

**PARTIAL DECISION of the FEI TRIBUNAL  
dated 15 February 2020**

**Consolidated Cases:**

**Human Anti-Doping Case No.:** 2020/HD01

**Athlete/FEI ID/NF:** Sheik Ali AL THANI/10024194/QAT

**Event/ID:** CSIO4\*-W Designated Olympic Qualifier for Group F – Rabat (MAR)/2019\_CI\_0141\_S\_S\_02

**Date:** 10 – 13 October 2019

**Prohibited Substance:** Carboxy-THC (Cannabis metabolite)

And

**Human Anti-Doping Case No.:** 2020/HD02

**Athlete/FEI ID/NF:** Bassem MOHAMMED/10082635/QAT

**Event/ID:** CSIO4\*-W Designated Olympic Qualifier for Group F – Rabat (MAR)/2019\_CI\_0141\_S\_S\_02

**Date:** 10 – 13 October 2019

**Prohibited Substance:** Carboxy-THC (Cannabis metabolite)

**I. COMPOSITION OF PANEL**

Mr. José A. Rodriguez Alvarez, one member panel

**II. SUMMARY OF THE FACTS**

**1. Memorandum of case: By Legal Department.**

**2. Summary information provided by Athletes:** The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file as well as during the hearing, as also made available by and to the Athletes.

**3. Hearing:** 11 February 2020, via video conference call.

Present:

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

For the Athletes:

- Mr. Walter Van Steenbrugge, counsel
- Mr. Johan Heymans, counsel
- Ms. Esther Theyskens, counsel

For the FEI:

- Ms. Anna Thorstenson, Legal Counsel
- Ms. Ana Kricej, Junior Legal Counsel
- Mr. Mikael Rentsch, Legal Director
- Ms. Catherine Bollon, FEI Athletes Services & Human Anti-Doping Advisor

Witness:

- Mr. Mohammed Al Thani, witness (via telephone)

### **III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

#### **1. Articles of the Statutes/Regulations which are applicable (listing not exhaustive):**

Statutes 24<sup>th</sup> edition, effective 20 November 2018 ("**Statutes**"), Arts. 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2019, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

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

FEI Jumping Rules, 26<sup>th</sup> edition, effective 1 January 2018, Updated effective 1 January 2019, Article 264 ("**JRs**").

Anti-Doping Rules For Human Athletes, Based upon the 2015 WADA Code, effective 1 January 2015 ("**ADRHA**").

The World Anti-Doping Code - International Standard – Prohibited List – January 2019 ("**2019 WADA Prohibited List**").

**2. Athletes:** Sh. Ali Al Thani ("**Sh. Al Thani**") and Mr. Bassem Mohammed ("**Mr. Mohammed**") (together "**the Athletes**"), represented by Van Steenbrugge Advocaten, Mariakerke, Belgium.

**3. Relevant provisions:**

GRs Article 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)."

ADRHA Article 2.1.1: "It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.<sup>1</sup>"

ADRHA ARTICLE 9 AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS:

"9.1 An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes. Where applicable, consequences to teams are detailed in Article 11.

9.2 In circumstances where an Athlete is informed of an Adverse Analytical Finding in accordance with Article 7.3 and

(i) the B Sample analysis confirms the A Sample analysis (or the right to request the analysis of the B Sample is not exercised); and

(iii) where requested by the FEI and/or the Athlete,

the matter will be submitted to the FEI Tribunal who shall decide upon the Application of Article 9.1."

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<sup>1</sup> Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to an Athlete's Fault. This rule has been referred to in various CAS decisions as "Strict Liability". An Athlete's Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.

## ADRHA ARTICLE 11 CONSEQUENCES TO TEAMS

“11.1 Where one member of a team (outside of Team Sports) has been notified of an anti-doping rule violation under Article 7 in connection with an Event, the ruling body for the Event shall, where possible, conduct appropriate Target Testing of all members of the team during the Event Period.

11.2 Unless otherwise provided in the FEI Regulations for Equestrian Events at the Olympic or Paralympic Games, the Consequences to teams set forth below will apply.

11.2.1 At the Olympic Games, Paralympic Games, and FEI World Equestrian Games:

If a member of a team is found to have committed a violation of these Anti-Doping Rules during an Event, the Athlete’s results will be Disqualified in all Competitions and the entire Team Disqualified.

11.2.2 At all other Events than those listed above:

If a member of a team is found to have committed a violation of these Anti-Doping Rules during an Event where a team ranking is based on the addition of individual results, the Athlete’s results may be Disqualified in all Competitions. Should this be the case, the Athlete’s results will be subtracted from the team result, to be replaced with the results of the next applicable team member. If by removing the Athlete’s results from the team results, the number of Athletes counting for the team is less than the required number, the team shall be eliminated from the ranking.

11.2.3 Notwithstanding the above, for all Events, including but not limited to the Olympic and Paralympic Games, exceptional circumstances may be considered.”

JRs Article 264.7: “Number of teams and Athletes in the second round

At the discretion of the OC, the best six (minimum) to eight (maximum) teams after the first round take part in the second round with four Athletes per team, except otherwise provided in paragraphs 4.2 and 5.2 above. If there are fewer than six teams participating in the first round, all teams, if not eliminated in the first round, may take part in the second round with four Athletes per team.

(...)”

## 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 with regard to the disqualification of results from the event in question. 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 Tribunal has fully 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 The Athletes participated at the CSIO4\*-W Designated Olympic Qualifier for Group F in Rabat, Morocco, from 10 to 13 October 2019 (the "**Event**"), in the discipline of Jumping. The Athletes' National Federation is the Qatar National Federation ("**QAT-NF**"). Both Athletes are registered with the FEI.
- 1.2 The Athletes were subject to in-competition testing on 13 October 2019.
- 1.3 Analysis of the Athletes' samples revealed the presence of Carboxy-THC, a metabolite of Cannabis. Cannabis is listed in class S8 – Cannabinoids, and is considered a "Specified Substance", prohibited in competition under the 2019 WADA Prohibited List. The estimated concentration in the sample is 404 ng/mL for Sh. Al Thani, and 2955 ng/mL for Mr. Mohammed, which is greater than the Decision Limit of 180 ng/mL. The positive finding of Carboxy-THC in the sample gives rise to a violation of the ADRHA.
- 1.4 The following results were recorded by the FEI with regard to the Athletes and their team at the Competition on 13 October 2019:
  - a) 8th position (Sh. Al Thani – score 1/8; and Mr. Mohammed – score 4/1) - Individual Results
  - b) 8th position (Sh. Al Thani ranked 2<sup>nd</sup> in the team, and Mr. Mohammed ranked 4<sup>th</sup> in the team) – Team Results Qatar (4 Athletes total)

Further, the Results sheet outlines that Competition Rule 264.7 of the JRs related to the Nations Cup applied.

## **2. The Further Proceedings**

- 2.1 On 6 January 2020, the FEI Legal Department officially notified the Athletes, through the QAT-NF, of the presence of the Prohibited Substance following the laboratory analysis, the apparent rule violations and the consequences implicated.
- 2.2 The FEI further informed the Athletes that having reviewed whether a TUE has been granted the FEI confirmed that no TUEs have been granted for the use of the substance found in the Athletes' samples.

## **3. The B-Sample analysis**

- 3.1 On 24 January 2020, the FEI informed the Athletes of the results of the B-Sample analysis, which confirmed the presence of the Carboxy-THC in both samples.

## **4. Proceedings regarding the Disqualification of Results**

- 4.1 On 24 January 2020, the FEI requested the Automatic Disqualification of the Results in accordance with Article 9.1 of the ADRHA (the "**Request**"). The FEI further requested the Tribunal to issue a Partial Decision on this matter by 29 January 2020.
- 4.2 On 26 January 2020, the FEI Tribunal Chair appointed a one member panel for the case at hand. Neither party objected to the constitution of the panel, and – given the urgent request by the FEI - invited the Athletes to provide their position with regard to the Disqualification of the Results by 27 January 2020.
- 4.3 On 27 January 2020, the Athletes provided their first submission with regard to the Request.
- 4.4 On 28 January 2020, the FEI informed the Tribunal as follows:

*"The FEI and the legal representative of the two Athletes had a meeting this morning.*

*We can confirm that the two cases should be consolidated for the purpose of the proceedings.*

*After consultation with the Olympic department the FEI can confirm that the deadline can be pushed, to have a final partial decision on the disqualification at the latest on 15 February 2020. (...)"*

The FEI further provided the Tribunal with a schedule of submissions, and a proposed hearing date.

4.5 On 31 January 2020, the Tribunal proposed a different hearing date, and informed the Parties that all written submissions shall be received by the Tribunal no later than 10 February 2020, and that – at the outset – no post-hearing submissions will be granted, as were requested by the FEI.

4.6 On 3 February 2020, the Athletes' counsel submitted – among others – as follows:

*"(...) However, I request to have the possibility to appear physically before your Tribunal in order to defend the interests of my clients. The last week we have received a lot of new pieces of evidence which shed an important and new light on the entire case. I discussed this situation extensively with the clients and we have all come to the conclusion that through a hearing by phone it is impossible to properly explain and highlight such documentation. (...)"*

4.7 On 4 February 2020, the Tribunal clarified the submission deadlines, and informed the Parties as follows with regard to the hearing:

*"(i) In accordance with Article 45.3 of the Internal Regulations of the FEI Tribunal (the "IRs"), the setting of a hearing's time and date and in which form is fully at the panel's discretion;  
(ii) in view of the urgency of the matter a hearing has been accepted within the reasonable time;  
(iii) the hearing can be hold via video conference call; however no in-person attendance by the panel is feasible."*

4.8 On 7 February 2020, the Athletes provided their submission in relation to the Request.

4.9 On 10 February 2020, the FEI informed the Tribunal that the FEI was not to provide any further written submission, and would make any further (if any) submissions during the hearing.

4.10 On 11 February 2020, a hearing was held via videoconference call.

## **5. Submission by the FEI**

5.1 In essence the FEI submitted the following prayers for relief, and requested the Tribunal to issue such decision at the latest on 29 January

2020<sup>2</sup>, in order to enable re-allocated team and individuals to prepare for the Olympic Games:

- (i) *To automatically disqualify the individual results of Mr. Ali Al Thani [and in the FEI's second request: to automatically disqualify the individual results of Mr. Bassem Mohammed] in the Designated Olympic Qualifier for Group F in Rabat (MAR), on 13 October 2019 in accordance with Art. 9.1 ADRHA and;*
- (ii) *To eliminate the QAT Team results from the ranking as a consequence of the team having less than the required number of riders to constitute a team in accordance with Art 11.2.2 ADRHA.*

5.2 The FEI submitted the following reasons for the Request on their initial correspondence remitted on 24 January 2020 and similar reason was presented at the relevant hearing:

*"As stated above the present case and related disqualification of the results have important implications on the Olympic qualifier for Tokyo 2020 and therefore a partial decision at this stage of the procedure is of the utmost importance. The FEI would like to highlight the nature of the Designated Olympic Qualifier in Rabat (MAR) was specially organised to offer an opportunity for teams in Group F to qualify to the Olympic Games in Tokyo 2020.*

*The Team competition in question consisted of the addition of the individual results of the three best riders in a team. Mr Ali Al Thani was one of the three best riders in his team of four riders.*

*Since Mr Ali Al Thani [or Mr. Mohammed respectively for the second request] was part of the Qatar team who ultimately finished 8th in the Team competition on 13 October 2019, and therefore earned a quota for the Olympic Games, the disqualification of his results does have a great impact of the overall team results in the Designated Olympic Qualifier. (Annex 3-4)*

*The deadlines for the qualifications to the Olympic Games are very tight. Should the Qatar team be eliminated from the rankings, and other NFs, NOCs, athletes, and horse owners, are affected of this decision and need to be aware of the outcome at the latest on 29 January 2020. Therefore it is an urgent matter not only to the FEI, but also to many involved parties such as NFs and NOCs (National Olympic Committees) who need to have clarity as to which teams are qualified and can participate in the*

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<sup>2</sup> Later on the FEI clarified that the FEI required a decision by 15 February 2020, as re-allocations needed to take place on 17 February 2020.



*Olympic Games, in order to plan their competition schedules, expenses, and funding accordingly. (Annex 5 p.6)*

*Important deadlines to apply for the Olympic Games are as follows:*

- By 3 February, all NOCs must confirm or decline to the FEI if they will send a team.*
- By 17 February, the FEI shall inform the NOCs/NFs of any reallocation of quota places and allocation of individual quota places (that are dependent on how many teams are confirmed to participate at the Olympic Games (see Annex 5, page 10)*

*Thus, the team following Qatar in this Designated Olympic Qualifier is Morocco who would need to confirm or decline to the FEI by this date if they will send a team to the Olympic Games.*

*In addition, the disqualification does not only affect the team quotas, the individual quotas to the Olympic Games. Since if a team earns a team quota instead of an individual quota, some of the individual quotas might be liberated for other NFs to fill.*

*In addition to this case, another member of the Qatar team also has a positive arising from this competition, namely case 2020/HD02 Bassem Mohammed [or case 2020/HD01 Sh. Al Thani respectively for the second request]. As a result, for the purpose of the Team results, the two decisions must be reviewed jointly and consolidated on this point.*

*The Athlete[s] tested positive on 13 October 2019 in connection to the Team Competition of that day. As per Art. 9.1 above the individual results obtained in that competition shall be automatically disqualified with all resulting consequences, including forfeiture of any related medals, points and prizes. The rule applies regardless if the period of Ineligibility is reduced or eliminated under Article 10 ADRHA, e.g., on the basis of No (or No Significant) Fault or Negligence, no matter the explanations for the positive finding, since the Athlete did compete with a prohibited substance in his body in this competition. The quick application of the automatic disqualification is necessary in order to safeguard the level playing field of equestrian sport.*

*The individual results of the two members of the Qatar team on 13 October 2019 that are to be automatically disqualified need to be subtracted from the team results.*

*By removing those Athletes' results from the team results, the number of Athletes in the Qatar team is less than the required number to constitute a team, namely only two team members remaining.*

*In consequence, the Qatar team must be eliminated from the Team ranking and there will be no results for the QAT Team for this team competition and Designated Olympic Qualifier. Thus, by disqualifying the results of the two athletes, and also eliminate the Team results, Qatar will lose the Olympic Team quota earned at this event."*

- 5.3 Finally, the FEI reserved its rights to ask for the disqualification of the remaining days of the Event in the process of the merits of the case.

## **6. Submissions of the Athletes or on their behalf**

- 6.1 On 27 January 2020, and on 7 February 2020, the Athletes submitted in essence as follows.
- 6.2 On 29 January 2020, the Athletes submitted – among others – that the state of the proceedings did not permit a (preliminary) decision by the Tribunal. At that time, the Athletes had not been provided with the full laboratory packages of both the A and B samples by the FEI. Those packages were essential for their expert, to draw any conclusions as to whether the analysis of the A and B samples was duly executed.
- 6.3 Furthermore, the Athletes submitted several other procedural arguments. The ones maintained in the Athletes' submission of 7 February 2020 will be outlined in the following.
- 6.4 More specifically, the Athletes alleged a violation of Article 7.3.1 (g) of the ADRHA, the IRs and Article 6, §1 of the European Convention on Human Rights ("**ECHR**") by not organizing an in-person hearing. The Athletes had repeatedly requested to be heard in person, and neither the ADRHA, nor the notification letter, nor the hearing request form provided that the ultimate decision as to the form of the hearing is made by the Tribunal. Further, Article 45.3 of the IRs only applied to Appeals proceedings, and the articles of the IRs applicable to the proceedings at hand (i.e. articles 19 to 28) did not include any provision on the basis of which the setting of the hearing's form was at the Tribunal's discretion.
- 6.5 Furthermore, the refusal by the Tribunal to hold an in-person hearing constituted a violation of the Athletes fair trial rights, as protected by Article 6, §1 of the ECHR, which applied to the "*determination of (...) civil rights and obligations*". Referring to the *ECHR, nos. 40575/10 and 67474/10, Mutu and Pechstein v. Switzerland, 2 October 2018 (§§ 56 – 59) Decision*, the Athletes argued that the right of a professional athlete to carry out his occupation - which might be affected by disciplinary proceedings in the context of a (national or international)

sports federation – was without doubt a “civil right” in nature. What was important in this assessment - according to the European Court - was the sanctions which an individual risked incurring in the disciplinary proceedings. In the present cases the Tribunal may impose provisional suspensions on the Athletes at any time prior to the hearing, and periods of Ineligibility on the Athletes. The FEI requested the elimination of the Team. The potential measures or sanctions the Tribunal may impose clearly affected the Athlete’s right to carry out their occupation. Thus Article 6, §1 ECHR applied to the proceedings, and this was also reflected in Article 8 of the ADRHA, which provides for the right to a fair hearing.

- 6.6 Article 6, §1 ECHR enshrined the right to a fair trial, which included the principle of “equality of arms” and the right to adversarial proceedings. This implied that each party must be afforded a reasonable opportunity to present their case – including their evidence – under conditions that do not place them at a substantial disadvantage vis-à-vis the other party. The Athletes had provided ample reasons why a hearing by conference call would prevent them from presenting their evidence, and the legal counsel would travel to any location the Tribunal may see fit to attend the in-person hearing.
- 6.7 Moreover, by unduly expediting the proceedings and not affording a reasonable opportunity to prepare the case, Article 8.1.2 of the ADRHA and Article 6, § 1 ECHR were violated. In the case at hand the Athletes were not awarded a reasonable opportunity to prepare their written submissions and collect their evidence, as in the Athletes view their deadline for their written submissions was only confirmed by the Tribunal on 4 February 2020 at 19:32 CET. Until that time, numerous emails and letters were sent back and forth between the Parties and the Tribunal, causing uncertainty and confusion as to the schedule of the submissions. The Athletes alleged that as a result they had *“only three business days to prepare their written submissions at ease and without disturbance and to collect their evidence.”* In view of the importance of the case, the drastic sanctions that the FEI sought and the major impact that this case might have on the Athletes and their Team, this timeframe could not be considered as a reasonable time. In addition, it was impossible for the Athletes to collect all the evidence that they wished to present to the Tribunal and get in contact with all witnesses they wished to call.
- 6.8 Further, the “urgency” invoked by the FEI to expedite the proceedings in violation of the Athletes’ fair trial rights was completely artificial and self-imposed, in essence because the qualification timeline for entries for the 2020 Tokyo Olympic Games was only on 6 July 2020. Any other

deadlines referred to by the FEI were by no means imposed by the Olympic Games and thus not binding. In the Athletes' view exceeding these deadlines would not have any insurmountable impact on the actual qualification process for the Olympic Games. Therefore, in the view of the Athletes, expedited proceedings were not justified on the basis of Article 8.1.2 of the ADRHA. In any case, since the FEI was aware of the internal deadlines, the FEI should have acted faster upon the in-competition testing of the Athletes, having taken three and a half months after the test to notify the Athletes of the Adverse Analytical Findings.

- 6.9 The Athletes further invoked that Article 6, §1 of the ECHR was violated by not granting them the right to have the last word.
- 6.10 With regard to the Disqualification of the Results, the Athletes submitted that in accordance with Article 9.2 of the ADRHA the Tribunal should decide whether or not to apply Article 9.1 of the ADRHA in the current case. As Article 9.1 of the ADRHA only applied in case of "an anti-doping rule violation", the Tribunal had to make a decision on the merits based on all the evidence and with respect for the Athletes' fair trial rights and their right to a fair hearing. Splitting up the decision-making process would go against Articles 9.1 and 9.2 of the ADRHA, and proceeding to a decision on the merits of the case and the elimination of the Team would violate Article 8.1.2 of the ADRHA and Article 6, §1 ECHR.
- 6.11 Should the Tribunal proceed to the assessment of the case, it had to conclude that exceptional circumstances were present that did not permit the elimination of the Team. The Athletes denied that they knowingly smoked, inhaled or otherwise used cannabis during the Event. But they are convinced that the only plausible explanation for the positive tests and the values detected was that they were unknowingly exposed to cannabis during their visits to the hotel's shisha bar in Rabat, which they visited on a daily basis during the Event. Smoking shisha was very popular in Qatar, and was particularly common for professional athletes in order to relax. While shisha was also popular in Morocco, a substance named "kif", *i.e.*, the Moroccan cannabis was often used instead of or with the shisha tobacco, unlike in Qatar. The team manager (as also confirmed by witness statements of two team managers present at the Event) had strictly followed up and supervised the Athletes, and stressed that precautions were taken in order to assure that only shisha tobacco would be used in the shishas smoked by the Athletes. Further, the Athletes' expert, Dr. Borrey, confirmed this explanation. She clarified that – even though different values of carboxy-THC were detected in the Athletes' respective

samples, they could have been exposed to a similar dose of cannabis, and the values detected had probably been accumulated over the course of several days.

- 6.12 Further, it was very implausible that the Athletes would have knowingly put themselves and the Team in such a situation. To use a substance that did not even enhance the performance at such an important event would be stupid, and they had never before tested positive for any Prohibited Substances.
- 6.13 Moreover, given the strict precautions taken by the team manager, the Athletes concluded that the kif was deliberately added to their shisha(s). The Team's most important competitor in the Event was Morocco, the host nation, which if the Team was to be eliminated, would take its place at the 2020 Tokyo Olympic Games. The Athletes had filed a criminal complaint with the Moroccan authorities. These circumstances are to be considered "exceptional" in nature, and the Tribunal could not eliminate the Team based on Article 11.2.3 of the ADRHA.
- 6.14 In the alternative, the Athletes argued that the decision on the elimination had to be suspended until the final decision on the criminal complaint in Morocco, as it was important to confirm whether the Athletes have become the victim of a crime and to find out who has committed or instructed such crime. Without this information, no reasoned decision based on all elements of the case was possible. Moreover, the FEI would not be able to guarantee that Morocco was not involved in the tampering of the Athletes' shishas during the Event.

## **7. Hearing**

- 7.1 During the hearing the Parties had ample opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its Decision on the Disqualification of the results. The Tribunal heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.
- 7.2 During the hearing, the Tribunal accepted for a witness to be called even though the Athletes did not pre-arrange for the witness to participate. In the Athletes' view witnesses should have been invited by the Tribunal, as was the case in other procedures, which is however not the case under the IRs. Despite not having pre-arranged the participation of the witness, upon agreement of the FEI and confirmation by the Panel, time

was given for all arrangements to be made for the participation of the witnesses referred in the written statement of the Athletes. In view of the short time notice, only one of the witnesses mentioned was able to participate, however during the hearing it was allowed for the second witness to participate if reachable at whatever stage of the hearing. Ultimately, the second team manager could not be reached during the hearing.

- 7.3 Further, the Tribunal granted the Athletes with the right to submit additional documents with regard to a criminal complaint lodged in Morocco concerning the alleged sabotage by the Moroccan team. The FEI – while not able to understand the contents of the documents, since they were submitted in Arabic, even though the counsel earlier mentioned that a French version exists, and the documents themselves seemed to confirm the existence in French – accepted the documents and took note that there might be criminal proceedings ongoing in Morocco.
- 7.4 During the hearing, and where not mentioned otherwise in the following, both Parties maintained their previous submissions.
- 7.5 At the outset of the hearing, the Parties were provided with the possibility to argue procedural issues. In this regard, counsels for the Athletes reiterated that the right to be heard had not been respected, since no in-person hearing had been granted. They furthermore requested for a hearing to be held in public to which the FEI opposed, and argued that hearings are to be held in private, whereas decisions of the FEI Tribunal are to be published. The Athletes counter-argued with regard to publicity that their concern was which steps the FEI would take against the Moroccan team in case it became clear that they might be responsible for the rule violations in the future. Furthermore, the Athletes reiterated that the dynamics of a hearing via videoconference call were different, and they would not be able to explain themselves and to show documents. At the end of the hearing, the counsels further argued that they were not able to see whether the panel followed and understood their argumentation. In addition, to have a form in which the Athletes can choose to have a hearing in-person or via telephone conference call, and then have the Tribunal decide on the way the hearing is conducted made the form purposeless, and this form did not distinguish between Preliminary Hearings or hearings on the merits. Pursuant to Article 8.1.3 (c) and (d) of the ADRHA the basic principle was a hearing in person and public, and a private hearing was the exception.

- 7.6 Moreover, the Athletes argued that since the FEI had no longer made a written submission, they could not be aware of the FEI's arguments during the hearing. The FEI rejected this position and referred to their written submission of 24 January 2020. Further, the FEI explained that the FEI would only answer to the submissions made by the Athletes but not change their position. The Athletes however argued that the argument of the last word still stood, as they should be able to hear and to react to the submissions made by the other side.
- 7.7 The Athletes also maintained that they only had 3 business days to prepare their submission, and argued that their procedural rights had therefore been limited. The Athletes further argued that, whereas, the FEI was aware of the positive findings on 9 December 2019, the FEI only notified the Athletes on 6 January 2020. This made the Athletes' investigations more difficult. They further argued that the Disqualification of the Results, and the potential consequences for the QAT Team was the most important decision in these cases.
- 7.8 In answering to the alleged breaches of the right to be heard and the Athletes' due process rights, the FEI argued that the FEI Rules and Regulations had been complied with. The proceedings at this stage and the hearing via videoconference call were only to determine the disqualification (or not) of the Results of 13 October 2019. Any other consequences would be decided by the Tribunal at a later stage, and the Athletes will have opportunities to be heard again and present their cases on the merits. Article 7.3.1 (g) of the ADRHA only mentioned that an Athlete has the right to request a "hearing", but there was no right for an in-person hearing, or any mention thereof. There existed a right to a fair hearing pursuant to Article 8 of the ADRHA, which the FEI and the Tribunal applied for each and every case. Furthermore, a general right to an "oral hearing" derived from the guarantee of a public hearing pursuant to Article 6.1 of the ECHR. The right to provide oral evidence did not necessarily mean that this right had to be granted in an in-person hearing. It was correct that athletes could ask for an in-person or oral hearing, but it was for the Tribunal to decide on how the right to be heard is to be exercised pursuant to Articles 25.1, 25.2, and 28.3 of the IRs.
- 7.9 The FEI further argued that it was incorrect that the Athletes asked for an in-person hearing already in their first reply on 27 January 2020, as there was no reference to an in-person hearing in their submission, but only the right to be heard. Furthermore, the FEI and the Athletes' counsel allegedly met in person on 28 February 2020, and the legal counsel never requested for an in-person hearing during this meeting, but only for more time to provide their written submission to which the

FEI agreed. Furthermore, in the view of the FEI counsels agreed to and confirmed the FEI's email (no such confirmation email has been submitted to the Tribunal though) of the same day which included a timeline for submissions agreed by the Parties, as well as a hearing via conference call/video call. Furthermore, any and all documents by the Athletes should have been submitted within the deadline of 7 February 2020, and could not be shown during the hearing; therefore the Athletes' rights to be heard could not be violated for not being able to show documents if there is no in-person hearing. Additionally, the FEI also indicated being surprised that the Athletes themselves were not participating in the hearing.

7.10 After hearing the Parties' position with regard to procedural issues, Mr. Mohammed Al Thani, one of the team managers for the QAT Team at the Event, was heard as witness. He confirmed that he was family related to Sh. Al Thani (third degree), one of the Athletes concerned. He stated that they controlled everything that was going on with the Team, including grooms and horses. Further, he stated that all athletes have to undergo an annual check at the Aspetar clinic in Qatar, were "nothing had shown up". Regarding the incident at stake, he stated, amongst others, that the Athletes went to the shisha bar a few times during the Event, and that there had been more riders, including the riders from the Moroccan team. Each of them used a different shisha pipe, and not all athletes present did smoke shisha. The QAT Team supports the Athletes because they believed that "they did not do anything." If the QAT Team would be disqualified this would be a shock for the QAT Olympic Committee since the team has been riding at this high level for a long time. Further, they financially invested a lot for the Olympic Games already, and for example bought horses.

7.11 Following, the hearing moved to discuss the actual request for Disqualification of the Results. In this sense, the FEI further explained that there seems to be some confusion as to what constituted Individual results. In equestrian sport it was quite particular when it came to calculating the Individual and Team results. To start with, Equestrian sport is an "Individual Sport", which was defined pursuant to the ADRHA as "*Any sport that is not a Team Sport.*", and "Team Sport" is defined as "*A Sport in which the substitution of players is permitted during a Competition.*" Even if there is a team competition in equestrian sport it remained an individual sport. There is an individual performance of each rider/horse combination, and each athlete/horse is alone in the field of play competing a jumping course. For such individual performance the combination receives an Individual Result. In a team competition it is each Individual results which are added to the Team result. Therefore, without the Individual results of the individual team members there is



no Team result. A full team consists of 4 riders and their horses, but only the 3 best individual results count for the total Team results, called "drop score".

- 7.12 Moreover, the FEI highlighted that it was important to understand the FEI's definitions of Competition and Event. Competition is the competition of each day of the Event, and one competition may consist of two rounds of jumping, but only count as one Competition, as the results are only given for the total of the two round in the one Competition. The Competition in question consisted of two rounds, round one and round two. The addition of the results of each individual athlete in both rounds are the results for this Competition's Individual results. Then the addition of the Individual results of the 3 best athletes in the team counted as the Team results for the purpose of the Team qualification to the Olympic Games.
- 7.13 The FEI further explained that whether or not there was an individual classification in that Competition was irrelevant, since there is an Individual result and an individual performance of the Competition. Article 264 of the JRs clearly states that there must be no individual classification, only team classification for this competition format.
- 7.14 The wording of Article 9.1 of the ADRHA was in the FEI's view crystal clear and the FEI therefore concluded on the Individual Results that (i) there was an in-competition test in the Nations Cup Competition of 13 October 2019 where the Athletes tested positive; (ii) the two Athletes have Individual results in this Competition; (iii) the addition of those Individual results count for the classification of the Team results; (iv) any explanations of how the positive finding happened such as sabotage or no fault, is therefore irrelevant for the purpose of the application of Article 9.1, since there were no exceptions to Article 9.1. An automatic disqualification of the Individual results of the two Athletes in that given Competition, where they tested positive, shall therefore apply.
- 7.15 With regard to the Team results, the FEI argued that Article 11.2.2 of the ADRHA referred to the Individual results of an Athlete in all Competitions at an Event, and all other days, but not the day the Athlete actually tests positive, since this was already regulated by Article 9.1 of the ADRHA. In addition, it was clear from Article 10.1 of the ADRHA that Article 11.2.2 of the ADRHA only referred to the *other results* of the Event. *In all competitions*, referred to the rest of the Event, meaning that the FEI may Disqualify all the Competitions in the whole Event and not only the one Competition resulting from the automatic Disqualification of the day the Athlete tested positive. There was no *shall* included in the rules, since the FEI might want to use this discretion not

to disqualify all events for some exceptional circumstances, *i.e.*, an athlete testing negative on one of the other days for example. It was therefore clear from the rules that there was no discrepancy for Article 9.1 of the ADRHA and any exceptional circumstances, no fault or negligence, or explanations for the positive finding, such as sabotage or contamination, could only be considered for the purpose of the other competitions of the event, not for the day the Athletes tested positive. Otherwise, it would go against the logic of the protection of the level of playing field, since the Athletes still competed with a Prohibited Substance in their bodies, and the results from such competition must and shall therefore be disqualified; there could not be any exceptions to this rule. Exceptional circumstances might apply to the other days of the Competitions but not to this date, *i.e.*, 13 October 2019.

- 7.16 Finally, due to the structure of equestrian sport and especially the Team results being based on the addition of the Individual results of each athlete, it was a natural consequence that if 2 Individual results of a team of 4 riders are Disqualified, there was no longer any Team results, since each Individual results themselves count for the Team, and there are only 2 athletes left in this particular competition, which meant that there are therefore no Team results for the QAT Team for the Olympic Qualifier. The FEI clarified that the FEI was not asking for the Disqualification of the Team results, but this was a natural consequence for the team as there was no Team results (after the Individual results are disqualified) of the QAT Team in the Competition.
- 7.17 In response to the Athletes' allegation that the only deadline the FEI had to follow was 6 July 2020, the 2020 Tokyo Olympic Games entry deadline, the FEI explained that 17 February 2020 was a deadline from the IOC where the FEI had to confirm all quotas, and the FEI had to inform all NOCs of any re-allocation quotas.
- 7.18 With regard to the question of the Disqualification of the Results, the counsels for the Athletes pointed out that this, *i.e.*, during the hearing, was the first time they heard the reasoning by the FEI.
- 7.19 They argued that Article 9.1 of the ADRHA referred to Article 11 of the ADRHA with regard to consequences for teams. Therefore, one had to look at Article 11 to know what the consequences for the Team where; there was no automatic disqualification.
- 7.20 Furthermore, Article 11.2.2 of the ADRHA clearly refers to "may", and allowed in the Athletes' view for an absolute discretion mentioning "all competitions". The rules allowed for exceptions, *i.e.*, exceptional

circumstances, and in those cases the entire team should not be affected.

- 7.21 The cases at hand concerned *force majeure, i.e.,* the Athletes shisha, and this should not have consequences for the entire QAT Team. If one read Article 9 and 11 of the ADRHA the reasoning of the FEI did not make sense in the Athletes' view. However, Article 11.2.2 of the ADRHA clearly included "all competitions" and allowed for exceptional circumstances.
- 7.22 For the cases at hand, it was expected that Egypt should place first in the Olympic Qualifiers, all the other teams were fighting for the second spot. The only possible explanation for the positive finding was - on the basis of the values - shisha being mixed with kif. In the meantime the Athletes were continuing to investigate.
- 7.23 One had to look at the context in these cases. The Athletes were tested previously all the time, and one had to question why they would start taking Prohibited Substances on the night before the Competition. This did not make sense. Cannabis was not even a performance enhancing substance; there would have been no reason to take it. The substance did in the Athletes' view not change the level of playing field, and the circumstances were exceptional, *i.e., force majeure.*
- 7.24 In the Athletes' view, the fact that an official legal complaint was lodged in Morocco was relevant with regard to exceptional circumstances which applied in these cases. Furthermore, hearing witnesses in this regard was also highly relevant. The counsels expressed once more their disappointment not having been able to call their second witness during the hearing.
- 7.25 The Athletes submitted that the Tribunal could decide to disqualify the Athletes automatically but not to disqualify the QAT Team. It looked like that the Athletes have been tampered with, and the Moroccan team (the ones allegedly behind the tampering) would be the one to qualify for the Olympic Games if the QAT Team was disqualified.
- 7.26 The Athletes argued that from a legal perspective one had to look at Articles 9.1, 11.2.2 and 11.3 of the ADRHA. Therefore, the Individual results should not be automatically disqualified from the Team results, and it was possible to disqualify on the one hand the Individual results but to on the other hand leave the team results undisturbed.
- 7.27 Related to this request, note was taken that the counsels for the Athletes further confirmed also having a PoA for the QAT Team.

- 7.28 At the end of the hearing, the FEI acknowledged that the Tribunal has respected their right to be heard and their procedural rights. The Athletes acknowledged that this was the case during the hearing, but reserved their arguments with regard to the alleged procedural rights violations prior to the hearing and with regard to the hearing being organized via videoconference call rather than in-person, as submitted in writing, and once more extensively discussed during the hearing.

## **8. Jurisdiction**

- 8.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs and the ADRHA. More specifically, under Article 9.2 of the ADRHA, in circumstances where the Athletes were informed of an AAF in accordance with Article 7.3, the B-Sample analysis confirms the A-Sample analysis - as it is the case in the cases at hand -, and were requested by the FEI and/or the Athlete, the Tribunal shall decide upon the Application of Article 9.1 of the ADRHA, *i.e.*, the Automatic Disqualification of Individual Results, at this stage of the proceedings.
- 8.2 In addition, pursuant to Article 22.2 of the IRs, the Hearing Panel may resolve issues that are not specifically provided for in the Procedural Rules of the FEI Tribunal, *i.e.*, the IRs, in a manner that achieves fair, consistent, and expeditious resolution of the matter.

## **9. The Athletes**

- 9.1 Pursuant to the scope to the ADRHA, athletes who (i) are registered with the FEI; and/or (ii) participate in an International Event are bound by the ADRHA. Both (i) and (ii) apply for the Athletes in the cases at hand. Thus, they were bound by the ADRHA at the time of sampling. This remains undisputed.

## **10. Legal Discussion**

- 10.1 At the outset, the Tribunal wishes to clarify that it has understood and taken into consideration all submissions – written and oral – of the Parties.
- 10.2 To start with the Tribunal will address the alleged procedural flaws, as pointed out by the Athletes. The Tribunal does not accept the reasoning for an in-person hearing by the Athletes. No in-person hearing needs to be held in order to see possible relevant documents. The IRs require for all documents to be provided in advance of the hearing, and any document can be referred to as Exhibit, page number and/or Article thereof. While a discussion might be accepted with regard to witnesses' or athletes' behaviour in an in-person hearing versus a hearing via

videoconference call this argument has to be dismissed in the present proceedings, as the Athletes did not themselves participate at the hearing. Finally, the Tribunal wishes to comment on the Athletes' arguments that an in-person hearing had to be granted since the Athletes' civil right for carrying out their occupation was concerned. The Tribunal has to clarify that in the cases at hand the Athletes are not suspended at this point in time, and neither is the purpose of this decision to impose a period of Ineligibility on the Athletes, which might restrict their right of occupation for a period of time. The Athletes are free to continue to ride. The fact that previous results are disqualified (as decided further below) does not prevent them to pursue their occupation in the future, as far as this decision is concerned. Furthermore, the Tribunal finds that the Athletes have – at this point in the proceedings – not proven or even argued that riding is their occupation and main living.

- 10.3 That said, the forgoing discussion is irrelevant, as the IRs clearly provide that it is the discretion of the Tribunal to decide whether and in which form a hearing is conducted. The Tribunal granted the Athletes an oral hearing via videoconference call. Given the time constraints, and the fact that this part of the proceedings only concerns the Disqualification of the Results, and given that the most important points of the decision are legal arguments, there was certainly no need for an in-person hearing when the same can be – and was in fact in the Tribunal's view – achieved via videoconference call. The Tribunal wishes to point out that the video conference call set-up even allowed for an impromptu solution to hear the witness.
- 10.4 For the avoidance of any doubt, the Athletes will have, once more, the opportunity to be orally heard with regard to the merits of these cases, once the proceedings have reached that stage.
- 10.5 Moreover, while the Tribunal agrees that the time between the sample collection and the Notification Letters to the Athletes was not the most diligent - in particular as one would expect to have a more diligent approach when dealing with results that would count for Olympic qualifications - the Tribunal does not agree with the Athletes' allegations that they had only 3 working days to provide their position and submission or that their timeframe was insufficient or even abusive. In fact, the Athletes were informed on 24 January 2020 - when receiving the Request - that the FEI is seeking the Disqualification of the Results. In addition, the Athletes have been notified of the positive findings on 6 January 2020, *i.e.*, the Notification Letters, and were informed in the Notification Letters of the possible consequences pursuant to Articles 9 to 11 of the ADRHA. Thus, the Athletes had *de facto* 14 days to prepare

their submission, and also were aware of the FEI's position on that date. In addition, they were aware of the possible consequences with regard to the Disqualification of the Results 1 month prior to their submission deadline. The Tribunal notes that the FEI did not bring any new arguments during the hearing, but merely explained its position further, as well as responded to the procedural arguments brought by the Athletes. The Tribunal therefore dismisses that the Athletes did not have the last word, and finds that in the Tribunal's view the equality of arms has been respected, as the Athletes were provided with the opportunity to respond to all arguments made by the FEI and were granted at all times the right of last rebuttal.

- 10.6 In a second step, the Tribunal has to decide on the Request, *i.e.*, the Disqualification of the Results. The Tribunal is satisfied that the laboratory reports relating to the A-Samples and the B-Samples reflect that the analytical tests were performed in an acceptable manner and that the findings of the laboratory is accurate and has not been contested at this stage. The Tribunal is satisfied that the test results of the Samples for both Athletes evidence the presence of Carboxy-THC, a metabolite of Cannabis in their samples taken during in-competition tests on 13 October 2019.
- 10.7 During the hearing, the Athletes confirmed having received the laboratory documentation packages for the A- and the B-Samples, and that their expert had the opportunity to review them. The Athletes did not contest the accuracy of the test results or the positive findings. Cannabis is listed in class S8 – Cannabinoids, and is considered a "Specified Substance", prohibited in competition under the 2019 WADA Prohibited List. The estimated concentration in the sample is 404 ng/mL for Sh. Al Thani, and 2955 ng/mL for Mr. Mohammed, which is greater than the Decision Limit of 180 ng/mL. The presence of this substance above the limit without a valid TUE, which is not the case in the present cases, is prohibited under Article 2.1 of the ADRHA.
- 10.8 As a result the Tribunal finds that violations of Article 2.1 of the ADRHA, *i.e.*, *the presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*, have been established for both Athletes.
- 10.9 The Tribunal further finds that the conditions of Article 9.2 of the ADRHA, *i.e.*, that the Athletes have been informed of their AAFs and the B-Samples confirm the A-Samples analysis, are fulfilled. Furthermore, the FEI requested the Tribunal to decide on the Disqualification of the Results at this point in time in the proceedings. Accordingly, the pre-requisite for the Automatic Disqualification of the

Individual Results, *i.e.*, violations of the ADRHA, has also been established.

- 10.10 It is therefore clear that the ADRHA provide for the possibility to split the proceedings and for the Tribunal to decide on the Disqualification of the Results at this stage. As previously found, any and all conditions required to take such a decision are fulfilled.
- 10.11 From the foregoing, together with the Tribunal's authority to resolve issues not specifically provided for in the IRs, in a manner that achieves fair, consistent, and expeditious resolution of the matter, the Tribunal finds that it shall apply Article 9.2 of the ADRHA, and thus Article 9.1 of the ADRHA at this point in the proceedings.
- 10.12 Taking into consideration the importance of maintaining a level playing field and the substantial prejudice to the other competitors if the results are not corrected at this point in time, the Tribunal indeed finds that it is both fair and consistent with previous findings by the Tribunal to disqualify the results at this point in the proceedings, in order to allow for the rankings to be corrected accordingly. Furthermore, the Tribunal takes note that the Competition determines which teams qualify for the 2020 Tokyo Olympic Games, which in the Tribunal's view is another reason to decide on the disqualification of results – at least partially – already at this point in the proceedings.
- 10.13 It follows from Article 9.1 of the ADRHA that an anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any related medals, points and prizes.
- 10.14 Following Article 264 of the JRs with regard to Nations Cup, the results sheets provided, and the FEI's explanations during the hearing, the Competition in question consisted of two rounds, and the addition of the results of each individual athlete in both rounds are the results for this Competition's Individual results, *i.e.*, the Individual Results of the Athletes on the day of sampling on 13 October 2019.
- 10.15 Furthermore, pursuant to Article 10.1 of the ADRHA, an anti-doping rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Athlete's Individual results obtained in that Event, with all Consequences (and the resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1, *i.e.*, where an athlete established that he or she bears no fault or negligence for the rule

violation. However, the Tribunal finds that a decision in this respect does not have to be taken at this point in time, but together with the merits in these cases. Neither has such decision been requested at this point in time.

10.16 The Tribunal finds that the wording of Article 9 of the ADRHA is clear, strict and not open for arguments based on "No Fault or Negligence" or "No Significant Fault or Negligence". The automatic disqualification of Individual results has been consistently followed by the Tribunal in positive doping cases, both for athletes and horses, with the rationale of protecting the horse welfare and to ensure a level playing field. Article 9 of the ADRHA mirrors Article 9 of the World Anti-Doping Code ("**WADC**"), which requires the automatic disqualification of individual results in doping cases.

10.17 The Tribunal also wishes to clarify that for the purpose of this Article and this decision that it does not matter whether or not the Prohibited Substance had any performance enhancing effect. Carboxy-THC has been included on the 2019 WADA Prohibited List, and as such any positive finding of a listed substance, is prohibited.

10.18 Ultimately, the Tribunal notes that the Individual results of the Athletes shall be Disqualified pursuant to Article 9.1 of the ADRHA. This remains undisputed by the Parties.

10.19 Therefore, the Individual Results of Sh. Al Thani achieved at the Competition of 13 October 2019 shall be disqualified. In addition, the Individual Results of Mr. Mohammed achieved at the Competition of 13 October 2019 shall also be disqualified.

10.20 In a next step, the Tribunal notes that the Parties do not agree whether the foregoing disqualification of the Individual Results means that those Individual Results can (still) or cannot count for the Team results. Further, the Parties have a different interpretation with regard to Article 11.2.2 of the ADRHA. More specifically, concerning the following wording:

*"If a member of a team is found to have committed a violation of these Anti-Doping Rules during an Event where a team ranking is based on the addition of individual results, the Athlete's results may be Disqualified in all Competitions. (...)"*

10.21 In the view of the Athletes the "may", *i.e.*, the discretion, also applies for the Competition the Athletes tested positive, *i.e.*, for the Competition on 13 October 2019. This was because Article 9 clearly referred to Article



11 for Team Results, and the wording “may” allowed for an absolute discretion mentioning “all competitions”. In the FEI’s view the wording “all Competitions” meant all other competitions than the ones already disqualified under Article 9.1 ADRHA, and basically those results referred to in Article 10.1.1. This was because it was clear from Article 10.1 of the ADRHA that Article 11.2.2 of the ADRHA only referred to the *other results* of the event. *In all competitions*, referred to the rest of the Event, meaning that the FEI may Disqualify all the competitions in the whole Event and not only the one competition resulting from the automatic Disqualification of the day the Athlete tested positive.

10.22 The Tribunal agrees with the FEI’s interpretation that Article 11.2.2 of the ADRHA can only be meaning to refer to those Competitions where an athlete did not test positive or can show there was no Prohibited Substance in his or her system. This is because of the essence of the existence of Anti-Doping. As outlined at the beginning of the ADRHA, the *Fundamental Rationale for the Code and the FEI’s Anti-Doping Rules for Human Athletes* is to preserve what is intrinsically valuable about sport, *i.e.*, “the spirit of sport”, which is reflected in values in and through sport, including – among others – Ethics, fair play and honesty, respect for rules and laws, and respect for self and other participants. Doping, on the other hand, is fundamentally contrary to the spirit of sport, as it does not reflect those values.

10.23 In the cases at hand, the Athletes tested positive at the Competition of 13 October 2019. The presence of any Prohibited Substances on the WADA List in an athlete’s body is prohibited in-competition (such as in the cases at hand) and is defined as doping pursuant to Article 1 of the ADRHA. The purpose of doping tests is to firstly ensure that no athlete competes with any Prohibited Substances in his or her system, and secondly which goes hand in hand with the first point to ensure a level playing field for all athletes. Athletes should be able to rely that they compete against other athletes who are free of Prohibited Substances, no matter what the Prohibited Substances might be. For the avoidance of any doubt, the Tribunal does not have to decide at this point in time whether the positive results of the Athletes of 13 October 2019, might have also affected the other Competitions or the entire Event. As outlined by the FEI it is important to distinguish the definition of Competition and Event under the FEI Rules and Regulations.

10.24 It would therefore be against this fundamental rationale and the spirit of sport if the Individual Results of the Athletes of 13 October 2019 are Disqualified, but those same results which were achieved with a Prohibited Substance in the Athletes system, could still be counted for the Team results, which are established by adding those Individual

Results of the 3 best athletes of the team. It is to be noted that when assessing the team impact of the individual infractions, the Panel has considered all relevant elements and in particular noted the hierarchy of the events relevant (i.e. Olympic Games), amount of players involved and clear wording of the relevant articles.

- 10.25 While the Tribunal understands that this might have consequences for the QAT Team and their Olympic Qualification given that two Individual results are disqualified at the same time, the Tribunal nevertheless finds that the Individual Results of the Athletes achieved in the Competition of 13 October 2019, *i.e.*, the day of sampling, have to be disqualified in its totality. As a consequence the Athletes will not have any results recorded for the Competition on this day; and therefore no Individual results exist for Sh. Al Thani and Mr. Mohammed which could be added to the Team results.
- 10.26 Nonetheless, and for the sake of clarity, the Tribunal finds that in view of the present decision, any impact on the overall result of the Event at hand and the respective Team potential qualification or disqualification for the Olympic Games it is to be established directly by the FEI.
- 10.27 For the avoidance of any doubt, the present decision is not a decision on the merits of these cases, and therefore it is not fully relevant – at this point in time – whether the explanations of sabotage might materialize over the course of the Athletes’ investigation. It is also to be noted that the cases at hand only concern the Anti-Doping Rule violations against the Athletes. The Tribunal further also wishes to clarify that proceedings in front of the Tribunal are of disciplinary nature and not criminal. While the Tribunal might suspend proceedings where there are parallel criminal proceedings ongoing, and await their outcome, the Tribunal is not obliged to do so.
- 10.28 Since this decision only concerns the Disqualification of results, all other arguments which might not have been addressed in this Decision do not need to be decided at this point in time.

## **11. The Decision**

- 11.1 As a result of the foregoing the Tribunal decides as follows with regard to the Disqualification of the results of the Athletes:

**1) The Individual results of Sh. Al Thani at the Competition on 13 October 2019 shall be disqualified in its totality.**

**2) The Individual results of Sh. Al Thani shall not count for the calculation of any Team results on the same day.**

**3) The Individual results of Mr. Mohammed at the Competition on 13 October 2019 shall be disqualified in its totality.**

**4) The Individual results of Mr. Mohammed shall not count for the calculation of any Team results on the same day.**

11.2 A fully reasoned Final Decision, including a finding on sanctions and costs, shall be issued at the end of the proceedings, pursuant to Article 39.1 of the IRs.

11.3 This Decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

**V. DECISION TO BE FORWARDED TO:**

- a. The Athletes: Yes**
- b. The President of the NF of the Athletes: Yes**
- c. The FEI**
- d. The President of the Organising Committee of the Event: Yes**
- e. Any other: WADA & QAT NADO**

**FOR THE PANEL**



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**Mr. José A. Rodríguez Alvarez, one member panel**