

The Anti-Doping Hearing Panel
of the
International Biathlon Union

Decision
in the matter of
IBU v. Ms. Ekaterina Glazyrina

The Anti-Doping Hearing Panel (the “Panel”) composed of Christoph Vedder, Professor of Law, Munich, Germany (Chair), Janie Soublière, Attorney-at-law, Montreal, Canada, and Dr. Bo Berglund, Medical Doctor, Stockholm, Sweden heard the case of the IBU v. Ms. Ekaterina Glazyrina and, after holding a hearing on 16 October 2017, receiving various post hearing submissions and duly deliberating the facts and the law, renders the following decision in accordance with article 8.2.1 of the IBU Anti-Doping Rules (IBU ADR):

I. Statement of Facts

1. Ms. Ekaterina Glazyrina (the “Athlete”), an athlete under the jurisdiction of the Russian Biathlon Union (“RBU”), was subject to three doping controls in advance of the XXII Winter Olympic Games held in Sochi in 2014 (the “Sochi Games”):
 - an in-competition test on 19 December 2013 in Izhevsk, Russia, conducted by RUSADA after a race at the Russian Championship and, coded sample number 2866518 and laboratory reference no 18162, analysed by the WADA-accredited laboratory in Moscow
 - an in-competition test on 21 December 2013 in Izhevsk, conducted by RUSADA after another race at the Russian Championship and coded sample number 2867708 and laboratory reference no 18250, analysed by the Moscow laboratory
 - an out-of-competition test on 6 January 2013, conducted by RUSADA and, coded sample number 2870746 and laboratory reference no 0190, analysed by the Moscow laboratory.
2. The Athlete participated in the first three IBU World Cup events of the 2013/2014 season, i.e. in Östersund, Sweden, 22 November to 1 December 2013 with two races; in Hochfilzen, Austria, 3 to 8 December 2013 with three races; and in Annecy-Le Grand Bornand, France, 9 to 15 December 2013 with three races. The Athlete did not participate in the fourth WC event in Oberhof, Germany from 1 to 5 January 2014, but she participated in the fifth and sixth WC events, i.e. in Ruhpolding, Germany, 7 to 12 January 2014, with two races; and in Antholz, Italy, 16 to 19 January 2014, with two races
3. Prior to the Sochi Games, all the Athlete’s doping controls were conducted by RUSADA. IBU did not test the Athlete.
4. The Athlete participated in the Sochi Games competing in one race on 14 February 2014

and finishing 61st.

5. The McLaren Independent Person Investigation Report Part II (the "IP Report II"), published on 9 December 2016, and the documentation attached thereto, including email communications from and to the Moscow laboratory, indicated that samples collected from the Athlete may have contained prohibited substances.
6. The IP Report II reported among others that doping controls conducted by RUSADA may have been tampered with or manipulated, and that samples, analysed as yielding adverse analytical findings and/or as having initial screening procedures confirm the presence of prohibited substance, had been reported as being negative in ADAMS and not analyzed any further.
7. By letter of 22 December 2016, the IBU, through the RBU, notified the Athlete that it had initiated an investigation because of a possible anti-doping rule violation ("ADRV"). The Athlete was informed that, as indicated in the McLaren Report II, three of her samples that had been reported negative in the ADAMS system by the Moscow laboratory had in fact yielded initial positive screening. Specifically,
 - the analysis of the Athlete's urine sample coded number 2866518, collected on 19 December 2013, yielded the presence of one or more prohibited substances and
 - the analysis of the Athlete's urine samples coded number 2867708, collected on 21 December 2013, and number 2870746, collected on 6 January 2014 yielded "suspicious results".
8. In the same letter the IBU invited the Athlete to provide an explanation or relevant information to assist the IBU in its investigation and offered her to accept a voluntary provisional suspension pursuant to Article 7.11.5 of the IBU Anti-Doping Rules ("IBU ADR").
9. By letter of 12 January 2017, the RBU provided the IBU with a statement by the Athlete and screenshots of her ADAMS profile. The Athlete denied having committed any ADRV.
10. By letter dated 25 January 2017, the IBU requested that RBU provide a detailed report about, amongst others, the Athlete's three urine samples mentioned in the IP Report II. She was also asked to submit related documents such as her Doping Control Forms for all three samples ("DCF") and copies of the Laboratory Analysis Reports.
11. By letter dated 3 February 2017, the RBU enclosed, amongst others, the Athlete's DCF for all three samples, an undated letter from RUSADA to the RBU and a letter of 1 February 2017 from the Moscow laboratory to the RUSADA.
12. By letter of 10 February 2017, the IBU informed the Athlete that it considered that an ADRV had occurred by way of her (1) "use" of a prohibited substance or a prohibited method under Article 2.2 IBU ADR, (2) "tampering" with doping control pursuant to Article 2.5 IBU ADR, and (3) "complicity" under Article 2.9 IBU ADR. (The Panel notes that Article 2.9 did not exist in the edition of the IBU ADR applicable at the material time.) The IBU also notified the Athlete that she was provisionally suspended as of the same day. The IBU further reserved the right to extend its investigation to an ADRV for "presence" of a prohibited substance pursuant to Article 2.1 IBU ADR.

13. In the same letter, the Athlete was granted the opportunity to request a Provisional Hearing and to submit written observations in anticipation of this hearing in accordance with Article 7.11.3 et seq. IBU ADR.
14. The Athlete did not provide any observation or submission in response.
15. Further to IBU's request to the RBU, which was forwarded to the Russian Ministry of Sports, IBU received the Athlete's laboratory documentary package profiles for samples number 2866518, 2867708, and 2870746 from an unknown sender. The IBU forwarded these to the WADA-accredited laboratory in Seibersdorf, Austria for review. Upon the laboratory's request, the IBU then forwarded the Athlete's steroidal profiles to the laboratory.
16. Dr. Günter Gmeiner, Director of the Seibersdorf laboratory, orally informed the IBU that the analysis profiles were likely to relate to the same person, that they did not reveal any suspicious deviations and that they could not, by themselves, amount to an ADRV. Dr. Gmeiner opined that there were no signals that would indicate the application of the so-called Duchess Cocktail which allegedly consisted of metenolone, oxandrolone and trenbolone in the samples he had analyzed.
17. By letter of 29 June 2017 the IBU referred the matter to the IBU ADHP and submitted its reasoned statement together with 23 exhibits. The cover letter and the statement on behalf of the IBU including the exhibits were simultaneously copied to the RBU.
18. By letter of 18 August 2017 the Parties were notified that, according to Article 8.1.3 IBU ADR, a Panel was established to hear the Athlete's case; namely: Janie Soublière, Canada, Bo Berglund, Sweden and Christoph Vedder, Germany, acting as chairman.

II. Proceedings before the Anti-Doping Hearing Panel

1. The IBU ADHP

19. According to Article 8 IBU ADR, the ADHP is the competent body to decide whether, in a given case, an ADRV was committed. According to Article 47 of the IBU Constitution and Article 8.2.2 IBU ADR, the decisions of the ADHP may be appealed directly to the Court of Arbitration for Sport in Lausanne, Switzerland.
20. Although the ADHP is part of the institutional framework of the IBU and renders, in matters of alleged ADRVs, the final decision for the IBU, it acts in complete independence. As Article 8.1.2 IBU ADR states "*Each panel member must be otherwise independent of the IBU*". The Panel members appointed for the pending case have no prior involvement with the case.
21. Neither party has challenged the IBU ADHP's jurisdiction to hear the case.

2. Written Submissions

a. Summary of the IBU's Written Submissions

22. In its written statement of 29 June 2017 the IBU submitted that, pursuant to Article 3.2 IBU ADR, facts related to an ADRV may be established by any reliable means. The IBU mainly relied on the documentation reliable to it, including but, not limited to, the IP Report II and the supporting email communication, as well as the DCFs of the three doping controls in question, the Laboratory Analysis Report for the Athlete's samples and the laboratory profiles for the samples no 2866518 and no 2867708.
23. Based on that evidence the IBU concluded that the Athlete "*most likely*" committed an ADRV by use of a prohibited substance in violation of Article 2.2 IBU ADR.
24. According to the IBU, the Athlete's urine sample 2866518 collected on 19 December 2013 in Izhevsk was sent, together with 14 other samples, to the Moscow laboratory and, according to the chain of custody form, received by that laboratory on 23 December 2013. On 27 December 2013 the laboratory submitted an ADAMS Test Report stating that no prohibited substances were detected in sample 2866518.
25. However, the IBU submitted that EDP 0230, 0231 and 0232 of the IP Report II provides an email communication regarding the Athlete's sample 2866518 that was exchanged between three persons. Dr. Grigory Rodchenkov, then Director of the Moscow laboratory, Mr. Alexej Velikhodny, whom the IP Report identifies as one of the Liaison Persons of the Center of Sports Preparation for the Russian Team and the author of the so-called Duchess List, and an unidentified person. This series of email communications occurred on 25 December 2013, two days after the arrival of the Athlete's samples at the laboratory.
26. IBU relied on the evidence on file relating to an athlete code "A0241", which it said clearly related to Athlete by way of the identification of her sample number(s), her sex, the date and place of collection and the competition in question. This was further confirmed by way of her DCF's.
27. The email identified as EDP 0230 shows that on 25 December 2013 at 11.29 h, Mr. Velikhodny received an email which read, with express reference to the Athlete's sample 2866518 collected in Izhevsk on December 19 : "*Metenolone, oxandrolone, trenbolone*" and further down, in English translation, expressed: "*I think it is a bit too much and such samples should not get into the laboratory.*"
28. The IBU explained that, according to the IP Report II, the "Duchess Cocktail" was administered to Russian athletes who were intended to participate at the Sochi Games and consisted of metenolone, oxandrolone and trenbolone, all of which are anabolic-androgenic steroids like testosterone. This were the same three substances detected in the Athlete's sample coded 2866518.
29. The IBU then relied on a later round of email exchanges regarding the Athlete between Dr. Rodchenkov and Mr. Velikhodny, which also took place on 25 December 2013 within the period of an hour (also in EDP 0230 0231 and 0231).
30. In those emails Dr. Rodchenkov wrote: "*... she has to be hidden immediately*"

To this Mr. Velikhodny replied: *"The issue is being looked into as we speak! We will pull her out!"*

And an hour or so later Mr. Velikhodny wrote. *"Yes, it is necessary! I checked it, she is in Ruhpolding (Germany) now until 13 January, and afterwards to Antholz (Italy) until 30, on 30th is arrival at the Games! I reported and wait for the decision."*

31. The IBU then relies on EDP 0232 which offered the rest of the emails in this exchange and that were sent roughly two hours later in Mr. Velikhodny wrote with reference to the same athlete code "A0241": "Save". At the same minute an email from a sender the name of which was concealed answered "Got it. Understood, thank you". About ten minutes later an email from an anonymous sender wrote:

"If she is now starting at the World Cup, she will be picked out for sure - it will be not a very pleasant situation for the laboratory if we didn't find anything in case of such concentration and such substances ..."

32. The IBU argues that the last part of the communication establishes that the Russian authorities had decided the Athlete "had" to skip the next WC event, i.e. the Oberhof WC from 1 to 5 January 2014, to prevent her testing positive at a potential doping control.
33. Furthermore, the IBU asserted that the term "Save" in connection with the Athlete's EDP code "A0241" was the order to report the analysis results in the ADAMS system as negative as explained in the Disappearing Positive Methodology (DPM) outlined in the IP Report II.
34. Finally, the IBU referred and relied upon the fact that the Athlete did, in fact, pull out and not participate in Oberhof which was the only WC event at which she did not start in the 2013/2014 season prior to the Sochi Games.
35. With respect to the Athlete's sample coded number 2867798 collected on 21 December 2013 at the Russian Championship at Izhevsk, the IBU also mainly relied on an exchange of emails as evidenced in the EDP.
36. According to the IBU the chain of custody forms shows the Athlete's sample 2867798 was sent to the Moscow laboratory together with 14 other samples and received by the laboratory on 23 December 2013. The laboratory reported in ADAMS that no prohibited substances were detected.
37. However, the IBU then relied on documentation attached as EDP 0235 to the IP Report II. It is an email received by Mr. Velikhodny on 26 December 2013, i.e. three days after the Athlete's sample arrived at the Moscow laboratory. This email, with express reference to the Athlete's sample code number, date, place and competition of collection and her sex, read: *"Methenolone, oxandrolone (weak)"*. Mr. Velikhodny then replied to the concealed sender with copy to Dr. Rodchenko: *"Save. A0241"*.
38. The IBU submitted as explained in the IP Report I and II that "Save" was the order given to the Laboratory to report into ADAMS as negative the results of the Athlete's sample.

39. With respect to the Athlete's sample no 2870746 collected out-of-competition on 6 January 2014 at Ruhpolding, the IBU submitted that, according to the chain of custody form, the Athlete's sample, together with 11 other samples, was sent to the Moscow laboratory and received by the laboratory on 8 January 2014. The laboratory reported all the samples as negative in ADAMS.
40. With respect to the sample collected by RUSADA on 6 January 2014, the IBU argued that it was a wash-out test and that as a result the Athlete was "*suspicious of tampering or attempted tampering with any part of the Doping Control*" (article 2.5 IBU ADR).
41. In support of this, IBU pointed to the fact that after pulling out of the Oberhof WC at the last minute further to the laboratory's directives because of the results of the initial screening of her 19 December sample 2866518, the Athlete then completed in a race on 8 January 2014 in Ruhpolding. Based on this timeline, IBU argued that the Athlete's break until that event e.g. her non-participation in the World Cup event in Oberhof, covered the critical period during which she was at risk to test positive. She was tested on 6 January; it was negative; she could then compete.
42. The IBU then refuted the Athlete's written statement of January 12, 2017 in which she denied having any responsibility for an alleged manipulation of her samples because she claimed her doping controls had been carried out in strict accordance with the rules. She also declared that she "*never heard about the mentioned substances*". To the IBU, the fact the Athlete denied knowledge of "*the mentioned substances*", i.e. metenolone, oxandrolone and trenbolone, does not contradict the IBU's conclusion because
- "A violation of the IBU ADR by use of prohibited substances does not require knowledge of the names or chemical composition of those substances."*
43. Accordingly, IBU argued that should this Panel accept that the Athlete did not know that she had been administered the substances, she was nonetheless guilty of "using" them.
44. The IBU's requests for relief were as follows:

*"The provisional suspension imposed on Ms. Ekaterina Glazyrina on 10 February 2017 in accordance with article 7.11.2 IBU ADR shall remain in place.
Ms Ekaterina Gkazyrina shall be sanctioned for an anti-doping rule violation in accordance with article 10 IBU ADR."*

b. Summary of the Athlete's written Submissions.

45. Further to her written statement of 12 January 2017 and although invited to do so, the Athlete did not provide any written submissions in her defence prior the hearing.
46. By letter of 23 August 2017, while still not filing any written submissions, the RBU informed the Panel that Mr. Alexander Kravtsov, President of the IBU, Ekaterina Galazyrina and "*the lawyer of the RBU*" would attend the hearing. (But we note that in the end Ms. Glazyryrina did not).

3. The Hearing

47. The hearing took place in Munich, Germany on 16 October 2017 from 9.00h through

15.00h. In attendance along with the Panel were

- on behalf of the Athlete: Mr. Artem Patsev, Attorney-at-law, Moscow, Russia, counsel for the Athlete, Mr. Alexander Kravtsov, President of the RBU and Mr. Sergey Mnatsakanov, Head International Relations Department of the RBU as observers, according to Article 8.1.5 IBU ADR
- on behalf of the IBU: Ms Nicole Resch, Secretary General of the IBU and Dr. Stefan Netzle, Attorney-at-law, counsel for the IBU.

a. Opening statements

48. The IBU's opening statement referred to its written submissions of 29 June 2017 in which it asserted that the Athlete committed ADRVs under Articles 2.2 and 2.5 IBU ADR.
49. With the permission of the Panel, and no objection by the IBU, submissions on behalf of the Athlete were made for the first time by her Counsel.
50. The Athlete asserted that steroids had no short-term effects and that it made no sense to take steroids before competing. Furthermore, because the detection window for steroids was 50 to 90 days it would be unreasonable both to expect that steroids would not be detected during the WC season and to skip the Oberhof WC on short notice.
51. The Athlete further submitted that the administration of the Duchess Cocktail through the mucous membrane in the mouth was extremely inefficient and that the Athlete's name did not appear on the Duchess List.
52. According to the Athlete, the email of 25 December 2013 which said "*too much*" came from an unknown person from the laboratory. The Athlete emphasized that the email correspondence attached to the IP Report II had little evidentiary value because *inter alia* an unknown person was involved, and Prof. McLaren never testified before a panel.
53. It was further submitted that the Athlete was a member of the Russian B team and not a candidate for competing at the Sochi Games. The season 2013/2014 was a "*disaster*" for her. She never obtained a good result. At the Sochi Games she participated only because other female athletes were sick and finished 61th.
54. The Athlete then relied on Dr. Gmeiner's opinion, who further to checking the laboratory documents found "*no suspicious results*". For that reason, the person who sent the email on 25 December 2013 was clearly wrong.
55. The Athlete explained that her non-participation in the Oberhof WC was exclusively for sporting reasons. Reference was made to an email of 12 October 2017 written by Mr. Wolfgang Pichler, then coach of the Russian Biathlon team, stating that the Athlete had participated in too many races and should skip the Oberhof WC to save her strength as a candidate for the Russian relay team for Sochi.
56. Finally, counsel for the Athlete argued that Dr. Rodchenkov who was the origin of the

McLaren Reports was a “*lying person*”, involved in illicit businesses and conspiracy and that as a result he was unreliable as a witness.

b. Discussion

57. Following their opening statements, for greater clarity, the Panel discussed various issues with the Parties including:

- Did the Athlete register for the Oberhof WC and pull out; or did she simply never enter? (She registered and pulled out at the last minute)
- Could the exact time sequence of sample collection, initial screening, report to ADAMS and non-participation be clarified? (it was)
- The buccal ingestion of the Duchess Cocktail ingested (swirling the mixture in the mouth with alcohol as directed by Dr. Rodchenkov)
- The effects of the administration of steroids on competition performance and the excretion time of water soluble steroids.
- The “*unknown*” person who is included on the emails attached to the IP Report II (Is known by McLaren and WADA but protected under the WADA whistleblower policy);
- The time limit for last entries to the Sochi Games (re: 19 January 2014)
- The source of the Documentary Package laboratory reports (unknown).

c. Final pleadings

(i) The IBU

58. During its closing arguments the IBU reminded the Panel generally of the context of the Sochi Games as per the IP Report revelations.

59. For the IBU, any new evidence brought forth by the Athlete at the hearing was submitted too late and references to IAAF-related cases before the CAS have no meaning to the present dispute because in those cases the samples in question were still available for reanalysis.

60. The IBU stated that the applicable standard of proof was for IBU had to establish the ADRV “*to the comfortable satisfaction*” of the Panel.

61. With regards to its authority to conduct results management, IBU explained that it had been informed by WADA of the findings of the IP Report II investigations and that IBU was requested to act on these findings. Because RUSADA was deemed non-compliant and could no longer operate as results management authority for the samples in question, the IBU became the competent authority to take over the matter as envisioned by Article 7.9 IBU ADR.

62. IBU relied on various CAS awards, notably *CAS 2017/O/5039 IAAF v RUSAF & Anna Pyatkh*, (hereinafter “Pyatkh”) which established that the McLaren Report II provides reliable information and argued that the principles applied in Pyatkh also applied to this case.
63. Accordingly, the email exchanges contained in EDP 0230 0231 and 0232 constitute reliable evidence.
64. To IBU Mr. Velikhodny’s “Save” order meaning that the Athlete’s analytical results should be reported negative in ADAMS was quite compelling.
65. The IBU submitted that many Russian athletes may have used the Duchess Cocktail and not exclusively those mentioned on the Duchess List. The evidence established that the Athlete would have used the three substances of the Duchess Cocktail, i.e. metenolone, oxandrolone and trenbolone, because all three had been found in two of her samples.
66. The IBU pointed to the sequence of time and events as being conclusive when considered in conjunction with the EDP emails: the Athlete participated in three consecutive WC events; then she underwent two doping tests on 19 and 21 December 2013; further to the analysis of these samples she was told to hide; then she pulled out of the Oberhof WC; on 6 January 2014, she was tested pre-competition by RUSADA in Ruhpolding as part of mass-test intended to check whether or not Russian athletes were clean; after that she was deemed safe and was allowed to participate in the Ruhpolding WC event.
67. The IBU disclaimed the evidence of Mr. Pichler because there was no opportunity to cross-examine him. In any event, the IBU rejected the Athlete’s explanation that she had competed in too many races before the Oberhof WC and that she wished to rest. She had registered for the Oberhof WC and therefore intended to compete. She only pulled out because of the directives given as outlined in the EDP emails.
68. With regards to the evidence provided by Dr. Rodchenkov, the IBU submitted that his testimony was scrutinized by Prof. McLaren and corroborated by further evidence and, therefore, was to be generally accepted as reliable.
69. The IBU insisted that the laboratory “doc-packs” that has been received then sent to and analysed by the Seibersdorf laboratory have no evidentiary value because they came from an “unknown” source. IBU also argued that because of their unknown and unverifiable source, the reports may have been tampered with and/or that it was not clear which samples had been analysed and included in the package. Contrary to the doc-packs’ unverifiable and untrustworthy analytical data, the contents of the McLaren Report II were reliable.
70. In this regard, the IBU relied on the IP Report II and the corresponding EDP. According to the IBU, CAS panels in charge of Sochi-related disputes had applied the same standard of proof and accepted the Report as reliable information.
71. The assertion advocated by the Athlete that it was “unreasonable” that she took steroids given her poor sporting results is irrelevant because the use of prohibited substances constitutes an ADRV irrespective of their effects.

72. In conclusion, the IBU submitted that the Athlete committed ADRVs by way of use of a prohibited substance under Article 2.2 IBU ADR and tampering under Article 2.5 IBU ADR.

73. Therefore, the IBU requested the Panel impose a period of ineligibility of two years.

(ii) The Athlete

74. In her final pleadings the Athlete submitted that initial screening findings did not provide conclusive scientific evidence of the presence of a prohibited substance in a urine sample. Rather, she relied on the opinion of Dr. Gmeiner which concluded that her data did not reveal any steroids. The Athlete explained that the laboratory Doc Packs that were sent and analysed by Dr. Gmeiner referred to internal code numbers and technical data as well as the time of the operation. They could not have been tampered with and were reliable.

75. The Athlete says she could not have benefitted from the use prohibited substances and referred to her table of results from January 2012 onwards which showed poor performance and stated that she was not a candidate for participating in the Sochi Games. It is only on 20 January 2014 that she was entered for the Sochi Games, and as a substitute only. There, she finished 61st, which is not a great result.

76. After the National Championship where she had good results because other athletes did not compete, she said a "*caucus*" of Russian coaches, including Mr. Pichler, decided that she would not compete at the Oberhof WC because she had "*too many races*" and should stay fit to try qualify for the Sochi Games.

77. Against that factual background the Athlete emphasised that she exclusively missed the Oberhof WC for sporting reasons and that this had been Mr. Pichler's decision.

78. The Athlete pleaded that, considering the long-term effects and detection windows of steroids, it was "*unreasonable*" to skip one single WC event only.

79. She said she was tested 1 February 2014 and that sample which, according to the Athlete is still stored at the Lausanne laboratory, was also negative.

80. The Athlete further argued that that the alleged ADRV was not established to the comfortable satisfaction of the Panel. This was notably so with regards to the charge of tampering as, in her case, no bottles had been opened or swapped or scratched, and also with regards to the charge of use because the unknown person had never been identified in the EDP emails.

81. The Athlete therefore concluded that all charges brought against her should be dismissed because the commission of an anti-doping rule violation had not been established to the requisite legal standard.

4. Post-hearing briefs

82. At the end of the hearing, further to the ample discussion and arguments brought forward by both parties that had not been included in any written submissions, the Panel decided that the Parties should submit post-hearing briefs to summarize their cases.
83. The Panel directed the parties to submit post-hearing briefs simultaneously no later 23 October 2017 and explained that these post hearing briefs were restricted to comment on facts and arguments which already were discussed during the hearing and no additional evidence and/or arguments would be allowed.
84. Nevertheless, on that same day, right after the hearing, the Athlete sent a letter by which a number of documents the Athlete had referred to at the hearing were forwarded together with some related explanations. In reply, counsel for the Athlete was advised by the Panel to consolidate this information into the post-hearing brief which, then would be considered by the Panel. On 17 October 2017, the Athlete submitted an affidavit of Mr. Pichler, dated 16 October 2017.
85. On 17 October 2017, the Panel invited the Parties, to comment in their post-hearing briefs on various questions, all of which were duly answered by the relevant party with knowledge of the information. Notably, the Panel requested details on the Athlete's competitive schedule, the amount of doping controls collected in Ruhpolding in early January, the list of Russian athletes who competed in Oberhof and the breakdown of the Athlete's competitive results by discipline.
86. Although their whole content was carefully considered by the Panel, for the sake of brevity, and because much of their substance reiterated the oral pleadings, the parties post hearings briefs are succinctly summarized as follows. Additional facts or evidence are set out, where relevant, in the other paragraphs of the present award.

a. IBU post hearing brief

87. The IBU post hearing brief maintained the IBUs request for relief namely that the athlete should be sanctioned for an anti-doping rule violation with a period of ineligibility of 2 years in accordance with article 10 of the IBU ADR.
88. Prior to outlining its main legal arguments in support of its request for relief, the IBU invited the Panel to take into consideration the Athlete's procedural behaviour, including the fact that she failed to file any written brief prior to the hearing than a flooded the Panel with materials at the hearing while not attending for no specific reason. The IBU invited the Panel to take the Athlete's behaviour into account when assessing the merits of the case.
89. IBU then recounted the facts of the case. Again, for the sake of brevity only the main arguments will be recounted.
90. The IBU maintained that the Athlete's absence at the Oberhof WC was a direct consequence of the suspicious findings of the Moscow laboratory, as well as the upshot "*hide*" directive.
91. First, the IBU rejected the Athlete's argument that she missed Oberhof WC to rest and

reminded the Panel that the Athlete had participated in all World Cup events of the 2013/14 season with one exception: the Oberhof WC. Further, although at the hearing it was explained that she skipped this event for sporting reasons on the advice of her coach Mr. Pichler; IBU also rejected this explanation. To the IBU, Mr. Pichler's affidavit is unpersuasive and unverifiable. Further, the sporting reasons brought forward by the Athlete are also not convincing given the fact that she allegedly was told to skip Oberhof to rest but that, in fact, she ended up spending that time training.

92. Second, the IBU refuted the Athlete's counsel "*relentless*" referral to her having poor sporting results during the relevant competition season. According to IBU, in her submissions, the Athlete conveniently left out her good results. In fact, as a member of the relay team she had finished 6th and 4th and 6th respectively in the three prior World Cups prior to Oberhof, she was part of the Russian team for the Sochi Games and she participated at the Sochi Games. On this, while the IBU conceded that the Athlete's selection to the Sochi Games team may have been because of various other members of her team being suspended for doping (as opposed to being sick) "*this only demonstrates the disgraceful situation of Russian Biathlon when it comes to doping*" at the time.

93. Third, the IBU stated that it had opened its investigation against the Athlete because supporting documentation of the IP Report II contained email communications which created heavy suspicion that she had committed an ADRV. The IPF Report II EDP files provided email communications whose content and purpose were clear and paralleled the evidence in the case file. (The positive screens, the Save order, the directive to hide the athlete and prevent her from competing in the next World Cup etc...) The IBU says that what happened in reality is exactly what was discussed in the emails, *inter alia*:

"After the suspicious screening the athlete was taken out of competition in order to avoid a positive analysis results from international testing. After her testing showed no indication of an ADRV she was brought in again and eventually participated in the OWG Sochi."

94. Fourth, discrediting all the case law precedents the Athlete had relied upon at the hearing because it did not support her defence or her arguments, IBU relied on the *Pyatykh* award, notably par 83, which dealt with the evidentiary value of the IP Report II and the documentary evidence contained in the EDP and stated that the different types of evidence with respect to individual athletes are like strands in a cable and that it would be up to the results management authority to determine if the strands of evidence could amount to an anti-doping rule violation. IBU also relied on par. 89 of the *Pyatykh* award which stated that "*an ADRV for use could be established by any reliable means including, contextual evidence, initial testing procedure results, forensic evidence, evidence linking a particular athlete to doping ...*"

95. IBU argued that it is standing CAS jurisprudence that the IP Report II constitutes conclusive evidence and that the respective tribunal must review the evidence on a case by case basis to determine if it is sufficient to establish the commission of the anti-doping rule violation.

96. Further to recounting all the factual evidence already described above, the IBU stated that the Athlete's case is one of exemplary clarity.

97. The IBU conceded that the Athlete's alleged manipulation or tampering of samples was not conclusive, yet nonetheless, argued that Athlete's use of three prohibited substance under Article 2.2 IBU ADR constitutes an anti-doping rule violation irrespective of her fault or knowledge.

98. The IBU's request for relief was as follows:

"Ms. Ekaterina Glazyrina shall be sanctioned for an anti-doping rule violation with a period of suspension of 2 years, in accordance with article 10 IBU ADR (2015), starting at the date of the hearing decision whereby the period of the provisional suspension served shall be credited against the otherwise applicable ban."

b. Athlete post hearing brief

99. The Athlete said that doping allegations are indisputably serious and vigorously denied committing any anti-doping rule violations.

100. When arguing which standards and burdens of proof were applicable to this case, she said that for IBU to succeed it had prove its case to the comfortable satisfaction of the hearing panel. So, the IBU's mere allegations or inferences, which are not supported by clear and direct evidence, are not sufficient to meet this standard. The Athlete argued that it is *"not sufficient to infer that something may have happened or that a violation may have been committed or that someone's unidentified actions may constitute an anti-doping rule violation."*

101. In refuting the IBU's arguments, the Athlete said that the only evidence the IBU relies upon is the chain of emails between three persons about three suspicious samples. However, because two of these suspicious samples are in fact not followed by any comments in the EDP Emails, they must be considered clean. And, with regards to the three persons, the Athlete argued that none of them are reliable: one is unknown and unnamed, the others have not been available for questioning and/or are known crooks. Therefore, any evidence received from these three persons should be deemed inadmissible and given no evidentiary weight.

102. The Athlete claimed that to say she allegedly used prohibited substances is an erroneous allegation because *"it is common knowledge that the detection window of steroids is 3-10 days after a simple ingestion and that their metabolites could be detected for months"*. So, it would have been unreasonable to use steroids just before a huge competition. In any event, she says she skipped the Oberhof WC solely for sport reasons on advice of her coaches and nothing more.

103. The Athlete also reiterated that when her laboratory profiles and dock packs for the samples in question were sent to a reputable WADA accredited laboratory, its Director confirmed that he did not notice anything unusual in the Athlete's steroid profile and notably did not notice any traces of the Duchess Cocktail in her samples. She said the Seibersdorf laboratory findings regarding her samples reviewed together with her steroid profile clearly show *"that all the allegations against her are imitations, or belong to another athlete, or were the subject of an illicit conspiracy within the Moscow Laboratory."*

104. The Athlete rejected any contention that she had used the Duchess cocktail. Referring to the IP Report II EDP 0055 (which is the Duchess List), she highlighted that, not surprisingly, her name is not on the List.
105. The Athlete argued that she was never an A team biathlete. Rather she was considered a member of the B team, never showed any good result in 2013/2014 and was only included to the Sochi Games short list at the last minute. There, her awful result was a 61st place finish. *“What an enhancement of sport performance”*, she emphasized.
106. The Athlete also believed that the content of Professor McLaren’s affidavit with regards to his findings in the IP Report II) could not be considered reliable. Citing the application of various CAS awards (including but not limited to *CAS 2016/A/4486 ISSF v. Poistogova*; *CAS 2017/A/4968 Legkov v. International Ski Federation (FIS)*; *CAS 2017/A/4969 Evgeny Belov. International Ski Federation FIS and CAS 2011/A/2384 UCI v. Alberto Contador Velasco & RFEC / CAS 2011/A/2386 WADA v. Alberto Contador Velasco & RFEC Contador*) the Athlete asked the Panel to give no independent weight to Professor McLaren’s affidavit.
107. In conclusion, the Athlete claimed that *“evidence - by far beyond the applicable standard of “by a balance of probability” - demonstrated that she “did not engage in practice of doping, still less using steroids with the so-called Duchess cocktail”*.
108. To the contrary, *“all the scientific and other strong evidence”* in the case file indicated that she was clean, that she was open to testing and that she was not hiding from doping control.
109. According to the Athlete, the IBU failed to submit clear and convincing evidence to the comfortable satisfaction of the Panel that she committed an ADRV under either Article 2.2 or Article 2.5 IBU ADR.
110. Therefore, the Athlete requested that her case be dismissed

5. The documentary procedural hearing on the admissibility of additional submissions

111. On December 22, 2017, IBU submitted additional evidence that had become available to all International Federations further to WADA’s Investigations and Intelligence Department (WADA I & I) sharing the findings of its “Operation LIMS” data; data which WADA supported with Affidavits to accentuate their reliability.
112. Operation LIMS offered data that had been recovered from reconstructing the hard drive of the Moscow Laboratory after it had been seized and collating all the information that was contained in the Laboratory’s Information Management System (whereby the acronym LIMS derives).
113. All the information that was found and extrapolated from the LIMS database has been collated into Excel spreadsheets by WADA I&I. All International Federations were

provided excel files which contained copious amounts of information, notably identifying athletes, their sample numbers, date of testing, the results of initial screening procedures, with exact concentrations, the results of full analysis procedures and how the matter was treated internally by the laboratory etc.

114. Upon receipt of this confidential information, IBU sought to admit solely the Athlete's data from LIMS into the case file to bolster its anti-doping rule violation charges against the Athlete. IBU explained that it could not file the entirety of the IBU LIMS files because they also identified numerous other athletes and that this information was confidential.

115. Prior to deciding whether firstly to admit these new submissions into evidence and secondly what weight should be given to its contents, the Panel sought out arguments from both parties as to their admissibility

116. IBU had already argued as to why this new evidence should be admitted when filing the evidence with the Panel and for the sake of brevity the IBUs argument regarding the admission of the LIMS evidence can be further summarized as follows:

- On December 14, 2017 IBU received from WADA excerpts from the LIMS database which included among other data about the samples provided by the athlete and which form the basis of the claim being brought by IBU against the athlete, namely samples 2886518, 2867708 and 2870746.
- This information was not available at the time of the hearing and should have been admitted into the case file by analogy to CAS Code Rule 56.
- The report should be admitted into evidence and taken into consideration by the Panel when adjudicating the matter.

117. The Athlete's response reiterated verbatim many of the points outlined in their post hearing brief. Again, for the sake of brevity these need not repeated. Her specific arguments regarding the admissibility of the LIMS evidence can be summarised as follows:

- The IBUs late submission should be disregarded because it was filed too late and there was no reasonable explanation for the delay.
- Dr. Hoffmann, the individual who prepared the memo is neither an expert nor independent from the IBU.
- Dr Rodchenkov's alleged affidavit explaining the LIMS data was not submitted, is unreliable and in event was made without direct reference to or knowledge of the Athlete.
- The IBU LIMS data was not provided in its entirety and was not made available for review by the Panel or the Athlete. As a result, it should neither be admitted into evidence nor be presumed to be reliable evidence in terms of article 3.2 of the IBU ADR.

III. Merits

118. The Panel has considered the facts and the law as discussed in the written and oral proceedings.

1. Applicable Law

119. The Athlete is bound by the IBU ADR by virtue of her membership to RBU and IBU

pursuant to their introductory “*Scope*”:

“(the IBU ADR) apply to the IBU and each of its member federations. They also apply to the following athletes ... each of whom is deemed, as a condition of his/her membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the IBU to enforce these Anti-Doping Rules and to the jurisdiction of the hearing panels specified in Article 8 and Article 13 to hear and determine cases and appeals under these Anti-Doping Rules...”

120. Accordingly, the IBU Anti-Doping Rules are applicable to this dispute.
121. Regarding the merits of the dispute before the Panel, all parties agree that the applicable IBU ADR are those which were effective at the time the alleged ADRV was committed. Hence, the applicable rules are the IBU ADR adopted by the IBU Congress in 2012 that were effective as of 1 January 2013 (the **A**IBU ADR"). They include the WADA Prohibited List that was in force during the calendar year in which the alleged ADRV's occurred e.g..2013 and 2014.
122. Regarding the procedural issues of the dispute, the applicable version of the IBU ADR is the one that was in force when the investigation against the Athlete was initiated, i.e. 22 December 2016. Therefore, in this respect, the IBU ADR 2015 apply, as amended by the IBU Congress in 2016.

2. Anti-Doping Rule Violation

123. Pursuant to Article 1 IBU ADR, doping is defined as the occurrence of one or more of the ADRVs set forth in Article 2 IBU ADR.

a. Article 2.2 IBU ADR: Use of a prohibited substance

124. Three prohibited substances were allegedly detected in the Athlete's samples, i.e. metenolone, oxandrolone and trenbolone. These substances are listed under S1.1 of the 2013 and 2014 WADA Prohibited Lists as Anabolic-Androgenic Steroids (AAS) and are therefore classified as non-specified substances.

125. The IBU submits not that the Athlete has committed an ADRV for the “presence” of a prohibited substance in her system pursuant to article 2.1 of the IBU ADR. This is because neither have the results of a complete analysis of the Athlete's three A samples in issue been made available, nor are the B samples of the three urine samples in issue available for analysis as required under article 2.1 of the IBU ADR.

126. The IBU submits that the Athlete committed an ADRV by way of “use” of a prohibited substance in accordance with article 2.2 of the IBU ADR. Although also submitting that an ADRV for tampering had been committed at the onset, this charge has since been withdrawn.

b. Burden, standard and means of proof

127. Pursuant to Article 3.1 IBU ADR, the burden of establishing an ADRV lies with the IBU and the standard of proof is to the “*comfortable satisfaction of the hearing panel*,

bearing in mind the seriousness of the allegation”.

128. Pursuant to Article 3.2 IBU ADR, facts related to an ADRV may be established “*by any reliable means*”. The Comment to Article 3.2 IBU ADR reads as follows:

“... the IBU ... may establish an anti-doping rule violation under Article 2.2 ... based on ... the credible testimony of third persons, reliable documentary evidence, reliable analytical data from either an A or B sample as provided in the comments to Article 2.2, or ...”

129. The Comment to Article 2.2 IBU ADR reads as follows:

“.. that use ... of a prohibited substance ... may be established by any reliable means. Unlike the proof required to establish an anti-doping rule violation under Article 2.1, use may also be established by other reliable means such as admissions by the athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, or other analytical information that does not otherwise satisfy all the requirements to establish “presence” of a prohibited substance. ...”

130. Based among others on the non-exhaustive list of examples provided in article 2.2 of the IBU ADR, the Panel must then determine whether the content and probative value of the documentary evidence relied upon by the IBU in this dispute establishes that an anti-doping rule violation has been committed to its comfortable satisfaction.

3 Issues

131. The following are the core issues that the Panel has examined in its deliberations.

1. What are some preliminary matters for the Panel to consider in its deliberations?
 - i. Should the Athlete’s behaviour affect the outcome of these proceedings?
 - ii. Should the IBU’s “LIMS Memo” and its contents be admitted into evidence?
 - iii. Did the Athlete have a “poor” competitive season and to which extent is this of relevant to the outcome of this case?
 - iv. What is the probative value of the Seibersdorf laboratory analysis?
2. Can the evidence submitted by IBU be considered “reliable”?
3. Does the evidence on file allow the Panel to conclude that an ADRV for use has occurred?
4. If so, what is the appropriate sanction?

a. What are some preliminary matters for the Panel to consider?

i. The Athlete’s behaviour

132. IBU has taken great exception to the Athlete’s procedural behaviour throughout these proceedings, and by extension that of her counsel.

133. Specifically, IBU has argued that the lack of respect for the Panel’s procedural directives (notably not filing a pre-hearing brief and presenting the Panel and IBU with a substantial amount of arguments and documents on the day of the hearing), as well as her non-participation at the hearing should both be drawn as adverse inferences.

134. Counsel for the Athlete explained that she could not travel to the hearing because her child was sick and further explained that his inability to file documents in a timely fashion ahead of the hearing was due to having been assigned to the file five days prior.
135. Given the seriousness of the allegations being brought against the Athlete as well as the potential consequences for the same, she perhaps should have made all possible efforts to be present to defend herself from the charges being brought against her and at least advise the Panel ahead of the hearing as to why no written submission had yet been filed.
136. However, while the IBU's objection is noted, in light the exceptional circumstances which have been prevalent throughout these disciplinary proceedings, this Panel has neither drawn an adverse inference from the Athlete's tardy submissions nor from her failure to attend the hearing.

ii. The IBU Memo

137. Both parties presented valid arguments as to why the IBU's December 22, 2017 submissions should be admitted, or not. In the end, because the IBU ADR offered no procedural guidance on the subject, the Panel decided to apply R56 of the CAS Code *mutatis mutandis* and admitted this evidence into the case file based on exceptional circumstances.
138. During the hearing, the Athlete conceded that the circumstances surrounding this case were exceptional. They did not cease to be further to the hearing. Indeed, these exceptional circumstances also explain the tardiness of this now rendered award.
139. Certainly, the ongoing investigation into the Russian doping scandal, the steady stream of information emanating from WADA's investigations and numerous disciplinary tribunal awards involving Russian athletes have rendered the circumstances surrounding this case exceptional.
140. Additionally, the fact the Athlete was permitted at the hearing to tardily file numerous documents with the Panel and to file its post hearing brief as late submissions, was all the more reason why the IBU's tardy submissions, the IBU Memo relating to the WADA Operation LIMS data, should also be admitted.
141. Therefore, the "IBU memo" was admitted into evidence.
142. However, as argued by the Athlete, Dr. Hoffmann, the third party who drafted the report, is neither independent nor an expert in the field and could not be examined by the Panel or cross examined by the Athlete during these proceedings. Therefore, his opinion was given no independent weight.
143. And, while admitted, the contents of the IBU memo were given little evidentiary weight because, albeit confidential, the direct evidence referred to in the IBU Memo was not provided along with the Memo i.e.: the actual spreadsheets provided by WADA to all International Federations during "Operation LIMS", the Rodchenkov Affidavit etc.

144. Yet, all WADA Operation LIMS excel spreadsheets were built the same way. They all provided the same information as it related to every athlete and sample contained in the database. When it was sent to each relevant International Federation, WADA I & I explained how to read and understand the information in relation to a specific athlete. Therefore, because of its existing personal knowledge and understanding of the LIMS data as presented in the LIMS spreadsheets, this Panel was in a unique position to understand the snapshot columns of the confidential spreadsheets that had been cut and pasted into the IBU Memo, without reference to or needing to rely upon Dr. Hofmann's opinion.
145. Having examined the LIMS spreadsheets in other circumstances at length, this Panel understood from the hard data provided in the IBU Memo that the information from the LIMS master data file referred to the Athlete's samples 2866518 collected on December 19 and 2867708 collected on December 21 and offered the actual concentrations of the same three substances that EDP0230 indicated had been found in initial screening of the Athlete samples, namely metenolone, oxandrolone and trenbolone . More pointedly, the LIMS data confirmed that the concentrations of these three substances in sample 2866518 were substantial while in sample 2867708 they were minimal.
146. Accordingly, while the Panel has not disregarded the IBU's independent expert conclusions or analysis, it has given some, albeit little, probative value to (solely) the hard data from the LIMS system provided in the IBU Memo.
147. It should expressly be noted that, when considered in relation to the evidence and facts that had already been submitted by both parties at that late juncture, while it did mirror and corroborate the evidence provided in the EDP emails, the IBU Memo did not serve any other evidentiary purpose in and of itself other than to support the conclusion this Panel had already comfortably come to.

iii. The Athlete's alleged poor competitive season

148. The Athlete has relied on her allegedly poor sporting results in the competitive season in question to convince the Panel that it was unreasonable to conclude that she used prohibited substances for performance enhancement and the IBU has argued to the contrary.
149. Based on the factual evidence filed, the Athlete had three top ten finishes in World Cups and made the Olympic Team that competed in the Sochi Games. Therefore, it was not a poor season.
150. Athletes who are found to have committed anti-doping rule violations are not always the best.
151. In this regard the Panel accepts the IBU's argument that the Athlete's prior competitive results and prior testing results do not assist in determining whether the Athlete used the three prohibited substances in question.
152. Further, poor results do not amount to a convincing argument in the face of an asserted anti-doping rule violation. Whether the Athlete was on the A or B team has little bearing on the Panel's deliberations with regards to the commission of the anti-doping

rule violation.

iv. The probative value of the Laboratory “Doc packs”.

153. The Athlete has argued that the Seibersdorf laboratory’s analysis results of her three samples’ doc packs and her biological passport, which neither indicated any abnormalities nor yielded traces of the Duchess Cocktail, is strong scientific evidence which supports her defence.

154. However, while such confidential doc packs would normally offer compelling scientific evidence, the evidence before this Panel shows that the Laboratory reports sent to the Seibersdorf Laboratory had been obtained by IBU in a rather odd and non-conventional fashion.

155. While doc packs would normally be sent by post, with cover letter with official letter head and envelope, the evidence here is that, when requested, the doc packs in question were delivered to IBU without any cover letter from the Laboratory or its official letterhead. IBU explained that it was anonymously delivered as a handoff to an unknown individual. So, the doc packs came from an unknown and unverifiable source. And, although the Athlete has explained that they had allegedly been seized from the Moscow Laboratory during the Russian criminal investigation, there is no evidence on file that corroborates this explanation.

156. Therefore, the origin, analysis and authenticity of the Doc Packs were questioned by IBU, and rightly so.

157. These doc pack reports are being used as evidence by the Athlete to rebut the IBU’s evidence. Therefore, the IBU argued that it was the Athlete’s burden to prove, on a balance of probability, that the doc packs analysed by the Seibersdorf laboratory effectively referred to the Athlete’s disputed urine samples, had not been manipulated or doctored and were authentic.

158. While, under the present factual circumstances, it is unclear who has the burden of proving whether these reports are official, authentic and if they were prepared and obtained and not tampered or doctored (although it would appear to be the Athlete), the resolution of this legal question is inconsequential.

159. Because of all the doubt and uncertainty surrounding these doc packs and whether their content is trustworthy, they can be given no probative value. Their source, content and authenticity have not and cannot be verified. They are therefore given no evidentiary weight by this Panel in its deliberations.

b. Can the evidence submitted by IBU be considered “reliable”?

160. As stated above, pursuant to article 3.2 of the IBU ADRV the Athlete’s “use” of three prohibited substances can be established by any “reliable means”.

161. The IBU has relied upon CAS case law (*par 91 of Patyakh, par 7.12 CAS (OG, Rio) AD 16/009; par. 7.4 CAS (OG, Rio) AD 16/021; CAS (OG), par 40 AD 16/024 and CAS*

2016/A/4745 and par 7.11 CAS (OG, Rio) AD 16/009) and submitted that the IP Report II and its related EDP constitute reliable evidence and conclusive evidence.

162. The Athlete challenged the identity and reliability of Dr. Rodchenkov (a “criminal”), Mr. Velikodny (“a low-grade official currently under criminal investigation”) and the “unknown” third person who is anonymous in the EDP emails.
163. The Panel accepts that the “unknown” person is not unknown but rather concealed and protected by the WADA whistle-blower program. Further, the unknown person is not a witness before the Panel and need not be interrogated. On this point, although relied upon by the Athlete, the Contador Awards relate to different factual situations and are not applicable here. In any event, the fact that one of the identities of the participants of the email exchange is concealed does not diminish the evidentiary value of the emails.
164. Although noted, the Athletes allegations with regards to Dr. Rodchenkov and Mr. Velikodny are equally irrelevant. Both are clearly identified in the emails and their function is well known and has been clearly explained. Arguing that these individuals are criminals does not diminish the evidentiary value of the emails.
165. The Athlete has also relied upon *Legkov*, *Piostogova* and *Belov* cases to challenge the reliability of Professor McLaren’s affidavit in relation to the IP report and to discredit both the evidence adduced by the IBU by way of the IP Report II and the IBU’s assertion that an anti-doping rule violation has been committed.
166. Although carefully considered, the Panel has concluded that because the CAS cases have little factual similarities to this one, the Athlete’s arguments are not resounding and do not assist this Panel in its present deliberations.
167. Finally, the fact that the *Legkov* and *Belov* cases both challenged an affidavit drafted by Prof McLaren’s for the purpose of those proceedings as well as his unavailability or presence at those hearings has no bearing on this case because Prof McLaren was neither called as a witness to these proceedings nor was his affidavit relied upon by IBU in the course of these proceedings.
168. It is the contents of the emails which is at the core of the IBUs arguments. The Athlete has made no express allegation or arguments to the effect that the EDP emails might be fake or fabricated. And, other than to unsuccessfully challenge the reliability of its authors, the Athlete has not brought forth any convincing reason for this Panel to doubt the reliability and authenticity of the contents of the EDP emails in question.
169. Based on the reasoning above, the Panel concludes that the information contained in the EDP emails can be considered reliable within the meaning ascribed to it in article 3.2 IBU ADR. Therefore, *inter alia* the EDP emails explaining the initial laboratory screening results for all three A samples in question, the “Save” order, and the explicit directives to “hide” the Athlete to avoid a doping control at the Oberhof WC are all “reliable means”.

c. Does the evidence on file allow the Panel to conclude that an ADRV for use has occurred?

170. In its post-hearing brief, the IBU indicated that its allegation of tampering was inconclusive. As such, there is no need for the Panel to address this alleged ADRV.

171. In its deliberations, the Panel is guided by the *Pyatykh* award:

"92. The Sole Arbitrator bears in mind that whether there is sufficient evidence to demonstrate an ADRV or not must be considered on a case-by-case basis."

172. So too does this Panel believe that whether there is sufficient reliable evidence to establish that an ADRV for use was committed can only be decided based on the facts and evidence before it in this specific case.

173. This Panel has carefully considered Article 3.2 IBU ADR when deliberating on the facts and evidence specific to this case.

174. When measured as *"strands in a chain"*, the evidentiary elements supporting the IBU's assertions are overwhelming:

- The content of the EDP emails (0230, 0231, 0232 and 0235).
- The logic timeline and chronology of these EDP emails
- The Disappearing Positive Methodology data from the EDP which confirms that the Athlete's three samples contained positive screens for the substance in questions but were *"Saved"*
- The Athlete's no show in Oberhof – as directed in the EDP emails that *"she must be hidden"*
- The excretion time of the Duchess Cocktail – which corroborates the chronology of the Athlete's actions and inactions and the results of her next doping control.
- The Athlete's return to competition in Rupholding further to that same washout testing by RUSADA.
- The LIMS data which confirms both that the Athlete's samples were saved and provides the exact concentrations of AAS detected in the samples further of the initial screening procure, all of which mirror the contents of the EDP emails (EDP0232 and 2035).

175. All of these cannot be considered *"a strange and suspicious coincidence"* as alleged by the Athlete's counsel at the hearing.

176. To be clear, this case is not, as stated at par. 198 of *CAS 2017/A/4986 Shapalova v. FIS* which was relied upon by the Athlete, a situation where this Panel *"is asked to draw inferences based on a small combination of evidence."*

177. Much to the contrary, this is a situation where the Panel is asked to make a finding on a very compelling combination of evidentiary elements which, it has been established above, are reliable, credible and of significant probative value and quite convincingly dovetail into and factually corroborate each other.

178. The Athlete and her samples are clearly identified both in the EDP and in the LIMS data. There is no ambiguity in this regard in the evidence before the Panel.

179. Although the Athlete has argued that she did not compete in Oberhof for sporting reasons, this explanation is doubtful because she allegedly skipped to event to rest, yet in lieu trained. Mr. Pichler's Affidavit is therefore also not convincing.
180. Much to the contrary, the fact that the Athlete suddenly pulled out of the Oberhof WC, the only event she missed in the short World Cup season, only to return after her January 6 washout test in Ruhpolding is pivotal and factually corroborates the EDP emails content, directives and timelines.
181. While the Athlete claimed that she was not a member of the "A team", that her performances were poor and that she had no reason to dope, the Panel disagrees. The Athlete's performances were not as poor as suggested and, by end of December, she was a candidate for the Sochi Games where she effectively competed as part of the A team.
182. In addition, the Athlete's argument that it would make no sense for her to submit to doping control and participate in Ruhpolding shortly after deciding to skip Oberhof is ill-founded.
183. Based on the pharmacology of the Duchess Cocktail, her concentrations levels were sufficiently present to justify pulling her from the Oberhof WC, but no so much as to not have return by January 6 because the substances would have washed-out of her system by then.
184. Indeed, the Panel's appreciation of the evidence before it is that the 6 January doping control appears to have been a "wash-out" test by RUSADA during the training camp of the Russian team in Ruhpolding, analysed by and within the control of the Moscow laboratory, to verify the athlete had fully excreted the substances.
185. This evidence is supported by the sophisticated design of the so-called Duchess Cocktail which allows for quick excretion times.
186. On this point, the fact the Athlete argues that she was not expressly identified on the Duchess list of little relevance to this Panel's finding of her use of the substances. This is so because the IP Report does not state that the names on the Duchess List are exhaustive.
187. According to the IBU ADHP's expert knowledge as supported by published opinions by independent experts that were as sought out by the Panel to provide clarity on the matter, namely Prof. Christiane Ayotte, Director of the Montreal WADA accredited Laboratory, Mario Thevis of the Cologne WADA accredited laboratory and Magnus Ericsson, Director of the Stockholm WADA accredited laboratory, scientific studies have demonstrated that buccal administration of a combination of Androgenic Anabolic Steroids (AAS) like methenolone, oxandrolone and trenbolone dissolved in alcohol (aka the "Duchess Cocktail") will result in a significant ingestion of AAS. The detection period will be short and no long-term metabolites of the AAS will be detectable.
188. The rapid excretion rates and short detection window of metenolone, oxandrolone and trenbolone dissolved in alcohol are precisely why the Duchess Cocktail was designed and why it was so widely and successfully used by athletes.

189. The Panel therefore rejects the Athlete's contention that the slow excretion rates of steroids make it improbable that she has used the Duchess Cocktail and committed an anti-doping rule violation. Rather the excretion rates of the Duchess Cocktail substances corroborate the IBU timelines and support the conclusion that the Athlete did in fact use these three substances.

4. Conclusion

190. Upon careful deliberation, the Athlete's case is in fact quite clear.
191. The IP Report and EDP explained that the Athlete's initial screening procedures showed quantities of oxandrolone trenbolone and metelonone, and the LIMS data supports these analytical findings by way of providing actual concentrations. This evidence on its own allows is convincing.
192. Then, further to considering the Athlete pulling out of the Oberhof WC, the "save" order, the "hide" order, the excretion rates of the Duchess Cocktail, the return to competition and the contextual situation with regards to doping in Russian biathlon at the time, the Panel is comfortably convinced that the Athlete has used metenolone, oxandrolone and trenbolone.
193. While the Athlete has adamantly denied knowledge of these prohibited substances, the Panel need not contemplate if the Athlete knew she was doping or intended to because intent or even knowledge of the use of prohibited substance is not necessary to establish than an ADRV occurred under Art. 2.2 IBU ADR.
194. According to Art. 2.2.1 IBU ADR, the mere use of a prohibited substance, which in this case has been proven by the evidence on file, is sufficient.
195. It is therefore our conclusion that the IBU has established to this Panel's comfortable satisfaction that an anti-doping rule violation for use has been committed by Ekaterina Glazyrina.

5. What is the appropriate sanction?

196. The Athlete has committed an ADRV for the use of a prohibited substance pursuant to Article 2.1 IBU ADR.
197. The Panel's finding that the Athlete committed an ADRV is based on her samples collected on 19 and 21 December 2013, respectively. Therefore, for the determination of the sanctions the 2013 IBU ADR apply.
198. Both samples were collected in-competition at the Russian Championship in Izhevsk, Russia. The substances used were non-specific substances according to the definition of Article 4.2.2 IBU ADR.
199. Article 10.2 IBU ADR applies to ADRVs including Article 2.2 which is an ADRV for "use or attempted use" of a prohibited substance. It provides for a mandatory sanction of a two-year period of ineligibility for a first ADRV for "use" of a prohibited substance, unless the conditions for eliminating or reducing the period of ineligibility under Articles 10.4 or 10.5 IBU ADR are met. However, because this case involves a non-specified substance and the Athlete never raised the issue of sanction reduction, neither Article 10.4 nor Article 10.5 apply.
200. Pursuant to Article 10.9 IBU ADR, the period of ineligibility shall start on the date of

the issuance of the present decision and pursuant to Article 10.9.2 IBU ADR any period of a provisional suspension already served shall be credited against this period of ineligibility.

201. The Athlete has been provisionally suspended since 10 February 2017 and shall therefore have that time credited from her two-year period of ineligibility. This means the Athlete will be able to resume competition on 10 February 2019.

202. According to Article 9 IBU ADR, the Athlete's results in the December 19 and 21 competitions are automatically disqualified with all resulting consequences such as forfeiture of any medals, points and prizes.

203. Article 10.8 IBU ADR states that:

"all other competitive results obtained from the date a positive sample was collected ..., or other anti-doping rule violation occurred, through the commencement of any provisional suspension ..., will, unless fairness requires otherwise, be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes."

204. Therefore, all competitive results the Athlete may have obtained from 19 December 2013 through to 10 February 2017, i.e. the date she was provisionally suspended, shall be disqualified with all resulting consequences including forfeiture of any medals, points and prizes. As to the fairness exception contained in Article 10.8 IBU ADR, the Athlete did not make any submission nor did the Panel find compelling reasons not to disqualify her results.

IV. Decision

205. On these grounds the Panel decides:

1. Ms. Ekaterina Glazyrina is guilty of an anti-doping rule violation for "use" of a prohibited substance, according to Article 2.2 IBU ADR.
2. Ms. Ekaterina Glazyrina is ineligible to compete for a period of two years from the date of this decision with the period of the provisional suspension already served credited.
3. All competitive results obtained by Ms. Ekaterina Glazyrina in the competitions she participated in from 19 December 2013 through to 10 February 2017 are disqualified with all resulting consequences for medals, points and prizes.

The Anti-Doping Hearing Panel

24 April 2018



Christoph Vedder

Chairman of the Panel



Janie Soublière
Member of the Panel



Bo Berglund
Member of the Panel