Arbitration CAS 2022/A/9113 Nairo Alexander Quintana Rojas v. Union Cycliste Internationale (UCI), award of 5 June 2023 (operative part of 3 November 2022)

Panel: Mr James Drake KC (United Kingdom), President; Mr Juan Pablo Arriagada (Chile), Mr Olivier Carrard (Switzerland)

Cycling
Doping (tramadol)
Nature and value of the UCI Medical Rules
Validity of sanctions under the tramadol control
Absence of an obligation of B-sample in tramadol control and use of a laboratory not accredited by WADA
Right to be heard and tramadol control

1. **The UCI Medical Rules are binding as part of the UCI Cycling Regulations. By requesting a license, any rider agrees to abide and be bound by these Rules and explicitly agrees and acknowledges that tramadol is prohibited in-competition. In this respect, any rider agrees to submit to in-competition tramadol control.**

2. **By virtue of their status, expertise and responsibility for protecting and reconciling the interests of all stakeholders in a particular sport, international federations such as the UCI enjoy a margin of appreciation in determining what factors are relevant and necessary to ensure the health and safety of all of their competitors and what regulatory measures are necessary in order to achieve this. The tramadol control within the UCI Medical Rules is expressed to be in response to UCI concern about the use of tramadol on individual riders and on the safety of the competitions generally. It is therefore open to the UCI to ban a substance on health and safety grounds and doing so is not in breach of the UCI's obligations as a signatory of the World Anti-Doping Code. On the same note, the fact that tramadol controls are carried out by the ITA does not convert the UCI Medical Rules into a set of anti-doping rules. WADA itself has confirmed that the UCI Medical Rules are not anti-doping rules.**

3. **The Tramadol Control and the UCI Medical Rules do not contain any provision for a B sample. This follows the logic that the tramadol control is a medical control process and not anti-doping. Therefore is no obligation on the UCI to provide for a B sample analysis. Consequently, the absence of a B sample analysis does not render a tramadol control invalid. With the same logic, there is no requirement that the UCI uses only WADA-accredited laboratories for the testing and analysis under the tramadol control since this is not an anti-doping process.**

4. **The right to be heard is a fundamental and general principle which derives from the elementary rules of natural justice and due process. In accordance with article 133.070(a) of the UCI Medical Rules, in case of presence of tramadol, the UCI Medical**

Director *"is competent to decide and sanction all cases"* for a first infringement. In case of allegations of evading a tramadol sample collection, tampering or attempting to tamper with the tramadol sample collection process, refusing or failing to submit to tramadol sample collection or failure to report to the tramadol control station within the time limit provided under Article 13.3.067 of the UCI Medical Rules without compelling justification, the UCI Medical Director *"may invite the rider to provide his/her position on the reported infringement"*. This article does not impose an obligation on the UCI Medical Director to invite the rider to provide an explanation; by use of the word "may" it is obvious that UCI Medical Director has the discretion to do so but is not so obligated.

I. PARTIES

1. The Appellant is Mr Nairo Alexander Quintana Rojas ("the Appellant" or the "Rider"). He is a cyclist from Colombia who competes in the sport of cycling in the discipline of road cycling. Among other notable events, the Rider has competed in the Tour de France, the Giro d'Italia (which he won in 2014) and the Vuelta a Espana (which he won in 2016).

2. The Respondent is Union Cycliste Internationale (the "Respondent" or the "UCI"), the international federation for cycling and the world governing body for the sport of cycling recognized by the International Olympic Committee. It has its headquarters in Aigle, Switzerland.

3. Collectively, the parties shall be referred to herein as the "Parties"

II. FACTUAL BACKGROUND

4. Below is a summary of the salient facts, matters and circumstances drawn from the Parties' evidence and written and oral submissions.

5. Tramadol is a synthetic opioid analgesic prescribed for the treatment of moderate to moderately severe pain. It is a centrally acting analgesic which works by binding to opioid receptors in the brain to block the perception of pain and also gives to rise to a euphoric effect. It can have side effects, including dizziness, drowsiness, and nausea. It can also be habit-forming. It is a prodrug with two active metabolites O-desmethyltramadol (M1) and N-desmethyltramadol (M2). It is the M1 metabolite that is the principal contributor to the opioid effect of the drug.

6. From time to time, the Respondent issued its *"Cycling Regulations"* (the "UCI Cycling Regulations") which governed the UCI and the sport of cycling. Part XIII of the UCI Cycling Regulations was introduced as of 1 March 2019 and was headed *"Medical Rules"* (the "UCI Medical Rules"). Chapter III of the UCI Medical Rules was concerned with *"Protection and Promotion of the Rider's Health"*, and Section 6 of Chapter III was titled *"In-Competition Prohibition*

of Tramadol" (which was referred to by the Parties as the "Tramadol Control") which provided, amongst other things, for a ban on the use of tramadol in-competition.

7. The 2022 Tour de France was held from 1 through 24 July 2022. The Rider participated in the event, finishing in sixth place overall.

8. Immediately following the 7th and 11th stages of the event, 8 and 13 July 2022 respectively, the Rider underwent control testing pursuant to the UCI Medical Rules by which he provided dried blood samples (the "Samples"). The sample taken on 8 July was No. 101177 ("Sample 101177") and that taken on 13 July 2022 was No.101050 ("Sample 101050"). The testing was carried out for UCI by the International Testing Agency (the "ITA").

9. The Samples were sent by the ITA to the Laboratory of Clinical Pharmacology and Toxicology in Geneva ("LCPT") for analysis. The analysis indicated the presence of tramadol for both Samples.

10. LCPT sent the Samples for review to the Centre of Research and Expertise in anti-Doping Sciences at the University of Lausanne ("REDS"). At REDS, Dr Faiss and Professor Botrè analysed the Samples and reported on their findings to the UCI Medical Director as follows:

    a. In relation to Sample 101177, in a report dated 16 August 2022: *"We the undersigned, Dr Raphael Faiss & Prof. Francesco Botrè, have reviewed the analytical report issued by Prof. Youssef Daali and we agree with the conclusion that Sample ID101177 was found to contain tramadol, O-desmethyltramadol and N-desmethyltramadol at estimated concentrations of 15.3 ng/mL for tramadol, and 9.2ng/mL for O-desmethyltramadol. Concentration for N-desmethyltramadol was found to be below the limit of quantitation, but still above the limit of detection. In view of the above, the presence of tramadol and its two main metabolites is ascertained by the analytical results without any departure from the Regulations or circumstances, other than the intake of tramadol, that caused the analytically positive results. Based on the reported concentrations of tramadol and its metabolites and existing data from the scientific literature on the excretion of tramadol, it can be estimated that an intake of tramadol occurred 12-48 hours before the sample was collected".*

    b. In relation to Sample 101050, in a report dated 16 August 2022: *"We the undersigned, Dr Raphael Faiss & Prof. Francesco Botrè, have reviewed the analytical report issued by Prof. Youssef Daali and we agree with the conclusion that Sample ID101050 was found to contain tramadol, O-desmethyltramadol and N-desmethyltramadol at estimated concentrations of 17.4 ng/mL for tramadol, and 10.0ng/mL for O-desmethyltramadol. Concentration for N-desmethyltramadol was found to be below the limit of quantitation, but still above the limit of detection. In view of the above, the presence of tramadol and its two main metabolites is ascertained by the analytical results without any departure from the Regulations or circumstances, other than the intake of tramadol, that caused the analytically positive results. Based on the reported concentrations of tramadol and its metabolites and existing data from the scientific literature on the excretion of tramadol, it can be estimated that an intake of tramadol occurred 12-48 hours before the sample was collected".*

11. By letter dated 17 August 2022, the UCI Medical Director, notified the Rider that he had *"been informed that the dried blood samples you provided on 8 and 13 July 2022 during the Tour de France 2022 revealed the presence of tramadol and its two metabolites"*. Further, the Rider was *"hereby formally notified that this constitutes an infringement of the UCI Medical Rules which prohibit tramadol in competition and which results in the disqualification of all results obtained during the Tour de France 2022"*.

12. In the same letter, the UCI Medical Director issued the following decision (the "Appealed Decision"):

"According to the analysis performed by the laboratory and following the Reds review of same, the UCI is satisfied that the presence of Tramadol and its metabolites in your samples 101177. And 101050, collected during the Tour de France 2022, is established.

According to Article 13.3.068 let. a (in fine) of the UCI Medical Rules, the mere presence of tramadol and its metabolites is sufficient to establish an infringement of the in-competition prohibition of tramadol. It is therefore not necessary to establish intent, fault, or negligence of the rider. In other words, a breach of the in competition Prohibition of tramadol occurs whenever tramadol is found in bodily specimen, irrespective of the reasons thereof, including whether or not a rider intentionally or unintentionally used tramadol.

Please note that as you receive notice of both tests results simultaneously, these will be considered as one single violation.

In view of the above, all of the results you obtained at the Tour de France 2022 are disqualified, including forfeiture of any medals, points and prizes, pursuant to Article 13.3.069, ch.1, let a) of the UCI Medical Rules.

Moreover, a fine of 5000 CHF is imposed in accordance with Article 13.3.069, ch.1, let b) of the UCI Medical Rules.

Finally, you shall reimburse the costs of both tramadol controls pursuant to Article 13.3.069, ch.1, let c) of the UCI Medical Rules A.

This decision is immediately enforceable as of receipt of this letter by email and may be appealed before the Court of Arbitration for Sport (CAS) within 10 days pursuant to Article 13.3.070, ch.1, let c) and d) of the UCI Medical Rules. …".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. The Rider challenges the Appealed Decision in this appeal.

14. On 26 August 2022, pursuant Articles R47 and R48 of the Code of Sports-related Arbitration 2021 edition (the "CAS Code"), the Rider filed his Statement of Appeal against the Appealed Decision.

15. On 7 September 2022, the Rider filed his Appeal Brief in accordance with Article R51 of the CAS Code.

16. On 29 September 2022, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.

17. On 5 October 2022, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide this appeal was: Mr Juan Pablo Arriagada, Attorney-at-law, Santiago, Chile; Mr Olivier Carrard, Attorney-at-law, Geneva, Switzerland; and James Drake K.C., Barrister and Arbitrator in London, United Kingdom, as president.

18. On 11 October 2022, the Parties signed and returned the Order of Procedure, issued by the CAS Court Office on behalf of the Panel.

19. A hearing took place on 12 October 2022. By consent of the Parties, the hearing was conducted in a hybrid fashion with some participants taking part in person and others remotely via Webex. The following people took part in the hearing:

    a. The Panel:

        i. Mr James Drake KC, President

        ii. Mr Juan Pablo Arriagada, Arbitrator

        iii. Mr Olivier Carrard, Arbitrator

    b. The Rider:

        i. Mr Fabio Pavone, Counsel

        ii. Mr Andrés Charria, Counsel

        iii. Professor Alberto Salomone, Expert, Forensic Toxicologist and Associate Professor at the University of Turin

        iv. Mr Luca Trentini, interpreter

    c. The Respondent:

        i. Mr Antonio Rigozzi, Counsel

        ii. Ms Marie Gachet, Counsel

        iii. Professor Francesco Botrè, REDS

        iv. Dr Raphaël Faiss, REDS

        v. Professor Jean-Luc Veuthey, Expert, Professor in Pharmaceutical Analysis, University of Geneva

d. CAS Court Office:

i. Ms Andrea Sherpa-Zimmermann, Counsel

20. At the conclusion of the hearing, the Parties confirmed that they had had a full and fair opportunity to present their respective cases, that their right to be heard had been fully respected, and that they had no objection to the manner in which the proceedings had been conducted.

IV. THE PARTIES' SUBMISSIONS

21. In considering and deciding upon the Parties' claims in this Award, the Panel has carefully considered all of the submissions made and evidence adduced by the Parties. The following represents a summary of those principal matters advanced by the Parties considered necessary to explain the Panel's reasoning and conclusions.

A. The Rider's Submissions

22. The Rider's submissions were in two halves, the first relating to legal questions concerning the Tramadol Control and the second relating to scientific considerations.

Legal Considerations

23. The Rider's submissions in this respect may be summarised in the following way.

a. The UCI Medical Rules are based on the Olympic Movement Medical Code (the "Olympic Medical Code") which is a non-binding document and cannot be used *"to impose a sanction over a rider"*. The UCI Medical Rules *"are a set of suggestions and guidelines"* and *"it is incorrect and an overreach of UCI to impose a sanction based on non-binding rules"*.

b. The Tramadol Control provides that an athlete has 10 days to appeal, to be contrasted with the 30-day period allowed under the UCI Anti-Doping Rules. This puts the Rider at a disadvantage.

c. The Tramadol Control is clearly a doping control. It is an anti-doping issue. It is carried out for the UCI by the ITA which is plainly *"an anti-doping organization"*.

d. The World Anti-Doping Code (the "WADC") issued by the World Anti-Doping Agency ("WADA") is the only authorised set of rules available to sports institutions to sanction an athlete for the presence of a prohibited substance *"or any substance that can regulate and improve … health"*. By Article 23 of the WADC, WADA *"rules health issues and its connection with substances and methods cannot be changed by a signatory organisation, such as the UCI". … Therefore, the sole authority to ban any substance in sports is WADA"*. This was made clear in CAS 2022/O/2422 at paras 45ff.

e. Accordingly, the UCI *"can't add any matter related with doping, it doesn't matter if UCI says it is not a doping issue"*.

f. It is not clear where the Samples were between the moment they were collected and arrival at the LCPT. For Sample No.101177, the sample was collected on 8 July 2022 and delivered to the LCPT on 19 July 2022, some 11 days later; and for Sample No.101050, the sample was collected on 13 July 2022 and delivered to the LCPT on 25 July 2022, some 12 days later. *"Where were the samples? Were the samples conserved in good condition?"*

g. There is no information available as to the chain of custody of the Samples.

h. There is no provision in the Tramadol Control for an athlete to call for the testing of a B-Sample. *"The b-sample opening is a fundamental right for the athlete. … In this case, there was not the opportunity to open b sample, because there was no b sample. It is incomprehensible how such an important right to an athlete is ignored"*.

i. The laboratory used by the UCI to analyse the Samples was not accredited by WADA. Accredited laboratories are the only laboratories that should perform anti-doping analysis, because of the quality of their work. The use by UCI of another laboratory is *"another abuse by the UCI"*.

j. The UCI Medical Rules provide, by Article 13.3.070, that *"Before making the decision the UCI Medical Director may invite the rider to provide his/her position on the reported infringement"*. The Rider was not invited to do so. *"This is another fundamental right ignored by the UCI"*.

Scientific Considerations

24. The Rider also raises a number of "scientific considerations" by which he challenges the scientific conclusions upon which the UCI Medical Director based the Appealed Decision.

25. The Rider's submissions in this respect are based on the views expressed by Prof. Salomone, Forensic Toxicologist and Associate Professor at the University of Turin, and Laboratory Supervisor at the 'Centro Regionale Antidoping e di Tossicologia A. Bertinaria'). Prof. Salomone's conclusions may be summarised as follows:

a. The Tramadol Control provides that the *"Tramadol Sample collection process, transportation and analysis of the Tramadol Sample are governed by the UCI Technical Rules on Tramadol in their version in force at the time of the sample collection"*.

b. The UCI Technical Rules on Tramadol (the "UCI TRT") describe the general steps of a tramadol control from the notification of the Rider to the reporting of the results to the UCI Medical Director.

c. According to Articles 17 and 18 of the UCI TRT, the initial analyses of tramadol are performed by using rapid ultrahigh performance liquid chromatography–electrospray ionization tandem mass spectrometry ("UHPLC-ESI-MS/MS"). All samples showing the

presence of the parent compound tramadol and its two main metabolites (O-desmethyltramadol and N-desmethyltramadol) *"must be submitted to the confirmation procedure. All other samples will be reported as 'absence of Tramadol".*

d. According to Article 21 of the UCI TRT, all samples not fulfilling the criteria of identification or presence of tramadol shall be reported as *"absence of tramadol".*

e. It follows therefore that what is required is the detection of tramadol and O-desmethyltramadol and N-desmethyltramadol. Unless all three are present in the sample analysed the sample is to be reported as showing the absence of tramadol. It is not enough, therefore, for the analyses to show one or other of the compounds; all three must be present.

f. According to Article 20 of the UCI TRT, the confirmation procedure data must demonstrate the compliance with WADA Technical Document – TD2021IDCR (headed "MINIMUM CRITERIA FOR CHROMATOGRAPHIC-MASS SPECTROMETRIC CONFIRMATION OF THE IDENTITY OF ANALYTES FOR DOPING CONTROL PURPOSES") ("WADA TD2021IDCR"). The procedure must therefore include (i) a summary table with relative abundances ("RA") of diagnostic ions, retention time ("RT") data and relevant calculation results; (ii) the applicable criteria used to identify the target substance(s) and report the presence of tramadol; and (iii) signed statements that the results meet the applicable criteria of WADA TD2021IDCR.

g. For Sample 101177:

   i. Tramadol was detected at 15.3ng/mL, the metabolite O-desmethyltramadol at 9.2 ng/mL, and the metabolite N-desmethyltramadol at a concentration below the Limit of Quantitation ("LOQ").

   ii. The reported concentration of tramadol (15.3 ng/mL) *"is in the sub-therapeutic range".*

   iii. The tramadol intake occurred at least 12-48 hours before the sample was collected, as is confirmed by LCPT and REDS.

   iv. For the metabolite O-desmethyltramadol, the peak integration for transition 1 was *"atypical"* in that it includes a region of signal below the baseline.

   v. For the metabolite N-desmethyltramadol, the peak integration for transition 2 was *"atypical"* in that it includes *"only a region of noise"* and it has not been verified that the signal/noise ratio was greater than three as required by the WADA TD2021IDCR.

   vi. The metabolite N-desmethyltramadol was not quantified by REDS because it was said to be below the LOQ. The limit of detection ("LOD") is not identified in the certificate of analysis. In the protocol paper, the LOD is set at 2ng/mL and the limit of identification ("LOI") at 5ng/mL. It is not clear how the certificate of

analysis could conclude that the concentration was below the LOQ (of 5ng/mL) and at the same time be above the LOI (also 5 ng/mL).

vii. The required summary table with RAs was not included in the certificate of analysis so it was not possible to verify that the RAs of the diagnostic ions in the Rider's sample correspond to the RAs in the reference specimen.

viii. It was not possible for the Rider to request a B-Sample because that is not part of the UCI TRT.

h. For Sample 101050:

i. Tramadaol was detected at 17.4ng/mL, the metabolite O-desmethyltramadol at 10.0 ng/mL, and the metabolite N-desmethyltramadol at a concentration below the LOQ.

ii. The reported concentration of tramadol (17.4 ng/mL) *"is in the sub-therapeutic range"*.

iii. The tramadol intake occurred at least 12-48 hours before the sample was collected, as is confirmed by LCPT and REDS.

iv. For the metabolite O-desmethyltramadol, the peak integration for transition 1 was *"atypical"* in that it includes a region of signal below the baseline.

v. For the metabolite N-desmethyltramadol, the peak integration for transition 2 was *"atypical"* in that it includes *"only a region of noise"* and it has not been verified that the signal/noise ratio was greater than 3 as required by the WADA TD2021IDCR.

vi. The metabolite N-desmethyltramadol was not quantified by REDS because it was said to be below the LOQ. The LOD is not identified in the certificate of analysis. In the protocol paper, the LOD is set at 2ng/mL and the LOI at 5ng/mL. It is not clear how the certificate of analysis could conclude that the concentration was below the LOQ (of 5ng/mL) and at the same time be above the LOI (also 5 ng/mL).

vii. The required summary table with RAs was not included in the certificate of analysis so it was not possible to verify that the Ras of the diagnostic ions in the Rider's sample correspond to the RAs in the reference specimen.

viii. It was not possible for the Rider to request a B-Sample because that is not part of the UCI TRT.

26. Prof Salomone's conclusions were as follows:

a. The certificates of analysis for the Samples do not provide a summary table with the RAs of diagnostic ions in accordance with the UCI TRT and the WADA TD2021IDCR.

b. The UCI TRT do not provide for B sample collection or analysis. B-sample analysis would have allowed the Rider to verify the RAs and the signal/noise ratios for, in particular, for diagnostic transition 1 for O-desmethyltramadol and transition 2 for N-desmethyltramadol.

c. Articles 18 and 21 of the UCI TRT requires the presence of tramadol *and* its two main metabolites.

d. The diagnostic transition 2 for N-desmethyltramadol seems to indicate that the metabolite was not present. The certificate of analysis should therefore have reported it as "not present" because the criteria for identification were not fulfilled – namely, two required transitions were not detectable.

e. Based on existing data from the scientific literature, at the concentrations of tramadol reported in the certificates of analyses *"it was unlikely that [the Rider] was under the influence of the drug during the competition"*.

27. Based on these views of Prof. Salomone, the Rider made the following submissions:

a. In order to affirm that there was tramadol in the Rider's body the laboratory tests must *"search and find tramadol and its two principal metabolites"*; i.e., all three must be detected.

b. UCI and ITA *"realized incomplete tests to find tramadol in [the Rider's] samples"*.

c. *"Therefore, it is impossible to say that there was tramadol in [the Rider's] body"*.

Relief

28. The Rider sought the following relief:

"The following is the Request for Relief for the present Appeal:

12.1. To set aside the decision arbitrarily taken by the Medical Director of the UCI.

12.2. To declare that NAIRO ALEXANDER QUINTANA ROJAS has not incurred in any infraction to the UCI's medical rules,

12.3 Declare that NAIRO ALEXANDER QUINTANA ROJAS is not disqualified from the TOUR DE FRANCE 2022.

12.4 Order the UCI to reimburse the Rider all the legal and other costs related to the present procedure".

B. The Respondent's Submissions

29. The Respondent's overarching submissions were:

a. The UCI Medical Rules provide for the *"In-Competition Prohibition of Tramadol"*.

b. The Rider's scientific expert, Prof Salomone, candidly accepts that (i) the Rider's Samples collected during the Tour de France show the presence of tramadol and (ii) the intake of tramadol has occurred at least 12-48 hours prior to the sample collection.

c. The UCI's ban on tramadol in competition is not an anti-doping matter. It is instead a health and safety matter because *"the side-effects [of tramadol] can be extremely damaging to the riders during a competition"*. The UCI is allowed to prohibit tramadol irrespective of its obligations as a signatory to the WADC.

d. The testing here followed UCI procedure, including as to chain of custody, and the Samples were analysed by a laboratory that used the *"validated method"* for tramadol detection which was confirmed by an external review conducted by REDS.

e. The analyses confirmed the presence of tramadol and its two metabolites.

f. It follows that the appeal must be dismissed and the Appealed Decision upheld.

Legal Considerations

30. The Respondent's submissions with respect to the legal considerations raised by the Rider may be summarised as follows.

a. The UCI Medical Rules refer to the Olympic Medical Code but the latter is not a formal part of the UCI Cycling Regulations and is not a set of UCI rules or binding obligations. That does not mean that the UCI Medical Rules are not binding. The UCI Medical Rules are binding as part of the UCI Cycling Regulations, to which the Rider agreed when he requested a licence from the Respondent.

b. The Tramadol Control, within the UCI Medical Rules, prohibits *"the presence of tramadol and/or its metabolites in a rider's sample collected in-competition"*.

c. The Tramadol Control goes on to provide that *"The mere presence of tramadol or its metabolites in a rider's in-competition sample is sufficient to establish an infringement of the In-Competition Prohibition of tramadol, without consideration of the rider's intent, fault or negligence"*.

d. The Rider does not challenge the principle of strict liability there set out.

e. The Tramadol Control provides for the sanctions to be imposed including, for a first infringement: (i) disqualification of the event in connection with the infringement, with all resulting consequences, including forfeiture of any medals, points and prizes; (ii) a fine, in the sum of CHF 5000 for a member of a team registered with the UCI at the time of the infringement or CHF 1000 if not; and (iii) reimbursement of the costs incurred by the Respondent in respect of the tramadol control.

f. The Rider does not challenge the UCI Medical Director's jurisdiction to impose these sanctions and nor does the Rider contend that, should the infringement be upheld, the wrong sanctions were imposed.

g. The Rider's argument that the Respondent is not permitted to ban the use of a substance for medical reasons because WADA is the sole authority to ban any substance in sports is *"plainly wrong"*. WADA itself has confirmed that the UCI Medical Rules are not anti-doping rules and that the Respondent is not in breach of the WADC in promulgating them.

h. The Tramadol Control process is not an anti-doping issue, as the Rider contends. The prohibition of tramadol in-competition is a health and safety issue *"notably because of the heavy side-effects"* of tramadol. Tramadol *"often induces dizziness, nausea, vomiting, drowsiness, hallucinations, loss of attention and respiratory depression which can cause real harm to the rider and other competitors"*. It also *"presents a risk of serotonergic side effects, such as tachycardia, hypertension, diarrhoea, agitation and convulsion that puts the riders' health in danger"*.

i. The fact that WADA has decided to place tramadol on the Prohibited List for 2024 has no bearing on the nature of the Tramadol Control as a health and safety issue for the Respondent and its athletes.

j. The fact that the control process for tramadol is similar to anti-doping controls does avail the Rider. Samples have to be taken, sent to a laboratory and analysed, such that it will inevitably be similar to the antidoping control process but that does not convert the Tramadol Control into an anti-doping control.

k. Nor does the fact that ITA collected the Samples. The ITA was chosen because it handles all other testing controls for the Respondent and was therefore already on site. It was decided to use ITA to conduct the Tramadol Control *"for simplicity, efficiency and practicality considerations"*.

l. There is no challenge by the Rider as to the reliability of the Tramadol Control process.

m. As to sample handling and chain of custody:

   i. As soon as the Samples were taken, they were sealed and kept by ITA until their shipment to the LCPT in Geneva. Between custom controls and post office processing, it took a few days for the Samples to arrive at the laboratory.

   ii. The Samples were dried blood samples. As such, as explained by Dr Faiss and Prof. Botrè (at REDS), the Samples were in a stable state, did not require controlled temperature environments, and could be stored for months at room temperature; it was therefore safe to send them by conventional courier/ mail services. The Samples were therefore *"kept in perfect condition through their shipment by post to the laboratory and afterwards in the laboratory itself"*.

iii. The UCI Medical Rules *"do not contain specific requirements for chain of custody. The UCI TRT simply provide that "[t]he samples are sent to the laboratory designated by the UCI Medical Director [here the LCPT] through a courier company" (Article 13 of the UCI TRT) and it is not in dispute that this is what happened in the present case"*.

n. As to the lack of a B-sample:

i. The argument that the Tramadol Control did not but should have provided for a B-sample analysis *"fails"* because it is not an anti-doping process. The cases relied on in this respect are immaterial here where the process is not anti-doping but medical.

ii. There is no obligation on the Respondent to provide for B-sample analysis. There are a number of areas of the law where drastic measures are imposed without providing for the right to have a B-sample analysed.

o. As to the fact that the LCPT was not WADA-accredited, that argument *"does not hold"* here because this is not a doping matter and WADA accreditation is therefore unnecessary. Articles 13.1 and 15.1 of the UCI TRT indicate that the only requirement is that the laboratory designated by the UCI Medical Director uses the validated method for the detection of tramadol in dried blood samples. The LCPT is designated by the UCI. The LCPT *"was a perfectly adequate choice of laboratory and does not give rise to criticism"*.

p. As to the fact that the UCI Medical Rules do not provide for a hearing:

i. The UCI Medical Rules provide, by Article 13.3.070, that *"Before making the decision the UCI Medical Director may invite the rider to provide his/her position on the reported infringement"*.

ii. But this relates solely to *"non-analytical cases"*, i.e., those matters set forth in 13.3.070(b) of the UCI Medical Rules relating to *"evading a Tramadol Sample collection, tampering or attempting to tamper with the Tramadol Sample collection process, refusing or failing to submit to Tramadol Sample collection or failure to report to the Tramadol Control Station within the time limit provided under Article 13.3.067 without compelling justification"*.

iii. It does not apply in respect of cases concerning the presence of tramadol, which are provided for in Article 13.3.070(a) of the UCI Medical Rules which states that *"In accordance with Article 12.5.004 of the UCI Regulations, the UCI Medical Director is competent to decide and sanction all cases of Presence of tramadol for a first infringement"*.

iv. In such a case as this, for presence, the UCI Medical Rules provide for a review by an independent body and then the possibility to appeal to CAS, with the right to be heard to be exercised at that stage.

v. In its also to be noted that any procedural irregularities before the internal bodies are in any event cured by the *de novo* nature of the CAS hearing. In the event,

therefore, that there were any procedural irregularities, they have been cured by this appeal.

Scientific Considerations

31. In relation to the scientific considerations raised by the Rider in this appeal, the Respondent's submissions may be summarised in the following way:

32. First, in relation to the contention that, in order to make out the offence, it is necessary to establish the presence of tramadol and its two main metabolites:

    a. It is not necessary for the purposes of the Tramadol Control for the analysis to detect the presence of tramadol and the two principal metabolites. The offence set forth in the Tramadol Control is found in Article 13.3.068(a) of the UCI Medical Rules which provides as follows: *"presence of tramadol and/or its metabolites in a rider's sample collected in-competition"*.

    b. Insofar as the UCI TRT provides otherwise, the UCI TRT is a technical document intended to *"describe the general steps of tramadol control from the notification of the rider to the report of the results to the UCI Medical Director"* and is not intended to define the offence.

    c. The reason behind the difference between the violation in the UCI Medical Rules and the obligation to report in the UCI TRT *"is to avoid a positive finding in a one-day race due to an intake of Tramadol that could have potentially have taken place several days before the race"*. This does not apply here because the Samples were collected during the Tour de France, a three-week stage race, in stages 7 and 11 respectively, after more than one week into the race.

    d. In any event, the analyses here do establish the presence of tramadol and its two principal metabolites.

33. Second, in relation to the Rider's contention that the tests were incomplete:

    a. Prof. Salomone suggests that certain matters could have been verified had the Rider's B sample been taken and analysed. He does not, however, suggest that providing a B sample analysis *"is a requirement for the reliability of an analysis"*.

    b. Nor does Prof. Salomone challenge the validated method for the detection of tramadol in dried blood spots set out in the paper by Salamin O., et al, *"Is pain temporary and glory for ever? Detection of tramadol using dried blood spot in cycling competitions"*. *Drug Testing Analysis* 12 (2020) 1649-1657 (the "Salamin Paper") that was used by LCPT and REDS. This method provides that the LOD is 2ng/mL for all compounds. What Prof. Salomone describes as the LOI is in fact the LOQ which is the level at which the compound can be both identified and quantified.

c. The issue is not whether the test was *"complete"* or not but whether the Panel is comfortable satisfied that the analyses show *"the presence of tramadol and/or its metabolites"* as required by Article 13.3.068(a) of the UCI Medical Rules. Or, if the offence is to be defined by the UCI TRT as requiring the presence of tramadol and both O-desmethyltramadol and N-desmethyltramadol.

d. In this context, it is accepted that the certificates of analyses for the Samples did not contain a summary table with the RAs of diagnostic ions as is set forth in the UCI TRT and in WADA TD2021IDCR but *"this departure is without consequence on the result since … the same data can be retrieved from the various graphs in the certificates of analysis"*. This is confirmed by Prof. Veuthey, Professor in Pharmaceutical Analysis, University of Geneva.

e. The UCI TRT provide that departures from the UCI TRT do not invalidate the tramadol control or the results of such control, unless it is established by the Rider on the balance of probabilities that such departure did cause the positive results. There is nothing at all from the Rider on this.

34. Third, in response to the Rider's contention that argument that it is not possible to say that there was tramadol in the Rider's body:

a. The evidence shows that tramadol was present in the Rider's Samples. This is accepted by Prof. Salomone and is not disputed by the Rider. This is plain from the data set forth in the certificates of analyses and confirmed by Prof. Botrè and Dr Faiss. It is also confirmed by Prof. Veuthey.

b. The evidence shows that O-desmethyltramadol was present in the Rider's Samples. This is accepted by Prof. Salomone and is not disputed by the Rider. This is plain from the data set forth in the certificates of analyses and confirmed by Prof. Botrè and Dr Faiss. It is also confirmed by Prof. Veuthey who noted that *"if the exact methodology provided for"* in the Salamin Paper is applied the concentration of this metabolite would be 7.36 ng/mL (and not 9.02 ng/mL as set forth in the certificate of analysis) for Sample 101177 and 7.70 ng/ml (and not 10.00 ng/mL as reported in the certificate of analysis) for Sample 101050.

c. The presence of N-desmethyltramadol is in dispute. The evidence shows that this metabolite was present in Sample 101177 at 2.52 ng/mL and in Sample 101050 at 2.76 ng/ML, i.e., above the LOD of 2ng/mL but below the LOQ of 5ng/mL. This is plain from the data set forth in the certificates of analyses and confirmed by Prof. Botrè and Dr Faiss. It is also confirmed by Prof. Veuthey.

35. By way of conclusions, the Respondent made the following submissions:

a. If one applies the actual wording of Article 13.3.068 of the UCI Medical Rules, there is dispute that there has been a violation.

b. Even if one were to narrow the ambit of Article 13.3.068 of the UCI Medical Rules by requiring that tramadol and its two main metabolites have to be present for a violation to occur, the violation is in any event established to the comfortable satisfaction of the Panel.

c. All the experts, including Prof. Salomone for the Rider, agree that there was an intake of tramadol 12 to 48 hours prior to the relevant sample collections that took place after the 7th and 11th stages of the Tour de France *"which means uncontestably during said competition"*.

d. The Rider's appeal should be dismissed in full and, as there is no challenge to the validity or proportionality of the sanctions imposed by the UCI Medical Director, the Appealed Decision should be confirmed in its entirety.

Relief

36. The Respondent sought the following relief:

"94. Based on the foregoing developments, UCI respectfully requests the CAS to issue an award:

1. Dismissing the Appellant's Appeal and all of his prayers for relief expressed in his Appeal Brief dated 7 September 2022.

2. Ordering that the Appellant shall bear all costs related to this arbitration, if any.

3. Ordering the Appellant to pay a contribution towards UCI's legal fees and other expenses incurred in connection with these proceedings".

V. JURISDICTION

37. Article R47 of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Player has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

38. Article 13.3.070 d) of the UCI Medical Rules provides as follow:

"Appeal

The decisions of the UCI Medical Director and of the UCI Disciplinary Commission are subject to an appeal to the Court of Arbitration for Sport. The time limit to appeal is 10 days upon receipt of the decision by the rider".

39. On 12 October 2022, the Parties signed and returned the Order of Procedure issued by the CAS Court Office on behalf of the Panel which noted, *inter alia*, that the Rider *"relies on Article 13.3.070 d) of the UCI Medical Rules as conferring jurisdiction on the CAS. The jurisdiction of the CAS is not contested by the Respondent and is confirmed by the signature of the present order"*.

40. The Panel, therefore, confirms that CAS has jurisdiction to decide this appeal.

VI. ADMISSIBILITY OF THE APPEAL

41. As to admissibility, as just noted, the time limit set forth in Article 13.3.070 d) of the UCI Medical Rules is 10 days upon receipt of the decision by the rider.

42. In this appeal, it is common ground that the Appealed Decision was received by the Rider on 17 August 29022 and that the Rider's Statement of Appeal was filed with the CAS on 26 August 2022 and that the appeal is therefore admissible. Furthermore, no objection was raised by the Respondent.

43. The Panel confirms that the appeal is admissible.

VII. APPLICABLE LAW

44. Article R58 of the CAS Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.

45. It is common ground in this appeal that the applicable regulations are the UCI Medical Rules and, specifically, the Tramadol Control set forth therein.

46. The Panel shall therefore decide this appeal according to those rules and, subsidiarily, to the laws of Switzerland as the country in with the Respondent federation is domiciled.

VIII. THE MERITS

47. Before dealing with those matters, it is necessary to set down the salient provisions of the UCI Medical Rules and the Tramadol Control therein. It is to be noted that the Rider accepts that he is subject to the Tramadol Control by reason of his request for a licence from the Respondent and that the Tramadol Control applies to the 2022 Tour de France.

48. The UCI Medical Rules contain four chapters: Chapter I Olympic Movement Medical Code; Chapter II Medical Actors in Cycling; Chapter III Protection and Promotion of the Rider's

Health; and Chapter IV Medical Service at Events. Chapter III is in six sections: (1) General rules; (2) Medical Monitoring of UCI ProTeams and UCI Continental Professional Teams; (3) Medical monitoring for women road, mountain bike (cross-country), track and BMX disciplines; (4) Ban on injections; (5) Concussion and return to competition; and (6) In-Competition Prohibition of Tramadol (i.e. the Tramadol Control).

49. The Tramadol Control was, as noted, introduced (with some fanfare in the sporting press) on 1 March 2019. The material parts are as follows:

*"***§6 *In-Competition Prohibition of tramadol***

13.3.066 Introduction

Tramadol is sold under different brand names, including, without limitation, Nobligan, Tiparol, Topalgic, Tradolan, Contramal, Tramal, Ultram, Ixprim. For the purposes of this Chapter tramadol is defined as the molecule 2-(diméthylamino)méthyl-1-(3-méthoxyphényl) cyclohexanol hydrochloride according to the IUPAC nomenclature.

Tramadol is a synthetic opioid analgesic (painkiller) prescribed for the treatment of moderate to moderately severe pain. It is a centrally acting analgesic that affects the way the brain and nervous system respond to pain. In addition to the risk of dependence and addiction, commonly reported adverse side effects of tramadol are dizziness, drowsiness and loss of attention, which are incompatible with competitive cycling and endanger other competitors.

In light of the foregoing, in order to protect each rider's health and physical integrity and to ensure the safety of the competitions, tramadol is prohibited in-competition.

By requesting a license, any rider agrees to abide and be bound by these Rules and explicitly agrees and acknowledges that tramadol is prohibited in-competition. In this respect, any rider agrees to submit to in-competition tramadol control as provided under this Chapter.

The following provisions are intended to apply autonomously and without connection with the World Anti-Doping Code and/or the UCI Anti-Doping Rules.

When reviewing the facts and the law of a given case, courts, arbitral hearing panels and other adjudicating bodies should be aware of and respect the purpose of these Rules as defined in this article.

The In-Competition Prohibition of Tramadol and the rules under this Chapter shall apply in full as of 1 March 2019.

13.3.067 Tramadol Control

Any rider participating in an event registered on an international or national calendar may be subject to tramadol control.

Unless a rider is identified in another manner, the riders who are selected to undergo a tramadol control are identified on a List to be posted at the entrance of the Tramadol Control Station and at the finish line.

It is each rider's responsibility, including the rider having abandoned or who did not otherwise finish the event, to ensure whether he/she has been selected to undergo a tramadol control.

The rider shall report as soon as possible to the Tramadol Control Station, but in any case within 30 (thirty) minutes of finishing the event, unless compelling justification exists (e.g. obtaining necessary medical treatment, participation in official protocols, fulfilment of media commitment, doping control or bike checks).

A sample collected from a rider under these Rules (Tramadol Sample) is owned by the UCI.

Tramadol Sample collection process, transportation and analysis of the Tramadol Sample are governed by the UCI Technical Rules on Tramadol in their version in force at the time of the sample collection.

13.3.068 Infringements of the In-Competition Prohibition of Tramadol

The following constitute an infringement relating to the In-Competition Prohibition of Tramadol:

a) Presence of tramadol and/or its metabolites in a rider's sample collected in-competition.

Presence within the meaning of this provision is defined as the analytical identification of tramadol in biological material collected for the purposes of Tramadol Control.

For the purpose of this provision, "in-competition" is the period starting 12 hours before the beginning of the event the rider is scheduled to participate through the end of such event and through the end of the Tramadol Sample collection process related to such event.

The mere presence of tramadol or its metabolites in a rider's in-competition sample is sufficient to establish an infringement of the In-Competition Prohibition of tramadol, without consideration of the rider's intent, fault or negligence.

b) Evading a Tramadol Sample Collection.

c) Refusing, failing to submit to Tramadol Sample collection or failure to report to the Tramadol Control Station within the time limit provided under Article 13.3.067 without compelling justification.

d) Tampering or attempting to tamper with any part of the Tramadol Sample collection process. This includes, without limitation, any conduct which subverts the Tramadol Sample collection process. 1. First Infringement

13.3.069 Sanctions on Riders

1. First Infringement

A first infringement of the In-Competition Prohibition of Tramadol is sanctioned with the following disciplinary measures:

a) disqualification of the event in connection with the infringement, with all resulting consequences, including forfeiture of any medals, points and prizes;

b) a fine: The amount of the fine shall be 5000 CHF for a member of a team registered with the UCI, at the time of the infringement. Otherwise, the fine shall be 1000 CHF;

c) Reimbursement of the costs incurred for the Tramadol Control.

2. Multiple Violations

Any further infringement shall be sanctioned with the following disciplinary measures:

a) disqualification of the event in connection with the infringement, with all resulting consequences, including forfeiture of any medals, points and prizes.

b) suspension of 5 months for a second infringement and 9 months for any further infringement.

Unless fairness requires otherwise, the suspension starts from the notification of the sanction.

c) Reimbursement of the costs incurred for the Tramadol Control.

13.3.070 Proceedings

a) Presence of tramadol in a rider's sample.

In accordance with Article 12.5.004 of the UCI Regulations, the UCI Medical Director is competent to decide and sanction all cases of Presence of tramadol for a first infringement.

Sanctions for further infringement of Presence shall be imposed by the UCI Disciplinary Commission.

b) Evading a Tramadol Sample collection, tampering or attempting to tamper with the Tramadol Sample collection process, refusing or failing to submit to Tramadol Sample collection or failure to report to the Tramadol Control Station within the time limit provided under Article 13.3.067 without compelling justification.

Such infringement shall be reported to the UCI Medical Director by any reliable means, including without limitation, report from the Tramadol Control Officer.

The UCI Medical Director will decide whether there is a prima facie infringement and if so, defer the case to the UCI Disciplinary Commission.

Before making the decision the UCI Medical Director may invite the rider to provide his/her position on the reported infringement.

The UCI Disciplinary Commission will apply the rules of procedure as contained in Part XII of the UCI Regulations.

c) Decision

The decisions of the UCI Medical Director and of the UCI Disciplinary Commission shall be notified by email to the rider, with a copy to the rider's national federation and the rider's team. They will be published on the UCI website.

The decisions of the UCI Medical Director and of the UCI Disciplinary Commission are enforceable as soon as it is communicated.

d) Appeal

The decisions of the UCI Medical Director and of the UCI Disciplinary Commission are subject to an appeal to the Court of Arbitration for Sport. The time limit to appeal is 10 days upon receipt of the decision by the rider. …".

50. As can be seen, sample collection process, transportation and analysis are stated to be governed by the UCT TRT. The UCI TRT came into effect on 1 March 2019, with the Tramadol Control. It is in four parts: Part I Introduction; Part II Testing; Part III Tramadol Sample Analysis; and Part IV Appendices. By the introduction, the UCT TRT are said to "supplement" the Tramadol Control *"More specifically, the purpose of the UCI TRT is to describe the general steps of a tramadol control from the notification of the rider to the report of the results to the UCI Medical Director".*

51. The introduction also states that:

"Departures from the UCI TRT or any other rules set forth in the UCI Regulations does not invalidate the tramadol control or the results of such control, unless it is established by a balance of probability that such departure did cause the positive results.

52. Salient provisions of the UCI TRT include as follows:

*"**Part II Tramadol Sample Analysis***

…

Article 2 In Competition Prohibition of Tramadol

For the purpose of the In-Competition Prohibition of Tramadol, "in-competition" is the period starting 12 hours before the beginning of the event the rider is scheduled to participate through the end of such event and through the end of the Tramadol Sample collection process related to such event.

…

Article 13 Transport of Sample and Documentation

1. The samples are sent to the laboratory designated by the UCI Medical Director through a courier company.

2. Documentation identifying the rider shall not be included with the samples or documentation sent to the laboratory that will be analysing the samples.

Part III Tramadol Sample Analysis

Chapter 1 Introduction

Article 14 Scope

This part outlines the requirements for the production of the analyses of Tramadol and metabolites in DBS (dried blood spots) samples collected in the context of tramadol control as provided under Part XIII of the UCI Cycling Regulations.

Article 15 General

1. The analyses have to be performed in the laboratory designated by the UCI Medical Doctor, using the validated method for the detection of Tramadol in DBS described under these regulations.

2. The results will be then reported by the laboratory to an independent entity for an initial review before being reported to the UCI Medical Director.

Chapter 2 Chain of Custody in the Laboratory

Article 16 Reception of the samples

The sample reception is described in the Appendix C of these regulations (Réception des échantillons DBS pour la detection du tramadol). The document in relation to the reception must at least contain the following items:

- The sample's external chain of custody form as provided by UCI.

- The laboratory's documentation of receipt of the Sample, including a declaration about any condition observed upon Sample receipt that may adversely impact the integrity of the Sample (Appendix C).

- Summary of the chain of custody which is supported by the laboratory's internal chain of custody documentation.

Article 17 Analytical data: Initial Testing Procedure

1. The analyses of Tramadol in DBS are performed by using UHPLC-ESI-MS/MS, after proper extraction of the samples.

2. The initial testing procedure or screening procedure comprises several steps, including the sample preparation, the extraction procedure, followed by the analysis on UHPLC-MS/MS.

The table of the sequence of analyses with the proper controls samples must be part of the documentation provided with the results.

Article 18 Evaluation of the results of the Initial testing Procedure

1. The presence or absence of Tramadol in the DBS will be defined by the analyst on the basis of the presence of the parent compound (the substance tramadol itself), and the two main metabolites (O-desmethyltramadol, N-desmethyltramadol).

2. All samples showing the presence of the parent compound Tramadol and the two main metabolites (O-desmethyltramadol, N-desmethyltramadol) must be submitted to the confirmation procedure. All other samples will be reported as "absence of Tramadol".

Article 19 Analytical data: Confirmation Procedure (CP)

The confirmation procedure comprises the following items for a proper interpretation of the results:

- Instrument type/identification code;

- A description of the composition of each positive quality control (QC) sample(s) analysed in the same batch;

- The monitored ions/transitions in the method for identification of the target compound(s)

- Each individual's complete signature/initials/name is provided, to assist in the interpretation of the Laboratory Internal Chain of Custody documents.

- Aliquot Laboratory Internal Chain of Custody documentation;

- The analytical instrument sequence file for the CP

- The chromatographic and spectral data (for LC-MSn CP)

- Positive QC sample(s); • Negative QC sample(s); and • Athlete Aliquot(s) analysed to conclude to the presence of tramadol and metabolite(s) in the sample.

- CP data shall be copies of the original data evaluated by the laboratory to support the conclusion of the presence of Tramadol.

Article 20 Evaluation of the Results of the Confirmation Procedure by the Laboratory.

The Identification data: the data must demonstrate the compliance with the WADA technical document for Identification criteria (WADA TD IDCR) including:

- A summary table with relative abundances of diagnostic ions, retention time (RT) data and relevant calculation results;

- The applicable criteria utilized to identify the target substance(s) and report the presence of tramadol;

- The summary table shall include signed statements that the results meet the applicable criteria of the TD IDCR;

- Statement that there was no deviation from the written CP;

- Data shall contain appropriate header information including date and time of analysis, identification code(s), instrument identification, etc.

- Statement that the Instrument meets performance criteria based on the "Laboratory SOP and QC data". This statement shall be signed and dated by the operator performing the evaluation

Article 21 Laboratory report

1. All samples not fulfilling the criteria of identification or presence of tramadol will be reported: "absence of Tramadol".

2. All samples with the presence of Tramadol and its two main metabolites (i.e. O-desmethyltramadol and N-desmethyltramadol), which has been confirmed through the applicable confirmation procedure, will be reported: "Presence of Tramadol". When a sample is reported "Presence of Tramadol", it shall be reported on a individual test report, together with the analytical documentation which is described under Articles 17 and 19 of these regulations.

Chapter 3 Initial Review and Final Report

Article 22 Initial review

1. The laboratory will report the results to an independent third entity through a safe electronic platform for review.

2. The review aimed to determine whether there is any apparent departure from the Regulations or circumstances, other than the use of tramadol, that caused the positive results.

Article 23 Final report to UCI Medical Director

Upon the conclusion of the initial review, a final report established as a certificate of analysis will be sent to the UCI Medical Director through a safe electronic platform".

A. Legal Considerations

53. As noted above, the Rider raised a number of matters which were described as *"legal considerations"* relating to the nature and validity of the UCI Medical Rules and the Tramadol Control therein.

54. The first such complaint was that the UCI Medical Rules are based on the Olympic Medical Code which was not *"a binding document for the UCI"* so that it followed that the UCI Medical Rules were merely a set of suggestions and guidelines and could not be relied upon to impose a sanction on a rider.

55. This argument is misconceived.

56. The Olympic Medical Code (which was adopted by the IOC in 2009) is reproduced within the UCI Medical Rules. In so doing, the UCI stated that the Olympic Medical Code is *"not a formal part of the UCI Cycling Regulations"* and *"not a set of UCI rules or binding obligations"*. Instead, the Olympic Medical Code was stated to be

> *"… the expression of a series of principles, goals and objectives that should guide all those that are involved in athlete health care and any activity covered by this Code, in particular: riders, their personal and team doctors, national federations, national team doctors, paramedical assistants, team managers, cycling event organizers and any medical staff involved in or present at cycling events. It is to that purpose that the Olympic Movement Medical Code is reproduced below".*

57. The UCI Medical Rules also provide that, in the event of a conflict between the Olympic Medical Code and the UCI Medical Rules then the latter should prevail.

58. But that is not to say that the UCI Medical Rules themselves are not binding; they are. As was submitted by the Respondent, the UCI Medical Rules are binding as part of the UCI Cycling Regulations, to which the Rider agreed when he requested a licence from the Respondent. This is expressly set forth in the Tramadol Control itself:

> *"By requesting a license, any rider agrees to abide and be bound by these Rules and explicitly agrees and acknowledges that tramadol is prohibited in-competition. In this respect, any rider agrees to submit to in-competition tramadol control as provided under this Chapter".*

59. The UCI Medical Rules, and the Tramadol Control therein, are therefore binding on the Rider.

60. The second complaint was that, while a Rider is allowed 30 days to respond to a charge brought under the UCI Antidoping Rules or the UCI Discipline and Procedure, and yet the time to appeal against a decision under the UCI Medical Control is 10 days.

61. It is true that the period under the UCI Medical Rules is shorter than for anti-doping or disciplinary matters. It is also possible that such may render it more difficult for a rider to collate the material needed to challenge a decision taken by the UCI Medical Director. But: (a) there is no suggestion here that the Rider was in fact hampered in putting together the material needed by him to mount this appeal; (b) it is open, of course, for a rider, and was open to the Rider, to seek further time if that was required; and (c) in any event, the shorter time period does not render the UCI Medical Rules invalid or ineffective.

62. The Rider next argued that the Tramadol Control *"is clearly a doping control"*. For the reasons put forward by the Respondent, the Panel disagrees:

    a. It is true that the control is carried out by ITA and that ITA is an experienced and well-known anti-doping body and that its principal task is to manage anti-doping programmes on behalf of various (and many) sporting bodies. But that, of itself and without more, does not convert the UCI Medical Rules into a set of anti-doping rules.

b. The UCI has promulgated the UCI Medical Rules in order to address various health and safety issues within the sport of cycling. The Tramadol Control within the UCI Medical Rules is likewise expressed to be in response to its stated concern about the use of tramadol on individual riders and on the safety of the competitions generally (including the risk of altered alertness or dizziness causing or contributing to crashes by riders, especially while in the peloton). This is the statement at Article 13.3.066 of the UCI Medical Rules:

"Tramadol is a synthetic opioid analgesic (painkiller) prescribed for the treatment of moderate to moderately severe pain. It is a centrally acting analgesic that affects the way the brain and nervous system respond to pain. In addition to the risk of dependence and addiction, commonly reported adverse side effects of tramadol are dizziness, drowsiness and loss of attention, which are incompatible with competitive cycling and endanger other competitors.

In light of the foregoing, in order to protect each rider's health and physical integrity and to ensure the safety of the competitions, tramadol is prohibited in-competition. …".

c. In this regard, the Panel is mindful that, by virtue of their status, expertise and responsibility for protecting and reconciling the interests of all stakeholders in a particular sport, international federations such as the UCI enjoy a margin of appreciation in determining what factors are relevant and necessary to ensure the health and safety of all of their competitors and what regulatory measures are necessary in order to achieve this. Having regard to its margin of appreciation, the Panel considers that the UCI is legitimately entitled to take the view that the health and safety of the riders, individually and collectively, requires that its riders should be banned from using a synthetic opioid analgesic that has dangerous side effects, including in particular, dizziness, and can be addictive.

d. It follows therefore that it is not right to say, as the Rider submitted, that WADA is the sole authority to ban any substance in sports. It is open to the UCI to ban a substance on health and safety grounds and doing so is not in breach of the UCI's obligations as a signatory of the WADC. Any doubt about this has been dispelled by WADA itself which has confirmed, in writing, that the UCI Medical Rules are not anti-doping rules and that the Respondent is not in breach of the WADC in promulgating them.

63. The fourth complaint on the part of the Rider was that it was not clear where the Samples were between collection and arrival at the LCPT. This complaint was not, however, pressed at the hearing and the Rider's expert, Prof. Salomone, accepted that there was no issue or concern in relation to the handling and processing and chain of custody of the Samples. In any event, the evidence at the hearing made clear that:

i. upon collection, the Samples sealed and kept by ITA until their shipment to the LCPT in Geneva;

ii. between custom controls and post office processing, it took a few days for the Samples to arrive at the laboratory; and

iii. the Samples were dried blood samples and therefore in a stable state, and could be stored for months at room temperature such that it was safe to send them by conventional courier/ mail services.

64. The fifth matter put forward by the Rider as a legal consideration was the fact that the Tramadol Control does not make provision for a B sample, which was said to be *"a fundamental right for the Rider"*. Prof. Salomone noted as well that the absence of a B sample has meant that the analyses could not be verified, in a manner that would be available under an anti-doping matter.

65. It is certainly right that the Tramadol Control does not contain any provision for a B sample. Once again, however, this does not mean that the Tramadol Control is rendered invalid. In circumstances where it is clear to the Panel that the Tramadol Control is a medical control process and not anti-doping, there is no obligation on the Respondent to provide for a B sample analysis.

66. In this context, the cases relied upon by the Rider do not assist him here as they relate to the requirements for the opening and analysing of a B sample within anti-doping regulations which make express and strict provision in relation to an athlete's right to a B sample. For example, in CAS 2010/A/2161, the ADO did not inform the athlete that the B sample was being analysed and proceeded to conduct the analysis in the absence of the athlete, all in breach of the express provisions of the relevant ADR. The panel there noted that the athlete's right to have a B sample analysed and to be present when that happens was a fundamental right, and that any failure to respect that right will invalidate the ADRV. But there is no free-standing abstract right to a B sample and there is no express right within the UCI Medical Rules for the UCI to provide the Rider with the protection of a B sample and therefore no breach on the part of the UCI in failing to do so.

67. The Rider next argued that the laboratory used by the UCI to analyse the Samples was not accredited by WADA and that accredited laboratories are the only laboratories that should perform anti-doping analysis, because of the quality of their work. This was *"another abuse by the UCI"*.

68. In this respect, it follows that, because this is not a doping matter then there is no requirement that the UCI uses only WADA-accredited laboratories for the testing and analysis under the Tramadol Control. As was submitted by the Respondent, Articles 13.1 and 15.1 of the UCI TRT (see above) require only that the samples be sent to a laboratory designated by the UCI Medical Director laboratory and that such laboratory is required to use *"the validated method for the detection of Tramadol in [dried blood samples] described under these regulations"*. The LCPT is the laboratory designated by the UCI Medical Director.

69. Finally, the Rider submitted that there was a breach here by the UCI in that the UCI Medical Director did not hear from the Rider before the sanction was imposed. It was said that this was

in breach of Article 13.3.070(b) of the UCI Medical Rules and a breach of the Rider's fundamental right to be heard.

70. Article 13.3.070 of the UCI Medical Rules is set out in full above. As can be seen on a careful reading of the article, what is said at sub-paragraph (b) of Article 13.3.070 relates to an infringement as provided for therein – namely, evading a tramadol sample collection, tampering or attempting to tamper with the tramadol sample collection process, refusing or failing to submit to tramadol sample collection or failure to report to the tramadol control station within the time limit provided under Article 13.3.067 of the UCI Medical Rules without compelling justification. It is in the circumstances of such an infringement that the UCI Medical Director *"may invite the rider to provide his/her position on the reported infringement"*.

71. By contrast, where there has been a violation pursuant to sub-paragraph (a) of Article 13.3.070 – the presence of tramadol in a rider's sample -- there is no stated requirement for the UCI Medical Director to allow the rider an opportunity to be heard before sanctions are imposed. Instead, where dealing with presence of tramadol, the UCI Medical Director *"is competent to decide and sanction all cases"* for a first infringement.

72. In any event, even if the language of Article 13.3.070(b) of the UCI Medical Rules was apt to apply to a violation by reason of presence of tramadol, the article does not impose an obligation on the UCI Medical Director to invite the rider to provide an explanation; by use of the word "may" it is obvious that UCI Medical Director has the discretion to do so but is not so obligated.

73. It is to be noted that the right to be heard is a fundamental and general principle which derives from the elementary rules of natural justice and due process and that the CAS has always protected the right: see, e.g., CAS 2010/A/2275. It is also to be noted that any failure on the part of the UCI Medical Director to allow the Rider to explain his position has been cured by the *de novo* nature of the CAS hearing in this appeal. Whether the *de novo* nature of a CAS appeal hearing always operates to cure all procedural irregularities is for another day; it is enough to say that any failure on the part of the UCI Medical Director to allow the Rider the opportunity to provide his explanation as to the events with which the director was concerned has been put right by the opportunity provided to the Rider to do just that within this appeal.

74. There is therefore no basis for this particular complaint by the Rider and there has not been a breach of the Rider's *"fundamental right"* to be heard.

75. In the result, the legal considerations put forward by the Rider, whether taken singularly or collectively, are not of such a nature as to invalidate the Appealed Decision.

B. Scientific Considerations

76. In order to address the scientific considerations, it is necessary to identify what was required by the Tramadol Control as supplemented by the UCI TRT, each of which has been set out in some detail above.

77. By Article 13.3.066ff of the UCI Medical Rules, the UCI has banned the use of tramadol in competition. The particular infringement of concern here is that set forth at Article 13.3.068(a) of the UCI Medical Rules; namely, *"Presence of tramadol and/or its metabolites in a rider's sample collected in-competition"* where

    a. "presence" is defined as *"the analytical identification of tramadol in biological material collected for the purposes of Tramadol Control"*; and

    b. "in-competition" is defined as *"the period starting 12 hours before the beginning of the event the rider is scheduled to participate through the end of such event and through the end of the Tramadol Sample collection process related to such event"*.

78. Article 13.3.068(a) of the UCI Medical Rules also provides *"The mere presence of tramadol or its metabolites in a rider's in-competition sample is sufficient to establish an infringement of the In-Competition Prohibition of tramadol, without consideration of the rider's intent, fault or negligence"*.

79. It follows therefore that, according to Article 13.3.068(a) of the UCI Medical Rules, the infringement will be established by the UCI if it can establish the following elements:

    a. the presence of tramadol and/or its metabolites in the Rider's sample according to the analytical identification of biological material collected from the Rider for the purposes of a tramadol control;

    b. where the sample was collected from the Rider within the period starting 12 hours before the start of the Tour de France through the end of the event and through the end of the tramadol sample collection process for the event;

80. It was accepted by the Respondent that it bore the burden of establishing these elements and that the relevant standard was to the comfortable satisfaction of the Panel.

81. It was accepted by the Rider that the Samples were collected in-competition.

a) All Three Compounds?

82. It was not, however, accepted by the Rider that it was sufficient for the Respondent to establish the presence of tramadol and/or its metabolites in the Rider's sample. As a definitional matter, the Rider contended that, in order to sustain an alleged infringement, the UCI must establish the presence of tramadol and the two principal metabolites – i.e., all three must be present. (This issue is plainly a legal issue but it was argued as a scientific consideration and will therefore be dealt with here.)

83. For this purpose, the Rider relies on Article 18 and Article 21 of the UCI TRT, the text of which are set out in above but is repeated here for ease of reference.

"Article 18 Evaluation of the results of the Initial testing Procedure

1. The presence or absence of Tramadol in the DBS will be defined by the analyst on the basis of the presence of the parent compound (the substance tramadol itself), and the two main metabolites (O-desmethyltramadol, N-desmethyltramadol).

2. All samples showing the presence of the parent compound Tramadol and the two main metabolites (O-desmethyltramadol, N-desmethyltramadol) must be submitted to the confirmation procedure. All other samples will be reported as 'absence of Tramadol".

Article 21 Laboratory report

1. All samples not fulfilling the criteria of identification or presence of tramadol will be reported : "absence of Tramadol".

2. All samples with the presence of Tramadol and its two main metabolites (i.e. O-desmethyltramadol and N-desmethyltramadol), which has been confirmed through the applicable confirmation procedure, will be reported: "presence of Tramadol". …"

84. The contention is that the use of the word 'and' renders the elements conjunctive so that the definition of presence is to be understood as requiring the presence of both the parent compound and the two metabolites.

85. It is not clear to the Panel that these articles are to be read in the way advanced by the Rider. Article 18 does not say that in order for a sample to be recorded as positive it must contain tramadol and O-desmethyltramadol and N-desmethyltramadol. What it does say is that the presence or absence of tramadol in the sample will be defined *"on the basis of the presence of the parent compound (the substance tramadol itself), and the two main metabolites (O-desmethyltramadol, N-desmethyltramadol)"*. This phrase may be read as meaning that the presence or absence of tramadol is to be assessed according to whether any one of the three noted compounds is present; that is, the analyst is instructed to record a positive result if <u>any</u> of the three compounds are present and a negative result if none is present.

86. In any event, there are two complete answers to this contention by the Rider.

87. The first is that, as was submitted by the Respondent, the infringement with which the Panel is concerned is that set forth in the Tramadol Control and it provides, in very clear terms, that "presence" is to be defined as meaning the presence of any one of the three compounds. Put slightly differently, the ingredients of the infringement are set forth in the Tramadol Control, and what is required there is the <u>presence of tramadol and/or its metabolites</u> in the rider's sample according to the analytical identification of biological material collected from the rider.

88. Second, as will be developed below, it is accepted by the Rider that both tramadol and O-desmethyltramadol were present in the Samples. The only debate in this appeal is as to the presence N-desmethyltramadol. In this respect, according to the certificates of analysis in respect of both Samples the amount of N-desmethyltramadol detected was above the LOD

(2ng/mL) but below the LOQ (5ng/mL) and so, whilst it could not be quantified, it was nevertheless present. That being so, even if, *arguendo*, the UCI TRT imposed a requirement for the presence of all three compounds, all three were, as a matter of fact, present in the Samples.

b) Incomplete Tests

89. The Rider contends that the tests conducted on the Samples were "incomplete" such that it was not possible to say that there was tramadol (or its metabolites) present in the Rider's body.

90. In order to assess whether there was any material deficiency in the testing and analyses, it is necessary first to address the requirements of the UCI TRT.

91. The UCI TRT is said to supplement the UCI Medical Rules and its stated purpose is *"to describe the general steps of a tramadol control from the notification of the rider to the report of results to the UCI Medical Director"*. The Panel distils the following matters from Part III, headed "Tramadol Sample Analysis".

    a. Dried blood samples ("DBS") are to be taken in-competition (defined as the period starting 12 hours before the event through to the end of the tramadol sample collection process for the event (see Article 2).)

    b. The DBS are to be sent by courier to the laboratory designated by the UCI Medical Director.

    c. There are a number of stated requirements as to chain of custody. (In light of the candid acceptance by Prof. Salomone that he took no issue in this respect these can be put to one side.)

    d. The analysis is to be performed in the laboratory using the validated method for the detection of tramadol in DBS described in the regulations. There does not appear to be any mention of the "validated method" (save a reference to the use of UHPLC-ESI-MS/MS, i.e., ultrahigh performance liquid chromatography electrospray ionisation tandem mass spectrometry) but it appears to be common ground that the validated method is that set forth in the Salamin Paper. (The Salamin Paper is the work of a team of scientists at REDS, the University of Geneva, the Swiss Centre for Applied Human Toxicology, the Cycling Anti-Doping Foundation, the French Anti-Doping Organisation, the UCI, the Lausanne University Hospital, and the Geneva University Hospitals. It appears to be common ground that the analytical method set forth in the Salamin Paper has been published in a peer-reviewed study and that it has not been questioned or had its reliability challenged.)

    e. An initial testing (or screening) procedure ("ITP") is to be undertaken. This is to be performed using UHPLC-ESI-MS/MS.

f. The documentation provided with the results must include a table of the sequence of analyses and the proper control samples.

g. The results are then to be evaluated.

h. For this purpose, the presence or absence of tramadol *"will be defined by the analyst on the basis of the presence of the parent compound (the substance tramadol itself), and the two main metabolites (O-desmethyltramadol, N-desmethyltramadol)"*.

i. All samples *"showing the presence of the parent compound Tramadol and the two main metabolites (O-desmethyltramadol, N-desmethyltramadol) must be submitted to the confirmation procedure.*

j. All other samples *"will be reported as 'absence of Tramadol'"*.

k. The positive samples are then to be submitted to a confirmation procedure (or "CP"). This CP must comply with WADA TD2021IDCR (and must comprise the various items listed in the UCI TRT such as a positive and negative specimen samples and the rider's aliquot).

l. The Laboratory is then to report the results of the analysis to *"an independent third entity"*. This entity is not identified in the UCI TRT but was in this case REDS. (There was no suggestion by the Rider that REDS was not an independent entity.)

m. The independent entity is then to conduct a review (called an *"initial review"*) in order to determine whether there has been an *"apparent departure"* by the laboratory that caused the positive result.

n. The independent entity is then to issue a *"final report"* (in the form of a certificate of analysis) and send it to the UCI Medical Director.

92. As to the Samples in this appeal, the Panel notes the following matters as gleaned from the evidence adduced by the Respondent (as supported by Prof. Botré and Dr Faiss in oral evidence at the hearing).

93. For Sample 101177:

a. The sample was collected on 8 July 2022.

b. It was received at LCPT on 19 July 2022.

c. The ITP was performed (by or under the supervision of Prof. Daali) on 19 July 2022. Tramadol and its metabolites O-desmethyltramadol and N-desmethyltramadol were detected.

d. The CP was performed (by or under the supervision of Prof. Daali) on 26 July 2022.

e. The results of the CP were that: tramadol was detected at 15.3ng/mL, the metabolite O-desmethyltramadol at 9.2 ng/mL, and the metabolite N-desmethyltramadol at a concentration below the LOQ (i.e., <5ng/mL) and therefore unquantified.

f. The results were reported by Prof. Daali to REDS.

g. REDS, by Prof. Botré and Dr Faiss, reviewed the report prepared by Prof. Daali and agreed with the conclusion that the sample *"was found to contain tramadol, O-desmethyltramadol, and N-desmethyltramadol at estimated concentrations of 15.3ng/mL for tramadol, and 9.2 ng/mL for the metabolite O-desmethyltramadol. Concentration for N-desmethyltramadol was found to be below the limit of quantitation, but still above the limit of detection*.

h. Prof. Botré and Dr Faiss expressed the view that *"the presence of tramadol and its two main metabolites is ascertained by the analytical results without any departure from the Regulations or circumstances, other than the intake of tramadol, that caused the analytically positive results"*.

i. Prof. Botré and Dr Faiss estimated that the tramadol intake occurred at least 12-48 hours before the sample was collected.

94. For Sample 101150:

a. The sample was collected on 13 July 2022.

b. It was received at LCPT on 25 July 2022.

c. The ITP was performed (by or under the supervision of Prof. Daali) on 26 July 2022. Tramadol and its metabolites O-desmethyltramadol and N-desmethyltramadol were detected.

d. The CP was performed (by or under the supervision of Prof. Daali) on 26 July 2022.

e. The results of the CP were that: tramadol was detected at 17.4ng/mL, the metabolite O-desmethyltramadol at 10.0 ng/mL, and the metabolite N-desmethyltramadol at a concentration below the LOQ (i.e., <5ng/mL) and therefore unquantified.

f. The results were then reported by Prof. Daali to REDS.

g. REDS, by Prof. Botré and Dr Faiss, reviewed the report prepared by Prof. Daali and agreed with the conclusion that the sample *"was found to contain tramadol, O-desmethyltramadol, and N-desmethyltramadol at estimated concentrations of 17.4ng/mL for tramadol, and 10.0 ng/mL for the metabolite O-desmethyltramadol. Concentration for N-desmethyltramadol was found to be below the limit of quantitation, but still above the limit of detection*.

h. Prof. Botré and Dr Faiss expressed the view that *"the presence of tramadol and its two main metabolites is ascertained by the analytical results without any departure from the Regulations or circumstances, other than the intake of tramadol, that caused the analytically positive results"*.

i. Prof. Botré and Dr Faiss estimated that the tramadol intake occurred at least 12-48 hours before the sample was collected.

95. The Respondent also called upon Prof. Veuthey (professor in pharmaceutical analysis at the University of Geneva) to provide an expert report and who also gave oral evidence at the hearing. Prof. Veuthey confirmed that:

a. The analytical method used by the LCPT is a peer-reviewed study, and its reliability had not been the subject of challenge.

b. The certificates of analysis do not report the RAs of diagnostic ions and relevant calculation results for the analyte identification. However, the underlying information can be retrieved from the data in the certificates of analysis. The table is simply a matter of presentation of the relevant data and its absence does not affect the reliability of the analysis and the conclusion arising out of such analysis.

c. The presence of tramadol is demonstrated (for both MS transitions) in both samples 101050 and 101177 at a quantifiable concentration of 17.4 ng/mL and 15.3 ng/mL, respectively.

d. The presence of O-desmethyltramadol is also demonstrated for both samples and for both transitions. Nevertheless, the reported concentrations should be corrected. As reported in the Salamin article, the transition 250.11/57.800 must be used for the quantification of this metabolite and the transition 250.133/42.300 used as qualifier. Using this procedure, O-desmethyltramadol is present at a quantifiable concentration of 7.7 ng/mL and 7.4 ng/mL for samples 101050 and 101177, respectively.

e. The presence of N-desmethyltramadol can be seen and detected (transition 250.130/43.800) but not quantified since the concentrations in both samples are lower than the Lower Limit of Quantification (LOQ < 5 ng/mL). N-desmethyltramadol is detected in both samples above the Limit of Detection (LOD = 2 ng/mL).

96. As noted, through the expert evidence of Prof. Salomone, the Rider levels a number of criticisms at the manner in which the analyses were performed and/or reported contending that the tests were incomplete and could not therefore sustain the alleged infringement.

97. It is first said that, had the protocol provided for the benefit of a B sample, then it would have provided a means by which the analyses of the Samples could have been "verified". The Panel has expressed its view that there was no obligation to provide for a B sample and no more needs to be said on that issue. It should however be noted that, as the Respondent submitted, what Prof. Salomone does not say is that the analysis of a B sample is a necessary requirement for the validity of the tests and analyses that were undertaken on the Samples.

98. It was next said that certain of the transitions were "atypical" but it was not said however that such atypicality invalidated the reported results so these can be put to one side.

99. It was said that there was some uncertainty as to the level of N-desmethyltramadol detected in the Samples. In particular, it was submitted by the Rider that it was not clear how the certificate of analysis could conclude that the concentration was below the LOQ (of 5ng/mL) and at the same time be above the LOI (also 5 ng/mL) as appeared to be required by the Salamin paper.

100. This was explained by Prof. Botré, Dr Faiss and Prof. Veuthey. The Salamin method provides that the LOD is 2ng/mL and that the LOI was 5ng/mL for all compounds. What Salamin describes as the LOI is in fact the LOQ which is the level at which the compound can be both identified and quantified. According to the certificate of analysis the amount of N-desmethyltramadol detected was above the LOD (2ng/mL) but below the LOQ (5ng/mL) and so could not be quantified, but it was clear that it was present. The Panel accepts both this explanation and the evidence that N-desmethyltramadol was present in the Samples.

101. Next, the Rider submitted that the required summary table with RAs was not included in the certificate of analysis so it was not possible to verify that the RAs of the diagnostic ions in the Rider's sample correspond to the RAs in the reference specimen.

102. It was accepted by the UCI that the certificates of analysis do not report the RAs of the diagnostic ions. However, as was said by Prof. Veuthey, the underlying information can be readily retrieved from the data in the certificates of analysis. As also noted by Prof. Veuthey, this absence from the certificate analysis does not affect the reliability of the analysis or the conclusion arising out of such analysis.

103. The Panel notes that, in any event, the UCI TRT expressly provided that (as set out above):

"Departures from the UCI TRT or any other rules set forth in the UCI Regulations does not invalidate the tramadol control or the results of such control, unless it is established by a balance of probability that such departure did cause the positive results.

104. Accordingly, even if there had been some material departure from the steps set forth in the UCI TRT (and the documents incorporated therein) it would be for the Rider to show that any such departure was causative of the reported positive results. There was no suggestion on the part of the Rider than this was so.

105. In all these circumstances, the Panel rejects the submission that the tests conducted were somehow "incomplete" and that such "incompleteness" rendered the reported results invalid or unreliable.

106. As a result, the question becomes whether the Panel is comfortably satisfied that the analyses of the Samples show the presence of tramadol and/or its metabolites as required by Article 13.3.068(a) of the UCI Medical Rules.

107. On this the Panel is comfortably satisfied.

a. The evidence shows that tramadol was present in the Rider's Samples. This is accepted by Prof. Salomone. It is also clear from the data set forth in the certificates of analyses and confirmed by Prof. Botrè and Dr Faiss. It is also confirmed by Prof. Veuthey.

b. The evidence shows that O-desmethyltramadol was present in the Rider's Samples. This too is accepted by Prof. Salomone. This is also clear from the data set forth in the certificates of analyses and confirmed by Prof. Botrè and Dr Faiss. It is also confirmed by Prof. Veuthey, albeit he corrected the levels of concentration that should have been reported to 7.36 ng/mL (and not 9.02 ng/mL) for Sample 101177 and 7.70 ng/ml (and not 10.00 ng/mL) for Sample 101050.

c. The evidence shows that N-desmethyltramadol was present in the Rider's Samples. The evidence shows that this metabolite was present in Sample 101177 at 2.52 ng/mL and in Sample 101050 at 2.76 ng/ML, in both cases above the LOD of 2ng/mL but below the LOQ of 5ng/mL. This is clear from the data set forth in the certificates of analyses and confirmed by Prof. Botrè and Dr Faiss. It is also confirmed by Prof. Veuthey.

d. The evidence shows that there was an intake of tramadol 12 to 48 hours prior to the relevant sample collections that took place after the 7th and 11th stages of the Tour de France such that it took place in-competition. This is also accepted by Prof. Salomone.

108. In the result, the Panel is comfortably satisfied that the Rider has infringed Article 13.3.068(a) of the UCI Medical Rules.

C. Sanctions

109. It is necessary therefore for the Panel to consider sanctions.

110. Article 13.3.069 of the UCI Medical Rules relates to sanctions. It is common ground that this is to be regarded as the Rider's first infringement.

111. Article 13.3.069(1) of the UCI Medical Rules is clear as to what sanctions are to be imposed. They are:

a. disqualification of the event in connection with the infringement, with all resulting consequences, including forfeiture of any medals, points and prizes;

b. a fine in the amount of CHF 5000 for a member of a team registered with the UCI, at the time of the infringement; otherwise CHF 1000; and

c. reimbursement of the costs incurred for the Tramadol Control.

112. These are the sanctions that were in fact imposed by the UCI Medical Director. They are entirely consistent with Article 13 of the UCI Medical Rules and, in any event, there is no challenge to the validity or proportionality of the sanctions so imposed by the UCI Medical Director.

113. The sanctions should therefore stand.

D. Conclusions

114. On its considered view of the submission made and evidence by the Parties, the Panel concludes and determines as follows:

a. The Rider has infringed Article 13.3.068(a) of the UCI Medical Rules.

b. The sanctions imposed by the UCI Medical Director are in accordance with the UCI Medical Rules and shall stand.

c. The Appealed Decision shall stand.

d. The Rider's appeal is dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 26 August 2022 by Nairo Alexander Quintana Rojas is dismissed.

2. The Award is pronounced without costs with the exception of the CAS Court Office fee, already paid by Mr Nairo Alexander Quintana Rojas, and which is retained by CAS.

3. (…).

4. All other and further motions or prayers for relief are dismissed.