such participation will be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).
- 14.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 14.6 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 twenty-one (21) days of its receipt.

V. DECISION TO BE FORWARDED TO:

- a. The Parties: 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



Ms. Harveen Thauli, one member panel