



**Arbitration CAS 2021/ADD/33 International Olympic Committee (IOC) v. Chijindu Ujah,  
award of 18 February 2022**

Panel: Ms Susan Ahern (Ireland), Sole Arbitrator

*Athletics (sprint)*

*Doping (ostarine; SARMS S-23)*

*Burden, standard and means of proof*

*Consequences of the disqualification of an athlete's results on the results of the relay team*

1. It is sufficient proof of an anti-doping rule violation (ADRV) under Article 2.1 of the IOC Anti-Doping Rules applicable to the Tokyo Olympics (ADR) *inter alia* if the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample is confirmed by the presence in the Athlete's B Sample of the same Prohibited Substance or its Metabolites or Markers. Article 3.1 of the ADR provides that the burden is upon the IOC to establish to the comfortable satisfaction of the Sole Arbitrator that an ADRV has occurred. Facts relating to an ADRV may be established by any reliable means in accordance with Article 3.2 ADR including by admissions.
2. The relay team falls outside of the definition of a "Team Sport" as defined in the ADR. However, where awards are given to teams in a sport which is not a Team Sport, Article 11.3 ADR provides that, in addition to any consequences imposed on the individual athlete(s) found to have committed the ADRV, the rules of the relevant International Federation determine the consequences of such ADRV on the team. According to Article 11.1 of the World Athletics Anti-Doping Rules 2021, the relay team is automatically disqualified from the Tokyo Olympics with all resulting consequences including forfeiture of any titles, awards, medals, points and prize money.

**I. PARTIES**

1. The International Olympic Committee ("IOC") is the supreme authority of the Olympic Movement and of the Olympic Games. The IOC has delegated some of its responsibilities related to the implementation of the Doping Control for the Games of the XXXII Olympiad (the "Tokyo Olympics") to the International Testing Agency ("ITA")<sup>1</sup>. This includes the delegation of results management and subsequent prosecution of potential Anti-Doping Rule Violations ("ADRV") to the ITA.

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<sup>1</sup> The ITA is constituted as a not-for-profit foundation which is tasked by International Federations and Major Event Organizers to deliver independent anti-doping programmes on their behalf.

2. Mr Chijindu Ujah (the “Respondent” or the “Athlete”) is an athlete from the United Kingdom and participates in athletics (predominantly as a sprinter in the 100m, 200m, and 4x100m disciplines). He represented the British Olympic Association at the Tokyo Olympics. He previously took part in the XXXI Olympiad in Rio de Janeiro (2016), reaching the semi-final in the individual men’s 100 metres.

## **II. FACTUAL BACKGROUND**

3. 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.
4. The IOC is a Signatory of the World Anti-Doping Code (“WADC”) and has enacted the IOC Anti-Doping Rules applicable to the Tokyo Olympics (as of March 2021) (the “ADR”).
5. While the IOC has delegated some of its responsibilities relating to the implementation of the Doping Control in relation to the Tokyo Olympics to the ITA, notwithstanding such delegation it remained responsible for WADC compliance in connection with all aspects of Doping Control conducted at the Tokyo Olympics.
6. Notwithstanding that the ITA is acting on its behalf, the IOC is in accordance with the ADR, to be considered as the party asserting any ADRV and for the purpose of any actions taken within the ADR Results Management process, including proceedings in front of the hearing body or in any other matter.
7. Article 7.1.1 ADR provides:

*“For Results Management relating to a Sample collected by the ITA on behalf of the IOC in accordance with Article 5 of these Rules or an anti-doping rule violation occurring during the Olympic Games Tokyo 2020, the IOC shall assume Results Management responsibility to determine whether an anti-doping rule violation was committed and, if so, all Consequences flowing from the anti-doping rule violation(s), including the applicable Disqualifications and other Consequences under Articles 9, 10.1, 10.2 and 11 of these Rules, the forfeiture of any medals, diplomas, points and prizes from the Olympic Games Tokyo 2020, and any recovery of costs applicable to the anti-doping rule violation. However, as part of its delegated responsibilities, the ITA shall be responsible to represent the IOC and act on its behalf and name in the conduct of the Results Management process for anti-doping rule violations arising under these Rules.”.*

8. The Athlete specialises as a sprinter and has won gold medals in the 4 x 100 metre relay at the World Athletics Championships in 2017 and at the European Athletics Championships in 2016 and in 2018. He has also won the title in the individual 100 metres at the 2017 Diamond League

final and has won podium places at numerous British Athletics Championships and a gold medal at the 2015 British Athletics Championships.

9. The Athlete was registered to take part in the Tokyo Olympics. He competed in the following Events:
  - (i) 100m sprint – he competed in Heat 7 on 31 July 2021, was placed third and qualified for the Semi-Finals. On 1 August 2021, he competed in Semi-Final 3, placed fifth. He did not qualify for the Final.
  - (ii) 4x100m sprint relay - he competed in Heat 1 on 5 August 2021, where his team placed second and qualified for the Final. On 6 August 2021, he competed in the Final, where his team placed second and won the silver medal.
10. On 6 August 2021, following the Final of the 4x100m sprint relay, the Athlete was subject to an In-Competition doping control under the Testing and Results Management authority of the IOC and urine sample no. A and B 3755059 (the “Sample”) was collected from the Athlete.
11. On his Doping Control Form (“DCF”) the Athlete listed the medication and supplements which he had taken over the 7 days prior to the Sample Collection, namely:

*“Magnesium, vitamin b12, multi vitamins, zma, calcium, sodium citrate, beta aleine, caffeine, omega 3, nitrate, cherry active, paracetamol, ibuprofen, ostocare, vitamin D, probiotic”.*
12. On 8 August 2021, the WADA-accredited laboratory in Tokyo, Japan (the “Laboratory”) reported an Adverse Analytical Finding (“AAF”) for the Prohibited Substances<sup>2</sup> SARMS enobosarm (ostarine) and SARMS S-23. These Prohibited Substances are selective androgen receptor modulators (“SARMS”) which can be used to stimulate muscle and bone growth and to reduce fat. They are prohibited by WADA at all times and are classified as non-Specified Substances under Section 1.2 (Other Anabolic Agents) of the 2021 WADA Prohibited List.
13. On 12 August 2021, the ITA (on behalf of the IOC) notified the Athlete of the AAF and that it was being brought forward as an apparent ADRV. Through the AAF notification, the Athlete was informed of: (a) the potential consequences of the AAF; and (b) his procedural rights, including the right to request analysis of the B-sample.
14. During the Period<sup>3</sup> of the Tokyo Olympics, the CAS ADD had pursuant to Article 7.6.1 ADR the power to impose a Provisional Suspension for an AAF. Given the timing of the AAF and the completion of the Athlete’s B-sample analysis the Period of the Tokyo Olympics had elapsed, together with the CAS ADD powers to provisionally suspend under the ADR:

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<sup>2</sup> ADR - “All Prohibited Substances shall be Specified Substances except as identified on the Prohibited List”. The WADA Prohibited List is incorporated into the ADR.

<sup>3</sup> The period of the Olympic Games Tokyo 2020 is defined as: “The period commencing on the date of the opening of the athlete village for the Olympic Games Tokyo 2020, namely, 13 July 2021, up until and including the day of the closing ceremony of the Olympic Games Tokyo 2020, namely, 8 August 2021”.

*"7.6.1 ... a Provisional Suspension shall be imposed by the CAS Anti-Doping Division promptly upon or after the review and notification described in Article 7.2.3 of these Rules and the Athlete or other Person being given the opportunity to be heard as specified in Article 7.6.3. In accordance with Article 7.1.2 of these Rules, the scope of the Provisional Suspension shall be limited to the Olympic Games Tokyo 2020".*

15. On 12 August 2021, the Athlete was provisionally suspended by the Athletics Integrity Unit ("AIU") on behalf of World Athletics. The suspension was not challenged by the Athlete.
16. The Athlete requested that the B-sample be analyzed and, on 19 August 2021, the Laboratory confirmed the findings of the A-sample analysis, namely the AAF for the Prohibited Substances enobosarm (ostarine) and S-23.
17. On 20 August 2021, the ITA notified the Athlete of the B-sample analysis results and the confirmation of the AAF and notified him that it would be referring the matter to the CAS ADD for a determination on the ADRV and the imposition of Consequences under the ADR.
18. On 24 August 2021, the ITA sent the Laboratory Documentation Package for the B-sample to the Athlete.
19. The Athlete accepts the ITA's account of the background to the In-Competition test undertaken by the Athlete at the Tokyo Olympics as contained in its Application to the CAS ADD and summarised above.
20. Article 7.2.3.8 ADR provides that:

*"In parallel or upon conclusion of the notification process hereinabove, an application pursuant to Article 8.1.1 of these Rules shall be filed by the ITA with the CAS Anti-Doping Division, as per Article 8 of these Rules and the CAS Anti-Doping Division Arbitration Rules"* (emphasis added).

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

21. On 8 September 2021, the IOC through the representation of the ITA on its behalf, made an Application pursuant to Article 8.1.1 ADR to the CAS ADD to hear its claim of an asserted ADRV against the Athlete, in relation to the Presence of the Prohibited Substances enobosarm (ostarine) and S-23 in the Athlete's Sample. It submitted its application and supporting evidence in accordance with Article A13 of the CAS Anti-Doping Division Arbitration Rules (the 'Rules').
22. On 17 September 2021, a 14-day extension of time was granted by the President of the CAS ADD for the submission of the Athlete's Answer.
23. On 27 September 2021, the Parties jointly appointed as the Sole Arbitrator in the current proceedings: Ms Susan Ahern, Barrister, Dublin, Ireland.
24. On 14 October 2021, the Athlete's Answer in response to the IOC's Application on an ADRV was received by the CAS ADD Office, in accordance with Article A14 of the Rules.

25. On 15 October, the CAS ADD Office invited the Parties to state whether they considered a hearing was necessary in this procedure and to do so by 20 October 2021.
26. On 20 October 2021, each of the Parties responded. The Athlete considered that no hearing was necessary. The IOC requested either the holding of a short hearing on the issue of the new arguments raised and new evidence presented by the Athlete in his Answer or a further round of submissions.
27. On 22 October 2021, the Athlete submitted that a further round of submissions was not required as in his view no new arguments were raised or evidence presented.
28. On 22 October 2021, in reference to the IOC's request to hold a hearing or to be granted a second round of written submissions, the Sole Arbitrator determined that the Parties would file a further written submission. A period of 7 days was granted to the IOC to file a Reply strictly limited to the Athlete's arguments regarding the disqualification of his results obtained in the individual 100m sprint competition during the Tokyo Olympics. Following which the Athlete would be granted a similar period of time to respond. No hearing was proposed to be held in this matter.
29. On 29 October 2021, the IOC Reply was received by the CAS ADD Office and then sent to the Athlete who was afforded 7 days in which to respond by way of Rejoinder.
30. On 8 November 2021, the Athlete filed his Rejoinder.
31. On 8 November 2021, the Parties were informed by the CAS ADD Office that the Sole Arbitrator determined that she was sufficiently well informed to determine the matter on the papers and that no hearing would be held in this matter in accordance with Article A19.3 of the Rules. On the same date the Order of Procedure was sent to each of the Parties for signature.
32. On 9 December the Claimant signed and returned the Order of Procedure.
33. On 15 December, the Athlete signed and returned the Order of Procedure.

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

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

34. The IOC's submissions in essence, may be summarized as follows:
35. The Claimant asserts an ADRV against the Athlete in relation to the Presence of the Prohibited Substances enobosarm (ostarine) and S-23 in the Athlete's Samples.
36. Article 2.1 of the ADR provides that the presence of a Prohibited Substance or its metabolites or markers in an athlete's sample constitutes an ADRV and sufficient proof is established "... where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its metabolites or Markers found in the Athlete's A Sample" as is the case for

the Athlete whose B-sample confirmed the presence of enobosarm (ostarine) and S-23, as found in the Athlete's A-sample. These substances are classified as non-Specified Substances under Section 1.2 (Other Anabolic Agents) of the 2021 WADA Prohibited List are prohibited by WADA at all times. The Athlete has, therefore, committed an ADRV pursuant to Article 2.1 of the ADR.

37. The Claimant submits that it has discharged its burden of proof, pursuant to Article 3.1 of the ADR establishing the Article 2.1 ADRV for Presence of a Prohibited Substance.
38. The Claimant submits that pursuant to the ADR, the consequences of an ADRV are limited to consequences in connection with the Tokyo Olympics and any sanctions that extend beyond the Tokyo Olympics will be referred to World Athletics, the Athlete's International Federation. The jurisdiction of the CAS ADD is in relation to Consequences pertaining to the Tokyo Olympics.
39. Article 7.9 ADR provides that;

*"Results Management decisions or adjudications will address and determine without limitation (i) whether an anti-doping rule violation was committed or a Provisional Suspension should be imposed, the factual basis for such determination, and the specific articles of these Rules violated, and (ii) all Consequences flowing from the anti-doping rule violation(s), including applicable Disqualifications and other Consequences under Articles 9, 10.1, 10.2 and 11 of these Rules, any forfeiture of medals, diplomas, points and prizes, and any recovery of costs (if applicable). In accordance with Article 7.1.2 of these Rules and Article 7.5 of the Code, the completion of the Results Management of the case in terms of sanctions beyond the Olympic Game Tokyo 2020 itself shall be referred to the applicable International Federation".*

40. The consequences of an ADRV are specifically set out in Articles 9 (Automatic Disqualification of Individual Results), 10 (Sanctions on Individuals) and 11 (Consequences to Teams) of the ADR, as well as Article 11.1 (Consequences to Teams) of the WA ADR. In reliance upon these ADR provisions, the IOC seeks (i) the Disqualification of the Athlete's results and those of his team members in the 4 x 100m sprint relay Final Competition in which they won the Silver Medal and the corresponding forfeiture of all medals, diplomas, points and prizes and (ii) the Disqualification of the Athlete's results in the 100m sprint Competition and the corresponding forfeiture of any medals, diplomas, points and prizes.
41. In relation to the Athlete's submissions regarding the exercise by the Sole Arbitrator of her discretion under Article 10.1.1. ARD not to Disqualify the results he obtained in the individual 100m sprint Competition during the Tokyo Olympics the IOC made a series of submissions including:
  - the inadequacy of the evidence submitted by the Athlete in relation to (i) his ingestion of the Prohibited Substance, (ii) Contamination and (iii) Fault;
  - that all of the Athlete's individual results at the Tokyo Olympics (including his individual 100m sprint results) should be disqualified, given that: (a) the Athlete tested positive for SARMs, which are anabolic agents with performance-enhancing benefits; (b) the Athlete

tested positive for two separate SARMs; (c) the Athlete tested positive at the end of the Tokyo Olympics, after he had competed in four separate races; (e) the standard period of Ineligibility for the presence of SARMs is four years, reflecting the seriousness of the ADRV; and (f) in all those circumstances, a disqualification of all results is necessary to protect the integrity of the Tokyo Olympics, the athletics disciplines in which the Athlete took part, and so as not to disadvantage other clean athletes.

- That he would not suffer prejudice and prejudgment of the matter when it comes before the AIU/World Athletics tribunal in due course.

42. The Claimant seeks the following reliefs from the CAS ADD:

- (i) *"The Application is admissible.*
- (ii) *Chijindu Ujah is found to have committed an anti-doping rule violation pursuant to Article 2.1 of the IOC Anti-Doping Rules applicable to the Games of the XXXII Olympiad Tokyo 2020.*
- (iii) *The result obtained by Chijindu Ujah in the Final of the 4x100m sprint relay shall be disqualified, with the resulting forfeiture of any and all medals, diplomas, points or prizes.*
- (iv) *All further individual results obtained by Chijindu Ujah on the occasion of the Olympic Games Tokyo 2020 shall be disqualified, with the resulting forfeiture of any and all medals, diplomas, points or prizes.*
- (v) *The British 4x100m sprint relay team at the Olympic Games Tokyo 2020 shall be automatically disqualified, with all resulting consequences for the British 4x100m sprint relay team, including the forfeiture of all titles, awards, medals, points and prize and appearance money.*
- (vi) *World Athletics is requested to consider any further action within its own competence".*

## B. The Athlete

- 43. The Athlete's submissions in essence, may be summarized as follows:
- 44. The Athlete submits that he is shocked by the Adverse Analytical Finding which he does not contest. It was submitted that *"Prior to the ADRV, Mr Ujah had an excellent anti-doping record and never before breached any anti-doping rules. This is the Athlete's first ADRV"*.
- 45. The Athlete does not contest the Consequence of the automatic disqualification of the result obtained by him and his team mates in the 4 x 100m sprint relay Final.

46. However, the Athlete submitted that the Sole Arbitrator should not exercise her discretionary power under Article 10.1.1<sup>4</sup> of the IOC ADR to disqualify all of his other individual results at the Tokyo Olympics (as set out in para.9 (i) above) for reasons set out below:

- There was no intention by the Athlete to ingest the Prohibited Substance, the AAF was due to his unintentionally taking a Contaminated Product (“i.e. “*a product that contains a Prohibited Substance that is not disclosed on the product label or in the information available in a reasonable Internet search*””).
- It would be premature and inconsistent with the requirements of fair process, to exercise the discretion at this juncture as the Athlete’s investigations are ongoing, and his case will be explored more fully in the context of the proceedings to be brought by the Athletics Integrity Unit (“AIU”) on behalf of World Athletics in due course. The exercise of such discretion would in effect prejudge the matter in particular given the Athlete’s intention to raise in his defense the arguments that he bore *No Fault or Negligence* and/or *No Significant Fault or Negligence* (as defined in the ADR) for the presence of the Prohibited Substance in his Samples.

47. By way of further explanation, the Athlete provided details of his ongoing investigations into the source of which he asserts is the Contamination responsible for his AAF for the Prohibited Substance. In particular:

- On his DCF the Athlete listed various supplements including “*beta aleine [sic]*”. This is a supplement that the Athlete used regularly for some time and which he describes as a substance “*which acts as a lactic acid ‘buffer’*”.
- The Athlete submitted several of the supplements listed on his DCF to LGC Limited (UK Accreditation Services accredited testing Laboratory No: 1187) for testing. He asserts that: “*The results from those tests have confirmed that the beta-alanine supplement contains the presence of the Prohibited Substances (ostarine and S23) even though the product label does not list those substances and it is not clear that supplement contains Prohibited Substances on a reasonable Internet Search*”.
- The Athlete’s enquiries are ongoing in anticipation of the proceedings under the auspices of the AIU/World Athletics.

48. In response to the IOC’s Reply the Athlete further submitted that: the IOC had gone further than the narrow issue upon which a reply was permitted by the Sole Arbitrator in relation to the submissions they made and the discretion foreseen by Article 10.1.1. of the ADR. In particular the Athlete asserts that the IOC Reply identifies matters which more properly pertain to “*his case in proceedings of a different remit (i.e. before World Athletics)*” and while he does not consider the instant proceeding to be “*in any way “subservient” to any future proceedings by World Athletics. The two procedures are entirely separate ... [and his] submissions have explained why this is not the appropriate*

<sup>4</sup> Article 10.1 of the ADR applies to ADRV’s in Individual Sports occurring during or in connection with the Tokyo Olympics. Pursuant to Article 10.1, an athlete’s ADRV may lead to the disqualification of all the individual results of an athlete, and consequences including forfeiture of all medals, diplomas, points and prizes.

*forum for the ventilation of the IOC's substantive points, and why he has been unable fully to set out his submissions on those issues at this stage and in this context".*

49. The Athlete seeks the following reliefs from the CAS ADD:

*"21.1 Not to disqualify his individual results other than the relevant Competition (i.e. the 4 x 100 metre relay event).*

*21.2 To order payment by the ITA of all costs of the arbitration, and a contribution to Mr Ujah's costs".*

## V. JURISDICTION

50. The "Introduction" to the ADR sets out the scope of the application of the ADR and states (in respect of the category of athletes that:

*"These Rules apply in relation to the Olympic Games Tokyo 2020. They shall, without limitation, apply to all Anti-Doping Activities and Doping Controls over which the IOC has jurisdiction in relation to the Olympic Games Tokyo 2020.*

*These Rules shall, without limitation, apply to ... (b) all Athletes entered in the Olympic Games Tokyo 2020 or who have otherwise been made subject to the authority of the IOC in connection with the Olympic Games Tokyo 2020 (see below); ... Athletes entered in the Olympic Games Tokyo 2020 or who have otherwise been made subject to the authority of the IOC in connection with the Olympic Games Tokyo 2020 are bound by these Rules as a condition of eligibility to participate in the Olympic Games Tokyo 2020 ...".*

51. In addition, Article 8.1 of the ADR provides for the jurisdiction of the CAS ADD and the application of the CAS ADD:

*"8.1.1 Where the ITA decides to assert an anti-doping rule violation, the ITA shall promptly file an application with the CAS Anti-Doping Division, acting as first-instance authority to conduct proceedings and to issue decisions, as per the CAS Anti-Doping Division Arbitration Rules. The application shall be filed in the name of the IOC by the ITA acting on the IOC's behalf. A copy of such application (which shall be deemed as the notice of charge as defined in the International Standard for Results Management) will be provided to the Athlete, the Athlete's NOC, the Athlete's International Federation, the relevant National Anti-Doping Organisation of the Athlete, the IOC and WADA.*

*8.1.2 The composition of the hearing panel and procedures applicable to the CAS Anti-Doping Division shall be as per the CAS Anti-Doping Division Arbitration Rules".*

52. Further Rule A1 of the Arbitration Rules of the CAS ADD (the "ADD Rules") provides:

*"The Anti-Doping Division of the Court of Arbitration for Sport (CAS ADD) has been established to hear and decide anti-doping cases as a first-instance authority pursuant to a delegation of powers from the International Olympic Committee (IOC), International Federations of sports on the Olympic programme (Olympic IFs), and any other signatories to the World Anti-Doping Code (WADC). These WADC signatories have delegated their powers to CAS ADD to decide whether or not there has been a violation of their anti-doping rules, as well*

*as to decide any sanction, if applicable, in accordance with the WADC. CAS ADD and these procedural rules have been established in conjunction with the applicable anti-doping rules of the WADC signatories concerned”.*

Rule A2 of the Arbitration Rules provides:

*“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 WADC signatory 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 WADC signatory, by contract or by specific agreement”.*

53. As a condition of participation in the Tokyo Olympics, the Athlete had to abide by the ADR. He submitted to testing on 6 August 2021 and as part of that process signed the Doping Control Form which provides for the jurisdiction of the CAS ADD to deal with any potential ADRV's:

*“The ITA will in particular initiate and undertake testing activities on the occasion of the Games, determine whether or not a potential anti-doping rule violation has occurred pursuant to the Rules, and if so, file the case with the Court of Arbitration for Sport for decision”.*

54. The jurisdiction of the CAS ADD is not contested by the Athlete; indeed, it is overtly accepted.
55. The IOC relies on ADR Article 8.1.1 as conferring jurisdiction on the CAS ADD and the ADD Rules make provision for receipt of a referred arbitration by the CAS ADD by *inter alia* the IOC.
56. Article 8.2.1 ADR provides for the powers of the CAS ADD:

*“8.2.1 In all procedures relating to any alleged anti-doping rule violation pursuant to these Rules, the right of any Person to be heard pursuant to paragraph 3 to the Bye-law to Rule 59 of the Olympic Charter will be exercised solely before the CAS Anti-Doping Division. Pursuant to Rule 59.2.4 of the Olympic Charter, the IOC Executive Board delegates to the CAS Anti-Doping Division all powers which are necessary for it to take the measures and sanctions envisaged by these Rules including, in particular, Articles 9, 10.1, 10.2 and 11 ...”*

57. On the basis of the above, the Sole Arbitrator determines that the CAS ADD has jurisdiction to hear and determine this matter.
58. The scope of the jurisdiction of the CAS ADD with regard to the Tokyo Olympics is not however unlimited. In accordance Articles 10.2.2, 7.9 and 7.1.2 of the ADR, *“completion of the Results Management in the case in terms of sanctions beyond the Olympic Games Tokyo 2020 itself shall be referred to the applicable International Federation”*. Therefore, World Athletics will be responsible for the management of any Consequences of the ADRV beyond the Olympic Games.

## VI. APPLICABLE LAW

59. In accordance with Article A20 of the Rules, the Sole Arbitrator 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”.
60. The ADR provides at Article 5.2 that the IOC has authority over anti-doping testing at the Tokyo Olympics and consistent with the delegation of its authority to conduct Testing to the ITA, the ITA does so on behalf of the IOC:

*“5.2.1 In accordance with Article 5.2.3 of the Code, the IOC shall have In-Competition and Out-of-Competition Testing authority over all Athletes in connection with the Olympic Games Tokyo 2020.*

*5.2.2 Accordingly, the ITA may conduct In-Competition and Out-of-Competition Testing on the IOC’s behalf, on any Athlete entered to or who may be entered to participate in the Olympic Games Tokyo 2020. The ITA may notably conduct Out-of-Competition Testing on these Athletes starting from the Period of the Pre-Olympic Games Tokyo 2020.*

*5.2.3 The ITA may require any Athlete over whom the IOC has Testing authority to provide a Sample at any time and at any place”.*

61. Accordingly, the Sole Arbitrator determines that the applicable ADR are the IOC Anti-Doping Rules of the Tokyo Olympic Games 2020 which provide in Article 18.2 for the application of Swiss law and the Olympic Charter.

## VII. MERITS

62. Article 2.1 of the ADR sets out that the presence of a Prohibited Substance shall constitutes an ADRV:

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

*2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample*

*2.1.1 It is the Athletes’ personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1”.*

63. It is sufficient proof of an ADRV under Article 2.1 ADR *inter alia* if the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample is confirmed by the presence in the Athlete’s B Sample of the same Prohibited Substance or its Metabolites or Markers.
64. Article 3.1 of the ADR provides that the burden is upon the IOC to establish to the comfortable satisfaction of the Sole Arbitrator that an ADRV has occurred:

*"The IOC (or the ITA acting before the hearing panel on behalf of the IOC as set forth in Article 8.1.1 of these Rules) shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IOC 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 probabilities but less than proof beyond a reasonable doubt. Where these 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 of these Rules, the standard of proof shall be by a balance of probabilities".*

65. Facts relating to an ADRV may be established by any reliable means in accordance with Article 3.2 ADR including by admissions.
66. The Athlete does not challenge the ADRV under Article 2.1 ADR for the Presence of the Prohibited Substances. He accepts the results of the Sample testing which have been provided in relation to his 'A' and 'B' Samples, and that the Prohibited Substances enobosarm (ostarine) and S-23 were found in those Samples. Accordingly, on the basis of the evidence submitted by the IOC, the Sole Arbitrator determines that the IOC has demonstrated to her comfortable satisfaction that an ADRV has been committed by the Athlete contrary to ADR Article 2.1.
67. It is for the Sole Arbitrator to consider now what consequences should apply to the Athlete within the context of the CAS ADD jurisdiction under the ADR.

## VIII. CONSEQUENCES

### (i) For the 4 x 100m Sprint Relay Final – the Athlete

68. The Athlete was a member of the 4 x 100m sprint relay team for Great Britain at the Tokyo Olympics, following which Competition an AAF was found in his Sample and he has been determined to have committed and ADRV contrary to Article 2.1 ADR.
69. In assessing the Consequences applicable to the Athlete's ADRV, which is for an Individual Sport (being any sport that is not a Team Sport), Article 9 of the ADR provides:

*"An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, diplomas, points and prizes"* (emphasis added).

70. Consequently, the Athlete is subject to the automatic Disqualification of the result obtained by him in the Final of the 4 x 100m sprint relay, with all resulting Consequences including forfeiture of any medals, points and prizes including the Silver Medal won in that Final.

### (ii) For the 4 x 100m Sprint Relay Final – the other members of the relay team

71. The situation with regard to the impact of the Disqualification of the Athlete's results in the sprint relay Final on his fellow relay team members also requires addressing. In this regard, it is

also notable that the Athlete himself “accepts, as a result of Articles 9 and 11 of the IOC ADR, that his and his team-mates’ results in the 4 x 100 metre relay event (the “relevant Competition”) will automatically be disqualified”.

72. As defined in the ADR a “Team Sport” is “A sport in which the substitution of players is permitted during a Competition”, thus the relay team falls outside of that definition. However, Article 11.3 ADR provides for situations where members of a team in a sport which is not a Team Sport but where awards are given to teams and an ADRV arises during the Tokyo Olympic Period, then in such cases; “the CAS Anti-Doping Division shall apply the rules of the relevant International Federation to determine the Consequences on the team (e.g., loss of points, Disqualification from a Competition, Event or the Olympic Games Tokyo 2020, or other Consequences), in addition to any Consequences imposed pursuant to these Rules on the individual Athlete(s) found to have committed the anti-doping rule violation”.
73. The rules of World Athletics (being the relevant International Federation of the Athlete) provide at Article 11.1 of the World Athletics Anti-Doping Rules 2021 (“WA ADR”) for consequences for relay teams as follows:

“11.1 Where the Athlete who has committed an anti-doping rule violation competed as a member of a relay team, the relay team shall be automatically Disqualified from the Event in question, with all resulting consequences for the relay team, including the forfeiture of all titles, awards, medals, points and prize and appearance money. If the Athlete who has committed an antidoping rule violation competes for a relay team in a subsequent Event in the Competition, the relay team shall be Disqualified from the subsequent Event, with all the same resulting consequences for the relay team, including the forfeiture of all titles, awards, medals, points and prize money unless the Athlete establishes that they bear No Fault or Negligence for the violation and that their participation in the relay was not likely to have been affected by the anti-doping rule violation” (emphasis added).

74. The terms of Article 11.1 WA ADR are clear and mandatory in nature. As a consequence of the Athlete’s ADRV the relay team is hereby automatically Disqualified from the Tokyo Olympics with all resulting consequences including forfeiture of any titles, awards, medals, points and prize money, which will include the forfeiture of the Silver Medal won in the 4 x 100m sprint relay Final.

### (iii) For the Athlete’s other Results

75. A matter which is in contention between the IOC and the Athlete relates to the impact of the Athlete’s ADRV in relation to the other results he obtained at the Tokyo Olympics. This was the subject of a discrete additional round of submissions in this case.
76. An assessment of the scope and impact of Article 10.1 is relevant and appropriate as it is the source of the Sole Arbitrator’s discretion in relation to the Disqualification or otherwise of other results obtained by an athlete who committed an ADRV at the Tokyo Olympics. It provides:

“10.1.1 An anti-doping rule violation occurring during or in connection with the Olympic Games Tokyo 2020 may, pursuant to the decision of the CAS Anti-Doping Division, lead to Disqualification of all of the Athlete’s

*individual results obtained in the Olympic Games Tokyo 2020 with all Consequences, including forfeiture of all medals, diplomas, points and prizes, except as provided in Article 10.1.2.*

*Factors to be included in considering whether to Disqualify other results in the Olympic Games Tokyo 2020 may include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in other Competitions.*

*10.1.2 If the Athlete establishes that he/she bears No Fault or Negligence for the anti-doping rule violation, the Athlete's individual results in the other Competitions shall not be Disqualified, unless the Athlete's results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation" (emphasis added).*

77. Article 10.1.1 ADR contemplates a situation where an athlete may have competed in multiple Competitions throughout the duration of the Tokyo Olympics and yet return an ADRV in only one of them. While it is not an exhaustive list, certain factors are identified which the CAS ADD might consider in reaching its decision as to whether or not any other results in the Tokyo Olympics might be disqualified arising from the ADRV in another Competition. These include (i) the seriousness of the ADRV the Athlete committed and (ii) whether the Athlete tested negative in other Competitions.
78. There was no evidence put before the Sole Arbitrator that the Athlete had been tested in other Competitions. Therefore, there are no negative tests to consider. In terms of the seriousness of the ADRV, the Parties each made submissions the essence of which is summarised below.
79. The Athlete submitted that the discretion of the Sole Arbitrator should be exercised in his favour so that he could retain his individual 100m sprint results from the Tokyo Olympics on the basis that: (i) he has been tested many times and this is his first AAF, which was the result of him unintentionally taking a Contaminated Product, namely a *beta-alanine* supplement; (ii) that the supplement he purchased over the Internet was not for the purpose of competitive advantage and it did not identify the Prohibited Substances as ingredients and therefore he was not on notice of the risk of contamination; (iii) his belief that the concentrations of the Prohibited Substances would prove to be very low and his intention to undertake sample batch testing to confirm "*the likely provenance of the AAF*"; and (iv) that he (and his team-mates) had suffered sufficiently through the automatic forfeiture of his 4x100m relay Silver Medal.
80. The IOC submitted that there should be no exercise of discretion by the Sole Arbitrator and all of the Athlete's individual results at the Tokyo Olympics including his individual 100m sprint results should be disqualified, based upon (i) the seriousness of the Prohibited Substances, namely two separate SARMs, which are anabolic agents, the standard Ineligibility period for which is 4 years, (ii) the fact the Athlete had competed in 4 races at the Olympic Games before his AAF was returned and (iii) the requirement to uphold the integrity of the Olympic Games and not to disadvantage other athletes who competed without the presence of prohibited substances in their system. In addition, (iv) the Athlete's age, maturity and education mitigate against his being unaware of the risk of contamination from supplements. The IOC noted the Athlete's reliance upon the contaminated supplement scenario in mitigation of the seriousness of the ADRV and pointed to the fact that this is a "*mere assertion*" on the Athlete's part and the

only evidence provided in support of this (LGC Certificate) does not name the supplement, include a batch number or link the test of the supplement to the actual unnamed *beta-alanine* amino acid he declared on his DCF.

81. It is a serious matter when an ARDV for the Presence a Prohibited Substance is found to have been committed and more so where it involves non-Specified Substances to which the highest period of Ineligibility for a first offence applies (subject to any proven mitigation permissible under the WADC). In the context of a tournament or a major event such as the Olympic Games where an athlete may have participated in multiple Competitions prior to the ADRV arising, it naturally raises issues with regard to whether the athlete may have had the benefit of the Prohibited Substance for those prior Competitions which is contemplated specifically as a factor in Article 10.1.1. The interrogation of this question which goes to the heart of the integrity of those Competitions, usually involves *inter alia* scientific evidence and witness testimony – none of which we have at this juncture of the proceedings.
82. However, in assessing the factual circumstances of this case the evidence does demonstrate two key facts. First, on his DCF the Athlete listed the medication and supplements which he had taken over the 7 days prior to the Sample Collection, and this list included ‘*beta aleine [sic]*’. Secondly, the Athlete submitted in evidence that he consumed a supplement containing *beta-alanine* which he admitted he had been taking “*regularly for some time*”. The distance in time between the Sample collection following the 4 x 100m sprint relay Final on 6 August 2021 and the 100m Semi-Final on 1 August 2021 was 5 days. By his own admission the Athlete had consumed the supplement he asserts as the likely source of his AAF at the time of his participation in both Heat 7 of the 100m (31 July 2021) and Semi-final 3 of the 100m at the Tokyo Olympics. These circumstances are themselves serious in the view of the Sole Arbitrator but when taken together with the submissions of the IOC (above) raise the level of seriousness even higher and move the Sole Arbitrator to determine that the Athlete’s other results from the Tokyo Olympics, namely in the 100m sprint Competition should also be Disqualified.
83. As a separate argument, the Athlete asserted that the CAS ADD should avoid considering the full facts of the case due to his further prosecution by the AIU/World Athletics. He raised arguments both as to the prejudice and prejudgment any decision by the CAS ADD on the Disqualification of the Athlete’s other Results would have. However, no evidence of any prejudice was articulated or demonstrated by the Athlete and the Sole Arbitrator does not agree that any would arise by the making of the determination in relation to the Disqualification of the Athlete’s other results at the Olympic Games. Independent tribunals established for the purposes of determining anti-doping cases are both obliged and accustomed to reviewing the evidence presented to them and making their own determinations. This is even more so where the subsequent tribunal (in this matter) will have an entirely different scope and function and will hear evidence not put before the Sole Arbitrator due *inter alia* to jurisdictional constraints.
84. The Sole Arbitrator also wishes to deal with the further argument raised by the Athlete to the effect that the IOC went further than they were permitted or was necessary in their Reply arguments: “... the IOC’s Reply emphasises steps which would be required for a party to establish whether there was any Fault within the meaning of the ADD Rules (Reply, §§26-32). However, this is not relevant nor would it be required for the application of Article 10.1.1 of the IOC ADR”.

85. The IOC did make extensive submissions in relation to the inadequacy of (i) the evidence of ingestion; (ii) the evidence of contamination and (iii) the evidence to assess Fault as provided by the Athlete. It was not necessary for the Sole Arbitrator to consider all of these factors in making her determination within the scope of the CAS ADD jurisdiction under Article 10.1.1, and only those that were relevant were considered. However, had this case been heard by the CAS ADD during the Tokyo Olympics, their consideration would have been very relevant and necessary. Indeed, Article 10.1.1 contemplates such a situation by providing for a mitigation exemption in Article 10.1.2 which would necessitate the CAS ADD considering the issue of Fault on the part of the Athlete, so in this regard the Sole Arbitrator disagrees with the Athlete's position. The timing of this case is such that considerations as to the Athlete's Fault will be assessed no doubt by the AIU/World Athletics tribunal to follow.
86. Finally, World Athletics is requested to consider any further action within its applicable Anti-Doping Rules in relation to any sanctions to be imposed upon the Athlete.

## **IX. COSTS**

(...).

## **X. APPEAL**

92. 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. The request for arbitration filed on 8 September 2021 by the International Olympic Committee is upheld.
2. Mr Chijindu Ujah is found to have committed an Anti-Doping Rule Violation pursuant to Article 2.1 of the IOC Anti-Doping Rules applicable to the Games of the XXXII Olympiad Tokyo 2020.

3. Mr Chijindu Ujah is sanctioned with the disqualification of his results in the 4 x 100m sprint relay Final on 6 August 2021, and his results in the 100m sprint – together with the forfeiture of any medals, diplomas, points and prizes in accordance with Article 10.1 of the IOC Anti-Doping Rules for the Tokyo Olympic Games 2020.
4. The Great Britain men's sprint relay team results in the 4 x 100m sprint relay Final on 6 August 2021 are disqualified together with the forfeiture of any medals, diplomas, points and prizes in accordance with Article 11.3 of the IOC Anti-Doping Rules for the Tokyo Olympic Games 2020.
5. World Athletics is requested to consider any further action within its own jurisdiction and pursuant to its own Rules including determining any period of ineligibility.
6. The award is pronounced without costs, except for the ADD Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the International Olympic Committee, which is retained by the ADD.
7. (...).
8. All other motions or prayers for relief are dismissed.