



**Arbitration CAS 2013/A/3055 Riis Cycling A/S v. the Licence Commission of the Union Cycliste Internationale (UCI), award of 11 October 2013**

Panel: Prof. Ulrich Haas (Germany), President; Mr Michele Bernasconi (Switzerland); Mr Georg von Segesser (Switzerland)

*Cycling*

*Disciplinary sanction*

*Erga omnes effect of a CAS award with regard to the practice of a rule of a federation*

*Categories of measures imposed by sports associations according to CAS case law*

*Meaning and nature of the Neutralisation Rule*

*Neutralisation Rule as a sanction*

*Compliance of the Neutralisation Rule with the WADC*

1. In view of the very broad scope of Article R47 and of Article R57 of the Code which entrusts the Panel with full review powers, there is no valid reason why a declaratory award on the legality of the application of a provision in the federation's regulations and thus, on a preliminary question regarding the legality of the decision under appeal should not be within the authority of the CAS. Therefore, by granting the CAS such extensive review powers, the Code and the Regulations (by way of reference) implicitly accept the possibility that a decision rendered with regard to the practice of a federation's rule may, and almost certainly will, have consequences *erga omnes* that go beyond the dispute *inter partes* upon which it is based.
2. In CAS case law, three categories of measures imposed by sport associations have been distinguished. The first category is disqualification. It consists in the forfeiture of results, medals, points and prizes of an athlete. The second type of sanction is of a disciplinary nature, including the imposition of a period of ineligibility on an athlete. The third type of measure is administrative in nature and concerns the conditions of participation in a competition or event. This can be in the form of qualification rules which establish the conditions under which an athlete is allowed to participate. The differentiation between these different types of measures must be performed not on a formal, but on a substantive basis. If, therefore, an eligibility rule is tied to an athlete's prior wrongful behaviour, the non-admission of the athlete concerned to an event or competition amounts to and must be treated as a disciplinary action against this athlete.
3. The Neutralisation Rule stipulates that the points, placings or wins of a rider who has been sanctioned for a violation of the UCI's Anti-Doping Rules with at least a two-year period of ineligibility will not be considered for two years beginning the day after the suspension ends. While the Neutralisation Rule is directed at teams rather than individuals, it would render worthless any points used to calculate the sporting value of the team. Thus, the Neutralisation Rule encourages teams participating in the top sporting events to boycott riders with a doping past and will in many cases lead to an

extension of a doping sanction imposed by the WADC on an individual rider by another two years. Furthermore, the Neutralisation Rule affects the sporting value of the team in terms of qualification for the WorldTour licence.

4. The Neutralisation Rule is considered to be a sanction for various reasons: it is automatically triggered by a doping offence sanctioned by at least a two-year period of ineligibility. Furthermore, riders whose prior behaviour prompts the application of the Neutralisation Rule to their points have no possibility to appeal. The effect of the Neutralisation Rule is disciplinary and has a punitive effect on both teams and riders. The stated aim of creating homogeneous teams which do not rely on one strong rider can be achieved in a more proportionate, effective and balanced manner than double sanctioning doping violations. Therefore, the effect of the Neutralisation Rule is similar to a boycott, it is clearly a sanctioning device directed against the athlete and it impacts the team's freedom to contract and choose the riders it wants.
5. The Neutralisation Rule further sanctions the same misconduct as the WADC. It is clearly disciplinary in nature and purpose. The effect of the Neutralisation Rule primarily concerns riders who have been sanctioned for a doping violation under the WADC. That it is directed at teams does not alter the disciplinary effects on riders — essentially extending their doping sanction by another two years. This kind of additional disciplinary sanction for misconduct already sanctioned is not provided for in Article 10 WADC and represents a “substantive change” to the sanctions in the WADC. Therefore, the Neutralisation Rule does not comply with UCI's obligations under the WADC.

## 1 THE PARTIES

- 1.1 Riis Cycling A/S (“Appellant” or “Riis”) is a Danish company that owns a professional cycling team currently named Team Saxo-Tinkoff.
- 1.2 The Union Cycliste Internationale (the “Respondent” or “UCI”) is an association under Articles 60 *et seq.* of the Swiss Civil Code (“CC”), having its seat in Aigle, Switzerland. It is the governing international body of the sport of cycling. The Licence Commission (“LC”) is a commission of the International Cycling Union (UCI) whose task it is to issue licences for the participation in the major international cycling competitions.
- 1.3 Abarca Sports SL is a Spanish company that owns a professional cycling team named Movistar Team and is supporting Riis in this matter.

## 2 FACTS

- 2.1 The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties in their written pleadings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

### A) The Context of the Neutralisation Rule

- 2.2 In 2004, the UCI created a system under which the teams of professional riders need to obtain a licence or a registration to compete at international and national level. More specifically as to the international level, the UCI Cycling Regulations Part 2 Road Races (the “Regulations”) currently provide for a licence (the “WorldTour Licence”: Articles 2.15.001 to 2.15.267 of the Regulations) to take part in the UCI World Tour events, which include the major international competitions (such as the *Tour de France*, the *Giro d’Italia*, etc.), and a registration (the “Professional Continental registration”: Articles 2.16.001 to 2.16.054) to participate in the Professional Continental circuit (comprising races of the various continental calendars). In order to obtain a WorldTour Licence or a Professional Continental registration, teams need to satisfy sporting, ethical, financial and administrative criteria (Article 2.15.011). The continued fulfilment of the same criteria is verified every year, as teams holding a WorldTour Licence or a Professional Continental registration have to register again for the following season.
- 2.3 The UCI WorldTour and WorldTour Licences are regulated in Chapter XV in Part II of the Regulations. The relevant sections are as follows:

“[...]

#### **§ 1 UCI WorldTour**

**2.15.001** *In the UCI WorldTour a number of high level professional cycling teams holding UCI WorldTour licences compete in a series of high level road events the organisers of which hold a UCI WorldTour licence.*

**2.15.002** *The UCI is the exclusive owner of the UCI WorldTour concept and trademark, without prejudice to the exclusive ownership rights of the organisers.*

#### **§ 2 UCI WorldTour Licence**

**2.15.003** *The UCI WorldTour licence is the right conferred by the UCI to take part in the UCI WorldTour, either with a team of professional riders, known as a "UCI ProTeam", or as organiser of a given event.*

**2.15.004** *A UCI WorldTour licence may be issued to a physical person or to a body such as an association, company or public authority.*

**2.15.005** *Applications for UCI WorldTour licences are examined and licences issued by the UCI licence commission.*

**2.15.006** *By applying for a licence, the applicant acknowledges that the UCI alone has the right to issue UCI WorldTour licences and undertakes not to participate in cycle sport competitions,*

*formulas or organisations other than those governed by the UCI's regulations and authorities.*

**2.15.007** *The application for a licence shall imply the applicant's acceptance of the rules and conditions governing the UCI WorldTour and the UCI's regulations in general.*

[...]

### **§ 3 UCI WorldTour Team Licence**

[...]

#### ***Application for a licence***

**2.15.009** *A maximum of 18 UCI WorldTour team licences may be issued, where applicable, in accordance with the geographic distribution determined by the Professional Cycling Council.*

**2.15.010** *A licence may be issued to an applicant fulfilling all the conditions set out in the regulations.*

**2.15.011** *The licence commission awards licences on the basis of the following criteria:*

- *sporting*
- *ethical*
- *financial*
- *administrative*

*In order to obtain a UCI WorldTour licence applicants must fulfil each of the four criteria. If more than 18 applicants meet each of these four criteria the licence commission will decide between them on the basis of the same criteria.*

#### ***Criteria***

**2.15.011a** *The sporting criteria comprise the sporting level of the UCI ProTeam or applicant team calculated on the basis of a points scale approved by the UCI Professional Cycling council.*

*This scale of points will be applicable to all UCI ProTeams, professional continental teams and teams applying for either of these status and will give rise to a classification of teams on the basis of sporting level.*

*The calculation of the sporting value will be based on a certain number of riders who form part of the team on 20 October of the year prior to the year of registration.*

[...]

**2.15.011b** *A team ranked in the first fifteen places of the classification on the basis of sporting level is by this fact considered to have satisfied the sporting criterion.*

*The sporting value of a team ranked between 16th and 20th places inclusive will be verified by the licence commission via a more detailed assessment. In order to determine whether a team ranked between 16th and 20th satisfies the sporting criterion, the licence commission will inter alia ascertain whether there is a clear gap in the classification or whether particular circumstances have had an effect on the team's results. Such particular circumstances shall*

*include any injuries to riders, the types of event which the team has ridden and the homogeneity of the team.*

*A team ranked lower than 20th shall be considered not to have satisfied the sporting criterion.*

**2.15.011c** *The ethical criterion takes account inter alia of the respect by the team or its members for:*

- a) the UCI regulations, inter alia as regards anti-doping, sporting conduct and the image of cycling;*
- b) its contractual obligations;*
- c) its legal obligations, particularly as regards payment of taxes, social security and keeping accounts;*
- d) the principles of transparency and good faith.*

*[...]*

**2.15.012** *The criteria in article 2.15.011 may also be used to refuse the award of a licence or to reduce its duration, even if the regulatory conditions are otherwise fulfilled.*

*(text modified on 1.04.11).*

**2.15.013** *The application for a licence shall be made by submitting a form drafted by the administration of the UCI with all the information and documents requested. The applicant must obtain the form from the administration of the UCI.*

**2.15.014** *The deadline for submission of applications for the available licences shall be set by the UCI administration. Applications submitted after this date shall not be considered unless the maximum number of licences, has not been reached.*

*[...]*

**2.15.015** *On the date indicated on the licence application form, the applicant must pay the UCI an application fee in the sum determined by the Professional Cycling Council. If this payment is not received on time the application shall not be considered.*

**2.15.016** *If a licence is awarded, the application fee shall be deducted from the licence fee. No reimbursement shall be made if the licence is refused or if the applicant withdraws his application. However, if the team is subsequently registered as a UCI Professional Continental Team or UCI Continental Team, no other registration fee is due for the same year of registration.*

*(text modified on 1.04.11).*

#### ***Examination by the licence commission***

**2.15.017** *The licence commission shall examine the licence application on the basis of documentation consisting of the following elements:*

- 1. the licence application form and its enclosures;*
- 2. the report or any other opinion of the auditor appointed by the UCI;*
- 3. the report drawn up by the UCI;*

4. *any other document or information provided by the applicant or requested by the UCI or by the licence commission to assess the application.*

*The licence commission may also take account of acknowledged facts.*

*The documentation must be drawn up in French or in English. Documents produced by third parties and written in another language must be accompanied by a translation into the language of the documentation.*

*The licence applicant has sole responsibility for assuring the quality and complete nature of his documentation. He may not, in particular, invoke the fact that he has not been asked by the UCI, the auditor approved by the UCI or the licence commission to provide information or documents or that his attention has not been called to gaps or other factors which may be regarded as negative when his application comes to be judged by the licence commission.*

- 2.15.018** *The UCI and the auditor must forward their opinion or report to the licence commission 15 days before the date of the hearing referred to in Article 2.15.019. At the same time, a copy shall be forwarded to the applicant.*

*[...]*

- 2.15.019** *The licence applicant will be invited within a time limit of 10 days to explain and defend his application for a licence before the licence commission at a hearing held for this purpose.*

- 2.15.020** *The applicant must lodge any statement in support of his application to the commission in four copies, at least 3 days before the date of the hearing, with a copy to the UCI and the auditor. A statement lodged after this deadline shall automatically be disregarded.*

- 2.15.021** *At least 3 days before the date of hearing, the applicant shall notify the licence commission and the UCI of the identity of those persons who will represent him or attend the hearing. The licence commission may refuse to hear any persons not notified within this time.*

- 2.15.022** *The UCI may participate in the hearing. The auditor appointed by the UCI may be heard at the request of the applicant, the UCI or the licence commission.*

- 2.15.023** *The date of the hearing may not be delayed, save where otherwise decided by the president of the licence commission.*

*If a party fails to attend the hearing, the licence commission shall give its ruling in his absence.*

*[...]*

- 2.15.025** *The commission shall render its decision as rapidly as possible and, as far as possible before 20 November prior to the first year of the licence.*

- 2.15.026** *The awarding of a UCI WorldTour licence shall be deemed to constitute registration for the first year of that licence.*

*Every licence shall be granted subject to a possible redistribution of the licences following a decision of the CAS cancelling a refusal to grant a licence pursuant to Article 2.15.241.*

*[...]*

### ***Duration of validity of the licence***

**2.15.031** *The licence shall be valid for four calendar years. However, at the reasoned request of the applicant, the licence commission may grant a licence for two or three years. This request must be made in the licence application; it will otherwise be inadmissible.*

*(text modified on 1.04.11).*

**2.15.032** *The licence commission may automatically reduce the duration of validity of the licence to 3, 2 or 1 years if, in the opinion of the commission and for the reasons it must provide, such a reduction is justified with regard to the criteria set out in article 2.15.011. The decision of the commission may be appealed to the Court of Arbitration for Sport. The applicant who does not accept a licence of reduced validity may renounce the licence under the conditions set out in article 2.15.016.*

*[...]*

**2.15.071** *If the UCI administration decides that it is unable to register the UCI ProTeam, it will notify the licence holder and the paying agent. Unless the holder renounces the licence, the UCI administration will refer the case to the licence commission:*

- 1** *The licence commission summons the UCI ProTeam to a hearing with a minimum of 10 days' notice, unless otherwise agreed with the UCI ProTeam;*
- 2** *The applicant must lodge any documents in support of his registration application to the commission in three copies, with one copy to the UCI, at least 5 days before the date of the hearing. Documents lodged after this deadline shall be automatically disregarded;*
- 3** *At least 5 days before the date of hearing, the UCI ProTeam shall notify the licence commission and the UCI of the identity of those persons who will represent him or attend the hearing. The licence commission may refuse to hear any persons not notified within this time;*
- 4** *The UCI may participate in the hearing. The auditor appointed by the UCI may be heard at the request of the UCI ProTeam, the UCI or the licence commission;*
- 5** *The licence commission shall apply the assessment criteria set out in article 2.15.011a ff.*

*Should the licence commission refuse the registration, the UCI ProTeam's licence is automatically withdrawn. The decision is subject to appeal to the CAS. Furthermore, the licence commission will pass on the application documentation to the UCI administration so that the latter can assess the possibility of registering the team as a professional continental team.*

*The UCI ProTeam shall be represented before the licence commission by the licence holder or, with the agreement of the latter, by the paying agent.*

*(text modified on 18.06.07; 1.07.10).*

*[...]”.*

- 2.4 The sporting criterion is one of the four categories based on which the LC awards UCI WorldTour Licences. The sporting criterion of a team is calculated on the basis of Article 2.15.011a. This provision makes reference to a *“point scale approved by the UCI Professional Cycling Council”* (the “PCC”). On 17 March 2011, at the meeting of the PCC in Milan, the point scale used to measure the 2012 sporting value was approved and a proposal for a so-called Neutralisation Rule with respect to the sporting value of riders returning from a two-year ban for doping violations was presented. The PCC postponed the decision on the Neutralisation Rule until a legal analysis of the measure was completed.
- 2.5 At the seminar for teams in Brussels in April 2011, participants were informed that there could be a modification of the 2012 sporting criteria, should the Neutralisation Rule be adopted. The rule was ratified by the UCI Management Committee the day after the PCC decided to adopt the rule at a meeting of the PCC in June 2011.
- 2.6 In a letter dated 29 June 2011, the UCI informed the teams of the above modification and advised them that the modification was *“effective immediately”*.
- 2.7 Annex 10 of the 2013 instruction guide for the registration of first and second division UCI teams (2013 / UCI / A-10) now reads as follows:

***“SPORTING CRITERION***

***CALCULATION OF TEAMS’ SPORTING VALUE***

*[...]*

*In order to obtain the most exact sporting value for each team, the sporting criterion has been drawn up in a way that takes account of this characteristic feature.*

*Two aspects are assessed for this purpose:*

- *individual value: sum of the value of the riders who make up the team*
- *collective value: contribution of the team to individual performances*

*The purpose of the **individual value** is to determine the strength of the riders making up the team in the following year. It is thus based on the riders under contract in the following registration year. Each rider is evaluated on the basis of:*

- *his placings in the various rankings*
- *his wins and podium places*

*This evaluation covers the last 2 seasons (as defined in the UCI Regulations) in order to give as precise and accurate a value as possible for each rider.*

*The best 12 riders are taken into account and their points added give the individual value*

*The **collective value** is intended to give a value to the collective performances of the team, including its management. To this end, the following are considered:*

- *final team rankings in each circuit*



- *victories, podiums and alternative jerseys*
- *Team-Time-Trial World Championships*

*The sum of the individual value and the collective value gives the team its sporting value and thus its position in the sporting ranking”.*

*[...]*

### **SPECIFIC PROVISIONS**

#### **1 Neutralisation**

*In the case of a rider who has been sanctioned for a violation of the UCI’s Anti-Doping Rules with a period of ineligibility for two years or more (whether or not a part of this period of ineligibility is suspended), his points, placings, wins, or wearing of a leader’s jersey will not be taken into consideration for a period of two years starting the day after his effective suspension has finished. (Note: this measure has no impact on the team’s result at the team-time-trial World Championships)”.*

#### **B) The Facts relating to the Appellant**

- 2.8 On 3 August 2010, the Appellant engaged the cyclist Mr Alberto Contador for a period of two years, beginning on 1 January 2011.
- 2.9 On 12 August 2011, the Appellant applied for a WorldTour Licence for the year 2012. Said licence was granted on 18 November 2011 by the LC.
- 2.10 On 6 February 2012, the CAS imposed a two-year period of ineligibility on Mr Alberto Contador, ending on 5 August 2012. In addition, Mr Alberto Contador was disqualified from all competitions he participated in as from 25 January 2011.
- 2.11 On 14 August 2012, Riis applied for a WorldTour licence for the Team Saxo-Tinkoff beginning in January 2013. Among the documents considered by the LC was the “*UCI Team Evaluation Report 2013*” in accordance with Article 2.15.017 para. 3 of the Regulations. The report notes the team’s position in the sporting hierarchy on 21 October 2012 as 20<sup>th</sup>, which required further assessment. The detailed report includes a comparison of the riders’ performances in 2011 and 2012, an analysis of which riders accounted for what percentage of the earned points and an analysis of the points earned. In particular, the case of Mr Alberto Contador is mentioned:

*[...]*

*Alberto Contador’s points are neutralized during two years, as is the case for all riders returning from a two-year suspension.*

*For the last two years, the sporting value of the team has been heavily dependant [sic] on Contador’s points, who accounted for more than 65% of the team’s points. While the possibility of a suspension for Contador, and thereby the loss of his points, loomed over the team, practically nothing was done to avert the risk of a sudden and sharp drop in the sporting value of the team”.*

- 2.12 On 21 November 2012, the hearing regarding the application for a UCI WorldTour Licence took place with both the Team Saxo-Tinkoff and the UCI being represented. In a letter of 10 December 2012, the LC informed the Team Saxo-Tinkoff that a licence had been granted for two years. In a following letter sent by fax on 21 December 2012 (but dated 7 December 2012), the LC briefly explained its reasons for granting the licence. It noted in particular that the team had followed its recommendations by changing its recruitment strategy so that the team was not solely based on one leader.
- 2.13 Appeals of the decisions of the LC are regulated in § 7 of Part II of the Regulations.

### **3 PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

- 3.1 On 9 January 2013, the Appellant filed a “Petition” with the Court of Arbitration for Sport (“CAS”). The “Petition” contained the Statement of Appeal as well as the Appeal Brief.
- 3.2 By letter of 14 January 2013, the CAS Court Office initiated the procedure *CAS 2011/A/3055 Riis Cycling A/S v. The Licence Commission of the UCI* and *inter alia* invited the Respondent to submit its Answer within 20 days.
- 3.3 By letter of 24 January 2013, the Respondent requested that the Panel allow an Answer limited to “*procedural issues related in particular to the admissibility of the appeal filed by the Appellant and the ability and interest of Riis Cycling A/S to appeal*”.
- 3.4 On 24 January 2013, the CAS Court Office invited the Appellant to file its observation on the Respondent’s request to limit its answer to procedural issues by 28 January 2013. It also noted that the Respondent’s deadline to file an answer would be suspended until the matter concerning the limitation of the Answer is settled.
- 3.5 On 25 January 2013, the CAS Court Office granted the Appellant an extension until 4 February 2013 in order to consult with a Swiss lawyer.
- 3.6 On 4 February 2013, the Appellant submitted its observation on the question of admissibility and jurisdiction and objected to a separation of the formal and merits proceedings. As a final point, the Appellant requested that the suspension of the Respondent’s deadline to submit an Answer be lifted.
- 3.7 By letter of 4 February 2013, the CAS Court Office acknowledged the Appellant’s response and confirmed that the Panel would decide on the issue upon being constituted. In the meantime, the deadline for the Respondent’s Answer remained suspended.
- 3.8 On 18 February 2013, the Respondent sent a letter in response to the Appellant’s objections of 4 February 2013.

3.9 On 22 February 2013, the CAS Court Office informed the Parties that the Panel appointed to decide the case was constituted as follows:

President: Prof Dr Ulrich Haas, Professor of Law in Zurich, Switzerland

Arbitrators: Mr Michele Bernasconi, Attorney-at-law in Zurich, Switzerland

Dr Georg von Segesser, Attorney-at-law in Zurich, Switzerland.

3.10 By letter of 27 February 2013, following a letter from the Appellant dated 26 February 2013 indicating that it would answer the Respondent's observations of 18 February 2013, the CAS Court Office reminded the Appellant that the Panel would decide on the Respondent's request to limit its Answer to procedural issues, and that no further comments or arguments should be filed. Nevertheless, the Appellant, submitted a reply, also dated 27 February 2013, to the Respondent's submission of 18 February 2013.

3.11 By letter of 1 March 2013, the CAS Court Office again asked that no further submissions regarding the Respondent's limitation request be submitted.

3.12 On 5 March 2013, the CAS Court Office informed the Parties that the submissions of 18 February 2013 by the Respondent and of 27 February 2013 by the Appellant, though unsolicited, would be allowed by the Panel. Further, the exchange of submissions with regard to the procedural issues were deemed closed and the Parties were informed that no hearing would take place unless a formal objection was made within three days. Finally, the deadline for the filing of the Respondent's Answer remained suspended.

3.13 By letter of 7 March 2013, the Appellant objected to the Panel deciding on the formal issues only, referring to its letter of 4 February 2013, but accepted that the Panel may decide whether there should be a hearing or not.

3.14 The CAS Court Office informed the Parties by letter of 11 March 2013 that the only unresolved issue was whether further submissions should be made on the procedural issues, but as none of the Parties had made such a request, the Panel would not hold a hearing on those issues. The Panel would render a preliminary award on the procedural issues of admissibility and jurisdiction on the basis of the submissions received.

3.15 In a Preliminary Award on Jurisdiction and Admissibility dated 17 June 2013, the Panel decided to retain jurisdiction to adjudicate on the merits of the appeal submitted by the Appellant and dismissed the Respondent's objections with respect to jurisdiction and admissibility.

3.16 By letter of 17 June 2013, the CAS Court Office informed the Respondent of the twenty-day deadline for submitting an Answer pursuant to Article R55 of the Code of Sports-related Arbitration.

3.17 The Order of Procedure was signed by the Appellant and the Respondent on 3 and 4 July 2013 respectively.

- 3.18 The Respondent's answer was filed on 8 July 2013.
- 3.19 By letter of 9 July 2013, the CAS Court Office informed the Parties that, unless they agree or the President of the Panel otherwise orders, the Parties are not authorized to supplement or amend their requests or arguments, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the Appeal Brief and of the Answer.
- 3.20 The CAS Court Office informed the Parties in a letter dated 19 June 2013 that a hearing would take place on 19 August 2013 in Lausanne, Switzerland.
- 3.21 The hearing was held in Lausanne on 19 August 2013. The Panel was assisted at the hearing by Mr William Sternheimer, Managing Counsel to the CAS and Ms Julia Donchi as *ad hoc* clerk. During the hearing the Appellant was represented by Counsel Mr Henrik Higham Schlüter and Mr Gawie Nienaber, board member of Riis Cycling. The Respondent was represented by Counsel Mr Jean-Marc Reymond and Ms Delphine Rochat as well as Ms Ottilie Morand, UCI Legal Manager.
- 3.22 At the conclusion of the hearing, the Parties, after making submissions in support of their respective case, confirmed that they had no objections with respect to their right to be heard and their right to be treated equally in the arbitration proceedings.

#### 4 THE PARTIES' RESPECTIVE REQUESTS FOR RELIEF AND BASIC POSITIONS

This section of the award does not contain an exhaustive list of the Parties' contentions on the merits, its aim being to provide a summary of the substance of the Parties' main arguments in this respect. In considering and deciding upon the Parties' claims in this award, the Panel carefully considered all of the submissions made and evidence adduced by the Parties, including allegations, witness statements and arguments not mentioned in this section of the award or in the discussion of the claims below.

##### 4.1 *The Appellant*

4.1.1 In the Appeal Brief of January 2013, the Appellant requested the CAS:

- (1) *"To set aside the argument of the License Commission in its reasons from December 21 2012 that Team Saxo-Tinkoff is ranked 20th in the sports evaluation as part of calculating teams Sporting Value according to Art. 2.15.11a of the UCI rules and confirms that Team Saxo-Tinkoff is rightfully ranked 19th in the sports evaluation."*
- (2) *"To ask the License Commission to set aside the practice of the License Commission (based on the request of the UCI World Tour) to use the neutralisation rule in connection with riders, who have committed their doping offense on or before June 29, 2011."*
- (3) *"To condemn the License Commission of the UCI to pay all the arbitration costs, if any, and to pay a substantial contribution towards the legal fees of Riis Cycling A/S"*.

4.1.2 The Appellant's submissions in support of its request, made in its written statements and its oral statements during the hearing can be summarized in essence as follows:

- (1) The Neutralisation Rule impacts the Appellant. The licence for the WorldTour is the "economical foundation" of the team. It ensures the participation in the top cycling events and, thus, is the basis for acquiring sponsors for the team. The latter is important, since in cycling – usually – more than 90% of the budget comes from sponsorship. The expectations of the sponsors, therefore, are vital for the surviving of the teams.
  - One of the expectations of the sponsors is planning stability. In view of their long-term budget commitments, sponsors need to know fairly long in advance whether or not a team is entitled to participate in the top cycling events, i.e. whether or not the team will be granted a WorldTour Licence. It, therefore, makes a significant difference whether or not a team is ranked according to the sporting criteria among the top 15. While the top 15 teams qualify for a licence per se (provided that the other requirements are fulfilled), the lower ranked teams (16-20) have to go through a further LC assessment process. Furthermore, the four teams ranked between 16<sup>th</sup> and 20<sup>th</sup> have to compete for the remaining three spots in the WorldTour. While the team ranking is of importance in this assessment process, it must be noted that the LC nevertheless has some degree of discretion when deciding how to allocate the remaining spots to the teams ranked between 16<sup>th</sup> and 20<sup>th</sup>.
  - The Neutralisation Rule affects the ability of the teams to obtain a licence, since the points won by a rider affected by this rule do not count towards the ranking of the team. In the case at hand, without the Neutralisation Rule, the Appellant would have been ranked 19<sup>th</sup> (instead of 20<sup>th</sup>). Although the difference between ranks 19 and 20 may not seem great, it would not take a significant number of additional points to reach a ranking of 15.
  - Another expectation of the sponsors is for the team to perform well in the sporting events, because only sporting success ensures the visibility sought after by the sponsors. According to the Appellant, this expectation of the sponsors is difficult to reconcile with the goal of obtaining a license, since building a team with strong sporting abilities will not necessarily result in a team consisting of individuals with high scores. According to the Appellant, a team participating in the big road racing events is – usually – built around one leader. In order for him to succeed at the event, he needs a group of riders that are specialized in certain tasks to help him win the race. Even though the specialisation of these riders is vital for the sporting success of the leader, it is frequently not rewarded by points in terms of the sporting criteria. In order to ensure both sporting excellence and a WorldTour licence, a difficult balance must be struck by the teams when choosing and contracting riders.
  - This difficult balance is heavily impacted by the Neutralisation Rule. For example, if the leader of a team falls under the Neutralisation Rule, the team might have to keep him for sporting reasons, but will have to spend substantial amounts of money on additional cyclists in order to compensate for the loss of points counting towards the team ranking (which in turn is important for the granting of the WorldTour Licence). Even though necessary from a license perspective, these

riders may be completely dispensable from a sporting point of view. The freedom of the team to choose riders available on the market is also affected by the Neutralisation Rule. If, for example, there is a rider with sporting potential who falls under the Neutralisation Rule, he cannot be contracted by the team, because that rider does not contribute to the points needed to obtain the WorldTour Licence.

- (2) According to the Appellant, the Neutralisation Rule not only impacts the team, but also the riders that fall under it. The Neutralisation Rule, in fact, constitutes a sanction for an athlete that has served his period of ineligibility. It thus constitutes a “second” or “additional” sanction” for the same doping offence. This is a breach of the World Anti-Doping Code (“WADC”), which the UCI has committed itself to comply with. As a consequence of this breach of the WADC, the Neutralisation Rule is invalid and unenforceable. In support of its conclusions the Appellant refers the Panel to recent case law of the CAS, notably CAS 2011/O/2422 (Osaka) and CAS 2011/A/2658 (BOA). In both decisions the CAS found that imposing an additional sanction on an athlete for an anti-doping rule infraction is incompatible with the WADC, since the latter provides in Article 23.2.2 that “*no additional provisions may be added to a Signatory’s rules which changes the effect of the Articles*” dealing with sanctions on individuals.
- (3) Furthermore, the Appellant submits that the Neutralisation Rule is also incompatible with other fundamental legal principles, such as the principle of *ne bis in idem*, the principle of proportionality, the prohibition of retroactive application of disciplinary sanctions, as well as fundamental rights protected, for instances, by Article 27 of the Swiss Constitution.
- (4) Finally, according to the Appellant, the Neutralisation Rule conflicts with EU Law as it “clearly constitutes an obstacle to the free movement of workers”.

## 4.2 The Respondent

4.2.1 In its Answer dated 8 July 2013, the Respondent filed the following requests to the CAS:

*“Dismissing entirely any and all requests for Relief made by the Appellant Riis Cycling A/S”.*

4.2.2 The Respondent’s submissions in its Answer and in the hearing in support of its request can be summarized in essence as follows:

- (1) The Respondent submits that the Appellant lacks standing to sue. According to the applicable rules, a licence holder is only entitled to appeal if the LC has reduced the duration of the validity of the licence applied for (Article 2.15.032 of the Regulations), or if the LC refuses to register a team (Article 2.15.071 of the Regulations). In all other circumstances, a person who has been granted a licence has no standing to sue.
- (2) Furthermore, the Appellant lacks legal interest to pursue its claims because there was no harm suffered as the WorldTour Licence had been granted. In particular, the Respondent submits that there is no tangible interest of a financial or sporting nature at stake. Neither the operative part nor the reasoning of the Decision affects the Appellant. The appeal, thus, is premature and – because filed in the abstract – cannot be allowed.

- (3) The Respondent points out that the Neutralisation Rule is covered by the autonomy of associations. In particular, the Neutralisation Rule is not a sanction. It is not aimed at individual riders, but only at teams. It does not extend the duration of the riders' period of ineligibility. The purpose of the Neutralisation Rule is to encourage teams to change their recruitment policy and build homogenous teams, but not to harm a rider. This being said, it shall be noted that the Neutralisation Rule does not apply to the UCI Professional Continental teams, which are also active in the business of professional cycling. Therefore, nothing prevents a rider from returning to a Professional Continental Team.
- (4) Even if the Neutralisation Rule were qualified as a sanction (*quod non*), the provision would be in compliance with the WADC. The CAS jurisprudence cited by the Appellant is not relevant as it deals with very different circumstances than the case at hand. The Neutralisation Rule neither functions as an eligibility rule nor prohibits participation. Furthermore, the WADC allows international sports federations to introduce rules which prohibit a certain conduct, in addition to the sanctions imposed by the Code. The Respondent makes reference in that respect to the comment "b" to Article 2 WADC and the comment to Article 23.2.2 WADC.
- (5) There is no violation of the *ne bis in idem* principle. First, this principle only applies in the context of criminal law. However, the matter in dispute here is civil in nature rather than criminal. Furthermore, no issues of *ne bis in idem* arise here as the Neutralisation Rule affects the team, not the rider, and has a different purpose than the original sanction imposed on the rider.
- (6) The principle of proportionality is also not violated. The Neutralisation Rule is limited in time and imposes no prohibitions either on the rider in terms of participating or on the team in terms of hiring sanctioned riders. It is both necessary and proportionate for its purpose.
- (7) There is no violation with regard to the prohibition on retroactivity. The triggering factor for the application of the Neutralisation Rule is not an anti-doping offence but the decision of a team to hire a rider having committed such an offence. The rule has only been applied to teams who employed riders whose suspension finished after 17 June 2011.
- (8) The Neutralisation Rule is not in violation of EU law. The dispute at hand is subject to Swiss law, so EU law does not apply.

## 5 JURISDICTION AND ADMISSIBILITY

- 5.1 Jurisdiction and Admissibility of the matter in dispute have been finally dealt with and accepted by this Panel in the Preliminary Award on Jurisdiction and Admissibility dated 17 June 2013, to which reference is made herewith.

## 6 MANDATE OF THE PANEL

- 6.1 The mandate of this Panel follows from Article R57 of the Code. According to Article R57 of the Code, the CAS has – in principle – unrestricted powers to look into the matter (fact and the law). The restrictions contained in the Regulations, relating to the mandate of this Panel (Articles 2.15.239 and 2.15.240), do not bind this Panel. In this respect the Panel fully subscribes to the conclusions reached in CAS 2012/A/3031 no. 68 et seq.

## 7 APPLICABLE LAW

- 7.1 Pursuant to Article R58 of the CAS Code, the Panel shall decide the dispute
- “... according to the applicable regulations and the rules of law chosen by the parties or, in absence of such a choice, according to the law of the country in which the federation, association or sports-related body has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
- 7.2 In the case at hand, the “*applicable regulations*” within the meaning of this provision are the rules and regulations of UCI. As for the “*rules of law chosen by the parties*”, reference is made to Article 78 of the UCI Constitution, according to which Swiss law applies in the context of CAS proceedings as long as the Parties have not agreed on any other applicable (national) law.

## 8 MERITS OF THE APPEAL

### A. *Request to set aside, in the decision of 21 December 2012 of the Licence Commission, the reasons resulting in a ranking of 20<sup>th</sup> in the sports evaluation and to confirm a ranking of 19<sup>th</sup>*

- 8.1 The Parties are in dispute as to whether the Appellant, pursuant to the relevant regulations, has any standing to request a ranking of 19<sup>th</sup> instead of 20<sup>th</sup>.
- a) Position of the Parties
- 8.2 The Respondent submits that the Appellant has no standing to appeal due to a lack of legal interest. More specifically, the Respondent maintains that the conditions relating to the standing to appeal, as regulated in Article 2.15.227 of the Regulations in conjunction with Articles 2.15.032 and 2.15.071 of the Regulations, have not been met.
- 8.3 According to the Respondent, the standing to appeal provided in Article 2.15.227 of the Regulations is limited (i) by Article 2.15.032 of the Regulations, which refers to the possibility of appealing to the CAS for a reduction of the licence period, and (ii) by Article 2.15.071 of the Regulations, which foresees the right to appeal the LC’s refusal to register a UCI ProTeam. In other words, only a failed applicant or a licence holder whose registration has been refused or



whose licence has been reduced in duration has the right to appeal a decision of the LC to the CAS. The Appellant is not a failed applicant, as the licence was granted, and the registration of the Appellant's team was accepted. While the licence was granted for a limited time, this was at the Appellant's own request and not a decision made by the LC. Consequently, according to the Respondent, the preconditions for an appeal have not been met, nor has the Appellant suffered any harm as required in order to appeal a decision to the CAS.

- 8.4 The Appellant contends that the wording of Article 2.15.227 of the Regulations does not expressly restrict a licence holder's possibility of appealing a decision of the LC which has caused harm. The Appellant maintains that it would go against a general rule of law if, without such express provisions, a party were prevented from appealing a decision that has caused adverse effects. According to the Appellant, it has suffered harm as a result of the LC decision to grant only a two-year licence. This meant that Mr Contador's points will still not be counted when applying for the next licence and that the Appellant was ranked as 20<sup>th</sup> instead of 19<sup>th</sup>. The ranking, the Appellant claims, affects the team as teams ranked 1-15 are automatically considered to have satisfied the sporting criterion, whereas teams ranked under 15 are subject to a more detailed assessment.

b) Analysis of the case at hand

- 8.5 The review of LC decisions provided for in the Regulations is modelled after Article 75 CC. This article provides – in the event a decision other than a resolution of the General Assembly is appealed – that the person appealing the decision of an association must be adversely affected in order to have standing to sue (see BK-ZGB/RIEMER, Art. 75 N 18 seq.).
- 8.6 The Respondent submits that this principle is curtailed in the case at hand by the Regulations. According to the Respondent, an applicant that received a license is only entitled to appeal in cases where Articles 2.15.032 or 2.15.071 of the Regulations apply. The Panel cannot follow the Respondent's arguments with respect to the limitations of the right to appeal. Firstly, such a limitation does not follow from the wording of the Regulations and, secondly, the Panel has serious doubts whether an association could curtail a person's right to appeal a decision by which he or she is adversely affected. Were that the case, it would leave such a party without access to any legal remedies.
- 8.7 The question therefore is whether the Appellant is seeking relief in order to remedy adverse effects of the Respondent's decision. The Panel does not perceive any adverse effects of the LC decision regarding the use of the Neutralisation Rule and the reasons resulting in a ranking of 20<sup>th</sup> in the sports evaluation. The Panel would have been prepared to accept that the Appellant would be adversely affected had the disputed ranking been between 16 and 20 and the "correct" ranking between 1-15. In such a case, the Appellant would have automatically fulfilled the sporting criterion and would have been spared the time and expense of a more detailed assessment. Since, however, the difference is between the 19<sup>th</sup> place instead of the 20<sup>th</sup>, the Panel fails to see in what way the Appellant might have been adversely affected, especially considering that the Appellant was granted the licence. Regardless of whether the Appellant was ranked 19<sup>th</sup>

or 20<sup>th</sup>, a detailed assessment as provided for in Article 2.15.011b of the Regulations would have taken place. The Appellant's position, had it been ranked 19<sup>th</sup>, it would have come very close to being among the top 15 teams, lacks sufficient substantiation to be considered as relevant in this context.

c) Conclusion

- 8.8 The Panel concludes that, although it cannot agree with the Respondent's interpretation of Article 2.15.227 of the Regulations, it does not see that the Appellant has suffered any harm as the result of having been ranked 20<sup>th</sup> instead of 19<sup>th</sup>. Therefore, the Panel finds that the Appellant has no standing to appeal with respect to its request to set aside in the decision of the LC the reasons which resulted in the Appellant having been ranked 20<sup>th</sup>.

***B. Request to set aside the practice of the Licence Commission of applying the Neutralisation Rule in connection with riders who have committed a doping offense on or before 29 June 2011***

- 8.9 The Parties are in dispute as to:

- (i) whether the Appellant has standing to sue regarding the request to set aside the practice of the LC of applying the Neutralisation Rule and (in the event that the first question is answered in the affirmative)
- (ii) whether the Neutralisation Rule is in conformity with the WADC and other applicable principles of law.

**I. Standing to appeal**

a) Position of the Parties

- 8.10 The Respondent argues, as with the first request, that the Appellant does not fulfil the conditions required to appeal to the CAS, has suffered no harm and, therefore, has no legal interest in the appeal. In addition, the Respondent submits that the appeal against the Neutralisation Rule is premature in any event. Correctly, an appeal can only be made at such time in the future when the Neutralisation Rule results in a denial of a WorldTour licence. Only at that point will the Appellant have the necessary legal interest to appeal the use of the Neutralisation Rule.
- 8.11 The Appellant submits that the application of the Neutralisation Rule has adverse effects on both the riders and the team. The Neutralisation Rule penalises teams that have riders under contract that have been held ineligible for past doping offences, since the points of the riders concerned do not count towards the sports criterion of the team. As the sports criterion is an essential element to qualify for a WorldTour licence, the consequences of the Neutralisation Rule impact heavily on the team recruitment policy. In principle, teams will have to boycott

riders affected by the Neutralisation Rule, thereby depriving such riders of the possibility of participating in the events and imposing on them (indirectly) an additional sanction (i.e. in addition to the one served under the WADC rules). Even if a team keeps an affected rider – e.g. for sporting reasons – the team will need to hire other riders that contribute points to the team in order to compensate for the points lost due to the Neutralisation Rule. This will result in very high additional expenses for the team, which constitutes a sanction imposed on the team for hiring an athlete with a doping past.

b) Analysis of case at hand

- 8.12 As established in the Preliminary Award on Jurisdiction and Admissibility dated 17 June 2013, the Appellant seeks declaratory relief to the effect that the Respondent is not allowed to apply the Neutralisation Rule to the Appellant. Furthermore, the Panel has concluded in said Preliminary Award that the Appellant has sufficient legal interest to request declaratory relief. The Panel also finds that the Appellant has standing to appeal because it is at present already adversely affected by the legal uncertainties pertaining to the validity of the Neutralisation Rule. As a WorldTour licence holder, the Appellant has entered into a contractual relationship with the Respondent. In the case at hand, the uncertainty relates to the validity of the Neutralisation Rule with respect to a violation that took place before the introduction of the Neutralisation Rule. Mr. Alberto Contador's points were not taken into consideration in the application for the 2012 WorldTour licence and, if the Neutralisation Rule is again applied, any points he received up until 5 August 2013 will not be taken into account in the Appellant's application for a 2014 WorldTour licence. All of this, however, has immediate consequences on the Appellant's recruitment and budget policy as of today.
- 8.13 The Panel further finds that the Appellant's claim against Respondent cannot be resolved by any other means. After the UCI Arbitral Board refused to consider the Appellant's objections to the Neutralisation Rule for lack of jurisdiction, the Appellant had no other legal remedies at hand, except an appeal to the CAS. The Panel does not find any valid reason why the Appellant, already bearing the adverse consequences resulting from the Neutralisation Rule, should have to wait for clarification of the legal uncertainties until the next application for a WorldTour licence. As already mentioned, the Parties have entered into a contractual relationship. Therefore, the Appellant has a claim against the Respondent that the Regulations be applied correctly and, in particular, that only such Regulations are applied that do not violate applicable rules and regulations. According to the Appellant, the Respondent has disregarded its claim when granting the WorldTour licence in 2012 by applying the Neutralisation Rule. Furthermore, the Respondent has repeatedly announced that it will continue to apply the provision to the Appellant in the future. Under these circumstances the Appellant must be granted the standing to appeal in order to resolve the legal uncertainties pertaining to the Neutralisation Rule.

c) Conclusion

- 8.14 The Panel concludes that the Appellant has standing to appeal in relation to its request to set aside the practice of the Licence Commission of applying the Neutralisation Rule in connection with riders who have committed a doping offense on or before 29 June 2011.

**II. Violation of the WADC**

a) What is the Panel's review scope?

- 8.15 The Panel reiterates that under Article R47 of the Code (to which Article 2.15.242 of the Regulations refers), the CAS is competent to hear all disputes relating to *"the decisions of federations, associations..."* as long as the statutes or regulations of sports-related bodies so provide. In view of the very broad scope of this provision and Article R57 of the Code which entrusts the Panel with full review powers, the Panel holds that there is no valid reason why a declaratory award on the legality of the application of a provision in the Regulations to the Appellant and thus, on a preliminary question regarding the legality of the decision under appeal should not be within the authority of the CAS.
- 8.16 By granting the CAS such extensive review powers, the Code and the Regulations (by way of reference) implicitly accept the possibility that a decision rendered with regard to the practice of the LC of using the Neutralisation Rule may, and almost certainly will, have consequences *erga omnes* that go beyond the dispute *inter partes* upon which it is based.

b) What qualifies as a sanction under the WADC?

- 8.17 The implementation of the WADC by the signatories is regulated in Article 23 WADC. Article 23.2.2 WADC states that the articles concerning doping, doping violations and sanctions *"must be implemented by Signatories without substantive change"* and that *"[n]o additional provision may be added to a Signatory's rules which changes the effect of the Articles enumerated in this Article"*.
- 8.18 In order to determine whether the Respondent violated its obligations arising out of Article 23.2.2 WADC, it is necessary to qualify the nature of the Neutralisation Rule. In CAS case law, three categories of measures imposed by sport associations have been distinguished. The first category is disqualification. It consists in the forfeiture of results, medals, points and prizes of an athlete. This type of sanction is reflected in Article 10.1 WADC. In CAS 2007/O/1381, the Panel notes that the sanction relating to the loss of sporting results *"est motivée en premier lieu par la nécessité d'assurer l'égalité de chances entre compétiteurs. Ce type de mesure n'existe pas seulement pour réprimer les infractions aux règles antidopage, mais d'une manière plus générale pour sanctionner la violation de toute règle qui vise à éviter qu'un athlète obtienne un avantage indu sur ses concurrents"* (CAS 2007/O/1381, para. 59). The aim of such sanctions is, thus, to re-establish a level playing-field, i.e. to ensure fairness, rather than impose a punishment.

- 8.19 The second type of sanction is of a disciplinary nature. This includes the imposition of a period of ineligibility on an athlete as provided for – e.g. – in Article 10.2 WADC. The purpose is punitive, and the extent of the punishment is related to the severity of the offence and to the degree of fault: *“L’étendue de la peine, c’est-à-dire la durée de la suspension, le montant de l’amende, etc., est donc liée à la gravité de l’infraction commise par le sportif (première ou deuxième infraction) et à son degré de culpabilité”* (CAS 2007/O/1381, para. 67).
- 8.20 The third type of measure is administrative in nature and concerns the conditions of participation in a competition or event. This can be in the form of qualification rules which establish the conditions under which an athlete is allowed to participate. Such qualification rules *“ont en commun le fait qu’elles ne sanctionnent pas un comportement indésirable de l’athlète. Elles ne font que prédéfinir certains attributs qui sont exigés des athlètes et certaines formalités obligatoires à remplir pour obtenir le droit de participer à telle compétition dans telle catégorie”* (CAS 2007/O/1381, para. 76).
- 8.21 The differentiation between these different types of measures must be performed not on a formal, but on a substantive basis. What matters is not how a federation or association labels the measure in question, but how the measure can be objectively qualified. If, therefore, an eligibility rule is tied to an athlete’s prior wrongful behaviour, the non-admission of the athlete concerned to an event or competition amounts to and must be treated as a disciplinary action against this athlete (CAS 2007/O/1381, para. 80 et seq).
- 8.22 Two recent CAS cases, both of which were referenced by the Parties, dealt with the meaning of the term “sanction” according to WADC. In CAS 2011/A/2658 (“BOA Award”), the British Olympic Association (BOA) bye-law was qualified as a (disciplinary) sanction because the effect on the athlete’s eligibility to participate in a competition was deemed to be the same as the sanction in Article 10 WADC (CAS 2011/A/2658, para. 23). The same doping offence which led to a sanction under the WADC also triggered the “extra sanction” of ineligibility in the BOA selection policy. Ineligibility in the BOA case resulted from *“an anti-doping violation as the relevant prior undesirable behaviour, which is the hallmark of an anti-doping sanction”* (CAS 2011/A/2658, para. 38). The bye-law was found to be incompatible with the WADC because it changed the sanctions and their effects as provided for in the WADC.
- 8.23 Similarly, in CAS 2011/O/2422 (“Osaka award”), the IOC Regulation was qualified as a sanction and thus not in compliance with the WADC. The Panel noted that *“the effective purpose of the sanction is the same (even if the underlying motivations are different); the sanction is attributable to the same behaviour, and the sanction results in the same consequence, ineligibility from Competition”* (CAS 2011/O/2422, para. 60).
- c) Is the Neutralisation Rule a sanction?
- 8.24 The Neutralisation Rule stipulates that the points, placings or wins of a rider who has been sanctioned for a violation of the UCI’s Anti-Doping Rules with at least a two-year period of ineligibility will not be considered for two years beginning the day after the suspension ends. The Respondent argues that the Neutralisation Rule is not a sanction as there is no extension

of ineligibility and no prohibition of participation in competitions. The BOA award and the Osaka award are irrelevant, according to the Respondent, because those cases dealt with the legality of a rule that prevents participation, which is not the case with the Neutralisation Rule. While the Respondent acknowledges that the Neutralisation Rule is linked to a previous doping offence, it nevertheless cannot be considered a sanction as it is directed at and affects only the UCI team, not the individual athlete. As a starting point to determine whether the Neutralisation Rule is a sanction, the Panel will consider the effects of the rule on both riders and teams as well as consider the purpose for which the rule was introduced.

i) Effect on Riders

- 8.25 While it is true that the Neutralisation Rule is, in principle, directed at teams rather than individuals, it does not follow that it has no effect on individual athletes. For two years after a doping suspension, any points that a rider earns will not be taken into account in determining a team's sporting value. As stated in the UCI Regulations Annexe – 2014/UCI/A-10, the sporting value is made up of the "individual value" and the "collective value". The placings and wins of the 10 best riders for the previous two years are taken into account and their combined points result in the individual value. The collective value includes the final team ranking in each circuit, victories and podiums as well as Team-Time-Trial World Championships. The sum of both values yields the teams sporting value and determines the position in the sporting ranking.
- 8.26 Pursuant to Article 10.11 WADC, a rider who has finished the period of suspension and has been subject to Out-of-Competition Testing may be reinstated. The Neutralisation Rule, while not expressly prohibiting participation, would render worthless any points used to calculate the sporting value of the team. One can easily imagine that such a rider, whose points will not count for two years, would have few chances to obtain a contract, for why should a team concerned about obtaining a higher sporting value and thereby a higher ranking hire a rider that cannot contribute to the team's ability to qualify for a WorldTour licence? While there may be cases where well-known riders are still attractive for teams to hire, this would not be so for a rider without a high-profile name or image. Thus, the Neutralisation Rule encourages teams participating in the top sporting events to boycott riders with a doping past. Thus, in effect, the Neutralisation Rule will in many cases lead to an extension of a doping sanction imposed by the WADC on an individual rider by another two years.

ii) Effect on Teams

- 8.27 The Respondent maintains that the Neutralisation Rule is only used to calculate the sporting value of a team, which is one of several criteria necessary for obtaining a licence. It is therefore part of the licence procedure, which lies outside the scope of the WADC. In line with the EU White Paper on Sport of 11 July 2007 concerning the organisation of sport, the Panel recognises the importance of licencing systems for clubs to ensure the viability of the sport and its competitions. Under Swiss law, a sports association located in Switzerland has considerable autonomy in regulating its own affairs, which includes defining its licencing system. However,

any rule which can be qualified as a sanction and changes the effect of the sanctions foreseen in the WADC also falls within the scope of the WADC.

- 8.28 Contrary to the Respondent's position, it is clear that the Neutralisation Rule affects the sporting value of the team in terms of qualification for the WorldTour licence. A team with a rider whose prior doping violation triggers the application of the Neutralisation Rule will be affected in various ways. Should the affected rider be one of the top 10, the team will be forced to hire other riders whose points will not be neutralised, to ensure qualification for the WorldTour licence. This in turn has ramifications on the team's strategy and budget, which remained uncontested. The Appellant noted that the majority of the budget comes from sponsorship contracts, which are generally for a fixed amount. It is therefore not always possible to make adjustments to the budget in order to hire riders with points. In addition to the budget, a sponsorship contract also entails obligations, one of which is racing in prestigious competitions such as the WorldTour events. Loss of a WorldTour licence or insecurity with respect to the chances of obtaining the licence could also affect sponsorship.

iii) Purpose of the Neutralisation Rule

- 8.29 The Respondent submits that when qualifying a specific provision, not only its effects, but also its purpose must be taken into account. While the Appellant submits that the purpose of the Neutralisation Rule is to sanction both the team and the rider, the Respondent argues that its purpose is to encourage teams to change their recruitment policy so as to have a more homogenous team. The Respondent maintains that the Neutralisation Rule attempts to motivate teams to develop strategies that do not rely too much on one single rider, as the team can then be harmed should anything happen to that rider, such as a doping violation or an accident. In other words, the Neutralisation Rule is an incentive to build balanced teams that can survive the loss of one team member. The fact that teams are forced, as a result, to hire other riders shows that the goal of balance and homogeneity is being achieved. The Respondent, moreover, ascribed an ethical function to the Neutralisation Rule, asserting that it was introduced to address the problem of riders being hired only for their points without regard to other values.

iv) Analysis

- 8.30 In consideration of the discussion above, the Panel finds that the Neutralisation Rule is to be qualified as a sanction.
- The Neutralisation Rule is automatically triggered by a doping offence sanctioned by at least a two-year period of ineligibility.
  - Riders whose prior behaviour prompts the application of the Neutralisation Rule to their points have no possibility to appeal.

- In effect, the Neutralisation Rule results in the forfeiture of points counting toward the sporting value of a team, a sanction similar to Article 10.1 WADC but seemingly without the purpose of promoting fairness in sport.
- The effect of the Neutralisation Rule is disciplinary: It sanctions again a behaviour that has already been sanctioned. It has a punitive effect on both teams and riders.
- From the point of view of both the team and the rider, the Neutralisation Rule effectively extends a rider's sanction by another two years. The Panel has noted the Neutralisation Rule does not entirely prohibit participation, which could be taken as a sign that it is not a sanction; however, the other punitive effects outweigh the nominal permission to participate.
- The purpose of the Neutralisation Rule is punitive and directed against the rider. Contrary to declarations that the Neutralisation Rule aims at promoting homogenous teams, a UCI press release on the PCC meeting in Maastricht of 15 June 2011 describes the Neutralisation Rule as *"aiming to prevent any rider returning to competition after a suspension of at least two years for violation of the Anti-Doping Regulation to contribute to the establishment of his team's sporting value during the registration procedure"*.
- The stated aim of creating homogeneous teams which do not rely on one strong rider can be achieved in a more proportionate, effective and balanced manner than double sanctioning doping violations. The Neutralisation Rule is not an effective way to achieve the alleged goal of a balanced team and is disproportionate in light of its punitive effects, in particular also with regard to affected riders who are not among the top 10 and where the Neutralisation Rule makes it more difficult for them to join a team.

v) Conclusion

- 8.31 In consideration of the foregoing, the Panel finds that the effect of the Neutralisation Rule is similar to a boycott, that it is clearly a sanctioning device directed against the athlete and that it impacts the team's freedom to contract and choose the riders it wants.

d) Does the Neutralisation Rule conflict with WADC?

i) Legal framework of WADC

- 8.32 The WADC provides a framework for harmonized anti-doping policies, rules and regulations within sport organisations and among public authorities. The WADC is neither a law nor an international treaty, but rather a contract instrument binding its signatories in accordance with private international law. By signing the WADC, the UCI is contractually bound to abide by its terms. Part 14 of the UCI Regulations confirms that UCI has accepted and incorporated the WADC in its Regulations:

*"As a consequence, at its meeting of 22-23 July 2004, the UCI Management Committee decided to accept the World Anti-Doping Code and to incorporate the Code in UCI's Regulations, as was done in the first version*



*of these Anti-Doping Rules which entered into force on 13 August 2004” (Part 14, Introduction, para. 1 of UCI Cycling Regulations).*

- 8.33 Pursuant to Article 23.2.2 WADC, signatories must implement the mandatory articles of the WADC as listed without substantive change. It further stipulates that *“no additional provision may be added to a Signatory’s rules which changes the effect of the Articles enumerated in this Article”*.

ii) Does the Neutralisation Rule comply with the WADC?

- 8.34 The Neutralisation Rule provides for an extension of the doping sanction after a WADC sanction in the form of a period of ineligibility has been served. In other words, it further sanctions the same misconduct as the WADC. It is clearly disciplinary in nature and purpose. The effect of the Neutralisation Rule primarily concerns riders who have been sanctioned for a doping violation under the WADC. That it is directed at teams does not alter the disciplinary effects on riders — essentially extending their doping sanction by another two years. This kind of additional disciplinary sanction for misconduct already sanctioned is not provided for in Article 10 WADC and represents, in view of the Panel, a *“substantive change”* to the sanctions in the WADC. Therefore, the Panel finds that the Neutralisation Rule does not comply with UCI’s obligations under the WADC.

e) What are the consequences of violation/non-compliance?

- 8.35 Article 23 WADC does not specifically address the consequences of a rule or regulation of a sport association that is not in compliance. CAS jurisprudence provides only limited guidance as there have not been many cases which have dealt with this issue. In CAS 2011/O/2422, the IOC Regulation was found to be non-compliant with the WADC and it was held to be invalid and unenforceable. In CAS 2011/A/2658, the Bye-law was considered a sanction and therefore not in compliance with the WADC. The Panel, limited by the prayers for relief, did not have jurisdiction to impose any further consequences.

- 8.36 In the present case, the Panel ultimately needs not consider in detail the consequences of non-compliance. The Parties, most notably the Respondent, upon being invited by the Panel to address this issue, explicitly agreed that any rule in the Regulation found to be non-compliant with the WADC is, as in CAS 2011/O/2422, invalid and unenforceable.

f) Conclusion

- 8.37 The Panel finds that the Neutralisation Rule should not be applied and the Appellant’s second request therefore be granted.

### III. Violation of fundamental legal principles

8.38 The issue of whether the Neutralisation Rule also violates fundamental legal principles can be left open. It is not necessary to examine further possible violations as a declaratory statement prohibiting the application of the Neutralisation Rule for offences before June 2011 has already been granted. Nevertheless, on a subsidiary basis, the Panel has very strong doubts as to the compatibility of the retroactive effect of the Neutralisation Rule with Swiss law and with general principles of sports law. The prohibition of the retroactive application of laws to facts which occurred before the introduction of those laws is a well-established principle in Swiss law. CAS jurisprudence consistently recognises the principle that the law in force at the time the act under scrutiny was committed is the law that must be applied. See, for example:

*“The Panel identifies the applicable rules by reference to the principle “tempus regit actum”: in order to determine whether an act constitutes an anti-doping rule infringement, the Panel applies the law in force at the time the act was committed. In other words, new regulations do not apply retroactively to facts that occurred prior to their entry into force, but only for the future” (CAS 2009/A/1918, para. 15)*

*“under Swiss law the prohibition against the retroactive application of Swiss law is well established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time that the facts at issue occurred” (CAS 2000/A/274, para. 208).*

8.39 The fact that the Neutralisation Rule was automatically triggered by a doping violation which occurred before the rule was introduced raises serious questions concerning retroactivity. Again, the Panel is not required to rule on this issue in detail as the declaratory relief has already been granted on other grounds.

8.40 The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. The requests to set aside the argument of the Licence Commission in its reasons from 21 December 2012 that the team is ranked 20th in the sports evaluation and to confirm that Team Saxo-Tinkoff is rightfully ranked 19th in the sports evaluation are dismissed.
2. The request to set aside the practice of the License Commission (based on the request of the UCI World Tour) of using the Neutralisation Rule in connection with riders who have committed their doping offense on or before June 29, 2011 is granted.
- (...)
5. All further and other claims for relief are dismissed.