

**Arbitration CAS 2021/ADD/23 World Triathlon v. Elena Danilova, award of 17 January 2022**

Panel: Mrs Susan Ahern (Ireland), Sole Arbitrator

*Triathlon*

*Doping (trimetazidine)*

*Definition of Use under World Triathlon rules*

*Standard of proof to characterize an ADRV for Use*

*“Reliable means” of evidence*

*Beginning and duration of the period of ineligibility and fairness exception*

1. In accordance with article 2.2.2 of the World Triathlon Anti-Doping Rules (WTADR), the mere fact an athlete used a prohibited substance or prohibited method is *per se* sufficient.
2. World Triathlon has the burden of establishing that an anti-doping rule violation (ADRV) has occurred. The standard of proof shall be whether World Triathlon has established an ADRV to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. The gravity of the particular alleged wrongdoing is relevant to the application of the comfortable satisfaction standard in any given case. The standard of proof itself is not a variable one. The standard remains constant, but inherent within that immutable standard is a requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven.
3. In accordance with article 3.2 WTADR, unlike an ADRV for “presence”, the commission of an ADRV for Use may be proven by any number of means, so long as they are “reliable”. The term “any reliable means” within the meaning of Article 3.2 WTADR (which mirrors Article 3.2 of the WADC) is not supposed to be limited. Article 2.2. of the WADC provides inter alia that Use “*may be established based upon reliable analytical data*”.
4. The purpose of the retroactive effect of the disqualification of competitive results, is tied to the integrity of sporting competition with a view to rectifying the record books for the sport and turning the dial back as it were as if the cheating had not occurred. It should be taken into account that, in certain exceptional circumstances, the strict application of the disqualification rule can produce an unjust result. In particular, this may be the case when the potential disqualification period covers a very long term. CAS panels have frequently applied the fairness exception and let results remain partly in force when the potential disqualification period extends over many years and there is no evidence that the athlete has committed ADRVs over the whole period from the ADRV to the commencement of the provisional suspension or the ineligibility period.

**To find out, whether a sanction is excessive, CAS panels must review the type and scope of the proved rule-violation, the individual circumstances of the case, and the overall effect of the sanction on the offender. CAS panels have a broad discretion when making that assessment.**

## **I. PARTIES**

1. World Triathlon (“WT” or the “Claimant”), is the International Olympic Federation for the sport of triathlon and its related multisport events. It has its registered seat in Lausanne, Switzerland.
2. Ms. Elena Danilova (the “Athlete” or the “Respondent”), is a 30-year-old triathlete from Russia. The Athlete is an International Level Athlete who has since 2007 been a member of the Russian national team.
3. Together the Claimant and the Respondent shall be referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, she refers in her Award only to the submissions and evidence she considers necessary to explain her reasoning.
5. On 7 May 2021, WT charged the Athlete with an anti-doping rule violation (“ADRV”) for Use of a Prohibited Substance, pursuant to Article 2.2 of the World Triathlon Anti-Doping Rules 2015 (the “WTADR”) in connection with the detection of Trimetazidine in the Athlete’s collected urine samples on three occasions which were not reported in ADAMS (WADA’s Anti-Doping Athlete Management System) due to a cover up involving the Russian Anti-Doping Agency (“RUSADA”) and the Moscow WADA Accredited Laboratory (“Moscow Laboratory” / “Lab”), hereinafter referred to as the “Russian Doping Scheme”.
6. The Athlete denies the charge and of having any knowledge of or complicity in whatever the Moscow Laboratory and/or RUSADA did.

### **A. The McLaren Reports**

7. On 19 May 2016, the World Anti-Doping Agency (“WADA”) appointed an Independent Person, Professor Richard McLaren, to establish if there had been manipulation of the doping

control process during the 2014 Sochi Winter Olympic Games. The terms of reference also included an examination of whether the Moscow Laboratory was involved.

8. On 18 July 2016, Professor McLaren published his first report (“McLaren Report I”) which reported the existence of significant state-sponsored doping in Russia. The report concluded that it was shown *“beyond a reasonable doubt”* that Russia’s Ministry of Sport, the Centre of Sports Preparation of the National Teams of Russia, the Federal Security Service and the Moscow Laboratory had (i) *“operated for the protection of doped Russian athletes”* within (ii) a *“state-directed failsafe system”* using (iii) *“the disappearing positive”* methodology.
9. **The Disappearing Positive Methodology (“DPM”):** The McLaren Report I found that there was a process in place to remove or expunge athlete Adverse Analytical Findings (“AAFs”). In practical terms the administration of the DPM was predominantly conducted via email through an intermediary called the “Liaison”. Upon the report of a Presumptive AAF, the Liaison would inform the Moscow Laboratory whether the relevant athlete was to be protected or not. The orders from the Liaison were in the form of a “save” or “quarantine” direction – these were found to have the following meanings:

“Save”	If the athlete was to be protected the term “save” was used. No Confirmation Procedure would be conducted and the Presumptive AAF hidden. Concealment would include falsely reporting the sample as “negative” in ADAMS.
“Quarantine”	If the athlete was not to be protected the term “quarantine” was used.

10. The “Save” order could arise if triggered by a Presumptive AAF or after the Confirmation Procedure (“CP”). Where the “Save” order arose after the CP the Moscow Laboratory would have to take the additional step of falsely reporting the sample analysis as negative in ADAMS. In neither case would the AAF be reported and therefore the athlete would be protected. The impact was that no ADRV case based upon the “presence” of a prohibited substance or method would arise.
11. The DPM method is now well known and was summarised succinctly by the Panel in the decision of *CAS 2020/O/6689* at para.32:

*“Relevantly, the Moscow Laboratory would conduct an initial analytical screening of samples collected from Russian athletes. If that screening revealed a likely Adverse Analytical Finding, a liaison person would obtain the identity of the athlete from RUSADA (by providing the bottle number of the sample). The athlete’s identity would be provided to the Russian Deputy Minister for Sport, Deputy Minister Nagornykh, who would then issue an order that the sample be “saved” or “quarantined. Where a “save” order was given, the Moscow Laboratory would take no further steps in analysis of the sample and it would be reported as negative in WADA’s Anti-Doping Administration & Management Systems (“ADAMS”) (a web-based database management system for use by WADA’s stakeholders). Personnel of the Moscow Laboratory would then falsify the result in the laboratory’s own Laboratory Information Management System (“LIMS”) (the database used by the Moscow Laboratory to store results of testing of samples) to show a negative result”.*

12. **Protection Scheme:** On 9 December 2016 Professor McLaren published the second part of his report (“McLaren Report II”) which found that from 2011 to 2015 more than 10,000 Russian athletes competing in various sports (including Triathlon) benefited from the doping cover-up and manipulation of data. In that report, Prof. McLaren affirmed that the key findings of the McLaren Report I remain unchanged namely:

*“An institutional conspiracy existed across summer and winter sports athletes who participated with Russian officials within the Ministry of Sport and its infrastructure, such as the RUSADA, CSP [the Center of Sports Preparation of National Teams of Russia] and the Moscow Laboratory, along with the FSB [the Russian Federal Security Service]. The summer and winter sports athletes were not acting individually but within an organised infrastructure as reported on in the 1st Report”.*

13. Operation LIMS (see below) did not independently investigate whether there was a Protection Scheme in Russia but relied upon the findings it considered established by the WADA Independent Commission (Pound Commission), the McLaren Reports I&II and the International Olympic Disciplinary Committee (Schmid Commission) Investigation.
14. **Evidence Documentation Package (“EDP”):** The McLaren Reports also included what is referred to as the Evidence Documentation Package or EDP containing evidence relating to specific athletes who Prof. McLaren considered were involved in or had benefited from the relevant scheme(s). The EDP contained substantial information relating to the cover-up scheme that occurred from within the Moscow Laboratory for the protection of Russian Athletes including the many emails in which “Save” and “Quarantine” orders were made within the DPM.
15. An EDP in relation to the Athlete’s three Samples was provided by WADA to WT.

#### **B. The 2015 & 2019 Moscow Laboratory Information Management System**

16. On 30 October 2017, WADA’s Intelligence and Investigations Department (“IID”) secured from a whistle-blower a copy of the Moscow Laboratory Information Management System which contained the data for all samples analysed by the Moscow Laboratory between 1 January 2012 and 31 August 2015 (the “2015 LIMS Database” or “2015 LIMS”).
17. WADA subsequently conducted an investigation of the 2015 LIMS Database which was codenamed “Operation LIMS” and noted the 2015 LIMS Database was subject to a “*rigorous authentication process and found to be reliable and valid*”<sup>1</sup>.
18. The 2015 LIMS Database copy was found to include Presumptive AAFs made on the initial testing of samples which had not been reported in ADAMS<sup>2</sup> or followed up with Confirmation

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<sup>1</sup> By Vigitek, an independent company specialising in forensic analysis whose report formed part of the evidence.

<sup>2</sup> ADAMS as, a web-based database management tool for data entry, storage, sharing and reporting designed to assist stakeholders and WADA in their anti-doping operations in conjunction with data protection legislation.

Procedure testing. This was considered by WADA to corroborate the findings in McLaren Report I of the DPM.

19. Getting access to the Moscow LIMS data (i.e. the data underlying all Moscow Laboratory sample analysis between 2012 to 2015) to compare it to the 2015 LIMS would enable a comparison to be made by WADA to resolve the suspicious Presumptive AAFs found in the 2015 LIMS. In September 2018, as a condition of reinstatement from its suspension, RUSADA together with the Russian Ministry of Sport agreed to procure the authentic Moscow LIMS data for WADA.
20. Between 10 and 17 January 2019, a WADA expert team was permitted to enter the Moscow Laboratory and under the supervision of the Investigative Committee for the Russian Federation (“Investigative Committee”), make a forensic image of the Moscow data. Over 23 terabytes of data were obtained, including a copy of the Moscow Laboratory LIMS database (the “2019 LIMS Database”/“2019 LIMS”), Server “1” and its hard-drives and disks provided by the Investigative Committee (collectively the “Moscow Data”).
21. The Moscow Data included “Raw Data” files and “PDFs”. A Raw Data file is the result of the Initial Testing Procedure (“ITP”) or Confirmation Procedure (“CP”) analysis of a sample aliquot. Raw Data indicates whether a substance or metabolite was detected by an analytical instrument. Once the Raw Data was acquired a PDF file was created to assist the Laboratory staff member reviewing the results. A PDF displayed the screening results of the approximately 100 substances tested for by the ITP.
22. On 15 May 2019, the WADA IID reported to the WADA Compliance Review Committee (“CRC”) that a significant number of discrepancies had been observed between the 2015 LIMS Database and the 2019 LIMS Database.
23. On 26 June 2019, the CRC instructed the WADA IID to investigate these discrepancies with the help of independent experts. The authenticity and reliability of the Moscow Data was then subject to investigation (“Authentication Process”) by the independent experts from the University of Lausanne’s Ecole des Science Criminelles (the “Independent Experts”) derived from the fields of digital forensic science, data analysis, laboratory analysis and anti-doping investigation. The Independent Experts produced a Digital Forensic Examination Report on 15 August 2019 (the “Report”).
24. On 6 September 2019, the WADA IID and the Independent Experts reported their findings to the CRC including digital evidence that had been materially altered after the reinstatement of RUSADA on 20 September 2018 but before a copy of the 2019 LIMS Database was provided to WADA on 17 January 2019. They discovered alterations included targeted backdating and deletion of files.
25. The Report was provided to the Russian authorities who had their own experts review it. On 8 October 2019, the Russian authorities refuted the findings and provided “New Data” to WADA IID. On 14 November 2019, the IID and the Independent Experts met with Russian authorities in Lausanne and discussed the assertions made by the Russian experts.

26. On 15 November 2019, the IID and Independent Experts provided a further report to the CRC, explaining that the New Data and explanations provided by the Russian Experts had not caused the Independent Experts to alter their original findings. Instead, the New Data had been shown to include forged data.
27. On 17 November 2019, the CRC concluded that the 2019 LIMS Database, had been intentionally altered after 20 September 2018, but before it was made available for forensic copying by WADA. On 9 December 2019, RUSADA was declared non-compliant with the WADA Code by the WADA Executive Committee.
28. It was subsequently found in CAS Award 2020/O/6689 (at page 126) that;

*“614. The Panel finds that, prior to the Moscow Data being retrieved by WADA in January 2019, and during its retrieval, it was subjected to deliberate, sophisticated and brazen alterations, amendments and deletions. Those alterations, amendments and deletions were intentionally carried out in order to remove or obfuscate evidence of improper activities carried out by the Moscow Laboratory as identified in the McLaren Reports or to interfere with WADA’s analysis of the Moscow Data”.*

29. RUSADA challenged the non-compliance finding of WADA to the CAS. On 17 December 2020, the CAS decision was issued (*CAS Award 2020/O/6689 at page 142*) which determined that RUSADA had failed to comply with the International Standard for Code Compliance by Signatories (the “ISCCS”) in that:

*“674. For the reasons given above, the Panel finds that RUSADA failed to procure an authentic copy of the Moscow Data and therefore failed to comply with the Post-Reinstatement Data Requirement. The steps taken to manipulate the Moscow Data and deceive WADA could hardly be more serious.*

*675. Accordingly, the Panel finds that WADA has established that RUSADA is non-compliant with the 2018 WADC”.*

### **C. The Moscow Laboratory LIMS**

30. The Moscow Laboratory LIMS refers to the laboratory information management system that existed in the Moscow Laboratory during the data retrieval mission of January 2019 and was included in the Moscow Data.
31. The LIMS is a system that allows a laboratory to manage a sample through the analytical process and the resultant analytical data. It is an internal chain of custody procedure to maintain the control and accountability of a sample from its receipt through to final disposition. The International Standard for Laboratories (“ISL”) requires a laboratory to have an internal chain of custody procedure, but until 2020 there was no specific requirement that a laboratory should have a dedicated LIMS.
32. The Moscow Laboratory designed and implemented its own LIMS. It is an SQL database which is a warehouse of multiple databases organized by year.

33. The most pertinent anti-doping data within LIMS is that related to sample reception, analysis, and the actions of a user within the system. This data is housed in table format with rows and columns, of which there are eight key tables (the “LIMS Tables”) e.g.:

LIMS Tables	Information
“Confirmation”	Information relating to the Confirmation Procedure conducted on the sample.
“Log_do”	Information relating to a user’s actions in the Moscow LIMS database including what the action was and, in what LIMS table the action occurred.
“pdfs”	Information relating to path-string (“Path”) of all PDFs created following the ITP for each sample. PDFs were transferred to the LIMS hard drive. Consequently, the Path denotes the name of the PDF file and specifies its unique location in the file system, including year of analysis and the name of the instrument used (e.g. “Adam”).

34. Arising from its findings, WADA IID prepared a data package for athletes suspected of having a Presumptive AAF to provide to their international federations. The data package would contain the original coded LIMS data in addition to the reference files required to decipher the coded fields, for both the 2015 and 2019 LIMS databases.

**D. Notice of alleged ADRV to the Athlete**

**a. *The Prohibited Substance***

35. Trimetazidine (“TMZ”) was added to the WADA List of Prohibited Substances and Methods (the “Prohibited List”) on 1 January 2014 as a Specified Stimulant under Section S.6b and was prohibited in-competition only. Effective from 1 January 2015, TMZ was reclassified as a non-specified substance and a hormone and metabolic modulator under Section S.4 of the Prohibited List and was prohibited at all times. TMZ is still included on the WADA List (2021 edition).

36. Pursuant to the Technical Document TD2014MRPL, in 2014 stimulants were not reported below 50% of the Minimum Required Performance Level (“MRPL”) value, which was 100ng/mL. Since 2015, the MRPL value is 20 ng/mL.

**b. *The Athletes’ Samples – 2014 and 2015***

37. The Athlete has been charged with an ADRV for Use of a Prohibited Substance under Article 2.2. of the WTADRs pursuant to a Notice of Possible Charge dated 7 May 2021.
38. The three samples (the “Samples”) in question are:

- **Sample 2916387** (*Lab Code 7923*) collected in-competition on 28 June 2014 at the Youth European Championships in Penza, Russia, where the Athlete won 1<sup>st</sup> place (**“Sample 1”**);
- **Sample 2916525** (*Lab Code 10247*) collected in-competition on 7 August 2014 at the International Sports Games (Sportakiada) in Cheboksary, Russia, where the Athlete achieved 2<sup>nd</sup> place (**“Sample 2”**);

Sample 1 & 2 are jointly referred to as the “2014 Samples”.

- **Sample 3880728** (*Lab Code 06435*) collected in-competition on 6 June 2015 at Russia’s Championship in Sochi, Russia (**“Sample 3”**).
39. The Samples were all collected by RUSADA which was the relevant testing authority. The analytical procedures were carried out by the Moscow Laboratory. WADA is responsible for accrediting anti-doping laboratories. When a laboratory does not meet ISL requirements, WADA may decide to suspend or revoke the laboratory’s accreditation. At the time when the Samples were collected in 2014 and 2015, the Moscow Laboratory was a WADA Accredited Laboratory.
40. The Doping Control Forms (“DCF”) in respect of each Sample were provided to the Athlete together with a data package (the “Athlete Data Package”).
41. According to the 2015 LIMS data, the Initial Testing Procedure used by the Moscow Laboratory in 2014 and 2015 for a presumptive AAF for TMZ was carried out using the following analytical procedures:
- (a) P4: by a GC-MS/MS instrument used mostly for anabolic agents, and
  - (b) P5: by the LC-MS/MS instrument for stimulants. The Confirmation Procedure used by the Lab in 2015 for AAF was carried out by LC-MS/MS using the P5 method.
42. ISL Article 3.2 defines the Initial Testing Procedure (“ITP”) as:
- “An analytical test procedure whose purpose is to identify those samples which may contain a Prohibited Substance, Metabolite(s) of a Prohibited Substance, or Marker(s) of the Use of a Prohibited Substance or Prohibited Method or the quantity of a Prohibited Substance, Metabolite(s) of a Prohibited Substance, or Marker(s) of the Use of a Prohibited Substance or Prohibited Method”.*
- ISL Article 3.2 defines the Confirmation Procedure (“CP”) as:
- “An analytical test procedure whose purpose is to identify the presence or to measure the concentration / ratio of one or more specific Prohibited Substances, Metabolite(s) of a Prohibited Substance, or Marker(s) of the Use of a Prohibited Substance or Method in a Sample”.*
43. The Moscow Laboratory submitted negative reports for each of the Samples in ADAMS.



44. The specific allegations proffered by WT in relation to the Samples are that:
- (i) The 2014 Samples – following the ITP which revealed a Presumptive AAF for TMZ in each Sample, they were subject individually to a “Save” order in accordance with the DPM outlined in the McLaren Reports. Neither of the 2014 Samples proceeded to a CP and were each reported as negative in ADAMS.
  - (ii) Sample 3 - following the ITP which revealed a Presumptive AAF for TMZ at a concentration of 4.7 µg/mL, some 100 times higher than the MRPL, the Sample was subject to a CP which confirmed the presence of TMZ, making it a reportable AAF. Notwithstanding the positive outcome, Sample 3 was reported as negative in ADAMS further to another “Save” order.
  - (iii) The Moscow Laboratory did not report the AAF because the Athlete was protected as part of the general doping and cover-up scheme (the “Protection Scheme”) operating in Russia.
  - (iv) There was manipulation and/or deletion of certain analytical evidence in relation to the Samples by persons with access to the Moscow Laboratory LIMS. The 2019 LIMS Database contained discrepancies in its data when compared to the 2015 LIMS Database with some data relating to the Samples, having been altered or manipulated in particular that:
    - (a) 2014 Samples: the recording of the Presumptive AAF for TMZ was present in the 2015 LIMS but was missing from the 2019 LIMS Database.
    - (b) Sample 3: the recording of a Presumptive AAF and successful CP for TMZ was missing from the 2019 LIMS, while it was present in the 2015 LIMS as a reportable AAF.
45. The Samples were previously investigated by WT in the context of both McLaren Reports I & II and the case against the Athlete was initially closed based upon those reports. However, with the arrival of the LIMS Databases and following their evaluation, the case was re-opened by WT. Details of the sequence of events was set out in the Notice of Charge to the Athlete as follows:
- 1.3 On 16 August 2016, World Triathlon decided to stay the proceedings against you in anticipation of publication of Part II of the McLaren Report.*
  - 1.4 Part II of the McLaren Report was published on 9 December 2016 and confirmed once again that two of your samples, specifically 2916525 and 3880728 had benefited from a “save” order and never been reported as positive for Trimetazidine in ADAMS.*
  - 1.5 On 20 December 2016, World Triathlon wrote to you once again to inform you of the contents of Part II of the McLaren Report and to give you an opportunity to admit the anti-doping rule violation.*

- 1.6 *On 29 December 2016 you responded to World Triathlon's second letter and stated once again that "During my life I have never ever used any kinds of performance-enhancing drugs for increase my sport results! I don't want to be involved in any non-sporting processes. I don't want to be a victim."*
  - 1.7 *On 24 May 2017, World Triathlon sent you a notification that it would not be proceeding with the charges against you based on the McLaren Reports and that it would be closing the file.*
  - 1.8 *On 30 October 2017, WADA the Intelligence and Investigations Department secured from a whistleblower a copy of Moscow Laboratory Information Management System (LIMS) data for samples analysed by the Moscow Laboratory between 1 January 2012 and 31 August 2015 (hereinafter referred to as the "2015 LIMS") and subsequently conducted an investigation of the 2015 Database was codenamed "Operation LIMS".*
  - 1.9 *On 17 January 2019, a team of WADA selected experts travelled to the Moscow Laboratory and extracted a copy of the Moscow Data (hereinafter referred to as "2019 LIMS").*
  - 1.10 *LIMS is a system that allows a laboratory to manage a sample through the analytical process and the resultant analytical data. The Moscow Laboratory designed and implemented its own LIMS.*
  - 1.11 *World Triathlon has been provided with data relating to three of your samples which it is sharing with you by way of a share file that can be accessed below.*
  - 1.12 *It appears that as supplementary information to the two McLaren Reports, both the 2015 LIMS and in the 2019 LIMS provide compelling data related to three of your urine samples to establish that you Used Trimetazidine in 2014 and 2015".*
46. Consequently, WT brought an ADRV charge under Article 2.2. WTADR against the Athlete for Use of TMZ in 2014 and 2015 and on 7 May 2021 the Athlete was provisionally suspended by WT.
  47. The Athlete both denies using any Prohibited Substance and/or knowledge of any involvement in the Russian Doping Scheme. The Athlete has exercised her right to have the matter heard before the Court of Arbitration for Sport ("CAS") Anti-Doping Division ("CAS ADD") pursuant to Article 8.1.2.1 of the WTADR.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

48. On 15 June 2021, counsel on behalf of the Athlete acknowledged the Notice of Charge and communicated to WT that they were requesting an expedited hearing before the CAS Anti-Doping Division.
49. On 16 June 2021, WT proposed an expedited hearing calendar, with a proposed hearing date in early August.

50. On 28 June 2021, the Claimant submitted its Request for Arbitration to the Anti-Doping Division of the Court of Arbitration for Sport (“CAS ADD”) in accordance with article 8.1.2.1 of the WTADR and the Arbitration Rules applicable to the CAS ADD (“CAS ADD Rules”).
51. On 14 July 2021, the Athlete submitted her Answer to the Request for Arbitration to the CAS ADD which included her own witness statement. The Athlete requested the Sole Arbitrator to action a number of their requests including:
- That WT provide an independent forensic analysis regarding the possible manipulation of the specific ITP and CP raw data files related to the Samples;
  - Certain other evidentiary matters referred to in WT’s Request for Arbitration;
  - To compel certain witnesses at the hearing (in accordance with Art. 184(2) PILS) as these witnesses are not under the control of the Athlete including the Former Director (Dr Grigory Rodchenkov) and Deputy Director (Dr Timofey Sobolevsky) of the Moscow Laboratory.
52. On 19 July 2021, the CAS Court Office informed the Parties that pursuant to Article A16 & A17 of the CAS Anti-Doping Rules (the “CAS Rules”), on behalf of the President of the CAS ADD Division, the Panel had been constituted as follows:
- Sole Arbitrator: Mrs. Susan Ahern, Barrister in Dublin, Ireland.
53. On 20 July 2021, the Claimant sought an extension of time to submit its Reply to which the Athlete consented. An extension to time to 23 July 2021 was granted
54. On 23 July 2021, in accordance with the procedural calendar agreed by the Parties, the Claimant’s Reply submissions were received by the CAS Court Office. These included:
- Digital Forensic Examination Report of the Université de Lausanne Ecole des science criminelles of 15 August 2019;
  - The WADA IID Report into the CRC Mandated Investigation of the Moscow Data of 6 September 2019; and
  - Final Report into the Russian Forensic Investigation of 15 November 2019.
55. On 30 July 2021, the Athlete’s Second Response was received by the CAS Court Office. Certain additional requests were made with regard to witnesses and evidence including *inter alia* a request that RUSADA confirm that none of the Samples (A or B components) is available for re-analysis and any chain of custody paper records, and digital files in relation to the Samples.
56. On 5 August 2021, the Claimant responded to the Athlete’s request for the production of documents and provided responses from the Moscow Laboratory dated 23 April 2021 (in respect of the Internal COC Forms) and 4 August 2021 in respect of the Samples.

57. The Claimant filed its expert reports and witness statements as follows:

Expert Reports:

- Professor Christine Ayotte, Director of the Montreal WADA Accredited Laboratory
  - First Opinion of 28 April 2021
  - Second Opinion of 22 July 2021.

Witness Statements:

- Mr. Aaron Richard Walker, Deputy Director and Dr Julian Broséus, Principal Data and Scientific Analyst of the WADA Intelligence & Investigations Department (“IID”)
  - Joint Statement in the case of the Athlete dated 6 May 2021 and
  - Reply Statement in the case of the Athlete dated 21 July 2021.

58. On 10 August 2021, the CAS Court Office communicated the agreed Hearing Timetable. On the same date, the Athlete and Claimant signed and returned the order of procedure.

59. On 13 August 2021, a hearing was held by virtual means. During the hearing the Sole Arbitrator was assisted by Mr. Fabien Cagneux, Counsel, and joined by the following:

For the Claimant:

- Ms. Jeanne Courbe, Counsel for WT
- Mr. Aaron Richard Walker, Deputy Director of the WADA IID
- Dr Julian Broséus, Principal Data and Scientific Analyst of the WADA IID
- Professor Christine Ayotte, Director Montreal WADA Accredited Laboratory

For the Athlete:

- Mr. Sergei Lisin, Lisin Mishin & Partners
- Mr. Sergei Mishin, Lisin Mishin & Partners
- Ms. Elena Danilova, the Athlete

60. At the outset of the hearing, the Parties confirmed that they had no objection to the Sole Arbitrator. No objections to the way in which the procedure was handled or organized were noted.

61. On 14 August 2021, the PowerPoint presentation of Dr Broséus presented at the hearing was provided by the Claimant.
62. On 17 August 2021, certain documents presented on screen by counsel for the Athlete were provided.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. The Claimant**

63. The Claimant's submissions in essence, may be summarised as follows:
64. In contravention of Article 2.2. of the 2021 WTADRs the Athlete committed an ADRV in that she Used or attempted to Use a prohibited substance or a prohibited method in the period 2014 to 2015. In this regard:
  - i. An Adverse Analytical Finding is not required in order to establish an ADRV. An ADRV may be established by any reliable means.
  - ii. It is each athlete's personal duty to ensure that no prohibited substance or prohibited method is Used and they are strictly responsible for any prohibited substance or prohibited method Used without the necessity to demonstrate intent, fault, negligence or knowing Use on the athlete's part.
  - iii. The evidence establishes an ADRV has occurred whether or not the Athlete was aware or intended same. The Athlete has provided no sufficient or credible explanation to refute the apparent Use of TMZ in 2014 and 2015.
65. There is clear evidence the Athlete committed ADRVs in the period 2014 to 2015 as:
  - i. The Athlete provided the Samples as demonstrated by the Doping Control Forms;
  - ii. The data evidence provided as part of the EDP demonstrates the Use of Trimetazidine by the Athlete in all three of her Samples;
  - iii. As a "Protected Athlete" her Samples were subject to "Save" emails and her AAFs were concealed as part of the DPM conspiracy implemented by the Moscow Laboratory pursuant to instructions from Russian authorities. Consequently, the Lab personnel "protected" the Athlete and falsely reported the Samples as negative in ADAMS in 2014 and in 2015.
  - iv. The Athlete's "protection" also included the manipulation and/or deletion of certain analytical evidence in relation to the Samples by unidentified individuals with access to the LIMS and the Lab instruments, computers, and paper documentation, in the period from 2016 until the delivery of the 2019 LIMS to WADA

- v. The fact that there was evidence that the Athlete's Samples were all altered, deleted or manipulated to cover up her use of TMZ pointed to the Athlete being a "Protected Athlete" under the "Russian Doping Scheme".
66. The forensic analysis of all the data confirms that the observable digital evidence relating to the three Samples in the 2015 LIMS Database is authentic and reliable and that the data relating to the Samples in the 2019 LIMS Database is not. In this regard the Claimant relies *inter alia* upon;
- i. various tribunals have found the data contained in the 2015 LIMS to be reliable e.g., IBU v Svetlanan Sleptsova (2019); IBU v Evgeny Ustyugov (2020); IWF v Yuliya Konovalova (17 September 2020);
  - ii. The CAS Panel who heard the RUSADA Compliance case (CAS 2020/O/6689) confirmed the unreliability of the 2019 LIMS;
  - iii. The Expert Reports of Professor Ayotte.
67. Because the 2019 LIMS was manipulated, the data contained therein is both unreliable and its selective manipulation for the Athlete's benefit points to her being a "Protected Athlete" under the "Russian Doping Scheme". Data related to each of the Athlete's three Samples were specifically altered or deleted or manipulated to cover up the use of TMZ at the time.
68. Based on the foregoing, World Triathlon respectfully requested that the CAS ADD:
- i. *"rule that it has jurisdiction to decide this dispute;*
  - ii. *find that the Athlete has committed an ADRV pursuant to Article 2.2 ADR as a result of Use of a Prohibited Substance Trimetazidine;*
  - iii. *impose a period of ineligibility of four (4) years upon the Athlete for the ADRV commencing on the date of its Award;*
  - iv. *credit against the Athlete's 4-year period of ineligibility the time served provisionally suspended from 26 May 2021 to the date of this Award;*
  - v. *order the disqualification of any results obtained by the Athlete between 28 June 2014 and 26 May 2021 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Article 10.10 ADR;*
  - vi. *award World Triathlon a significant contribution to its legal costs in addition to ordering the Athlete to reimburse to World Triathlon the 1000 CHF Filing Fee disbursed for this proceeding".*

## **B. The Athlete**

69. The Athlete's submissions in essence, may be summarized as follows:

- i. That she did not Use prohibited substance(s) and that WT has not demonstrated to the comfortable satisfaction of the Sole Arbitrator that the evidence adduced by it is reliable and sufficient to establish Use of TMZ by the Athlete
- ii. There are no Samples (A or B) remaining to be independently verified and all the chain of custody documentation relating to the Samples is missing.
- iii. That she was tested dozens of times in various countries and by various anti-doping organisations. All her tests were negative and an AAF has never been reported.
- iv. The only evidence relied upon by the Claimant is “*observable digital evidence*”. That digital evidence is not forensically reliable and has inconsistencies or omissions that are insufficient to establish Use to the relevant standard and/or should be taken into consideration when attributing weight to them.
- v. The ADRV is based entirely on allegations by WADA IID that the *pdf files* and *raw data files* from the 2019 LIMS show no findings of TMZ in the Samples because these have been manipulated by unidentified individuals. No independent forensic report in relation to the *.pdf* and/or *data files* from the Athlete Data Package was produced and the digital evidence is not corroborated by the individuals who were allegedly involved in the analysis of the Samples.
- vi. The Athlete’s due process rights are prejudiced if WT fail to request from RUSADA missing analytical data related to the ADRV.
- vii. The Moscow Laboratory in 2014 and 2015 did not conduct its sample analysis and procedures in accordance with the International Standard for Laboratories (“ISL”) and was analytically unreliable at all relevant times.
- viii. The 2015 LIMS and the extraction of the Athlete’s data therefrom have not been forensically verified to the requisite standard of proof.
- ix. The alleged Moscow Laboratory irregularities are reconstructed by WADA IID to add weight to the argument that the Athlete was “Protected” and to explain blatant inconsistencies between elements of the “digital” evidence of the AAF that would otherwise make such evidence void.
- x. The Athlete presents the Panel with a number of possible explanations as to the findings of TMZ in her Samples as they appear in the 2015 LIMS Database and related analytical data, including that she was recommended to use certain “cardioprotectors” by a cardiologist in 2013 and was diagnosed in September 2014 with chronic cardiomyopathy and was prescribed Mildronate, which contains meldonium, which at the time was not a Prohibited Substance. Her occasional use of Mildronate in 2015 is evidenced by the 2015 LIMS records.

- xi. The Athlete was not charged with falsification or tampering (Article 2.5 WTADR) given the seriousness of the allegations made and there is no evidence of the Athlete's involvement in any of the alleged wrongdoing by the Moscow Laboratory personnel.
  - xii. The IBU ADHP decisions in anti-doping cases against Mr Ustyugov and Ms Sleptsova are not binding for the Panel, nor they have any probative value.
70. The sufficiency of the evidence is questioned as (i) WT have failed to request RUSADA to present missing samples, files or Internal CoC documentation related to the Samples notwithstanding the fact that RUSADA is legally required to furnish to WADA the Moscow LIMS Data pursuant to the recent award in CAS 2020/O/6689; and (ii) WT failed to obtain witness statements from the individuals with the personal direct knowledge of the Samples analysis at the Lab (specifically, Dr Rodchenkov and Dr Sobolevsky).
71. Based on the foregoing, the Athlete respectfully requested that the CAS ADD:
- (a) *dismiss the claim by WT that the Athlete has committed an ADRV pursuant to Article 2.2 ADR as a result of Use of a Prohibited Substance Trimetazidine.*
  - (b) *award the Athlete a contribution to her legal costs in relation to this matter*".

## V. JURISDICTION

72. A2 Jurisdiction of CAS Anti-doping Division - Application of the Present Rules
- "CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.*
- These Rules apply whenever a case is filed with CAS ADD. Such filing may arise by reason of an arbitration clause in the Anti-doping Rules of a sports entity, by contract or by specific agreement*".
73. Article 7.1.1 provides that Results Management shall be the responsibility of, and shall be governed by, the procedural rules of the Anti-Doping Organization that initiated and directed Sample collection and that in this case RUSADA was the sample collection and results management authority for all three Samples. Article 7.1.6 of the 2021 ADR confers jurisdiction on WT to conduct results management in certain circumstances, including when WADA directs World Triathlon to do so, as is the case here.
74. Article 8.1 of the ADR provides:
- "8.1.1.1 World Triathlon has delegated its Article 8 responsibilities with regards to first instance hearings and decisions to CAS ADD, which has jurisdiction to hear and determine whether an Athlete or other Person,*



*subject to these Anti-Doping Rules, has committed an anti-doping rule violation and, if applicable, to impose relevant Consequences. The procedural rules of CAS ADD pertaining to the first instance hearing shall apply.*

*8.1.1.2 CAS ADD will always ensure that the Athlete or other Person is provided with a fair hearing within a reasonable time by a fair, impartial and Operationally Independent hearing panel in compliance with the Code and the International Standard for Results Management”.*

75. WT relies on Article 8.1.1 of the WTADR as conferring jurisdiction on the CAS ADD and the jurisdiction of the CAS ADD was not contested by the Athlete. Consequently, pursuant to Article 8.1.1 WTADR, the Sole Arbitrator finds that the CAS ADD has the jurisdiction to hear the matter and to determine this matter.

## **VI. APPLICABLE LAW**

76. A20 Arbitration Rules of the CAS ADD Rules, Law Applicable to the Merits provides:

*“The Panel shall decide the dispute according to the applicable ADR or the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law”.*

77. WT referred this matter to the CAS ADD in accordance with Article 8.1.1 WTADR and A13 of the CAS ADD Rules.
78. In accordance with Article A20 of the Rules, the Sole Arbitrator shall decide the dispute in accordance with the World Anti-Doping Code (“WADC”) and the applicable anti-doping rules or with the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law.

## **VII. MERITS**

79. The submissions of the Parties were considered in their totality by the Sole Arbitrator. This Award, however, sets out only those matters which are necessary to the determination of whether or not an ADRV has been committed by the Athlete.

### **A. Burden and Standard of Proof**

#### **a. The Legal Basis**

80. The Athlete is charged with an ADRV based on Article 2.2 of the 2021 WTADR which provides as follows:

*“The following constitute anti-doping rule violations: (...)*

*2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*

2.2.1 *It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method".*

"Use" is defined in Appendix 1 WTADR as:

*"The utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method".*

81. According to the text of this provision, the mere fact an athlete used a prohibited substance or prohibited method is *per se* sufficient. This is made explicitly clear in Article 2.2.2. WTADR which provides:

*"2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed".*

82. WT has the burden of establishing that the ADRV, in this case the Use or attempted Use of a prohibited substance or prohibited method, has occurred to the comfortable satisfaction of the Sole Arbitrator. Article 3.1 of the WTADR provides:

*"World Triathlon shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether World Triathlon has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability".*

83. Consistent with the observations of the Panel in CAS 2017/A/5045, *"it clearly follows from the applicable provision that the applicable standard of proof is flexible"*. The threshold WT must meet is higher depending upon the seriousness of the allegation.

84. The test of comfortable satisfaction has been regularly applied by CAS (see CAS 2009/A/1912) and *"must take into account the circumstances of the case"* (CAS 2013/A/3258). Those circumstances include:

*"[t]he paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities"* (CAS 2009/A/1920; CAS 2013/A/3258).

85. The gravity of the particular alleged wrongdoing is relevant to the application of the comfortable satisfaction standard in any given case. In CAS 2014/A/3625, the panel stated that the comfortable satisfaction standard is:

*“a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be “comfortable satisfied” [sic].”*

86. As the CAS panel explained in CAS 2014/A/3630, (see also in CAS 2017/A/5379 at par. 706) the standard of proof itself is not a variable one. The standard remains constant, but inherent within that immutable standard is a requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven.:

*“... the standard of proof does not itself change depending on the seriousness of the (purely disciplinary) charges. Rather the more serious the charge, the more cogent the evidence must be in support”*

87. Where the WTADR place the burden of proof upon the Athlete to rebut a presumption or to establish specified facts or circumstances, save as provided in Article 3.2.2. and 3.2.3. WTADR, the standard of proof shall be by a balance of probabilities.

**b. *Reliable Means***

88. The assessment of the admissibility of the evidence is as provided in 2021 WTADR at Article 3.2 - *“Facts related to anti-doping rule violations may be established by any reliable means including admissions”*.
89. Unlike an ADRV for “presence”, the commission of an ADRV for Use may be proven by any number of means, so long as they are “reliable”.
90. The term *“any reliable means”* within the meaning of Article 3.2 WTADR (which mirrors Article 3.2 of the WADC) is not supposed to be limited. The Comments to Article 3.2 of the WADC set out further non-exhaustive examples of reliable means including *“reliable analytical data from either an A or B Sample as provided in the Comments to Article 2.2”*. Article 2.2. of the WADC provides *inter alia* that Use *“may be established based upon reliable analytical data”*.
91. The Sole Arbitrator must therefore determine if WT's evidence and means of proving the ADRV for Use are reliable. Taking into consideration all the relevant circumstances of the case, the Sole Arbitrator must be persuaded that WT's evidence is credible and sufficiently reliable to meet the comfortable satisfaction threshold.

**c. *Issues for Determination***

92. The Sole Arbitrator considers that the following matters need to be determined in this case:
- (i) Did the Moscow Laboratory conduct its sample analysis in accordance with the International Standard for Laboratories (“ISL”)?
  - (ii) Is the data within the 2015 LIMS Database reliable evidence with regard to the Athlete?
  - (iii) Was the Athlete part of the Protection Scheme as promulgated by the Moscow Laboratory and RUSADA?

- (iv) Was there TMZ in the Athlete's Samples?
- (v) If the 2015 LIMS Database is reliable with regard to the Athlete, has an ADRV for Use been established to the comfortable satisfaction of the Sole Arbitrator?

## **B. Presumptions – ISL Compliance by the Moscow Laboratory**

- 93. Before assessing the analytical data relating to the Samples and/or the adequacy of the digital evidence, it is appropriate to consider the presumption relied upon in this case, in relation to the status of the Moscow Laboratory to assess if any departures from an International Standard, in particular the ISL occurred and if so, whether they could reasonably have caused the Presumptive AAFs in the Athlete's Samples.
- 94. The presumption exists in Article 3.2.2 of WTADR that in 2014 and 2015 the Moscow Laboratory conducted its sample analysis and procedures in accordance with the ISL:  
*“WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then World Triathlon shall have the burden to establish that such departure did not cause the Adverse Analytical Finding”.*
- 95. WT's position is that in 2014 and 2015 the Moscow Laboratory was fully accredited with recognised ability to produce forensically valid results – as evidenced by the 59 External Quality Assessment Scheme (“EQAS”) samples it correctly analysed between 2012 and 2015, specifically, that the Moscow Laboratory was operating as a WADA accredited laboratory at all material times and had International Standards Organisation (“ISO”) accreditation for all required methods. Therefore, pursuant to Article 3.2.2 WTADR a presumption exists that in 2014 and 2015 the Moscow Laboratory conducted its sample analysis and procedure in accordance with the ISL.
- 96. WT noted that the Moscow Laboratory was not suspended after the 2013 WADA assessment of its compliance but remained fully operational during the time frame in question and submitted that in the case of *IBU v Ustyugov* (at para. 377) the panel found in relation to the Lab that:  
*“Pursuant to Article 3.2.1 IBU ADR, because it was operating as a functional WADA-accredited laboratory at the time of the analysis of sample [named], the presumption remains that the Moscow Laboratory conducted its sample analysis and custodial procedures in accordance with the ISL and all applicable ISO standards”.*
- 97. The Athlete submits that departures from the ISL occurred due to a number of illegal practices; and that the Moscow Laboratory was analytically unreliable at all relevant times (in at least 2014 and 2015 when the Samples were collected), which should, in any event, invalidate all results.

**(i) *Illegal practices at the Moscow Laboratory***

98. The Athlete's ISL non-compliance contention was grounded upon the fact that the DPM was being undertaken by the Moscow Laboratory and evidence of a number of other illegal practices were being conducted as part of the Protection Scheme, documented in the McLaren Reports and were implemented by then director of the Moscow Laboratory, Dr Rodchenkov, the deputy director, Mr Sobolevsky, and other staff.
99. These practices were stated by the Athlete to include the systematic undercover testing of unofficial urine samples collected from Russian athletes as part of the doping and coverup scheme that was implemented in Russia from 2011 to 2015. Specifically, the Second McLaren Report described the existence of the practice of "washout testing" which was as the Panel in CAS 2017/A/5379 (at para. 161) described:

*"... used to gauge whether performance enhancing substances had cleared from an athlete's system prior to their participation in a major sporting event. The "washout testing" process involved the regular collection and examination of an athlete's urine over a period of time, to enable the excretion rate of those substances to be measured and to determine whether the athlete was clean prior to entering a competition".*

100. As per the McLaren Reports, Dr Rodchenkov began testing combinations of steroids with the aim of creating a cocktail of performance enhancing drugs with a reliable and short washout period (resulting in the "Duchess Cocktail" in or about 2010). While the Athlete argued that both official and "unofficial" urine sample were processed at the same time using the same instruments at the Moscow Laboratory in 2014 and 2015, she contended that such duality of practice would have affected the quality of the processes, methods and controls at the Lab such that the risks of human and technical error were exacerbated. Further, this risk was ignored by WADA in asserting that the Moscow Laboratory was ISL compliant at the relevant time.
101. Based on the above, the Athlete submits that; *"it can be assumed, with a comfortable degree of certainty, that the processes, methods, and quality controls at the Moscow Laboratory in 2014 and 2015 were below applicable standard (ISL) and the risks of human and technical error were exacerbated by these illegal operations"*.

**(ii) *Analytical reliability***

102. The Athlete also submitted that the fact WADA decided in November 2013 that the Moscow Laboratory would have its WADA Accreditation temporary suspended for six months if it did not engage independent quality management experts to help implement a quality management programme *"to ensure the accuracy and reliability of results"* by designated dates in December 2013 and April 2014 that this was of itself evidence of the poor standards at the Lab and WADA's own dissatisfaction with the accuracy and reliability of the results reported by the Moscow Laboratory.
103. The Athlete challenged WADA's reliance on the 59 EQAS samples that the Lab correctly analysed between 2012 and 2015, on the basis that the Moscow Laboratory could distinguish between Double-Blind EQAS samples from routine samples. In particular they relied upon the

McLaren Reports that the RUSADA Doping Control personnel were corrupt; that the Director of the Lab and the Director of RUSADA (Mr Velikodny) shared confidential information; there was evidence at least of Blind WADA Samples 2947605 and 2947601 being notified by email between Dr Rodchenkov and the Liaison on 4 September 2014; and EDP emails evidenced mistakes or unreliable analytical results [...].

104. WT asserted that the arguments the Athlete relies upon to seek to rebut the presumption are weak and contrary to the known fact that the Lab was “*carrying out state of the art analysis, regardless of its conceded role in the state sponsored doping programme*”. Further, no compelling evidence adequate to cast sufficient doubt on the presumption was presented to switch the evidential burden to WT pursuant to Article 3.2.2. In the unlikely event that the Athlete did, then such departures could not reasonably have caused the Presumptive AAFs for all of the Athlete’s Samples.
105. WT conceded that the Moscow Laboratory was running two parallel systems. One where it was meeting its WADA Accredited Laboratory requirements and the second, where it was acting fraudulently by engaging in the illegal practices described previously. WT’s position was clear that engaging in the illegal practices did not detract from the Lab’s analytical capabilities or their respect of their internal custodial procedures. In doing so, WT relied upon the first Expert Opinion of Prof. Ayotte where she concludes that the LIMS of the Moscow Laboratory showing that the Athlete’s Samples were (i) aliquoted and tested, (ii) that TMZ was found by the ITP’s performed, (iii) that a confirmation aliquot of Sample 3 was taken, tested and TMZ found to be present, and (iv) that the log for the CP results permitted the identification of TMZ according to the criteria (WADA Technical Documents). This evidence together with the WADA spreadsheets, offered in WT’s view, additional irrefutable compelling contemporaneous evidence of the Laboratory’s analytical capabilities in conformity with the ISL and all applicable Technical Documents.
106. WT also pointed to the demonstrated capability of the Moscow Laboratory to detect TMZ noting and evidencing that between 18 February 2014 and 28 March 2015, the Moscow Laboratory reported 12 AAFs for TMZ, at concentrations ranging from 0.062 to 18.5 micrograms per millilitre (ug/mL).
107. In considering whether the Athlete had succeeded in rebutting the presumption in WTADR Article 3.2.2., by establishing that a departure from the ISL had occurred which could reasonably have caused the AAF, the Sole Arbitrator considered *inter alia* the following factors:
108. That to retain WADA Accreditation a laboratory has to maintain both an EQAS (ISL Article 4.2.2) and an internal quality assessment system (ISL Article 5.4.7.2). The EQAS involves periodic samples being distributed to a laboratory to be analysed for the presence/absence of Prohibited Substances, Metabolites, Markers or Methods (as therein defined). Control EQAS samples are sent to a laboratory on a Blind (where it is distinguishable from a routine sample) or Double Blind (where it is indistinguishable from a routine sample) basis for analysis and assessed based upon whether the performance is satisfactory under the EQAS.
109. The Athlete has made a series of assumptions about the prevalence of both human and technical errors within the Moscow Laboratory and posited a number of hypotheses to underpin their

arguments as to Lab's analytical unreliability and demonstrated breaches of the ISL. However, there is a corresponding absence of evidence supporting these assumptions. For example, there was no evidence that the Lab could identify Double-Blind samples (as submitted by the Athlete).

110. The fact the Moscow Laboratory had both correctly analysed all 59 of the WADA EQAS samples and simultaneously managed to carry out the Protection Scheme points to the operation of a very sophisticated regime by experts rather than one that was error prone and analytically unreliable. The success of the Protection Scheme lay in the ability of the Moscow Laboratory to correctly detect Prohibited Substances. Without this ability, the Protection Scheme would not have survived or indeed thrived as it did for many years.
111. The Protection Scheme was a contravention of the ISL, a point WT conceded. That does not in the Sole Arbitrator's view detract from the fact there were two parallel analytical operations being conducted concurrently at the Moscow Laboratory, first, the WADA Accredited and compliant Moscow Laboratory operation with the recognised analytical ability to produce forensically valid results and second, the fraudulent Moscow Laboratory operation conducting the Protection Scheme with the same analytical ability to produce forensically valid results upon which the success of the Protection Scheme depended. The fact that two parallel operations were being conducted by the Moscow Laboratory concurrently, does not negate the analytical capacity of the Lab at the relevant time.
112. In addition, having considered all of the above arguments and evidence, the Sole Arbitrator is comfortably satisfied that such evidence and the ongoing review by WADA of the accreditation of the Moscow Laboratory pursuant to the ISL and the Lab's ISO status during the material times in 2014 and 2015 when the Athlete's Samples were processed by it, mitigate against a finding that the Moscow Laboratory was not ISL compliant for the purposes the presumption in Article 3.2.3 WTADR. As there was no evidence provided that was sufficient to invalidate or cast doubt on any analytical data deriving from the Moscow Laboratory or that the analysis conducted by the Moscow Laboratory were not reliable, the burden of proof does not shift to WT to prove otherwise.

### **C. Reliability of the 2015 LIMS with regard to the Athlete's Samples**

113. A central question which clearly arises for the Sole Arbitrator to determine is whether the 2015 LIMS presented to it is authentic and reliable, a position that the Athlete challenges.
114. The chronology as to how WADA came to be in possession of the 2015 LIMS from a whistleblower in 2017 and the 2019 LIMS (as part of the Moscow Data) has been set out previously and was not contested by the Athlete.
115. The Athlete challenged the authenticity of the 2015 LIMS and submitted that the 2015 LIMS is, at best, actionable intelligence that needs to be corroborated by other reliable evidence for the purposes of any anti-doping proceedings. The Athlete pointed to:

- (i) the gap in time between the original illegal “dump” of the data on 3 September 2015 in unknown circumstances to its delivery to WADA on 30 October 2017 as a clear interruption of the evidence chain of custody which could not be remedied and allows for the possibility that there was inadvertent or intentional manipulation of the data during the “dump”;
  - (ii) the fact that WADA has never released a full SQL version of the 2015 LIMS except to WADA’s nominated forensics experts. It is therefore unknown if the “dump” contained any of the .pdf or raw files, or other data from the Lab. This was even more so the case where the LIMS could be and was remotely accessed until June 2016 and it was undisputed that for example Dr Sobolevsky searched for the Athlete’s sample within LIMS in late 2015.
  - (iii) the lack of reliable evidence that WADA IID extracted and translated all data related to the Samples from the 2015 LIMS unless this extraction process is certified by an independent third party with access to an original complete SQL version of the 2015 LIMS;
  - (iv) the Moscow Laboratory’s LIMS did not have features that would ensure data integrity and security and prevent unauthorized access;
  - (v) her belief that WADA IID tried to cure these defects by subjecting the 2015 LIMS to several logical tests and then concluded that the 2015 LIMS was authentic because its contents matched, to a satisfactory degree, with other data on relevant samples particularly ADAMS records and re-analysis of the samples in WADA’s possession.
116. The Athlete accepts that the 2019 LIMS corresponds to the forensic image of the LIMS database that was performed by a WADA team at the Moscow Laboratory on 12 January 2019. However, she contends that the authenticity of the 2019 LIMS, as well as the alleged manipulation of the “Moscow Data” are outside the scope of these proceedings. Notwithstanding that, there were a number of factors the Athlete highlighted in seeking to limit the scope of the Panel’s review solely to evidence of possible AAFs in her Samples and should disregard the evidence of alleged LIMS data manipulation in 2018 and 2019; (i) “Operation LIMS’ findings may have evidentiary value if the 2015 LIMS is found to be forensically reliable; (ii) it was inconceivable that the DPM conspirators would leave incriminatory digital evidence after reporting any of the samples negative in ADAMS, unless they intended to use that evidence to their own benefit in the future; and (iii) there is no proof that the Athlete was knowledgeable of, or somehow involved with, any protection scheme.
117. WT assert that the forensic analysis of all the LIMS data confirms that the observable digital evidence relating to the Athlete’s three Samples in the 2015 LIMS Database is authentic and reliable (and that the data relating to the Samples in the 2019 LIMS Database is not). In doing so WT placed reliance upon the reliability and authenticity of the 2015 LIMS in a number of areas.



- (i) The fact that various tribunals have found the data contained in the 2015 LIMS to be reliable e.g., *IBU v Svetlana Sleptsova (2019)*; *IBU v Evgeny Ustyugov (2020)*; *IWF v Yuliya Konovalova (17 September 2020)*;
  - (ii) The CAS Panel in the RUSADA Compliance case (*CAS 2020/O/6689*) confirmed the unreliability of the 2019 LIMS noting that: “*The steps taken to manipulate the Moscow Data and deceive WADA could hardly be more serious*”;
  - (iii) The Expert Reports of Professor Ayotte confirms that the 2015 LIMS findings are consistent with the detection and confirmation of TMZ in Sample 3; “*there [is] numerous traces left in the LIMS of the Moscow Laboratory showing that the athlete’s above-mentioned samples were indeed: i) aliquoted and tested, ii) that trimetazidine was found by the initial testing procedures performed, iii) that a confirmation aliquot of lab code 6435 was taken, tested and that trimetazidine was again present, iv) that the log for the confirmation results permitted the identification of trimetazidine according to the criteria (WADA Technical Documents)*”.
118. WT relied upon the oral and written evidence of Mr Walker and Dr Broséus of WADA IID in relation to; (i) details of the investigations they conducted into the LIMS Data and underlying analytical data generally and (ii) specifically details relating to Sample 3 which was delivered to the Moscow Laboratory on 7 June 2015; and (iii) the analytical evidence in relation to Sample 3 that the Athlete Used TMZ.
- (i) LIMS comparative analysis**
119. Mr Walker gave evidence *inter alia* in connection with the Moscow Laboratory LIMS, its operation and how it was structured (e.g. into tables and headers etc.). Specifically, he addressed why the 2015 LIMS was an accurate copy of the original LIMS created contemporaneously as part of the Moscow Laboratory’s analytical procedure (i.e. it was the “Authentic” version) and its contents could be relied upon as being accurate and analytically valid in particularly the forensic validity of the detection of TMZ.
120. Investigations were conducted to establishing the analytical validity of the data contained within the 2015 Database. The outcome of this analysis, using key anti-doping analytical data, revealed (i) a very high degree of matching between the 2015 and ADAMS i.e. a 99% match across a series of categories including Sample codes and Laboratory codes, pH values, Event Types, athlete gender, and Specific Gravity values, between the 2015 LIMS; (ii) the analytical data for AAFs legitimately reported in ADAMS by the Moscow Laboratory for all athletes between January 2012 and August 2015, matches the data contained in the 2015 Database. Further (iii), the content of the EDP emails provided by the McLaren Investigation matched the associated data detailed in the 2015 LIMS even though they did not come from the same source; and the Moscow Data contained digital evidence that the CP records from the 2015 Database once existed in the 2019 Database but were intentionally deleted from that database including records related to the Sample

**(ii) The Athlete's Samples compared**

121. WADA IID also noted that discrepancies were also observed; "... from the original prospective pool of 63,279 "unique" samples, there were 245 samples (and their associated data) present in the 2015 Database but absent from the Moscow LIMS. Moreover, there are 32898 samples and 22 "Bags" present in both Data Sources that contain discrepancies (differences) in their respective data values".
122. The Athlete's three Samples were all part of the cohort of 245 samples where discrepancies were found to exist between the 2015 LIMS and 2019 LIMS.
123. The Athlete's Samples were all recorded in both the 2015 LIMS and 2019 LIMS and the data underlying them matched completely save for certain critical differences in particular in relation to the "found" and "confirmation" tables of the databases:

*"More specifically, the data recorded in the tables, "Bags", "Samples", "Screenings", "MS\_data" and "PDFs" for all three of the Athlete's samples matched completely between the Data Sources. However, differences were observed in the "Found", "Confirmation" and "log\_do" tables in that the most important analytical records had been removed (deleted) from these tables in the 2019 Database. More specifically:*

- (i) *In sample 3880728 (viz the Sample), the recording of a Presumptive AAF and a successful CP for trimetazidine was missing from the 2019 Database. In other words, the 2015 Database recorded a reportable AAF for trimetazidine, while the 2019 Database did not.*
- (ii) *In samples 2916387 and 2916525 (viz the 2014 Samples), the recording of a Presumptive AAF for trimetazidine was missing from the 2019 Database".*
124. All the Athlete's Samples were referenced in the 2015 LIMS database as showing TMZ. In addition, for Sample 3 there was a positive entry in the confirmation table, meaning that it was subject to a CP, leading Mr. Walker to state that "TMZ was truly discovered" in Sample 3.
125. By contrast, none of the Samples were found in the 2019 LIMS database. There were no entries in the "found" table or for Sample 3 in the "confirmation" table, meaning that these entries had been deleted.

**(iii) Digital DNA – Independent Experts**

126. In terms of authenticity, evidence was presented that following recovery from the Moscow Laboratory, the 2019 LIMS was compared to the 2015 LIMS, a process that involved a sample-by-sample comparison of every record of every sample in the respective LIMS databases involving the Independent Experts<sup>3</sup>.

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<sup>3</sup> The scope of the Independent Experts mandate was to: "i. Conduct forensic analysis of alteration(s) to the Data that occurred in January 2019, prior to the arrival of the WADA expert team, in order to provide knowledge about what happened when, where, how, who was involved, and the impact. Specifically, describe relevant alterations including timestamp modifications, user accounts, impact and possible deletion (e.g. Raw, PDF, logs, batch, queries, scripts). ii. Provide WADA with any recovered copies of LIMS data from December 2018/January 2019 and conduct comparative analysis of live (2019 version) LIMS databases on the versions

127. WT included in their evidence a suite of forensic reports prepared by WADA IID as well as the Independent forensic experts from the University of Lausanne (Profs. Casey and Souvignet). These reports provided detailed and comprehensive explanations of the forensic analysis conducted by the Independent Experts as well as their factual observations and evaluations. At a high level the Independent Expert's second report noted:

*"The LIMS system and database, and Server ONE were altered before the Moscow Laboratory provided WADA with forensic copies. These alterations include backdated systems, formatted disks, deleted files and backups, secure erased files, selectively removed command history entries, as well as replaced database, deleted records, removed tables and missing logs".*

128. Evidence was given that in its interrogation of the 2019 LIMS the Independent Experts found evidence of deleted files. Deleting a file removes the operating systems map of the data but not the data itself which remains in the "free-space" area of the hard drive until it is overwritten by new data or subject to erasure using specialized data erasing software.

129. When a LIMS database is used all the database related data and metadata are stored in a folder containing *inter alia* ".MYD" files. This folder stores files used for back-up purposes. The Independent Experts recovered a deleted version of the LIMS (referred to as "Carved LIMS") from the "free-space" area of the Moscow Data. They recovered deleted ".MYD" files from "carved" files ("Carved Records") for the "found", "confirmation", "messages" and "log\_do" tables for the 2012 to 2015 LIMS databases. *"The recovered files included every parameter of data recorded for each sample. The recovered records included those pertaining to the Athlete's Samples".*

130. Evidence was given which compared the Carved Records to the content of the "found" and "confirmation" tables for all 245 samples where discrepancies were found to exist between the 2015 LIMS and 2019 LIMS. The outcome was, per WADA IID Joint Statement that:

*"There was a complete match, including for the Athlete's samples. In other words, the Moscow Data contained evidence (akin to digital DNA) that the "found" and "Confirmation" records present in the 2015 Database but absent from the 2019 Database, once existed in the Moscow LIMS but had been intentionally deleted before the Moscow LIMS was forensically imaged by WADA on 12 January 2019. Moreover, the alteration of key anti-doping analysis data continued as late as between 6 and 9 January 2019".*

131. The carved "log\_do" records were compared to the "log\_do" tables of the 2015 Database for the databases labelled "2012", "2013", "2014" and "2015", which WADA IID determined that - *"There was a complete match, including for the Athlete's Samples".*

#### **(iv) Sample 3**

132. A comparison of the "confirmation" table for Sample 3 in the 2015 LIMS versus the Carved LIMS showed deletions in three headers (as set out in the table below). Similar evidence for

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*from January. iii. Analyze use of remote access mechanisms during this period and evaluate the impact, if any, on the integrity of the Data, more particularly, the Moscow data".*

each of the Samples “found” tables was also produced in evidence which showed deletion of the TMZ finding from the Sample (in the “id” and “code\_id” headers).

LIMS version	Offset	Record _state	Id	Id_fou nd	Number _aliq	Vol_ aliq	Proc	Id_users tart	Id_labor ant
2015 LIMS	0x000 14f7c	Existing	774	2694	1	0.2	5	1	5
Carved LIMS	0x000 14f7c	Deleted	NA	NA	NA	0.2	5	1	5

DT_start	AB	if_fo und	conf_ conc	ATF	SD	DT_end	comment	id_user_end	batch
2015-06-09 08:17:30	0	1	3.4	1	0	2015-06-09 13:20:08		5	720
2015-06-09 08:17:30	0	1	3.4	1	0	2015-06-09 13:20:08		5	720

do	ADA MS	stor_out_DT	stor_out_ uid	out_alik_DT	out_alik_ uid	stor_in_DT	stor_in_ uid
0		2015-06-09 12:17:51	39	2015-06-09 12:21:01	39	2015-06-09 12:21:02	39
0		2015-06-09 12:17:51	39	2015-06-09 12:21:01	39	2015-06-09 12:21:02	39

133. A comparison of the “log\_do” tables for Sample 3 in the 2015 LIMS versus the Carved LIMS showed a full match, including the logs related to the reporting of the Presumptive AAF and the successful CP (per “do” header) in LIMS and the date and time when these entries were made (per “DT” header). In addition, the logs matched the content of the records as they appeared in the “confirmation” tables of the 2015 Database and the Carved LIMS.
134. In asserting its position that the 2015 LIMS is authentic and that the 2019 LIMS is not, WT relied upon the Carved Records as providing compelling, observable digital evidence (which it compared to “digital DNA”) that the “found”, “confirmation” and log\_do” records for the Athlete’s Samples existed in the 2015 LIMS and were intentionally deleted from the 2019 LIMS

after 20 November 2018 but before 12 January 2019 when WADA forensically imaged the Moscow LIMS. The Independent Experts reported as one of their findings that:

*“h) On or after November 2018, the “log\_do” logs were removed from the databases labelled “2012”, “2013”, “2014”, and “2015” in Moscow LIMS.*

*i) The integrity of the “log\_do” logs in LIMS version “v2015” (I&I LIMS) was corroborated by deleted records recovered from deleted tables salvaged from free space on the LIMS disk”.*

135. Dr Broséus at the Hearing presented a PowerPoint presentation in which he reflected in visual form the evidence in the Joint Statement and visually explained the LIMS, its structure and content including in relation to the Athlete’s Samples, the backup data for which (LIMS data, raw data and .pdf files) formed part of the Athlete Data Package. The presentation summarizes the various matches and incongruities between the 2015 LIMS and 2019 LIMS by way of spreadsheets, PDF comparisons and summation of the data that was altered, deleted and/or carved from the 2019 LIMS.
136. Dr Broséus described the interface in the LIMS database and how records were created and the terminology that was employed in the database. Using a flow chart, he explained how WADA IID identified the tables which contained the most relevant information (i.e., bags, samples, screenings, ms\_data, pdfs, scr\_results, confirmation) to show where an athlete tested positive for a prohibited substance and also to demonstrate the Internal COC process. The LIMS database would record if a CP was conducted on a sample and then the outcome.
137. Each sample was linked to a specific Laboratory code in LIMS, which Dr Broséus described as being “key” as the Moscow Laboratory only used the Internal Code (“code\_int”) once a sample was admitted to the Laboratory. This included using the Internal Code as part of the references naming of the .pdf and raw-data files of samples. The codes accorded to the Samples internally in the Laboratory corresponded with the external references (“code\_ext”) on the Sample Doping Control Forms.
138. Dr Broséus asserted that notwithstanding the absence of the Internal COC Forms, significant and analytically important information concerning the control and accountability of a sample can be discerned from the LIMS data by looking at the “Sequence of Events” as established by Operation LIMS - (this is represented in tabular form in paragraph 164 using Sample 3).
139. The analytical instrument produced an analytical file, from this file a .pdf is created and is transferred to the LIMS server (hard drive) and the LIMS database identifies which .pdfs were created. This enabled the reviewers to see what .pdfs had been created (which indicates whether a prohibited substance was detected in the relevant aliquot analysed) and therefore what they would expect to find in the server. PDFs are only created from ITP results.
140. He described as “important” the log\_do table which is essentially an internal audit trail of the process conducted on a sample. It gave WADA “another layer to authenticate the 2015 LIMS” because these logs were found in the Moscow Data. This demonstrated the Internal COC from reception of a sample through to its recording in ADAMS.

**(v) Recovered evidence – raw data and pdfs**

141. Dr Broséus looked in detail at Sample 3 (noting that the same logic applies to the 2014 Samples). He explained that using specialized software, the Moscow Data was interrogated by the Independent Experts for raw data files related to Sample 3.
142. The Raw Data files “s\_06435.raw” and “06435.raw” evidence the ITP and CP analysis, respectively, for TMZ, however, only the ITP raw data file “s\_06435.raw” could be recovered for Sample 3. No existing CP Raw Data files were observed in the Moscow Data which meant that the CP raw data file “06435.raw” had been irretrievably deleted from the Moscow Data. However, the “information” (not content) about this file was recovered from the Moscow Data.
143. The Independent Experts also observed that CP raw data file “06435.raw” was originally saved to the Fileserver in the parent folder “06435 - Trimetazidine” (Parent Folder) on 9 June 2015. Dr Broséus noted that the recovery of this information is observable digital evidence that the CP raw data file “06435.raw” previously existed in the Moscow Data but was deleted prior to the release of the Moscow Data to WADA on 17 January 2019. The Parent Folder was deleted on 21 July 2016 – *“the same day the Investigative Committee entered the Moscow Laboratory to seize evidence related to its investigation of Doctor Rodchenkov and others”* according to the Joint Statement.
144. Within the 2019 LIMS a path string of all pdfs created are recorded in the pdf table. A path denotes the name of a file or directory and specifies its unique location in a file system. The existence of a path means that a pdf must exist within the Moscow Data. Paths for seven of Sample 3’s pdfs were found in the 2015 and 2019 LIMS.
145. However, when the pdf tables in the 2015 LIMS and 2019 LIMS were compared “no differences were observed”. The failure to alter or delete the “pdf” table in the 2019 LIMS was described in the Joint Statement as *“an error by those involved in manipulating the Moscow Data as this table provided a further means by which the completeness and integrity of the Moscow Data was undermined”*.
146. The 2014 Samples were also addressed in a similar way by Dr Broséus and their journey was detailed in the Joint Statement.
147. WT concludes that the 2015 LIMS is more reliable, authentic and valid evidence than the 2019 LIMS, both generally and more specifically, in relation to the Athlete’s samples. WT contends that the deletion and manipulation of the 2019 LIMS supports the 2015 LIMS findings and strengthens WT’s case against the Athlete as the alterations and deletions were to the betterment and protection of the Athlete.
148. The Athlete argues to the contrary, that if the 2019 LIMS was manipulated, then no reliability may be placed upon its data.
149. The Athlete interpreted the evidence presented by WT in relation to the pdf files such that it considered that *“strictly speaking, the pdf files in question are genuine original files and bear no forensically observable signs of manipulation”*. Thus, the authenticity of the pdf files in question is dependent on the authenticity of the underlying raw data files. She goes on to submit that the raw data files

within the 2015 LIMS are questionable because; (i) they did not match the 2019 LIMS; (ii) the Independent Experts did not find any traces of manipulation in the “suspicious” raw data files; (iii) the manufacturer of the Lab’s analytical equipment, ThermoFisher, had insufficient time to report if it was definitively possible to manipulate a raw data file; and WT are relying on a “pattern” observed in Operation LIMS which is unsubstantiated, to assert that the ITP files relating to the Samples were manipulated to conceal AAFs for TMZ.

150. The absence of an independent forensic report to support the possible manipulation of the specific ITP and CP data files relating to the Samples, it is submitted by the Athlete means that WT have not demonstrated the reliability of their digital evidence or support the file manipulation allegations.
151. A series of searches were conducted on the Samples years after they had been taken. Details of such searches in relation to Sample 3 can be found at para. 164. WT submits that the timing of the searches forms part of the sequence of events and coincides with key dates in the timeline e.g. between when WADA announced its investigation into the allegations of Russian state manipulation of the doping control process, when the Investigation Committee entered the Moscow Lab, the publishing dates of the McLaren Reports and culminating in the delivery of the Moscow Data to WADA and that such behaviour is yet a further element to highlight the protection of the Athlete.

**D. Was the Athlete a Protected Athlete within the Russian Doping Protection Scheme?**

***(i) How did the Protection Scheme work?***

152. WT submitted that that the Athlete benefited from a Protection Scheme that was in place between the Moscow Laboratory, RUSADA and the Russian authorities. The background to the Protection Scheme and how it came to be discovered have been set out previously and are not in contention.
153. In addition, WT relied on the explanation of the WADA IID personnel, that a “Save” email or the athlete’s name recorded in the “General Comments” field of the LIMS was evidence that an athlete is a “Protected” athlete.
154. While the Athlete conceded that the establishment of the DPM in the Moscow Laboratory, and indeed relied upon it to discredit the analytical capabilities of the Lab, she denied that she had any knowledge of it or the schemes undertaken at the Lab and/or that she was a “Protected” athlete. She denied that she had authorised or was aware of any manipulations with regard to herself and claims that neither WT nor WADA have presented evidence of her direct involvement or implication in the DPM. In this regard, the Athlete placed reliance upon para. 718 of the decision in CAS 2017/A/5379 which underlines that a:

*“... Panel must be comfortably satisfied that the Athlete personally committed a specific violation of a specific provision of the WADC (...) ... if the participation of an athlete in any of the various features of the scheme has not been proven, a CAS panel cannot be comfortably satisfied that an inference in favour of the athlete’s use of a prohibited substance can be made” (emphasis added).*

155. The Athlete also postulated as the motivation behind the involved Lab personnel who engaged in the DPM (e.g. career-drive, financial, fear) and contented that such motivations were relevant factors “*for the purposes of alternative explanations of the findings of TMZ in the Samples*”.
156. WT did not contend that the Athlete was involved in the manipulation to her Samples at the Moscow Laboratory but denied that the Athlete’s knowledge or involvement was a relevant factor to establish Use as knowing Use does not need to be established for the ADRV to be found (per WTADR Article 2.2.1).
157. WT also sought to distinguish the decision in the Legkov case on the basis that that was a “tampering” or “attempting tampering” case where salt was allegedly added to his samples. Rather in this case that Athlete has been charged with Use and not “tampering”. Therefore, “... *Although it might have been relevant to a tampering charge, unlike the Athlete argues, her knowing involvement (or lack thereof) in the DPM is irrelevant to the present “Use” charge because intent or knowing use is not required to establish the commission of a “Use” violation pursuant to Article 2.2 ADR*”.

**(ii) “Save” Orders for the Athlete’s Samples**

158. The case presented by WT is that the Athlete was a Protected Athlete under the Russian Doping Protection Scheme. This was manifested *inter alia* by “Save” orders being rendered in respect of each of her three Samples and the failure to progress the 2014 Samples to CP to cover up her use of TMZ. The Save orders were part of the EDP package.
159. In this regard evidence of such “Save” orders was produced in the form of the EDP emails from Dr. Tim Sobolevsky at the Moscow Laboratory addressed to Aleksey Velikodny (the Russian Ministry of Sport “Liaison”) and Dr. Rodchenkov with a corresponding reply indicating that the Athlete’s Sample should be saved as follows: (*English translation from Russian*).
160. Sample 1 (Lab Code 7923) – communication of 1 July 2014

*From: Aleksey Velikodny [avsochi2014@gmail.com]*

*Sent: Tue 01/07/2014 12:44*

*To: Tim Sobolevsky*

*Cc: Dr. Grigory Rodchenkov*

*Subject: Re: a result*

*Save*

*2916387, Danilova Elena, triathlon, international competition | 7210, RU Penza, collection 2014-06-28 trimetazidine*

*Triathlon U23 and Youth European Championships. Penza, 28 June Females. Under 23. 1<sup>st</sup> place – Elena Danilova (Russia)*

*1 July 2014, 12:30 user Tim Sobolevsky <tim.sobolevsky@gmail.com> wrote:*

*2916387, F, triathlon, international competition | 7210, RU Penza, collection 2014-06-28 trimetazidine*



161. Consistent with the contents of the email communication, the Athlete placed first in the Under 23 Youth European Championships held in Penza, Russia on 28 June 2014.

162. The chronology Sample 1 followed was as follows:

- On 30 June 2014, the ITP was commenced, and five aliquots were extracted from Sample 1 for use in five analytical procedures. The results of these procedures were evaluated by the Moscow Laboratory at various times on 30 June 2014 and 1 July 2014. Of the five analytical procedures undertaken, only three would be expected to have produced PDFs (as previously defined), namely P1.004, P1.005, and P1.006.
- On 1 July 2014, the last of the PDFs was imported to the LIMS Server.
- The email communications of 1 July 2014 alerting the Presumptive AAF, and the responding “Save” directive was issued on the same day (as above).

163. Sample 2 (Lab Code 10247) – communication of 12 August 2014

*From: Aleksey Velikodny [avsochi2014@gmail.com]*

*Sent: Tue 12/08/2014 17:29*

*To: Grigory Rodchenkov; Tim Sobolevsky*

*Cc:*

*Subject: results*

*Save*

*2916525, triathlon, International Sports Games (Spartakiada) | 5500/14, RU Cheboksary, collection 2014-08-07*

***Danilova Elena** – European youth champion 2014 (U23), Moscow – coaches: Zuev, Generalova.*

*Trimetazidine (2<sup>nd</sup> place) ...*

*\*\*\*<sup>4</sup>*

*From: Tim Sobolevsky [tim.sobolevsky@gmail.com]*

*Sent: Tue 12/08/2014 10:06*

*To: Aleksey Velikodny; Dr. Grigory Rodchenkov*

*Cc:*

*Subject: results*

*2916525, F, triathlon, International Sports Games (Spartakiada) | 5500/14, RU Cheboksary, collection 2014-08-07 trimetazidine*

164. Consistent with the contents of the email communications, the Athlete was the 2014 Youth (U23) Champion and had placed second in 2014 International Sports Games (Spartakiada), on 7 August 2014.

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<sup>4</sup> \*\*\* refers to another athlete in an unrelated sport.

165. The chronology Sample 2 followed was:

- On 11 August 2014, the ITP was commenced, and four aliquots were extracted from Sample 2 for use in four analytical procedures. These procedures were completed, and their results evaluated by the Moscow Laboratory at various times on 12 August 2014. Of the four analytical procedures undertaken, only three would be expected to have produced PDFs, namely P1.004, P1.005, and P1.006.
- On 12 August 2014, the last of the PDFs was imported to the LIMS Server.
- The email communications of 12 August 2014, alerting the Presumptive AAF and the responding “Save” directive was issued on the same day (as above).

166. Neither of the Athlete’s 2014 Samples proceeded to CP notwithstanding the alleged Presumptive AAF for TMZ in each one. WT content that that the failure to proceed to confirmation testing for the 2014 Samples provides corroborative evidence that the Athlete was a long-time user of TMZ.

167. Sample 3 (Lab Code 06435) – communication of 10 June 2015

*From: Aleksey Velikodny [avsochi2014@gmail.com]  
Sent: Wed 10/06/2015 17:51  
To: Tim Sobolevsky  
Cc: Dr. Grigory Rodchenkov  
Subject: Re: results*

*Save triathlon  
Quarantine [...]*

*Sent from iPhone  
> 10 June 2015, at 8:15, Tim Sobolevsky <tim.sobolevsky@gmail.com> wrote:  
3880728, F, triathlon, Russia’s Championship | 24053/15, RU Sochi, collection 2015-06-06  
trimetazidine*

168. The chronology Sample 3 followed was as set out in the table below, including post analysis actions specifically concerning Sample 3 referred to by WADA IID as the “Sequence of Events”:

6 June 2015	Sample 3880728 was collected
7 June 2015	Sample delivered to the Moscow Laboratory
8 June 2015	Sample assigned Laboratory Code 06435. Initial Testing Procedure was commenced. Six aliquots were extracted from the Sample for use in six analytical procedures. These procedures were completed, and their results evaluated by the Moscow Laboratory. From which procedures only four would

	be expected to have produced PDFs, namely P1.004, P1.005, P1.006 and P1.020
9 June 2015	An aliquot was extracted for procedure P1.006 (stimulants). The Raw data was acquisitioned from the Instrument “Foxy” to create a PDF (s_06435 PDF) from the P1.005 results was imported to the LIMS
	a Presumptive Adverse Analytical Finding (AAF) for TMZ at a concentration of 4.7 mcg/mL was reported in LIMS and evaluated by the certifying scientist
	in response to the Presumptive AAF, a Confirmation Procedure (CP) was commenced and entered in the LIMS.
	instrument computer named “R2D2” commenced acquisition of the Raw Data file “06435.raw” which file was saved to the Parent Folder
	The CP process confirmed the presence of TMZ – at a concentration of 3.4 ug/mL and was entered in 2015 LIMS. The reported concentration was about 100 times higher than the MRPL of 20 ng/mL
11 June 2015	Sample 3880728 was reported “negative” in ADAMS by Dr Sobolevsky
10 November 2015	<i>WADA suspended the accreditation of the Moscow Laboratory</i>
13/11/15 – 20/01/16	Sample 3880728 searched 10 times in LIMS using Internal Sample code
18/05/16,	<i>WADA announced the commencement of an Independent Person (viz the McLaren Investigation) to investigate Doctor Rodchenkov’s allegations of Russian state manipulation of the doping control process</i>
28/06/16	Sample 3880728 searched in LIMS
21 July 2016	<i>The Investigative Committee entered the Moscow Laboratory Parent Folder among files deleted by unknown user</i>
01/08/16 – 24/11/16	Sample 3880728 searched 13 times in LIMS
26/12/16	Sample 3880728 searched 3 times in LIMS
16/01/17 – 29/09/17	Sample 3880728 searched 5 times in LIMS
06/10/17 – 20/11/18	Sample 3880728 searched 9 times in LIMS

169. In comparison to the 2014 Samples, Sample 3 proceeded to undergo CP testing, to confirm whether or not the Presumptive AAF for TMZ was in fact an AAF for TMZ. WT assert that the presence of TMZ was confirmed again following the CP.
170. There are no Internal COC Forms for any of the Samples as these were removed from the Moscow Laboratory in 2016 by Russian Law enforcement. Specifically:

*“... World Triathlon requested the Chain of Custody Forms from the Moscow Laboratory for Samples 3880728 (Lab Code 06435), 2916387 (Lab Code 7923) and 2916525 (Lab Code 10247) on 23 April 2021. For ease of reference, upon receipt of World Triathlon’s request, Dr. Mocholova (Director of the Moscow Laboratory) responded “Unfortunately, the information you have requested is missing at the laboratory. Sorry about this issue ...”.*

171. The post-analysis Samples themselves were also no longer available.

*“on 3 August 2021 World Triathlon inquired from the Moscow Laboratory if the A3880278 and B3880278 Samples were still available for reanalysis. On 4 August 2021, Dr. Mochalova replied that “Unfortunately, these samples are not available in the laboratory, presumably the samples were discarded of in 2014-2015”.*

172. WT submitted that the Moscow Laboratory maintained both a digital and hard copy chain of custody procedure for all samples. Therefore, notwithstanding the absence of the Internal COC Forms or the physical Samples, WT contended that significant and analytically important information concerning the control and accountability of a sample can be discerned from the LIMS data and looking at the sequence of events as it pertains to the Athletes Samples, from collection and following their movement through the analytical process. This data was collaged into spreadsheets by WADA IID for ease of review.

173. In connection with the Samples, WT relied upon the DCFs for each of the Samples to demonstrate that the Athlete was tested and the relevant Samples provided for doping control, which were not disputed by the Athlete. They further relied upon the digital data contained in the Athlete Data Package, the Joint Statement and Reply of WADA IID and on the expert opinions of Prof. Ayotte.

174. By contrast, the absence of both the physical Samples and the Internal COC Forms was a significant concern to the Athlete. The Athlete’s position was that in reality none of the Samples could now be independently reanalysed as they have been destroyed or are otherwise unavailable due to seizure of samples and documentation by the Russian Investigative Authorities in 2016 and this was compounded by the absence of the Internal COC Forms. This meant it would not be possible to corroborate the observable digital data recovered by WADA IID and relied upon by WT.

175. The Athlete Data Package is a collection of LIMS records, Carved LIMS files, retrievable .pdf and raw files related to the Samples. The evidentiary value of this data the Athlete submitted was undermined by the failure to follow basic forensic chain of custody rules. Specifically, there is no independent forensic opinion to confirm the uninterrupted chain of custody of this data from the moment WADA came into possession of the 2015 LIMS until the moment the data related to the Samples have been extracted, translated, and assembled. The Athlete’s position was that the observable digital evidence in the Athlete Data Package is insufficient to establish the Use of TMZ by the Athlete.

176. The Athlete submitted that this was compounded by the lack of independent forensic confirmation that the EDP elements represent “all and any” email exchanges by the Lab with the Liaison or between Lab personnel in relation to the Samples. Therefore, the EDP was

unreliable (including the four emails from the EDP package related to the Samples) and the same forensic chain of custody reservations apply to any EDP evidence as to the 2015 LIMS.

#### **E. Was TMZ detected in the Athlete's Samples?**

177. It is now necessary to review and assess the evidence upon which WT rely to found the ADRV for Use of TMZ against the Athlete.
178. WT submit that the Athlete's Samples each had a Presumptive AAF for TMZ and Sample 3 had a reportable AAF for TMZ at a concentration of 3.4 ug/mL, 100 times higher than the MRPL which was reflected in the evidence compiled in WADA IID's Joint Statement. TMZ is a non-threshold substance, meaning that once detected and confirmed, the presence of TMZ should and must be reported as an AAF. In the Athlete's case, it was not.
179. Trimetazidine is also well documented as a performance enhancing substance that would be quite beneficial to endurance sport athletes such as triathletes. As opined by Prof. Ayotte relying on peer review articles at the time of the collection of the Athlete's samples. *"The laboratories in Poland and Cologne reported documented the prevalence of Trimetazidine in the urine samples of athletes participating principally in endurance and strength sports (cycling, triathlon, canoe and athletics)"*. In fact, according to the authors of the article *"The prevalence of trimetazidine use in athletes in Poland"*, published in November 2014 – the exact time the Athlete was using the Trimetazidine – *"according to knowledge of the pharmacology and mechanism of TMZ action, TMZ can be used by athletes to improve physical efficiency, especially in the case of endurance sports"* especially including triathlon.
180. The fact that three of the Athlete's Samples were found to contain TMZ in 2014 and in 2015 confirms the Athlete's continuous use of the same for the purpose of performance enhancement. In order to independently verify the findings, WT submitted the recovered data to be independently assessed by Professor Christiane Ayotte who confirms that TMZ was in fact found in the Athlete's samples further to her analysis of the analytical procedures that were implemented by the Laboratory with regards to each of the Athlete's samples.
181. Prof. Ayotte observed that the Moscow Laboratory detected TMZ by two procedures, one based on the enzymatically hydrolysed glucuronide fraction mostly for anabolic agents by GC-MS/MS, "P4" and the second one by the LC-MS/MS procedure for stimulants, "P5". She confirmed TMZ was found in the Athlete's Samples further to her analysis of the analytical procedures that were implemented by the Moscow Laboratory as follows:

*"... trimetazidine was detected in the initial testing procedures carried out on the three athlete's sample:*

*i) the analysts who performed ITP "P4" (GC-MS/MS) and ITP "P5" (LC-MS/MS) entered for each one the presence of trimetazidine in samples 2916487 and 2916525. Two different aliquots, two different procedures, two different approaches leading to the detection of the same prohibited substance. These tests were done, the respective pdf files were created;*

*ii) the third sample, 3880728 (lab code: 6435), was also found from the ITP "P5" to contain trimetazidine and entries were made for its successful confirmation by LC-MS/MS "P5". We can follow the sample and its*

*aliquots from receipt to the end of the confirmation, and the email mentioning the result from T. Sobolevsky to the authorities issuing the “save” instructions (see first report);*

*iii) although most of the analytical data is lost, or inconsistent with the LIMS entries, one pdf file showing the presence of trimetazidine signal (GC-MS/MS “P4”) still exists; iv) the level of trimetazidine in sample 3880728 was high and consistent with what is expected from its administration (level confirmed at 3.4 µg/mL).”*

182. In relation to Sample 3 (3880728/Lab Code 6435), the results were reported as negative in ADAMS on 11 June 2015 following a “Save” order. The sampling pathway of Sample 3 was described by Prof. Ayotte who took the information from the spreadsheets of the LIMS 2015 data file which she noted was almost the exclusive source of the evidence in this case and proceeds to validate TMZ in the Sample at a concentration of 3.4 µg/mL:

*“It was received on 8 June 2015 at 9h44 and registered by D. Kulyako. The results (negative) were reported in ADAMS on 11 June 2015 (id as #N/A). The sample was affixed lab code 6435 and sampling was done the same day. Grigory Dudko for P4 and Marina Dikunets for P5 reported the end of the ITPs on 9 June at 10h09 and 6h30 respectively. For the latter test, M. Dikunets also entered the substance trimetazidine at a concentration of 4.7 µg/mL on the “found” sheet. T. Sobolevsky requested the confirmation in P5 (one aliquot of 0.2 mL sampled by D. Kulyako) that was carried out by M. Dikunets the same day. Later, she entered at 16h20 that Trimetazidine was confirmed in the concentration of 3.4 µg/mL.... According to documents received, on 10 June 2015, prior to the reporting in ADAMS, T. Sobolevsky e-mailed the findings to A. Velikodny and G. Rodchenkov at 6h15. A. Velikodny answered at 17h15 “Save triathlon””.*

183. Relying on the raw log of data entered in the LIMS for the CP results of Sample 3 by the analyst having validated the confirmation of TMZ in the Sample, Prof. Ayotte took the values and entered them into her own WADA accredited laboratory’s identification form and reproduced the results in tabular form. Relying on that table of results, Prof. Ayotte was able to conclude with certainty that the positive identification criteria for TMZ were met - “identification satisfaisante” - (as required in all Technical Documents in accordance with the ISL):

*“Positive identification means that: i) the retention time of trimetazidine in sample 6435 matched the reference and, ii) each ion-transition selected was present in the sample and in abundances matching the reference”.*

184. Prof. Ayotte noted that while there is only one chromatogram of one ITP still available for the detection of TMZ, TMZ can be observed in it. She goes on to confirm that in respect of Sample 3, that; (i) the chain of custody and data of the LIMS version 2015 recorded prior to the “Save triathlon” instructions of 10 June 2015, “were consistent with the detection and confirmation of trimetazidine in urine sample 3880728”; and (ii) that the levels recorded in the 2015 LIMS “were sufficiently high at 4.7 and 3.4 µg/mL (ITP and CP respectively) larger than the MRPL of 20 ng/mL (0.02 µg/mL) for Hormone and metabolic modulators, to be reliably confirmed. The ion-transitions (267 to 181 and 267 to 16[5]) that were selected for the detection of trimetazidine in the P5 ITP are typical”.
185. The Athlete claims that there is no evidence from the Moscow laboratory data supporting that her urine samples contained TMZ. Further that the Moscow Laboratory was unreliable and there were other possible sources of Prohibited Substances (see further below).

## F. Consideration

186. The core of this case hinges on the reliability or otherwise of the 2015 LIMS database. Professor Ayotte's opinions are predicated upon the data in the 2015 LIMS and WADA's evidence is that the 2019 LIMS is unreliable as it was subject *inter alia* to deletions and manipulations prior to its coming into their possession in 2019.
187. In considering the validity or otherwise of the 2015 LIMS database, the Sole Arbitrator noted the format in which the evidence was presented by WT, in particular the WADA LIMS spreadsheets which was the technical method WADA IID used to make the LIMS data visible for normal uses outside the laboratory software. The original 2015 LIMS database is secured by WADA IID.
188. The 2015 LIMS was analysed by computer forensic expert, Vigiteck, who produced a report on 23 November 2017. The mandate they were tasked with was to:

*"1. Proceed to the rebuild of databases present on the USB key H001. The USB key was given to us by the client during a meeting at the WADA office in Montreal on November 1, 2017 around 10:15am. 2. Extract data from rebuilt database using SQL queries provide on the USB key".*

The conclusion of the computer forensic expert report was:

*"With the data provided to us, we were able to reconstruct all the structure of the database to make it functional. All errors encountered during the process were explainable. We were able to run a consistent MySQL database system. We executed the scripts Found.sql and SP.sql. The result is being placed in Excel sheets, in the select folder, containing tabs named by year ...".*

189. After the Moscow Data (including the 2019 LIMS) was made available to WADA it had it forensically reviewed by the Independent Experts. They found that the evidence of WT in relation to the authenticity and validity of the data contained in the 2015 LIMS as compared to that of the 2019 LIMS is extensive and compelling. In particular the Moscow Data contained digital evidence that the CP records from the 2015 LIMS in relation to Sample 3 previously existed in the 2019 LIMS but was intentionally deleted.
190. Further, the scale of the LIMS is considerable, with over 63,277 samples and the match criteria of the 2015 with ADMAS are in the 99<sup>th</sup> percentile (across fields including sample codes, laboratory codes, steroid profile values, pH values, event types, gender of athletes) and the analytical data for AAF's legitimately reported in ADAMS by the Moscow Laboratory between 2012 and 2015 matches the data in the 2015 LIMS.
191. The content of the emails and attachments recovered in the McLaren Investigation matches the associated data within the 2015 LIMS. The 2015 LIMS provided by a whistleblower and the McLaren emails did not come from the same source.
192. The Sole Arbitrator accepts the WADA IID and Independent Experts' forensic analysis (of pdf and raw data files and alterations to specific LIMS data) showing that data was deleted, altered and modified in the 2019 LIMS and further rejects the Athlete's argument that the fact the 2019

LIMS data was manipulated renders the 2015 LIMS data unreliable. Indeed, it was the provision of the 2019 LIMS to WADA as part of the Moscow Data which enabled the comparison with the 2015 LIMS to take place in the first place, for the Carved Data to be discovered and, in doing so gave, greater weight to the 2015 LIMS authenticity and reliability in the Sole Arbitrator's view

193. From the evidence filed by WT before the Sole Arbitrator and heard at the Hearing, a manipulation of the Athlete's 2019 LIMS data evidently occurred and was for the betterment and protection of the Athlete.
194. WADA IID's evidence is that the general Protection scheme undertaken by the Moscow Laboratory especially in 2013 and 2014 was designed to conceal doping by Russian athletes and not to falsely implicate them. The Sole Arbitrator accepts this evidence.
195. Dr Broséus explained in detail in his presentation how the WADA investigations, utilising the expertise of Vigitek and the Independent Experts have authenticated and established that the 2015 LIMS is more reliable than the 2019 LIMS both generally and specifically with regards to the Athlete's samples. On the basis of their evidence, including substantial corresponding reports, the Sole Arbitrator is comfortably satisfied that the 2015 LIMS is reliable evidence upon which WT can rely.
196. WADA IID investigated whether the Moscow Data were the result of later manipulation of the respective files and data because the information differed in important respects from ADAMS and the 2015 LIMS. The investigation by WADA IID with the Independent Experts reveals to the comfortable satisfaction of the Sole Arbitrator, that the Moscow Data which constitute the factual basis of the ADRV charge against the Athlete are correct, while the 2019 LIMS data have been manipulated. This determination is consistent with the decision of the Panel in CAS 2020/O/6689 which concluded (at para. 67) that:

*"The audacity of the manipulation of Forum Messages, the implausibility of Mr Mochalov's explanations for his purported activities, the little weight given to his evidence in light of the fact that he was not made available for cross-examination and the extent of the activities and deletions of the Moscow Data in December 2018 and January 2019 all leave the Panel convinced, both on the balance of probabilities and to the higher standard of strict/full proof, that the manipulation of the Moscow Data was carried out for the purpose of mitigating or avoiding consequences of the doping schemes identified by the WADA Independent Commission and the McLaren Reports".*

197. The Carved LIMS is observable digital evidence that the 2015 Database was not "*intentionally or inadvertently manipulated*" at any time between 2015 and the time it came into WADA's possession. If the 2015 Database had been subject of such nefarious interference, then it would have been impossible for WADA to find a matching version within the Moscow Data in January 2019.
198. The Athlete benefited from the alteration of this data. Moreover, manipulation of the Moscow Data has been held as a factual finding by CAS, as provided in CAS 2020/O/6689, [614], "*The Panel finds that, prior to the Moscow Data being retrieved by WADA in January 2019, and during its*



*retrieval, it was subjected to deliberate, sophisticated and brazen alterations, amendments and deletions. Those alterations, amendments and deletions were intentionally carried out in order to remove or obfuscate evidence of improper activities carried out by the Moscow Laboratory as identified in the McLaren Reports or to interfere with WADA's analysis of the Moscow Data".*

**(i) Possible Source of Prohibited Substance**

199. A key submission made by the Athlete was, in the event it was proved to the comfortable satisfaction of the Sole Arbitrator that her Sample(s) did contain TMZ, that the possible source could be attributed to medical reasons. She submitted that, in 2013 and 2014, she was taking "cardioprotectors" including "Mildronat" (which contains meldonium) for a chronic cardiac condition. At the time it was not a prohibited substance. In relation to her medical history she stated that:

*"In May 2013, I was subjected to a regular medical check-up at FMBA clinic. After performing a functional test, I received a recommendation from a cardiologist to use "cardioprotectors". In November 2013, I received again a recommendation to take "cardioprotectors" on a regular basis for the following 12 months ... In September 2014, after a regular check-up at the FMBA clinic, I was diagnosed with a chronic cardiomyopathy and prescribed Mildronat".*

200. On 13 July 2021, the Athlete obtained copies of her medical records from FGBUZ Clinical Hospital No.86 of "Federal scientific and clinical sport medicine center of Federal medical and biological agency (FGBU FNKZSM FMBA of Russia)" - FMBA of Russia which included records of her medical visits on 15 May and 5 November 2013. In addition, on 15 September 2014 the Athlete attended a cardiologist, Dr. Valezneva Oxana Yurievna of the FMBA. The preliminary diagnosis was: *"Abnormal results following functional testing of cardio-vascular system (miocardosis 1 degree). Patient Ticket: cardio [r94.3] first discovery, chronic".* The therapeutic recommendations included: *"Mildronat 500 mg x2/day per 1 month; ECG control in 1 month".*
201. The Athlete could not recall all the medications she was prescribed in 2013 given the elapse of time. She indicated that she had *"requested a full copy of my medical records from the FMBA clinic to get a full picture"* but these were not forthcoming and her medical records from her home town of Penza did not keep any records for that period when her Samples were taken.
202. The position of WT in relation to the relevance of the Athlete's medical history was that her medical condition and use of Mildronat remain "alleged" and in any event does not and cannot provide an explanation for the detection of and her Use of TMZ and has no relevance to this determination. WT further noted that TMZ could not, under any circumstances, have been confused with meldonium in the Moscow Laboratory analysis and relied upon the oral testimony of Prof. Ayotte who confirmed this point. The Sole Arbitrator is therefore comfortably satisfied that the Athlete has not demonstrated any other route or source of the TMZ in her Samples.
203. The Sole Arbitrator accepts Professor Ayotte's evidence and conclusions in relation to the Athlete's Samples, namely that TMZ was detected in the ITP in each her Samples and there was

a successful CP for Sample 3. This constitutes a breach by the Athlete of Article 2.2 of the WTADR and amounts to an ADRV for “Use” of a Prohibited Substance.

**(ii) Knowledge**

204. The Athlete submitted a witness statement (13 July 2021) and gave evidence at the hearing. Ms Danilova spoke to her international career history. In particular she stated that she “... *have never intentionally used prohibited substances*” and noted that she had been subjected to doping control tests since 2012, resulting in over 72 anti-doping tests having been conducted by her both within Russia, outside Russia. She also disputed any knowledge of the Protection Scheme or that she had benefited from it:

*“Before the first media reports in 2016, I have never heard anything about a “doping protection scheme” and I have never been offered to get involved in this program. I have never met Dr Rodchenkov or anyone from the Moscow anti-doping laboratory staff”.*

205. WT submitted that the Athlete’s testing history has no bearing and its irrelevant to this determination. This is necessarily the case in determining if an ADRV has been committed as the facts and circumstances of the particular alleged ADRV are the relevant consideration. A prior “clean” or “unclean” record could be relevant at the sanctions consideration stage.
206. The Athlete is charged with an ADRV for Use. She has not been charged with tampering or attempted tampering. WT conceded that it cannot establish that the Athlete was a knowing participant in the so-called “Russian Doping Scheme”.
207. WT were however clear that knowledge of the Protection Scheme on the part of the Athlete was not a necessary ingredient to establish Use. But a lack of knowledge did not absolve her from responsibility for using TMZ and being charged with an ADRV for Use as a result. This is because Article 2.2.2 of the WTADR clearly makes it each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. *“Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method”.*

**VIII. SANCTION/INELIGIBILITY**

208. Pursuant to Article 2.2. WTADR, the Athlete has committed an ADRV for the Use of TMZ.
209. TMZ is a Prohibited Substance, so described on the WADA List of Prohibited Substances and Prohibited Methods and is not a Specified Substance. Article 10.2.1 WTADR provides that:

*“10.2.1 The period of Ineligibility, subject to Article 10.2.4 shall be four (4) years where:*

10.2.1.1 *The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional ...*

(...)

10.2.3 *As used in Article 10.2, the term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not “intentional” if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered “intentional” if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance”.*

210. In this regard WT have made submissions in relation to the sanctions be imposed upon the Athlete. They have sought:

- i. a period of ineligibility of four (4) years...*
- ii. credit against the Athlete’s 4-year period of ineligibility the time served provisionally suspended from 26 May 2021 to the date of this Award;*
- iii. order the disqualification of any results obtained by the Athlete between 28 June 2014 and 26 May 2021 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Article 10.10 ADR.*

211. WTADR Article 10.2.1 mandates a 4-year period of Ineligibility, unless the Athlete can establish that her Use of TMZ was not intentional.

212. WTADR Article 10.2 provides:

*“As used in Article 10.2, the term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk ...”.*

213. The Athlete has consistently denied Use of TMZ and/or involvement in the DPM or of the Russian Protection Scheme. She has provided no credible account for the TMZ that was found to be in each of her Samples. While she has raised a series of possible alternative sources for the evidence of TMZ in her Samples such as her medical use of meldonium and the unreliability of the 2015 LIMS Database from which the digital evidence of the TMZ arises, these have all been considered by the Sole Arbitrator and amount to suggestions and unsubstantiated claims

without corresponding evidence that could demonstrate that the Use of TMZ by her was not intentional.

214. The Athlete provides no explanation for the fact that Trimetazidine was conclusively and consistently detected in her urine samples in 2014, 2015 – thereby attesting to her Use of the same; notably, and most importantly, her Third sample collected June 2015, which was subject to a Confirmation Procedure and detected Trimetazidine at a concentration 100 times higher than the MRPL.
215. Consequently, the Athlete is subject to a four year period of Ineligibility. In accordance with WTARD Article 10.13.2, credit shall be afforded to her for the time served while she was provisionally suspended from 26 May 2021 to the date of this Award.
216. WT Article 10.10 addresses disqualification of results arising from an ADRV and provides as follows:

*“In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes”.*

217. In relation to the Disqualification of the Results of Competitions pursuant to WT Article 10.10 (“Disqualification”) the Sole Arbitrator notes that WT seeks disqualification of all results of the Athlete for all competitions she participated in from 28 June 2014 to 26 May 2021 together with the forfeiture of any prizes, medals, prize money and appearance money. This is a period of almost seven years and is considerably longer than the maximum period of ineligibility of 4 years that can be imposed according to the WTADR provisions. Thus, an assessment of whether fairness would require an alternative period of Disqualification to apply needs to be considered.
218. The import of the retroactive Disqualification provision of competitive results, is tied to the integrity of sporting competition with a view to rectifying the record books for the sport and turning the dial back as it were as if the cheating had not occurred (cf. CAS 2016/A/4464, at para. 194 and CAS 2016/O/4469, at para. 176). But against this imperative is the corresponding injustice that could accord to the Athlete. As the CAS Panel in CAS 2020/O/6759 explained:  
  
*“... it should be taken into account that, in certain exceptional circumstances, the strict application of the disqualification rule can produce an unjust result. In particular, this may be the case when the potential disqualification period covers a very long term, which is normally the case when the facts leading to the ADRV took place long before the adjudicating proceedings started which usually occurs when they are opened as a result of the re-testing of a sample or of the uncover of a sophisticated doping scheme. In addition, in this type of cases it may be difficult to prove that the athlete at stake used prohibited substances or methods during such a long period of time”.*

219. This fairness exception has been acknowledged by the CAS jurisprudence and applied in appropriate cases to accommodate the specific circumstances of the case and the period of time in which the sporting results are to be disqualified. The Panel in CAS 2020/O/6759, para.91 specify that, *“the CAS panels have frequently applied the fairness exception and let results remain partly in force when the potential disqualification period extends over many years and there is no evidence that the athlete has committed ADRVs over the whole period from the ADRV to the commencement of the provisional suspension or the ineligibility period (see e.g. CAS 2016/O/4481, CAS 2017/O/4980, CAS 2017/O/5039 and CAS 2017/A/5045). The CAS case law confirms that the panels have broad discretion in adjusting the disqualification period to the circumstances of the case”*.
220. Therefore, it is necessary and appropriate to consider if the particular circumstances of this case warrant an exception on fairness grounds to the mandatory Disqualification of results - as per CAS 2005/C/976 & 986 stating at para. 143: *“To find out, whether a sanction is excessive, a judge must review the type and scope of the proved rule-violation, the individual circumstances of the case, and the overall effect of the sanction on the offender”*.
221. The Athlete did not specifically address the Disqualification point or argue that fairness warranted a period lesser than that sought by WT. But WTADR Article 10.10 makes specific provision for a fairness assessment and thus the Sole Arbitrator has considered its application in the circumstances of this case. The Athlete used TMZ in 2014 and 2015, this was not done by accident or on a single occasion, but rather three occasions. However, there is no evidence that the Athlete used Prohibited Substances or Methods after June 2015, notwithstanding that her ADAMS record shows that she has been tested on at least 34 times since then. WT submitted no evidence of any ADRV post the collection of Sample 3 on 6 June 2015. Consequently, the Sole Arbitrator finds that the Disqualification of all competitive results through to the start of the Ineligibility period applied, may constitute excessive punishment. Rather it is more proportionate to apply the Disqualification over a period of time of four years, i.e. the same duration as the period of Ineligibility and do so from the date of Sample 3 (6 June 2015).
222. Consequently, in accordance with WRADR Article 10.10, the Sole Arbitrator finds that all the Athlete’s Competition results from 6 June 2015 to 5 June 2019 shall be disqualified with all the resulting consequences, including forfeiture of any medals, points and prizes.

## **IX. COSTS**

(...).

## **X. APPEAL**

226. Article 8 of the 2019 IBU ADR provides:

*“8.3 At the end of the hearing, or on a timely basis thereafter, the CAS panel will issue a written decision that includes the full reasons for the decision and for any period of Ineligibility imposed, including (if applicable) a justification for why the greatest potential Consequences were not imposed.*

8.4 *The decision may be appealed to the CAS as provided in Article 13. Copies of the decision will be provided to the Athlete or other Person and to other Anti-Doping Organisations with a right to appeal under Article 13”.*

227. Pursuant to Article A21 of the ADD Rules, this award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with reasons in accordance with Articles R47 et seq. of the Code of Sports-Related Arbitration, applicable to appeals procedures.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules that:**

1. Ms Elena Danilova is found guilty of an anti-doping rule violation in accordance with Article 2.2 of the 2015 World Triathlon ADR Rules between 2014 and June 2015 for the Use of the Prohibited Substance trimetazidine.
2. Ms Elena Danilova is sanctioned with a 4-year period of ineligibility commencing on the date of this Award.
3. The period of ineligibility shall commence from 26 May 2021 which is the date when the provisional suspension imposed on Ms Elena Danilova started to run.
4. All competitive results obtained by Ms Elena Danilova from 6 June 2015 to 5 June 2019 with all resulting consequences (including forfeiture of any medals, points and prizes) are disqualified.
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.