CAS 2011/A/2645 Union Cycliste Internationale (UCI) v. Alexander Kolobnev & Russian Cycling Federation

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Luigi **Fumagalli**, Professor and Attorney-at-Law, Milan, Italy

Arbitrators: Mr Martin **Schimke**, Attorney-at-law, Dusseldorf, Germany
Mr Jeffrey G. **Benz**, Arbitrator and Attorney-at-law, Los Angeles, USA

between

Union Cycliste Internationale (UCI), Aigle, Switzerland
Represented by Mr Philippe Verbiest, Attorney-at-law, Leuven, Belgium

as Appellant

and

Alexander Kolobnev, Alicante, Spain
Represented by Mr Claude Ramoni, Attorney-at-law, Lausanne, Switzerland

as First Respondent

Russian Cycling Federation, Moscow, Russian Federation
Represented by Mr Victor Berezov, Legal Counsel, Moscow, Russian Federation

as Second Respondent

* * * * *

1. BACKGROUND

1.1 The Parties

1. The Union Cycliste Internationale (UCI) (hereinafter also referred to as the "UCI" or the "Appellant") is the international governing body for the sport of cycling. UCI is an association under Swiss law and has its headquarters in Aigle (Switzerland).

2. Mr Alexander Kolobnev (hereinafter also referred to as "Kolobnev" or the "First Respondent") is a professional road racing cyclist of Russian nationality, born on 4 May 1981, holding a license issued by the Russian Cycling Federation.

3. The Russian Cycling Federation (hereinafter also referred to as the "RCF" or the "Second Respondent") is the national cycling federation in the Russian Federation and is a member of the UCI.

4. Kolobnev and the RCF are hereinafter jointly referred to as the "Respondents".

1.2 The Dispute between the Parties

5. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

6. On 6 July 2011, Kolobnev underwent an anti-doping control in Vannes (France), in the morning of stage 5 of the *Tour de France* 2001, in which he was participating as a member of the UCI Pro Team cycling team "Katusha" (hereinafter also referred to as the "Team").

7. The doping control form signed by Kolobnev contained the following statement:

   "*The chaperon José di Leonforte and Dr. Jean Louis Riche were presented in my room during my sleep in morning. They didn't have any respect to my privacy even didn't let me dressed up without those present*" ([1]).

8. The A sample provided by Kolobnev was analysed by the laboratory of Châtenay-Malabry, France (hereinafter also referred to as the "Laboratory"), which is accredited by the World Anti-Doping Agency (hereinafter also referred to as the "WADA").

9. On 11 July 2011, the Laboratory reported the presence of hydrochlorothiazide (hereinafter also referred to as "HCT"). HCT is a prohibited substance in class S.5 (diuretics and other masking agents) of the 2011 WADA list of prohibited substances (hereinafter also referred to as the "Prohibited List"), pursuant to which "*Diuretics include: … hydrochlorothiazide …*". More specifically, in accordance with the opening provision of the Prohibited List (under which "*All Prohibited Substances shall be considered as "Specified Substances" except Substances in classes S1, S2.1 to S2.5,*

[1] All the misspellings are in the documents transmitted to the Panel. Their number made it impossible for the Panel to underscore them with "*sic*" or otherwise whenever a document is referred to *verbatim* in this award.

S4.4 and S6.a …"), and with Article 32 of the UCI Anti-Doping Rules, in force since 1 July 2011 (hereinafter referred to as the "ADR"), HCT is a prohibited specified substance.

10. The analytical finding (hereinafter also referred to as the "Adverse Analytical Finding") was notified to Kolobnev on 11 July 2011.

11. On the same 11 July 2011, Kolobnev accepted a provisional suspension and requested the B sample analysis. At the same time, Kolobnev signed an "*explanation*" which reads *verbatim* as follows:

"*Concerning the test done at 6th July, I cannot give any explications, because I don't know nothing about the substance, finding in one of the probes of the test. As I said during the control, I did not used any medical preparates. I am abandoning the race because of respect to anti-doping rules*".

12. On 19 July 2011, the B sample analysis was performed at the Laboratory and confirmed the Adverse Analytical Finding.

13. Following a request by the UCI, a hearing took place before the RCF Anti-Doping Commission (hereinafter also referred to as the "Anti-Doping Commission") on 25 October 2011.

14. At the conclusion of the hearing, the Anti-Doping Commission issued a decision (hereinafter referred to as the "Decision") holding as follows:

"*1. Mr Alexander Kolobnev has committed a violation of the UCI Anti-Doping Rules (Article 2.1.1 – The Presence of a Prohibited Substance or its Metabolites or Markers in a Rider's bodily specimen);*

2. Mr Alexander Kolobnev is sanctioned with a reprimand and no period of ineligibility is imposed;

3. The results of Mr Alexander Kolobnev obtained at the Tour de France stage of 6 July 2011 shall be disqualified;

4. Mr Alexander Kolobnev is additionally sanctioned with a fine in amount of 1 500 CHF".

15. In support of its Decision the Anti-Doping Commission stated the following:

"*10. It is undisputed that the Rider has committed an anti-doping rule violation (Article 21.1 of the UCI Anti-Doping Rules – "The presence of a Prohibited Substance or its Metabolites or Markers in a Rider's bodily Specimen"). Accordingly, the RCF ADC shall determine applicable sanction for the abovementioned anti-doping rule violation.*

11. In the first hand, the RCF ADC will deal with the concept of No Fault or Negligence pleaded by the Rider. The RCF ADC thoroughly examined the reasoning of the Rider related to the fact that the biologically active food supplement named "Natural kapillyaroprotector" (dihydroquercetin) which contained hydrochlorothiazide (due to possible contamination) was used by the Rider to treat medical condition and therefore the Article 296 of the UCI Anti-

Doping Rules may be applied in this case.

12. *The RCF ADC rejects these pleadings. The comment to the Articles 10.5.1 and 10.5.2. clearly indicates that a sanction could not be completely eliminated on the basis of No Fault or Negligence positive test results from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest) and have been warned against the possibility of supplement contamination.*

13. *The box of "Natural kapillyaroprotector" (dihydroquercetin) had an inscription that this product is not a drug but the biologically active food supplement. Under these circumstances, the RCF ADC may not apply Article 296 of the UCI Anti-Doping Rules since this case concerns the positive doping test due to possible contamination of the biologically active food supplement.*

14. *Rejecting the application of the concept of No Fault or Negligence, the RCF ADC will examine this case in the light of application the Article 295 of the UCI Anti-Doping Rules.*

15. *Hydrochlorothiazide is a Prohibited Substance according to the WADA Prohibited List 2011 which is incorporated in the UCI Anti-Doping Rules and is listed in Class 5 – "Diuretics and Other Masking Agents". All substances listed in Class 5 are considered as Specified Substances and the Article 295 of the UCI Anti-Doping Rules provides specific legal regime for the anti-doping rule violations involving the presence of Specified Substance. The standard sanction for the first anti-doping rule violation (2-year period of ineligibility) may be reduced or even eliminated when the Rider can establish how a Specified Substance entered his body and that such Specified Substance was not intended to enhance Rider's performance. If the Rider meets the requirements set by the Article 295 of the UCI Anti-Doping Rules, the standard period of ineligibility shall be replaced with the following sanctions: at a minimum – a reprimand and no period of ineligibility and at a maximum – two (2) years of ineligibility.*

16. *Therefore, according to the Article 295 of the UCI Anti-Doping Rules the RCF Anti-Doping Commission were to determine whether: (a) the athlete established how the specified substance had entered his body, (b) such specified substance had not been intended to enhance the athlete's sport performance or mask the use of a performance-enhancing substance.*

17. *The Rider explained that the specified substance entered his body as a result of taking the biologically active food supplement named "Natural Kapillyaroprotector" (dihydroquercetin) which had been purchased by the Rider in Ufa, Russia in the biggest retail drug-store in Russia – "36,6".*

18. *"Natural kapillyaroprotector" has been used as a medical treatment for chronic vascular disease – "varix dilatation" which the Rider suffers from since 1997-98. In 1999 the Rider underwent surgery which involved removal of the varicose veins form his legs. In 2009 the Rider received a prescription from the Dr. Sergey Petrov from the Clinical Diagnostic Centre in Nizhniy Novgorod (Russia) concerning due treatment of the Rider's chronic disease and such treatment included, inter alia, the use of Kapillar or Natural kapillyaroprotector.*

19. *On 24 June 2011 during the Russian National Cycling Championships in Ufa*

(Russia) the Rider purchased "Natural kapillyaroprotector" (dihydroquercetin) in the drug-store "36,6" which is placed on the same street as the hotel where the Rider lived in Ufa. Initially, the Rider intended to purchase "Kapillar" following the prescription of his doctor. However, "Kapillar" was not available at the moment and the Rider was offered to purchase the product with similar effect – "Natural kapillyaroprotector" (dihydroquercetin). Since "Natural kapillyaroprotector" (dihydroquercetin) was also in his list of prescriptions made by the doctor, the Rider decided to purchase "Natural kapillyaroprotector" (dihydroquercetin) and used this product right up to the testing on 6 July 2011.

20. *The Rider has provided the RCF ADC with the results of the analysis of all substances, medicines and supplements used by the Rider made by the independent science laboratory – HFL Sport Science (Fordham, UK). According to the certificate of analysis #70169 issued by the HFL Sport Science a blister pack containing 8 yellow tablets had been submitted for analysis. One of tablets was tested and the presence of hydrochlorothiazide was identified. The customer reference #010808 corresponds to the batch number on the box of "Natural kapillyaroprotector" (dihydroquercetin) submitted for analysis.*

21. *Summarizing abovementioned circumstances, the RCF ADC satisfied with the evidence submitted by the Rider related to the way how the Prohibited Substance entered the body of the Rider.*

22. *Then, the RCF ADC shall determine whether the Rider was successful in producing corroborating evidence to the comfortable satisfaction of the RCF ADC showing the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance.*

23. *As it was previously mentioned, Hydrochlorothiazide has been found in one of the tablets of "Natural kapillyaroprotector" (dihydroquercetin) which had been purchased by the Rider in Ufa, Russia in drug-store "36,6" for treatment of his chronic disease. The Rider has provided the RCF ADC with the medical documentation confirming the Rider's medical conditions.*

24. *Furthermore, the Rider has provided the RCF ADC with the statement of Dr. A.V. Mikhajlov – the doctor of the bicycle racing team "Katyusha". …*

25. *Thereafter, the Rider also submitted an Expert Opinion of Dr Laurent Rivier who is an experienced specialist in Chemistry and Sciences from the University of Lausanne, Switzerland. The Expert Opinion of Mr Rivier concerns the plausibility of the statement of Mr Kolobnev in front of the adverse analytical finding obtained on his urine on 6 July 2011. …*

28. *The RCF ADC thus came to conclusion that the Rider succeeded to prove to comfortable satisfaction of the RCF ADC that the use of prohibited substance was not intended to enhance his sport performance and the Article 295 of the UCI Anti-Doping Rules may be applied in this matter.*

29. *Therefore, the last issue for the RCF ADC is to determine the degree of fault of the Rider while committing an anti-doping rule violation.*

30. *The RCF ADC accepts the Rider's position this case falls at "the very lowest end of the spectrum of fault contemplated by the (ADR) or the WADC". The Rider made all reasonable steps to be sure that no prohibited substance entered his*

body. The Rider used "Natural kapillyaroprotector" (dihydroquercetin) only by the prescription of the experienced doctor for the treatment of his chronic disease and purchased this product in the biggest retail drug-store in the territory of the Russian Federation "36.6". Therefore, the Rider could reasonably imply that the product purchased in such store does not contain any prohibited substance and is not mislabelled or contaminated.

31. Taking into account all relevant circumstances of this case, the RCF ADC suggests that a reprimand and no period of ineligibility is an adequate and fair sanction for the Rider.

32. Under Article 291.1 of the UCI Anti-Doping Rules should the results of the Rider in no other stage of a race (except the stage in relation with which the sample was taken) be likely to have been influenced by the anti-doping rule violation, the Rider shall be disqualified from the stage in relation with which the sample was taken only. Consequently, the results obtained by the Rider at the Tour-de-France stage of 6 July 2011 shall be disqualified.

33. Pursuant to the Article 326.1 "b" of the UCI Anti-Doping Rules addition to the sanctions provided for under articles 293 to 313 anti-doping violations shall be sanctioned with a fine in the minimum amount of CHF 3000 for elite men. However, this amount shall be reduced by half for violation for which article 295 (Specified Substances) is applied. Therefore, the Rider shall be sanctioned with fine of CHF 1500".

16. The Decision was notified to the UCI by the RCF, together with the full disciplinary file, on 31 October 2011.

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS Proceedings

17. On 30 November 2011, UCI filed a statement of appeal, with 4 exhibits, with the Court of Arbitration for Sport (hereinafter also referred to as the "CAS"), pursuant to Article R48 of the Code of Sports-related Arbitration (hereinafter also referred to as the "Code"), to challenge the Decision. In such submission, the Appellant appointed Mr Martin Schimke as arbitrator.

18. In a letter dated 8 December 2011 and 9 December 2011, Mr Jeffrey G. Benz was appointed as arbitrator by Kolobnev and the RCF.

19. On 15 December 2011, UCI filed its appeal brief in accordance with Article R51 of the Code, together with 24 exhibits. An English translation of Exhibit 24, then, was lodged on 5 January 2012.

20. By communication dated 11 January 2012, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr Martin Schimke and Mr Jeffrey G. Benz, arbitrators.

21. Answers to the appeal, seeking its dismissal, were filed as follow:

i. on 13 January 2012 by the Second Respondent; and

ii. on 16 January 2012 by the First Respondent, together with 24 exhibits, 4 witness statements and 3 expert reports.

22. A hearing was held on 7 February 2012 on the basis of the notice given to the parties in the letter of the CAS Court Office dated 17 January 2012. The Panel was assisted at the hearing by Ms Andrea Zimmermann, Counsel to the CAS. The following persons attended the hearing:

i.	for the Appellant:	Mr Philippe Verbiest, counsel, Mr Simon Geinoz, jurist at the UCI, and Ms Ophélie Calori, UCI sports department;
ii.	for the First Respondent:	Mr Claude Ramoni, counsel, and Kolobnev in person; and
ii.	for the Second Respondent:	Mr Victor Berezov, counsel, Mr Vladimir Drenichev, RCF Deputy General Director, and Mr Dmitry Voevodin, interpreter.

23. At the hearing, the parties made submissions in support of their respective cases. Mr Trofimov (by phone), Mr Petrov (by phone), Dr Mikhailov, Mrs Kolobneva (by phone), Mr Silin (by phone), and Dr Rivier were heard as witnesses upon request of the First Respondent. The deposition of Ms Barkova was deemed not to be necessary. Finally, Kolobnev himself rendered some declarations.

24. At the conclusion of the hearing, the parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings and that they had been given the opportunity to fully present their cases.

2.2 The Position of the Parties

25. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a. The Position of the Appellant

26. In its statement of appeal, the UCI indicated that its appeal was aimed at "*having the contested decision annulled and reformed*", and "*having Mr Alexander Kolobnev sanctioned in accordance with UCI's anti-doping rules*".

27. In the appeal brief, then, the UCI specified its requests for relief as follows:

"*May it please to the Arbitration Tribunal:*

- *To set aside the contested decision;*
- *To sanction Mr Kolobnev for presence and/or use of a prohibited substance with a period of ineligibility of two years starting on the date of the Panel's decision;*

- *To state that the period of provisional suspension shall be credited against the period of ineligibility;*
- *To disqualify Mr Kolobnev entirely from the 2011 Tour de France and to disqualify any subsequent results;*
- *To condemn Mr Kolobnev to pay to the UCI a fine amounting to 350'000 Euros;*
- *To condemn Mr Kolobnev to pay to the UCI the costs of the results management by the UCI, i.e. 2'500.- CHF;*
- *To condemn Mr Kolobnev to pay to the UCI the cost of the B-sample analysis as well as the cost of the A-sample documentation package, i.e. 690.- Euros;*
- *To order Mr Kolobnev and RCF to reimburse to the UCI the Court Office fee of CHF 1000.-;*
- *To condemn Mr Kolobnev and RCF jointly to pay to the UCI a contribution to the costs incurred by the UCI in connection with these proceedings, including experts' and attorney's fees*".

28. In its submissions, in other words, the Appellant criticizes the Decision, which it asks the Panel to set aside and to replace with a new decision variously sanctioning the First Respondent.

29. In support of its requests, the Appellant submits that an anti-doping rule violation under Article 21.1 ADR is established: the presence of HCT in Kolobnev's sample is not denied, but confirmed by the explanation given by the First Respondent to justify it. As a result, the consequences provided by the ADR for such anti-doping rule violation apply.

30. The first consequence is ineligibility, which, in the Appellant's opinion, should be imposed for a period of two years, as the conditions for its reduction under the ADR are not met. According to the Appellant, in fact, "*neither article 295 nor article 296 ADR shall apply, as the Rider* [Kolobnev] *did not demonstrate by a balance of probability how the substance entered his body. In any event the Rider* [Kolobnev] *did not act without significant fault or negligence. Hence article 293 shall apply*".

31. More specifically, the Appellant examines the First Respondent's explanation, accepted by the Decision, of the presence of HCT in his body (allegedly caused by the ingestion of a contaminated product, named "Natural Kapillyaroprotector": hereinafter referred to as the "Product"), to submit that it is "*questionable for several reasons*" and that Kolobnev "*failed to demonstrate that this route of ingestion … is more likely to have occurred than not to have occurred*". In the Appellant's opinion:

    i. Kolobnev did not prove how he got the Product, as he did not provide any evidence of purchase;

    ii. Kolobnev did not prove that he was in possession of the Product at the time of the doping control test;

    iii. Kolobnev did not indicate the use of the Product or of any medication in the

doping control form or thereafter;

iv. Kolobnev did not provide sufficient evidence with regard to his health conditions;

v. Kolobnev did not prove why he changed his habit, taking the Product instead of the other he was used to;

vi. the explanations provided do not prove that Kolobnev did not use HCT under a different form; and

vii. Kolobnev did not prove that the Product was contaminated.

32. In addition, the Appellant submits that the First Respondent's fault is significant, since the Product has to be considered to be a supplement and not a medication. The same conclusion, however, is to be maintained, in the Appellant's opinion, also assuming that the Product has to be considered to be a medication. More exactly, the Appellant claims that Kolobnev did not make all reasonable steps to be sure that no prohibited substance entered his body. The conduct of the First Respondent is "*totally negligent for a top professional athlete*" because, *inter alia*:

i. he changed his habits and bought a new food supplement in replacement of his usual one, without taking sufficient precaution;

ii. he bought the Product from the nearest drugstore and did not take into consideration the reputation, quality or reliability of the drugstore as relevant criteria to determine where to buy his food supplements or medications;

iii. he did not consult the patient information leaflet of the Product;

iv. he did not properly consider the indications printed on the box of the Product, while reading them he should have refrained from using the Product without further investigations;

v. he relied on a two year old prescription, without having the doctor's recommendation renewed or confirmed on a regular basis;

vi. he used the Product in a way contrary to the dosing indications on the box;

vii. he did not mention the use of the Product on the doping control form;

viii. Kolobnev's doctor who in 2009 prescribed the use of the Product is not a sports medicine specialist; and

ix. neither Kolobnev or the doctor made research on the Product and determined the appropriate dosage.

33. In any case, in the Appellant's opinion, it was for Kolobnev to prove that his degree of fault justified a reduction of the otherwise applicable sanction, and Kolobnev failed to give such evidence.

34. The second consequence of Kolobnev's anti-doping rule violation is disqualification. More specifically, the UCI submits that the First Respondent should be entirely disqualified from the *Tour de France* 2011 pursuant to Article 291.1 ADR ([2]), and,

[2] The reference to the ADR provision which the UCI requests this Panel to apply with respect to the disqualification of the First Respondent's results has indeed been rectified at the hearing of 7 February 2012. In its written submissions, in fact, the UCI had invoked the application of Article 289.2 ADR and

additionally, that in accordance with Article 313 ADR all competitive results obtained subsequently to the *Tour de France* 2011 should be disqualified.

35. The third consequence which the UCI requests the Panel to draw from the First Respondent's anti-doping rule violation is the application of the financial sanction contemplated by Article 326.1(a) ADR, to be determined in a measure corresponding to EUR 350,000, equal to the net income to which Kolobnev was entitled in 2011.

36. Finally, the UCI invokes Article 275 ADR to justify its request that the costs of result management, of the B-sample analysis and of the A-sample documentation package be reimbursed by Kolobnev and the RCF.

b. The Position of the Respondents

b.1 The Position of the First Respondent

37. In his answer, Kolobnev requested the CAS to rule as follows:

> *"1. The Appeal filed by the International Cycling Union (UCI) on 30 November 2011 against Mr Kolobnev and the Russian Cycling Federation concerning the decision taken by the Anti-Doping Commission of the Russian Cycling on 25 October 2011 is dismissed.*
>
> *2. The decision of the Russian Cycling Federation of 25 October 2011 is confirmed.*
>
> *3. UCI shall compensate Mr Kolobnev for the legal and other costs incurred in connection with this arbitration, in an amount to be decided at the discretion of the panel*".

38. In support of his request to have the appeal dismissed, Kolobnev submits that "*UCI failed to take into consideration all facts of the case, established by the RCF and supported by the evidence put forward by Mr Kolobnev before RCF … . On the contrary, most of the submissions by UCI are either in contradiction to the evidence of the file or inaccurate, as not supported by any evidence*".

39. As to the facts, the First Respondent underlines the following points, for which documentary and testimonial evidence is offered:

    i. Kolobnev has been suffering from varicose veins or varix dilatation, a chronic vascular disease, for 15 years, has regularly consulted a doctor for it, and undergone medical treatment that included surgery;

    ii. to treat such disease and enhance his venous system, Kolobnev was recommended by Dr Petrov, his personal doctor, to use the products called "Kapilar" or "Natural Kapiliaroprotektor" (i.e., the Product), which are sold in Russia without prescription. Dr Petrov is not a specialist in sports medicine, but is aware of the fact that Kolobnev is an elite rider and cannot use medications that contain a prohibited substance;

    iii. Kolobnev informed the doctor of the Team, Dr Mikhailov of the use of the products called "Kapilar" or "Natural Kapiliaroprotektor", and Dr Mikhailov

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not of Article 291.1 ADR.

approved the treatment;

iv. it is inaccurate to suggest that Kolobnev used the Product for the first time in June 2011, since he had used it also before that occasion;

v. the Product is manufactured under private label by the "36.6" drugstore: "*36.6 is the largest and most reputable pharmacy chain in Russia*". The Product was purchased on 24 May 2011 in Ufa, Russian Federation, where Kolobnev was to compete in the Russian National Championship, and paid in cash, at a "36.6" drugstore, which was not the nearest drugstore to the hotel where Kolobnev was staying, but which was visited "*because of its reputation*";

vi. Kolobnev had the Product with him at the *Tour de France* 2011; and

vii. the doping control of 6 July 2011 "*was conducted in a hurry, as the doping control officers were willing to control all riders of the "Katusha" team before breakfast … . The Doping Control Station was not well equipped. In particular, there was no table available and the riders had to carry the containers in their hands … . This constitutes probably a breach of article 172 ADR and Appendix 4 to the ADR*".

40. In the First Respondent's opinion, the conditions for the application of a reduced sanction pursuant to Article 295 ADR are met, and the Decision was correct in reaching that conclusion.

41. Primarily, Kolobnev submits that he has established, according to the applicable evidentiary standard (i.e., by balance of probability), how the prohibited substance entered his body. More specifically, according to the First Respondent, the origin of HCT, found in Kolobnev's body, can be explained by reference to the factual background (§ 39 above) and as follows:

i. the analyses performed by the HFL Sport Science Laboratory in the United Kingdom prove that tablets of the Product were contaminated with HCT;

ii. an expert report signed by Dr Rivier confirms that the amount of HCT found in Kolobnev's urine is compatible with the intake of the contaminated Product;

iii. the absence of mention of any product on Kolobnev's doping control form is no evidence that he was not taking the Product, because, *inter alia*, under the ADR, riders have no obligations to mention supplements or medications in the doping control form, and because of the circumstances of the control of 6 July 2011; and

iv. in any case, contrary to what the UCI submits, Kolobnev does not have to prove that he did not take HCT in any other form: "*such proof of a negative fact would, in reality, be impossible to bring*".

42. At the same time, Kolobnev contends that also the absence of intent to enhance sport performance or to mask the use of a prohibited substance has been established. In that regard, the First Respondent submits that he was taking the Product for medical reasons and that he was not aware that he was consuming a prohibited substance: therefore, he could not reasonably have any intent to enhance sport performance or to mask the use of a prohibited substance. In addition, expert reports confirm that the accidental use of HCT, in the amount taken by Kolobnev, could not have any significant masking effect;

indeed, the use of HCT could have been detrimental to his health and sport performance.

43. With respect to the measure of the sanction, the First Respondent submits that:

i. it is not possible to maintain that the Product should be considered to be a "food supplement" to justify a severe sanction. Actually:
- in a recent decision (award of 29 July 2011, CAS 2011/A/2495, 2496, 2497 & 2498, *FINA v/ Cielo et al.*: hereinafter referred to as the "Cielo Award"), a CAS Panel found that the athlete had used a food supplement, but still imposed only a reprimand;
- even though the package of the Product specifies that it is a biologically active food supplement, Kolobnev was using it for therapeutic reasons upon advice of his doctor;
- the Product, and the active substance it contains (dihydroquercetin), is promoted for its benefit to health in general and to the capillary system in particular: its use is not associated with sporting activities;

ii. the contaminated Product was purchased from a reliable source;

iii. the contaminated Product was purchased upon advice of a doctor;

iv. the contaminated Product was manufactured under the label of a reputable supplier;

v. he had been informed that the Product was "*safe and OK for use*"; and

vi. it is difficult to see what, if anything, Kolobnev could have reasonably done to avoid the positive result.

44. With respect to the other consequences of the anti-doping rule violation committed by Kolobnev, the First Respondent's position is that:

i. the request that Kolobnev shall be entirely disqualified from the *Tour de France* 2011 cannot be granted, since Article 289.2 ADR ([3]) does not apply to offences involving a specified substance, such as HCT, and the Decision correctly applied Article 291.1 ADR; and

ii. the financial sanction imposed by the Decision is in accordance with the text of Article 326.1(b) ADR in force at the time the Decision was rendered; in any case, pursuant to the text of Article 326 ADR entered into force on 1 October 2011, more favourable to the First Respondent, the financial sanction imposed is not obligatory in the case (such as that of Kolobnev) in which a professional rider, responsible for an anti-doping rule violation, is not declared ineligible for two years. In addition, UCI has failed to demonstrate that the financial sanction applied by the Decision is not proportionate to the offence committed by Kolobnev, taking in mind all the other consequences of the proceedings he was subjected to, which include a suspension served as a provisional measure and the impossibility to find a new team for 2012.

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[3] Which is the ADR provision that the UCI had requested this Panel to apply in its written submissions: *see* footnote 2 above.

45. In general, and finally, the First Respondent submits that "*if … an additional sanction was ordered by the CAS, this would result in Mr Kolobnev missing the 2012 Pro Tour and the 2012 cycling season, including the 2012 Olympic Games. Such sanction, with the financial consequences deriving therefrom, would be clearly disproportionate with the facts of the case, namely the accidental ingestion of a specified substance through the use of a contaminated product purchased upon medical advice from a very reliable source and with the aim of treating a medical condition*".

b.2 The Position of the Second Respondent

46. In its answer, the RCF requested the following relief:

> *"1. The Appeal of the UCI shall be dismissed and the Decision of the RCF Anti-Doping Commission dated 25 October 2011 shall be confirmed.*
>
> *2. The CAS shall order the UCI to bear the costs of this arbitration.*
>
> *3. The CAS shall award to the Respondent 2 a contribution towards its legal costs*".

47. In support of its request to have the appeal dismissed, the RCF submits that the Decision "*has been rendered in full compliance with the effective UCI ADR and is consistent with the CAS jurisprudence*", and that the reasons invoked by the Appellant are "*not convincing*" and do "*not undermine the key elements*" of the Decision.

48. More specifically, the Second Respondent's answers to the Appellant's submissions concerning the origin of the prohibited substance are, *inter alia*, the following:

i. as to the claim that Kolobnev failed to prove that he did not use HCT under another form, the RCF points to the applicable evidentiary standard (balance of probability) to suggest that the First Respondent had met it, through the evidence provided, which refers to his medical conditions, explains the reasons of the use of the Product and confirms that the Product contained HCT. A different, negative, proof is impossible to provide;

ii. as to the claim that Kolobnev failed to prove how he had obtained the Product and that he had the Product in his possession at the *Tour de France* 2011, the Second Respondent refers to the evidence adduced by Kolobnev, found to be convincing notwithstanding the absence of a receipt of purchase of the Product;

iii. as to the claim that Kolobnev failed to submit a complete and current medical file, the RCF contends that the examination of the entire medical file of Kolobnev was not necessary, as the important point was to verify whether the Product had been recommended by a doctor and for such purposes the abstracts provided were sufficient;

iv. as to the questioning of the current validity of the 2009 medical conclusions and recommendations, the RCF submits that Kolobnev was suffering from a chronic disease: therefore it was possible to refer in 2011 to a 2009 prescription; and

v. in summary, according to the RCF, the First Respondent "*produced very credible and reliable evidence*" confirming that HCT entered his body as a result of the use of the contaminated Product, taken under the prescription of his personal doctor to treat a chronic disease.

49. With respect to the Appellant's submissions concerning the degree of fault, the Second Respondent's answers are the following:

    i. it cannot be maintained that the mere fact of use of a nutritional supplement "*constitutes at least significant character of an athlete's degree of fault*": as indicated in the Cielo Award, in fact, every single case involving nutritional supplements has to be considered individually;

    ii. the circumstances of the purchase by Kolobnev of the Product show that his conduct was "*highly responsible and cautious*";

    iii. the drugstore where Kolobnev purchased the Product was not the nearest to the hotel where Kolobnev was staying: he decided that "*in unknown city it was the best solution to buy products in the biggest Russian drugstore retailer and not to enter the local pharmacies which reputation and products information was unavailable*";

    iv. there is no reason why the First Respondent should have refrained from using the Product after reading the inscriptions on its box, since the Product had been prescribed by the doctor;

    v. the use of the Product had been recommended by Kolobnev's personal doctor;

    vi. the First Respondent had a confirmation by the Team doctor, i.e. a doctor who specializes in sports medicine, that the use of the Product "*is not linked with any doping danger and therefore … safe for the athletes*";

    vii. the "36.6" drugstore chain, labelling and selling the Product, "*has in Russia solid, clean and immaculate reputation*";

    viii. the doctor who prescribed the Product is an experienced specialist in phlebotomy: therefore, "*it is reasonable to presume that he used to prescribe only those products which reliability does not raised any doubts*";

    ix. the fact that Kolobnev did not mention the use of the Product in the doping control form is irrelevant;

    x. the composition of the Product never changed; and

    xi. it cannot be required of the First Respondent to give an explanation for the contamination of the Product.

50. In summary, since the conditions for the application of Article 295 ADR are met, and the degree of fault of the First Respondent is "*at the very lowest end of the spectrum of fault*", the Second Respondent concludes that "*the adequate, fair and proportionate sanction*" for Kolobnev "*shall be a reprimand and no ineligibility period shall be imposed*".

3. LEGAL ANALYSIS

3.1 Jurisdiction

51. CAS has jurisdiction to decide the present dispute between the parties.

52. The jurisdiction of CAS is not disputed. In addition, pursuant to Article R47 of the

Code, Article 329 ADR explicitly confers jurisdiction on CAS for this case.

53. More specifically, the provisions referring to CAS contained in the ADR, which are relevant in these proceedings, are the following:

Article 329

"*The following decisions may be appealed to the Court of Arbitration for Sport:*

1. a decision of the hearing body of the National Federation under article 272 …"

Article 330

"*In cases under article 329.1 to 329.7, the following parties shall have the right to appeal to the CAS: …*

c) the UCI …"

Article 331

"*The appeal of the UCI shall be made against the License-Holder and against the National Federation that made the contested decision and/or the body that acted on his behalf. The National Federation or body concerned shall be liable for costs if the hearing panel which made the decision against which the appeal has been made has applied the regulations incorrectly*"

Article 334

"*The statement of appeal by the UCI, the National Anti-Doping Organization, the International Olympic Committee, the International Paralympic Committee or WADA must be submitted to the CAS within 1 (one) month of receipt of the full case file from the hearing body of the National Federation in cases under article 329.1, 329.2 and 329.5 and from the UCI in cases under article 329.3, 329.4, 329.6 and 329.7. Failure to respect this time limit shall result in the appeal being disbarred. Should the appellant not request the file within 15 (fifteen) days of receiving the full decision as specified in article 277 or the decision by the UCI, the time limit for appeals shall be 1 (one) month from the reception of that decision*"

Article 346

"*The decision of the CAS shall be final and binding on the parties to the case and to all License- Holders and National Federations. It shall not be subject to appeal or any other recourse, except such recourse that cannot be validly excluded under applicable law*".

3.2 Appeal Proceedings

54. As these proceedings involve an appeal against a decision rendered by a national federation (RCF) acting by delegation of powers of an international federation (UCI) regarding an international level athlete in a disciplinary matter brought on the basis of rules providing for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case of international nature, in the meaning and for the purposes of the Code (see §§ 112-115 below).

3.3 Admissibility of the Appeal

55. The statement of appeal was filed within the deadline set in Article 334 ADR. No further internal recourse against the Decision is available to the Appellant within the structure of RCF. Accordingly, the appeal is admissible.

3.4 Scope of the Panel's Review

56. According to Article R57 of the Code,

"*the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance…*".

57. Pursuant to Article 344 ADR

"*The CAS shall have full power to review the facts and the law. The CAS may increase the sanctions that were imposed on the appellant in the contested decision, either at the request of a party or ex officio*"

3.5 Applicable Law

58. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

59. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute

"*… according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*".

60. In accordance with Article 345 ADR

"*The CAS shall decide the dispute according to these Anti-Doping Rules and for the rest according to Swiss law*".

61. As a result of the foregoing, the Panel considers the ADR to be the applicable regulations, chosen by the parties, for the purposes of Article R58 of the Code, and that Swiss law applies subsidiarily.

62. The Panel identifies the applicable substantive rules by reference to the principle "*tempus regit actum*": in order to determine whether an act constitutes an anti-doping rule infringement, the Panel applies the law in force at the time the act was committed. In other words, new regulations, unless they are more favourable for the athlete (the *lex mitior* principle referenced in advisory opinion CAS 94/128, rendered on 5 January 1995, *UCI and CONI*), do not apply retroactively to facts that occurred prior to their entry into force, but only for the future (CAS 2000/A/274, *S. v/ FINA*, award of 19 October 2000).

63. In light of the above, in order to establish an anti-doping rule violation and its consequences, the Panel shall apply the ADR in force in July 2011. However, provisions of the ADR thereafter entered into force shall apply to the extent they are more favourable to Kolobnev.

64. The provisions set in the ADR in force in July 2011 which are relevant in this arbitration include the following:

Article 19

"*Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in article 21*"

Article 21

"*The following constitute anti-doping rule violations:*

1. The presence of a Prohibited Substance or its Metabolites or Markers in a Rider's bodily Specimen.

1.1 It is each Rider's personal duty to ensure that no Prohibited Substance enters his body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Rider's part be demonstrated in order to establish an antidoping violation under article 21.1.

1.2 Sufficient proof of an anti-doping rule violation under article 21.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Rider's A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed; or, where the Rider's B Sample is analyzed and the analysis of the Rider's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider's A Sample.

1.3 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample shall constitute an anti-doping rule violation. …

Article 22

"*The UCI and its National Federations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI or its National Federation has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the License-Holder alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in articles 295 and 305 where the License-Holder must satisfy a higher burden of proof*"

Article 23

"*Facts related to anti-doping rule violations may be established by any reliable means, including admissions. …*"

Article 32

"*For purposes of the application of Chapter VIII (Provisional Suspension and provisional measures) and Chapter X (Sanctions and Consequences), all Prohibited Substances shall be "Specified Substances" except (a) substances in the classes of anabolic agents and hormones; and (b) those stimulants and hormone antagonists and modulators so identified on the Prohibited List. …*"

Article 275

"*If the License-Holder is found guilty of an anti-doping rule violation, he shall bear:*

1. *The cost of the proceedings as determined by the hearing panel.*
2. *The cost of the result management by the UCI; the amount of this cost shall be CHF 2'500, unless a higher amount is claimed by the UCI and determined by the hearing body.*
3. *The cost of the B Sample analysis, where applicable.*
4. *The costs incurred for Out-of-Competition Testing; the amount of this cost shall be CHF 1'500, unless a higher amount is claimed by the UCI and determined by the hearing body.*
5. *The cost for the A and/or B Sample laboratory documentation package where requested by the rider.*
6. *The cost for the documentation package of the blood samples analyzed for the Biological Passport where applicable.*

The License-Holder shall owe the costs under 2) to 6) also if they were not awarded in the decision. The National Federation shall be jointly and severally liable for its payment to the UCI"

Article 289

"*Except as provided in articles 290 and 291, an anti-doping rule violation occurring during or in connection with an Event leads to Disqualification of the Rider's individual results obtained in that Event according to the following rules:*
…

2. *If the violation involves*
   a) *the presence, Use or Attempted Use of a Prohibited Substance or a Prohibited Method (articles 21.1 and 21.2), other than a Specified Substance; …*

   all of the Rider's results are disqualified, except for the results obtained (i) in Competitions prior to the Competition in connection with which the violation occurred and for which the Rider (or the other Rider in case of complicity) was tested with a negative result, and (ii) in Competitions prior to the Competition(s) under point i.

3. *If the violation involves the presence, Use or Attempted Use of a Specified*

Substance, all of the Rider's results obtained in Competitions posterior to the Competition in connection with which the violation occurred are disqualified, except for those results which were not likely to have been affected by the violation"

Article 291

"*1. If the Event is a stage race, an anti-doping violation committed in connection with any stage, entails Disqualification from the Event, except when (i) the anti-doping violation involves the presence, Use or Attempted Use of a Prohibited Substance or a Prohibited Method, (ii) the Rider establishes that he bears No Fault or Negligence and (iii) his results in no other stage were likely to have been influenced by the Rider's anti-doping violation.*

2. If the anti-doping violation committed in a stage race involves the presence, Use or Attempted Use of a Specified Substance and only a reprimand is imposed in conformity with article 295, the Rider shall not be disqualified from the Event but 1% (one percent) of the time recorded by the Rider during the stage on which he tested positive shall be added to the final time on the individual classification. The number of points scored during that same stage shall be deducted from the final classification. Any prize won in connection with the stage in which the anti-doping violation occurred shall be forfeited"

Article 293

"*The period of Ineligibility imposed for a first anti-doping rule violation under article 21.1 (Presence of a Prohibited Substance or its Metabolites or Markers), article 21.2 (Use or Attempted Use of a Prohibited Substance or Prohibited Method) or article 21.6 (Possession of a Prohibited Substance or Prohibited Method) shall be*

2 (two) years' Ineligibility

unless the conditions for eliminating or reducing the period of Ineligibility as provided in articles 295 to 304 or the conditions for increasing the period of Ineligibility as provided in article 305 are met"

Article 295

"*Where a Rider or Rider Support Personnel can establish how a Specified Substance entered his body or came into his possession and that such Specified Substance was not intended to enhance the Rider's sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility for a first violation found in article 293 shall be replaced with the following:*

at a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the License-Holder must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The

License-Holder's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility"

Article 296

"*If the Rider establishes in an individual case that he bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Rider's Sample as referred to in article 21.1 (presence of a Prohibited Substance), the Rider must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility eliminated. In the event this article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under articles 306 to 312*"

Article 297

"*If a License-Holder establishes in an individual case that he bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 (eight) years. When a Prohibited Substance or its Markers or Metabolites is detected in a Rider's Sample as referred to in article 21.1 (presence of Prohibited Substance), the Rider must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility reduced*"

Article 313

"*In addition to the automatic Disqualification of the results in the Competition pursuant to article 288 and except as provided in articles 289 to 292, all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified*"

Article 314

"*Except as provided under articles 315 to 319, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed*"

Article 315

"*Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the License-Holder, the hearing body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred*"

Article 317

"*If a Provisional Suspension or a provisional measure pursuant to articles 235 to*

245 is imposed and respected by the License-Holder, then the License-Holder shall receive a credit for such period of Provisional Suspension or provisional measure against any period of Ineligibility which may ultimately be imposed"

Article 318

"*If a License-Holder voluntarily accepts a Provisional Suspension in writing from the UCI and thereafter refrains from competing or acting as Rider Support Personnel, the License-Holder shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. A copy of the Rider's voluntary acceptance of a Provisional Suspension shall be provided promptly to each party entitled to receive notice of a potential anti-doping rule violation under article 206*"

Article 326

"*In addition to the sanctions provided for under articles 293 to 313 anti-doping violations shall be sanctioned with a fine as follows.*

1. *The fine is obligatory for a License-Holder exercising a professional activity in cycling and in any event for members of a team registered with the UCI.*
   a) *Where a suspension of two years or more is imposed on a member of a team registered with the UCI, the amount of the fine shall be equal to the net annual income from cycling that the License-Holder normally was entitled to for the whole year in which the anti-doping violation occurred. The amount of this income shall be as assessed by the UCI, provided that the net income shall be assessed at 70 (seventy) % of the corresponding gross income. The License-Holder concerned shall have the burden of proof to the contrary. For the purpose of the implementation of this article the UCI shall have the right to receive a copy of the complete contracts of the License-Holder from the auditor appointed by the UCI. If justified by the financial situation of the License-Holder concerned, the fine imposed under this paragraph may be reduced, but not by more than one-half.*
   b) *In other cases than those under a) the minimum fine shall be CHF 3'000.- for elite men, CHF 1'500.- for elite women and CHF 750,- for under 23 Riders. These minima shall be doubled in the event of a violation under article 21.5 (Tampering or Attempted Tampering), article 21.7 (Trafficking or Attempted Trafficking), or 21.8 (Administration or Attempted Administration), in the event of an evasion or refusal under article 21.3 and in the event of a second or third violation. These minima are reduced by half for violations for which article 295 (Specified Substances) or article 297 (No Significant Fault or Negligence) is applied. Minima may be further reduced for License-Holders resident in Africa, Asia and South-America in line with incomes and cost of living.*
2. *No fine shall be imposed for violations for which article 296 (No Fault or Negligence) is applied. …*
4. *In observance of paragraphs 1 and 5 the amount of the fine shall be set in*

line with the gravity of the violation and the financial situation of the License-Holder concerned. …".

65. The provision set in the version of the ADR entered into in force in October 2011, after the date of the anti-doping rule violation, which has been invoked in this arbitration under the *lex mitior* principle, is the following:

Article 326

"*In addition to the sanctions provided for under articles 293 to 313 anti-doping violations shall be sanctioned with a fine as follows.*

1. The fine is obligatory for a License-Holder exercising a professional activity in cycling and in any event for members of a team registered with the UCI.

a) Where a period of Ineligibility of two years or more is imposed on a member of a team registered with the UCI, the amount of the fine shall be equal to the net annual income from cycling that the License-Holder normally was entitled to for the whole year in which the anti-doping violation occurred. The amount of this income shall be as assessed by the UCI, provided that the net income shall be assessed at 70 (seventy) % of the corresponding gross income. The License-Holder concerned shall have the burden of proof to the contrary. For the purpose of the implementation of this article the UCI shall have the right to receive a copy of the complete contracts of the License-Holder from the License- Holder or any person or organization maintaining the contracts, for example the auditor appointed by the UCI and National Federation. If justified by the financial situation of the License-Holder concerned, the fine imposed under this paragraph may be reduced, but not by more than one-half.

b) Where a period of Ineligibility of two years or more is imposed on a License-Holder exercising a professional activity in cycling that is not a member of a team registered with the UCI the minimum fine shall be CHF 3,000 for elite men, CHF 1,500 for elite women and CHF 750 for under 23 Riders. These minima shall be doubled in the event of a violation under article 21.5 (Tampering or Attempted Tampering), article 21.7 (Trafficking or Attempted Trafficking), or 21.8 (Administration or Attempted Administration), in the event of an evasion or refusal under article 21.3 and in the event of a second or third violation. These minima are reduced by half for violations for which article 295 (Specified Substances) or article 297 (No Significant Fault or Negligence) is applied.

If the License-Holder concerned is not a Rider the minimum fine shall be CHF 5,000 for a first violation and CHF 10,000 in the event of a second or third violation.

Minima may be further reduced for License-Holders resident in Africa, Asia and South-America in line with incomes and cost of living.

In each case the maximum fine shall be the triple of the minimum fine stipulated above.

2. *No fine shall be imposed for violations for which article 296 (No Fault or Negligence) is applied.*

3. *In other cases than those under paragraphs 1 and 2 the imposition of a fine is optional.*

4. *In observance of paragraphs 1 and 5 the amount of the fine shall be set in line with the gravity of the violation and the financial situation of the License-Holder concerned*".

3.6 The Dispute

66. On the basis of the relief requested by the parties, object of these proceedings is the determination of the consequences to be imposed on the First Respondent under the ADR for the anti-doping rule violation he has committed. It is in fact common ground between the parties that, as a result of the Adverse Analytical Finding, the First Respondent is responsible for the violation contemplated by Article 21.1 ADR. The parties, then, disagree as to the consequences to be drawn from such finding: while the Appellant holds that the standard sanction of two years of ineligibility, together with the ensuing disqualification of results and financial consequences, has to be applied, the Respondents defend the Decision that held otherwise, in application of the rule (Article 295 ADR) providing for a reduction of the applicable sanction. No claim is, on the other hand, made on the basis of Articles 296 ["*No Fault or Negligence*"] or 297 ["*No Significant Fault or Negligence*"] ADR, whose application has been discarded by the Decision.

67. As a result of the above, there are two main questions that the Panel has to examine:

i. the first concerns the satisfaction of the conditions for the application of a reduced sanction pursuant to Article 295 ADR. More specifically, it consists in the assessment of whether the Decision was correct in holding that such conditions are met; and

ii. the second concerns the identification of the consequences, under the rules found to be applicable, to be imposed on Kolobnev for his anti-doping rule violation. More specifically, it consists in the assessment of whether the Decision was correct in imposing on Kolobnev only a reprimand, with no period of ineligibility, and the other consequences it applied.

68. The Panel shall consider each of these questions separately.

i. Was the Decision correct in holding that the conditions for the application to Kolobnev of a reduced sanction pursuant to Article 295 ADR are met?

69. As mentioned, Kolobnev, as a result of the Adverse Analytical Finding, was found responsible for an anti-doping rule violation: more exactly for the anti-doping rule violation contemplated by Article 21.1 ADR ("*Presence of a Prohibited Substance or its Metabolites or Markers in a Rider's bodily Specimen*"). Kolobnev himself does not (and did not before the Anti-Doping Commission) challenge such finding.

70. Article 293 ADR provides, for a first anti-doping rule violation of such kind, the sanction of two years' ineligibility. However, according to Article 295 ADR, in the

event the substance found in the competitor's sample is identified in the Prohibited List as a "Specified Substance", and additional conditions are met, the sanction applicable under Article 293 ADR is replaced by a sanction ranging from a simple warning with no ineligibility (minimum), to two years' ineligibility (maximum).

71. In such respect, it is common ground between the Parties that HCT, the substance found in the Kolobnev's sample, is a Specified Substance for the purposes of Article 295 ADR. The Prohibited List and the ADR, in fact, consider HCT, a diuretic mentioned in class S.5 of the prohibited substances, to be a Specified Substance. The question is whether the additional conditions for the application of Article 295 ADR are met. In fact, the period of ineligibility for a first violation set by Article 293 ADR is replaced with a sanction ranging from a reprimand, and no period of ineligibility, to two years of ineligibility, if the athlete can establish:

    i. how the Specified Substance entered his or her body, and

    ii. that such Specified Substance was not intended to enhance his or her sport performance or mask the use of a performance enhancing substance.

72. The evidentiary standard applicable to the establishment of the mentioned conditions is set by Article 22 ADR, as supplemented by Article 293 ADR. In accordance with the rules therein provided, therefore:

    i. regarding the first condition, the athlete may establish how the Specified Substance entered the body "*by a balance of probability*". In other words, a panel should simply find the explanation of an athlete about the presence of a Specified Substance more probable than not;

    ii. with respect to the second condition, a Panel must be "*comfortably satisfied by the objective circumstances of the case that the Athlete in taking or possessing a Prohibited Substance did not intend to enhance his or her sport performance*" (award 28 April 2011, CAS 2010/A/2229, *WADA v/ FIVB & Berrios*, § 83). It follows that the second condition is met when an athlete can produce corroborating evidence, in addition to his or her word, which establishes to the comfortable satisfaction of a Panel that he or she ingested a specified substance without the intent to enhance his or her sport performance.

73. In light of the foregoing, the first issue that the Panel has to determine is whether Kolobnev has established how HCT entered his body.

74. The Panel holds he has. The Panel, in fact, notes, on the basis of the evidence presented before the Anti-Doping Commission and in the course of this arbitration, that:

    - Kolobnev purchased the Product in Ufa, Russian Federation, on 24 June 2011;
    - Kolobnev had the Product with him at the *Tour de France* 2011;
    - the analysis performed on the Product by a laboratory (the HFL Sport Science Laboratory) upon Kolobnev's request reported the presence of HCT, in the estimated amount of 6.3 micrograms per tablet;
    - the tablet analysed was contained in a blister having the same batch number as the blister of the Product presented to the Panel;

- Dr Rivier indicated that the level of HCT found in the Kolobnev's urine is "*fully compatible*" with the daily intake of the amounts of HCT indicated by the First Respondent, as determined on the basis of the amount of HCT detected by the HFL Sport Science Laboratory.

These facts were undisputed.

75. The Panel has also remarked that Kolobnev had not indicated in the doping control form he signed while undergoing the control of 6 July 2011 that he had used (or was using) the Product (or any "*medication*") and that no absolute evidence has been brought to prove that he had not ingested the prohibited substance in any other way. However, the circumstances mentioned above lead the Panel to conclude that, by a balance of probability, the use of the Product is an explanation for the presence of HCT in Kolobnev's body more probable than not.

76. The Decision was therefore correct in reaching the same conclusion.

77. The second issue, then, that the Panel has to determine is whether Kolobnev has established that he ingested HCT without the intent to enhance his sport performance or to mask the use of a performance enhancing substance.

78. Preliminarily, the Panel notes that a dispute has arisen between the parties to this arbitration with respect to the issue whether the absence of intent to enhance the sport performance has to be ascertained with respect to the prohibited specified substance found in Kolobnev's body or to the Product, containing it, that the First Respondent had used.

79. The Panel remarks on this point that a difference can be noticed between the first and the second paragraph of Article 295 ADR. Its first clause, in fact, requires the athlete to establish that the use of the "*Specified Substance was not intended to enhance the Rider's sport performance or mask the use of a performance-enhancing substance*" in order to justify a reduction in the otherwise applicable period of ineligibility. In the second clause, then, Article 295 adds the requirement that "*the License-Holder must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance*". In other words, the second paragraph does not explicitly require the athlete to prove no intent to enhance sport performance through the use of the product itself rather than of the specified substance therein. Indeed, the express language of this clause is ambiguous and susceptible to more than one interpretation.

80. At the same time, however, the Panel remarks that in the award of 6 December 2010, CAS 2010/A/2107, *Oliveira v/ USADA*, another CAS Panel clarified (at §§ 9.14 and 9.17 of the decision) that an athlete only needs to prove that he/she did not take the specified substance with an intent to enhance sport performance. The athlete does not need to prove that he/she did not take the product (e.g., a food supplement) with the intent to enhance sport performance.

81. The Panel concurs with the conclusion reached in CAS 2010/A/2107, and the reasoning that supported it: indeed, only the construction of the (ambiguous) second paragraph of

Article 295 as having the same meaning of the (much clearer) first paragraph harmonizes the provision and appears to be consistent with the very concept of "Specified Substances" as prohibited substances "*which are particularly susceptible to unintentional anti-doping rule violations*" ([4]), or susceptible to have a "*credible non-doping explanation*" ([5]). As a result, this Panel concludes that it has to verify whether the First Respondent has established, to its comfortable satisfaction, that by the use of HCT Kolobnev did not intend to enhance his sport performance or mask his use of a performance enhancing substance.

82. The Panel finds that convincing evidence, in addition to the First Respondent's words, has been brought to confirm, to its comfortable satisfaction, that Kolobnev did not intend to enhance his sport performance or mask his use of a performance enhancing substance. Actually, Kolobnev did not even know that the Product contained HCT: even though the UCI imputes to Kolobnev a high level of fault, no concrete submission has been made by the Appellant to claim that the First Respondent actually knew that the Product contained a prohibited substance, which Kolobnev used with the intent to enhance his sport performance or cover the use of another prohibited substance. As a result, no intent to use HCT, for whatever purpose, can be imputed to Kolobnev. In any case, the Panel is satisfied, on the basis of the evidence showing Kolobnev's medical history, that the use of the Product (and therefore *a fortiori* of HCT) was justified by medical reasons totally unrelated to sport performance: the Product, recommended by Dr Petrov in 2009, had been actually indicated to supplement the treatment of the vascular disease affecting Kolobnev, and not (as food supplement normally are) to help an athlete recover from physical effort or better prepare for a sporting performance. Finally, the Panel notes, on the basis of Dr Rivier's report, confirmed at the hearing, that the use of HCT, at the level found in Kolobnev's urine, could not have any significant masking effect: the submission advanced by the UCI at the hearing, based on a sentence contained in the same report of Dr Rivier (that "*diuretics can also modify haematological parameters as now used for the biological passport*") has not been further substantiated by the Appellant with respect to HCT and its intake by the First Respondent, and therefore cannot be accepted.

83. The Decision was therefore correct also on this point. It follows that the conditions for the application of Article 295 ADR are met.

ii. What are the consequences to be applied for the anti-doping rule violation committed by Kolobnev?

84. The second question that the Panel has to answer concerns the consequences of the anti-doping rule violation committed by Kolobnev, in the light of the above conclusion that Article 295 ADR applies.

85. The first point concerns ineligibility: the Anti-Doping Commission decided not to impose any period of ineligibility and to sanction Kolobnev with a simple warning. UCI disputes this conclusion, and maintains that in any case the level of negligence shown by the First Respondent is such as to command a sanction of two years' ineligibility.

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4 Article 10.3 of the World Anti-Doping Code, edition 2003.

5 Footnote to Article 10.4 of the World Anti-Doping Code, edition 2009.

86. The period of ineligibility which, under Article 295 ADR, could be imposed on Kolobnev ranges from 0 to 24 months. The closing sentence of Article 295 ADR makes it clear, then, that the measure of the sanction depends on the assessment of Kolobnev's fault. In that respect, the Panel notes that it is a principle under the WADA World Anti-Doping Code (hereinafter referred to as the "WADC") (on which the ADR rules are modelled), that the circumstances to be considered in the assessment of the athlete's fault "*must be specific and relevant to explain the athlete's … departure from the expected standard of behavior*" (footnote to Article 10.4 of the WADC, edition 2009). Therefore, Kolobnev's fault has to be measured by the Panel, on the basis of specific circumstances, against the fundamental duty he had to do everything in his power to avoid ingesting any prohibited substance, weighing the circumstances adverse and the circumstances favourable to his position, as evidence before the Anti-Doping Commission or in the course of these arbitration proceedings.

87. In the Panel's view, the circumstances favourable to Kolobnev include the following:

- the use of the Product is not associated with sporting practice;
- the use of "*Kapilar or natural capillary protector*" was recommended on 26 June 2009 by Dr Petrov as part of the treatment for the vascular disease ("*lower limb varication*") affecting Kolobnev, for which he had undergone surgery years before;
- the possibility to use the Product without any doping related problem had been confirmed to Kolobnev by the team doctor, i.e. a specialist in sports medicine;
- he bought the Product (named "Natural Kapilyaroprotektor") from a reliable drugstore, which he had directly visited, and not from an on-line supplier whose products could be associated with doping or an intent to enhance performance;
- Kolobnev's case is not a case of contamination in a common multiple vitamin or other common nutritional supplement, the risks of the use of which are well known to athletes;
- the label of the Product did not contain any warning of the presence of a prohibited substance;
- before 6 July 2011, he had never returned an adverse analytical finding notwithstanding the use of the Product or of another product intended to have the same effects and used for the same purposes; and
- Kolobnev's personal history and clean anti-doping record over many years shows that he had always paid attention to anti-doping issues.

88. On the other hand, the circumstances adverse to Kolobnev are the following:

- the medical recommendation he relied upon was two years old at the time of the purchase of the Product;
- he did not consult with a doctor immediately prior to the purchase or the use of the Product;
- he exceeded the dosage indications for a correct use of the Product;
- he never mentioned the use of the Product on any doping control form.

- the circumstances of the use of the Product are not extraordinary and were not time-pressured: Kolobnev had time to calmly make substantial control and research with respect to the Product;
- Kolobnev is an experienced and accomplished international level athlete, who was the subject of regular anti-doping controls, with perfect knowledge of his anti-doping obligations.

89. The elements listed above, favourable and adverse to Kolobnev, have been weighed by the Decision, which concluded that the First Respondent's case falls at "*the very lowest end of the spectrum of fault*" and imposed only a reprimand.

90. The Panel concurs with such conclusion and finds that the Decision must be confirmed, in light of the very specific features of this case.

91. The Panel is led to this conclusion chiefly by the medical history of Kolobnev, documented in the course of the proceedings and not contradicted by the UCI. The use of the Product, even if considered to be a "supplement" and not a medication, was based on a medical recommendation which was still valid at the time Kolobnev purchased and took the Product, and was not in any way intended to enhance the sporting performance of the athlete.

92. In addition, the Panel finds that the sanction of a reprimand is in line with the recent jurisprudence concerning specified substances detected following the use of a "supplement", when compared with the elements adduced by the different Panels to identify the proper sanction. In fact,

- in the Cielo Award, the CAS Panel confirmed the sanction of a warning in a case where, such in the case of Kolobnev, there had been consultation with a sports medicine specialist with respect to the use of the supplement and the supplement had been bought from a reliable pharmacy. Unlike Cielo, Kolobnev did not have the doctor to conduct research on the product prior to its intake and, more in general, was much less in contact with the doctor. However, the purely medical justification for the use of the Product is much more stringent in the case of Kolobnev than in the case of Cielo (and marks a decisive difference between the two cases), since in the latter case the medical prescription of caffeine (which turned out to be contaminated) was justified only by the need to overcome tiredness or fatigue associated with either the fact of taking tablets to help sleep or the fact of having to compete in multiple races during a single event. In other words, the medical reasons adduced by Kolobnev are based on a specific pathology and are not linked to his sporting activity, as it was with respect to Cielo;
- in the award of 21 January 2010, CAS 2009/A/1918, *Wawrzyniak v/ HFF*, a sanction of three months was imposed, in a case where there was no medical justification for the use of the supplement, even though the athlete had informed the doctor of such use;
- in the award of 10 November 2011, CAS 2011/A/2518, *Kendrick v/ ITF*, a sanction of eight months was imposed in a case where the athlete had used, without any medical reason, a product which he had received from someone who

was not his own coach and which was contained in an unwrapped wrapper, and absent any consultation with quailed personnel;

- in the award of 28 April 2011, CAS 2010/A/2229, *WADA v/ FIVB & Berrios*, a sanction of twelve months was imposed, in a case where the Panel found the athlete to be negligent because he had no justification for using the product, had not consulted with a doctor and had not made any inquiry or research, which would have led him to discover the dangers associated with the use of that product;
- in the award rendered in *Foggo v/ National Rugby League,* CAS A2/2011, a sanction of six months was imposed on a professional rugby league player who purchased and used a supplement called "Jack3d", which resulted in an adverse analytical finding for MHA (a Specified Substance). The use of pre-workout supplements was encouraged by the athlete's club. The athlete himself had received very limited formal anti-doping education. However, the athlete had been assured by the store owner that the product was clean and had consulted his conditioning coach and undertaken research on the ASADA website in respect of the ingredients of Jack3d which had not resulted in the identification of any specified substances. The athlete had not sought or received medical advice;
- in the AAA award of 26 January 2009, *Brunemann v/ USADA*, a sanction of six months was imposed on an elite collegiate swimmer in the United States who took her mother's prescription pill bottle, plainly marked on the bottle as containing two diuretics that were Specified Substances, to relieve her constipation;
- in a decision of 24 November 2010, *UKAD v/ Dooler*, the United Kingdom Anti-Doping Panel imposed a sanction of four months on a semi-professional rugby league player who had tested positive for the presence of MHA. The source of this result was a product called "Xtreme Nox Pump" which he had taken at half time during a match to alleviate post-match fatigue and muscle pain. The product was in fact more directed towards improving training performance. He did not discuss his use of the product on match days with his team doctor and/or coaches. However, it was accepted that internet searches would not readily have identified that the product might contain MHA;
- in a decision of 22 March 2011, *RFU v/ Steenkamp*, a RFU disciplinary panel imposed a sanction of three months on a semi-professional rugby union player who had tested positive for MHA after using what he believed to be an energy drink. The drink had been recommended by a qualified fitness instructor, who had, after checking, assured him that the product contained no banned substances;
- in a decision of 16 March 2011, *RFU v/ Wihongi*, a RFU disciplinary panel imposed a sanction of four months on a professional rugby union player picked up a green bottle in the team dressing room at half-time during a match, believing it to contain water. He started to drink the contents but quickly realised that it contained a sport drink that had been prepared by team coaching personnel for another player and stopped drinking. He subsequently tested positive for MHA;
- in a decision of 29 October 2010, *NADP v/ Wallader*, the United Kingdom Anti-Doping Panel imposed a sanction of four months on a female shot putter for testing positive for MHA caused by her use of a supplement called "Endure". The athlete was 21, a student, and was given the supplement by her very experienced

coach, who had received specific assurances from the supplier that it was "legal". The athlete had, herself, both checked the ingredients against the 2009 Prohibited List and found no matches (because neither MHA was included by name on the Prohibited List at that point). The athlete, who had specialist medical assistance readily available to her, was found to have exercised "considerable diligence".

93. Having regard to all of the circumstances, and the prior cases involving specified substances, the Panel comes to the conclusion that Kolobnev's fault was minimal. It is true that he could have done something more than he did, in order to avoid ingesting the prohibited substance: he could have avoided taking the Product at all, he could have the Product tested before its use, he could even have sought new medical advice at the time of the purchase of the Product in Ufa or immediately before its use. Such steps, however, do not appear reasonable to the Panel, for the costs involved, or in the light of the medical recommendation the First Respondent already had for the use of the Product. In any case, the existence of a low level of negligence is consistent with the application of a simple reprimand pursuant to Article 295 ADR, as the First Respondent did not plead "*No Fault or Negligence*" under Article 296 ADR.

94. In addition, the Panel finds the Decision to be well reasoned, and based on a careful examination of the evidence in front of it. Therefore, this CAS Panel, even though it has full power of review of the disputed facts and law in the exercise of its jurisdiction, accepts the *dictum* in the award of 21 May 2010, CAS 2009/A/1870, *WADA v. Hardy and USADA Hardy* (§ 125), under which "*the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see TAS 2004/A/547, FC Zürich v/ Olympique Club de Khourigba, §§ 66, 124; CAS 2004/A/690, Hipperdinger v/ ATP Tour, Inc., § 86; CAS 2005/A/830, Squizzato v/ FINA, § 10.26; CAS 2005/C/976 & 986, FIFA & WADA, § 143; 2006/A/1175, Daniute v/ IDSF, § 90; CAS 2007/A/1217, Feyenoord v/ UEFA, § 12.4)*". Far from excluding, or limiting, the power of a CAS panel to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the Code), such indication only means that a CAS panel "*would not easily 'tinker' with a well-reasoned sanction, ie to substitute a sanction of 17 or 19 months' suspension for one of 18*" (award of 10 November 2011, CAS 2011/A/2518, *Kendrick v/ ITF*, § 10.7, with reference to CAS 2010/A/2283, *Bucci v/ FEI*, § 14.36). Therefore, a panel "*would naturally … pay respect to a fully reasoned and well-evidenced decision … in pursuit of a legitimate and explicit policy*" (ibid.). In other words, this Panel does not consider warranted, nor proper, to interfere with the Decision, to slightly adjust it.

95. The Decision is therefore to be confirmed in the portion imposing on Kolobnev a reprimand and no period of ineligibility. The request of the Appellant, seeking the application of a two years' period of ineligibility, is to be dismissed.

96. The second point concerns disqualification: the Anti-Doping Commission disqualified only the results obtained by Kolobnev at the stage of 6 July 2011 of the *Tour de France* 2011; the Appellant requests the disqualification of all the results achieved by Kolobnev at the *Tour de France* 2011 and thereafter.

97. The Panel notes that its finding that the anti-doping rule violation committed by Kolobnev has to be sanctioned with a reprimand leads to the application of Article 291.2 ADR, which specifically concerns the case of an anti-doping violation committed in a stage race involving a specified substance and entailing the application of a reprimand under Article 295 ADR.

98. In other words, Article 291.2 ADR perfectly fits the Kolobnev's case. The other provisions invoked by the Appellant do not apply, because Article 289.2 ADR considers only an anti-doping rule violation involving a prohibited substance other than a specified substance, and because Article 291.1 ADR applies only in cases when a period of ineligibility is imposed.

99. Under Article 291.2 ADR:

    i. the athlete shall not be disqualified from the stage race, but 1% (one percent) of the time recorded by the athlete during the stage on which he tested positive shall be added to the final time on the individual classification;

    ii. the number of points scored during that same stage shall be deducted from the final classification; and

    iii. any prize won in connection with the stage in which the anti-doping violation occurred shall be forfeited.

100. Pursuant to Article 291.2 ADR, therefore, only the results obtained by Kolobnev at the stage of 6 July 2011 of the *Tour de France*, i.e. the stage in which the anti-doping violation occurred, have to be disqualified. The other consequences on the final classification provided by Article 291.2 ADR do not apply, since Kolobnev, after the notification of the Adverse Analytical Finding, withdrew from the *Tour de France* 2011.

101. The Decision is therefore to be confirmed also in the portion providing for the disqualification only of the results obtained by Kolobnev at the stage of 6 July 2011 of the *Tour de France* 2011. The request of the Appellant, seeking the disqualification of Kolobnev entirely from the *Tour de France* 2011 and of any subsequent results, is to be dismissed.

102. The third point concerns the financial sanction: the Anti-Doping Commission imposed a fine of CHF 1,500; the Appellant requests the application of a fine in the amount of EUR 350,000.

103. The Panel remarks that at the time the anti-doping rule violation was committed, the case of Kolobnev, a rider member of a team registered with the UCI who had received a sanction lower than a suspension of two years, fell in Article 326.1(b) ADR: in fact, section (a) of such rule provided for a mandatory sanction equal to the net annual income from cycling "*where a suspension of two years or more is imposed on a member of a team registered with the UCI*"; while section (b) indicated the compulsory fine in the "*other cases*" concerning an athlete exercising a professional activity in cycling. Therefore, since Kolobnev had received only a reprimand, his was one of the "*other cases*". In October 2011, however, a new text of Article 326 entered into force, providing, under both sections (a) and (b) of Article 326.1 ADR, for a compulsory

sanction on a professional rider only in the event a period of ineligibility of two years or more is imposed, and making, at Article 326.3 ADR, the application of a financial sanction "*optional*" in the "*other cases*".

104. The Panel notes that the Decision correctly applied Article 326.1(b) ADR, in whose scope the case of the First Respondent was falling at the time the anti-doping rule violation was committed. In light of the low level of fault found with respect to Kolobnev, the Anti-Doping Commission applied the minimum fine (CHF 3,000) reduced by half (to CHF 1,500) as the violation involved a specified substance under Article 295 ADR. The entry into force of the new version of Article 326 ADR, applicable under the *lex mitior* doctrine, prevents the Panel from increasing such measure: Article 326.1(b) ADR is now applicable only in the event the athlete is declared ineligible for at least two years; Article 326.3 ADR, now applicable to the case of Kolobnev (and providing for an optional fine), could retroactively apply only in favour of the athlete, and therefore cannot be invoked by the UCI to obtain an increase in the financial sanction.

105. As a result, the Decision is to be confirmed also in the portion imposing on Kolobnev a fine in the amount of CHF 1,500. The request of the Appellant, seeking the application of a financial sanction amounting to EUR 350,000, is to be dismissed.

106. The fourth point concerns the remaining consequences, which the UCI requests this Panel to draw from the First Respondent's anti-doping rule violation: the point was not covered by the Decision, while the Appellant requests that Kolobnev and the RCF be ordered to bear the costs of result management, of the B-sample analysis and of the A-sample documentation package.

107. Such other consequences are provided by Article 275 ADR, in the event "*the License-Holder is found guilty of an anti-doping rule violation*", with the indication that the cost of the result management by the UCI, the cost of the B sample analysis, and the cost for the A and/or B sample laboratory documentation package, where requested by the rider, are owed jointly by athlete and its national federation also if they are not awarded in the decision ruling on the anti-doping rule violation.

108. The Panel notes that the First Respondent, even though he received only a warning, and no ineligibility period, under Article 295 ADR, committed an anti-doping rule violation. Therefore, he is, jointly with the RCF, liable for the costs mentioned in Article 275 ADR.

109. The UCI requested in this arbitration the payment of the cost of the result management quantified in the amount of CHF 2,500. Such measure corresponds to the amount indicated in Article 275(2) ADR. In addition, quantifies in EUR 690,00 the costs of the B-sample analysis and of the A-sample documentation package. Such amount has not been disputed by the Respondent.

110. Therefore, the Panel finds that the requests submitted by the UCI are to be granted: Kolobnev and the RCF and ordered to pay, as jointly and severally liable, the amounts of CHF 2,500 and of EUR 690,00 for the costs incurred by the UCI in the result management, for the B-sample analysis and for the A-sample documentation package.

3.7 Conclusion

111. In light of the foregoing, the Panel holds that the appeal brought by UCI against the Decision is to be granted only to a very limited extent, i.e. only with respect to the costs claimed by UCI under Article 275 ADR. The relief requested by the UCI on all other respects, including ineligibility, disqualification and the financial sanction, is, on the other hand, to be denied.

* * *

4. COSTS

112. Pursuant to Article R65.1 of the Code, disciplinary cases of an international nature shall be free of charge, except for the Court Office fee to be paid by the appellant and retained by the CAS.

113. Article R65.3 of the Code provides that the Panel shall decide which party shall bear the costs of the parties, witnesses, experts and interpreters, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

114. As this is a disciplinary case of an international nature, the proceedings are free of charge, except for the minimum Court Office fee, already paid by the Appellant, which is retained by the CAS.

115. With regard to the parties' costs, having taken into account the outcome of the arbitration, the conduct and the financial resources of the parties, the Panel finds it to be appropriate and fair that the UCI pays an amount of CHF 3,500 (three hundred five thousand Swiss Francs) to Kolobnev as a contribution towards the costs, for legal fees and other expenses, he has sustained in connection with these arbitration proceedings. The RCF, not assisted by outside counsel, is not entitled to any contribution.

* * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Union Cycliste Internationale (UCI) on 30 November 2011 against the decision taken by the Anti-Doping Commission of the Russian Cycling Federation on 25 October 2011 is partially granted.

2. Mr Alexander Kolobnev is ordered to pay the Union Cycliste Internationale (UCI):
   - an amount of CHF 2,500.00 (two thousand five hundred Swiss Francs) for the costs of the results management sustained by the Union Cycliste Internationale (UCI); and
   - an amount of EUR 690.00 (six hundred ninety Euros) for the cost of the B-sample analysis as well as the cost of the A-sample documentation package.

3. The decision taken by the Anti-Doping Commission of the Russian Cycling Federation on 25 October 2011 is confirmed for all the remaining portions. The appeal filed by the Union Cycliste Internationale (UCI) on 30 November 2011 against the decision taken by the Anti-Doping Commission of the Russian Cycling Federation on 25 October 2011 is dismissed in all respects not specifically granted herein.

4. This award is pronounced without costs, except for the court office fee of CHF 1,000 (one thousand Swiss Francs) paid by the Union Cycliste Internationale (UCI), which is retained by the CAS.

5. UCI is ordered to pay an amount of CHF 3,500 (three thousand five hundred Swiss Francs) to Mr Alexander Kolobnev as a contribution towards the costs, legal fees and other expenses, he has sustained in connection with these arbitration proceedings. The Russian Cycling Federation shall bear its own expenses.

6. All other prayers for relief are dismissed.

Lausanne, 29 February 2012

THE COURT OF ARBITRATION FOR SPORT

Luigi **Fumagalli**
President of the Panel

Martin **Schimke**
Arbitrator

Jeffrey G. **Benz**
Arbitrator