

7 February 2024

**DECISION OF THE INTERNATIONAL TENNIS INTEGRITY AGENCY
PURSUANT TO ARTICLE 7.14 OF THE 2024 TENNIS ANTI-DOPING PROGRAMME**

I. Introduction

1. The International Tennis Integrity Agency (**ITIA**) is the delegated third party, under the World Anti-Doping Code (**Code**), of the International Tennis Federation (**ITF**), the international governing body for the sport of tennis and signatory of the Code. Under the delegation, the ITIA is responsible for the management and administration of anti-doping across professional tennis in accordance with the Tennis Anti-Doping Programme (the **TADP** or the **Programme**), which sets out Code-compliant anti-doping rules applicable to players competing in Covered Events.¹
2. Marco Bortolotti (the **Player**) is a 33-year-old tennis player who is a national of and resident in Italy. He has competed in Covered Events since 2006.
3. When the Player registered online for an International Player Identification Number (**IPIN**) in 2006 and subsequent years, he expressly agreed to be bound by and to comply with the TADP. By virtue of that agreement, and by virtue of his participation in ITF and ATP events (which fall within the definition of Covered Events under the TADP), the Player became bound by and was required to comply with the TADP.
4. The ITIA charged the Player with the commission of anti-doping rule violations under Article 2.1 and/or Article 2.2 of the TADP (copied below), and proposed certain Consequences based on its analysis of the degree of fault that the Player bears for those violations:
 - “2.1 *The presence of a Prohibited Substance or any of its Metabolites or Markers in a Player’s Sample, unless the Player establishes that such presence is consistent with a TUE granted in accordance with Article 4.4.*”
 - “2.2 *Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method, unless the Player establishes that such Use or Attempted Use is consistent with a TUE granted in accordance with Article 4.4.*”
5. The Player has admitted the anti-doping rule violations charged and acceded to the Consequences proposed by the ITIA.

¹ Unless specified otherwise, references in this decision to the TADP are to the 2023 edition. In accordance with Article 1.5 of the 2024 TADP (which came into effect on 1 January 2024), any case brought after 1 January 2024 based on conduct that took place prior to 1 January 2024 will be governed by the substantive rules in force at the time of the conduct (i.e., the 2023 TADP) and the procedural rules of the 2024 TADP.

Any defined term denoted by an initial capital letter that is not otherwise defined in this decision has the meaning given to it in the TADP.

6. The ITIA therefore issues this decision further to TADP Article 7.14, which provides:
- “7.14.1 At any time prior to a final decision by the Independent Tribunal, the ITIA may invite the Player or other Person to admit the Anti-Doping Rule Violation(s) asserted and accede to specified Consequences [...]*
- 7.14.2 In the event that the Player or other Person admits the Anti-Doping Rule Violation(s) asserted and accedes to Consequences specified by the ITIA [...], the ITIA will promptly issue a reasoned decision confirming the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences [...], will send notice of the decision to the Player or other Person and to each Interested Party, and will Publicly Disclose the decision in accordance with Article 8.6. [...]*
- 7.14.3 Any decision issued by the ITIA in accordance with Article 7.14.2 that an Anti-Doping Rule Violation has been committed [...] will address and determine (without limitation): (1) the factual basis of the decision that an Anti-Doping Rule Violation was committed; and (2) all of the Consequences to be imposed for such Anti-Doping Rule Violation, including the reasons for imposing the Consequences specified, and in particular the reasons for exercising any discretion not to impose the full Consequences available under this Programme.”*

II. The Player's commission of anti-doping rule violations

7. On 4 October 2023, while competing at the ATP Del Monte Lisboa Belém tournament held in Lisbon, Portugal from 2 October to 8 October 2023 (the **Event**), the Player was required to provide a urine sample for drug testing pursuant to the TADP. The sample he provided was assigned reference number 1249661 and split into an A sample and a B sample, which were sealed in tamper evident bottles and transported to the WADA-accredited laboratory in Montreal (the **Laboratory**) for analysis.
8. The Laboratory detected, in the A sample, the presence of a metabolite of clostebol. Clostebol is an anabolic agent prohibited at all times under Section S1 of the WADA Prohibited List in the category of Anabolic Androgenic Steroids. It is a non-Specified Substance. The Player did not have a Therapeutic Use Exemption permitting Use of clostebol.
9. The Adverse Analytical Finding reported by the Laboratory in respect of the A sample was considered by an independent Review Board in accordance with TADP Article 7.4. The Review Board did not identify any apparent departures from the applicable sample collection and sample analysis procedures that could have caused the Adverse Analytical Finding. It therefore decided that the Player had a case to answer for breach of TADP Articles 2.1 and/or 2.2.
10. Accordingly, on 30 January 2024, the ITIA sent the Player a pre-charge Notice explaining that a metabolite of clostebol was present in his sample collected on 4 October 2023 and that he may therefore have committed Anti-Doping Rule Violations under TADP Article 2.1 (*Presence of a Prohibited Substance in his sample*) and/or TADP Article 2.2 (*Use of a Prohibited Substance*). The ITIA's Notice requested a response by 13 February 2024.
11. Given that clostebol is not classified as a Specified Substance under the TADP and/or the WADA Prohibited List, the Player was further informed that he would be subject to a mandatory provisional suspension under TADP Article 7.12.1, effective from 13 February 2024. The Player

was informed of his right to apply to the Chairman of the Independent Panel for the prevention/lifting of such provisional suspension.

12. TADP Article 2.1 is a strict liability offence that is established simply by proof that a prohibited substance was present in the Player's sample, i.e., the ITIA does not have to prove how the substance got into the Player's system or that the Player took the substance intentionally (or even knowingly).
13. On 1 February 2024, the Player replied, stating that he admitted the charges and provided an explanation as to the source of the clostebol metabolite detected in his sample. The Player waived his right to have the B sample opened and analysed.
14. On 2 February 2024, the ITIA sent the Player a formal Charge Letter, asserting that the presence of a metabolite of clostebol in his sample collected on 4 October 2023 constitutes Anti-Doping Rule Violations under TADP Articles 2.1 and/or 2.2.
15. On 5 February 2024, the Player accepted that clostebol was present in his sample collected on 4 October 2023 therefore admitted that he had committed the TADP Articles 2.1 and 2.2 Anti-Doping Rule Violations with which he was charged, but again, provided an explanation.

III. Consequences

A. Period of Ineligibility

(i) How clostebol got into the Player's system

16. The Player has asserted that he did not intend to cheat and did not knowingly ingest clostebol. He asserts that he was involuntarily contaminated with clostebol [REDACTED]
17. In support of his explanation, the Player provided (among other things): [REDACTED]
18. As part of its investigation into the Player's explanation for the clostebol metabolite detected in his sample, the ITIA has sought advice from the Laboratory as to the scientific plausibility of the Player's explanation. The Laboratory performed calculations based on the Player's exposure to the clostebol and the concentration detected in his sample and confirmed (based on scientific literature) that the Player's explanation was credible.
19. Given all the circumstances of this case, including the explanation and evidence provided by the Player, that ITIA accepts that the Player has established that the source of the clostebol metabolite in his urine sample [REDACTED]

(ii) TADP Article 10.2

20. This is the Player's first doping violation.
21. TADP Article 10.2.1 mandates a four-year ban for a TADP Article 2.1 and/or 2.2 violation that is "*intentional*" and is a first violation.² If the prohibited substance in question is not classified as a Specified Substance (as here), the Player has the burden of proving that the violation was not "*intentional*." If the Player can do so, then TADP Article 10.2.2 provides for a two-year period of ineligibility, subject to potential further mitigation. TADP Article 10.2.3 explains that in this context "*the term 'intentional' is meant to identify those Players or other Persons who engage in conduct that they knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk*". The jurisprudence is clear that what counts in this context is what the Player actually knew, not what he should have known.³
22. As set out above, the ITIA has accepted [REDACTED]
[REDACTED] Accordingly, the ITIA accepts that the Player has met his burden of demonstrating that his commission of the violation was not "intentional" within the meaning of TADP Articles 10.2.1 and 10.2.3, and so the two-year period of ineligibility set out in TADP Article 10.2.2 applies.

(iii) TADP Articles 10.5 and 10.6

23. TADP Article 10.5 provides that if a player establishes that he bears No Fault or Negligence for the anti-doping rule violation in question, the otherwise applicable period of ineligibility will be eliminated. No Fault or Negligence is defined in the TADP as follows: "*The Player or other Person establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule.*"
24. TADP Article 10.6.1.2 provides that where the player can establish that he bears No Significant Fault or Negligence and that the prohibited substance came from a Contaminated Product, then the otherwise applicable two-year period of ineligibility may be reduced by up to 100% (in which case there would be a reprimand only). A 'Contaminated Product' is defined in the TADP as a "*product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search*". The definition of No Significant Fault or Negligence is: "*The Player or other Person establishing that their Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the Anti-Doping Rule Violation*". Where No Significant Fault or

² In accordance with TADP Article 10.9.4.1, for the purposes of imposing consequences under the TADP, the anti-doping rule violations will be "*considered together as one single first Anti-Doping Rule Violation, and the sanction imposed will be based on the Anti-Doping Rule Violation that carries the more severe sanction*" if (as here) the Player did not commit the second anti-doping rule violation after he received notice of the first.

³ ITF v Sharapova, Independent Tribunal decision dated 6 June 2016, para 68, not challenged on appeal, Sharapova v ITF, CAS 2016/A/4643.

Negligence is found, the amount of reduction to be applied depends upon the degree of the player's Fault.

25. A plea of No Fault or Negligence or No Significant Fault or Negligence is assessed by considering how far the player departed from their duty under the TADP to use "*utmost caution*" to ensure that they would not ingest any prohibited substances or otherwise do anything that might constitute or result in the commission of an anti-doping rule violation.⁴ "*The difference between the two [...] is one of degree: to establish No Fault or Negligence, the athlete must show that he took every step available to him to avoid the violation, and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant*".⁵ The TADP definition of Fault⁶ makes clear that the first question is how far the player departed from the duty of utmost caution (objective fault) and the second question is whether there is any acceptable explanation for that failure (subjective fault).
26. The standard of "*utmost caution*" is very onerous and requires a player to show that he "*made every conceivable effort to avoid taking a prohibited substance*".⁷
27. In this case, the ITIA accepts that [REDACTED] [REDACTED] The ITIA does not think it could have reasonably expected the Player to take further precautions in relation to his exposure to a prohibited substance and hence accepts that the Player had No Fault or Negligence. In coming to this conclusion, the ITIA has considered recent, comparable, case law.

B. Disqualification of results

⁴ See, e.g., *Kutrovsky v ITE*, CAS 2012/A/2804, para 9.49 ("*the athlete's fault is measured against the fundamental duty that he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any prohibited substance*"); *FIFA & WADA*, CAS 2005/C/976 & 986, paras 73-75 ("*The WADC imposes on the athlete a duty of utmost caution to avoid that a prohibited substance enters his or her body. [...] It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified*").

⁵ *IBAF v Luque*, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

⁶ "*Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player's or other Person's degree of Fault include, for example, the Player's or other Person's experience, whether the Player or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in their career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2*".

⁷ *Knauss v FIS*, CAS 2005/A/847, para 7.3.1; *WADA v NSAM et al*, CAS 2007/A/1395, para 80 ("*The burden is therefore shifted to the athlete to establish that he/she has done all that is possible to avoid a positive testing result*").

28. TADP Article 9.1 states that *“An Anti-Doping Rule Violation committed by a Player in connection with or arising out of an In-Competition test automatically leads to Disqualification of the results obtained by the Player in the Competition in question, with all resulting consequences, including forfeiture of any medals, titles, ranking points and Prize Money obtained by the Player in that Competition.”*
29. TADP Article 10.1.2 states that *“If the Player establishes that they bear No Fault or Negligence for the Anti-Doping Rule Violation in question, the Player's results obtained in the Competition(s) other than the Competition during or in connection with which the Anti-Doping Rule Violation occurred will not be Disqualified unless the ITIA establishes that the Player's results in the other Competition(s) were likely to have been affected by their Anti-Doping Rule Violation.”*
30. The Player's results at the Event are automatically disqualified in accordance with TADP Articles 9.1 and 10.1.2 (including forfeiture of any medals, titles, ranking points and Prize Money received as a result of participation in that event). As the ITIA has determined that the Player had No Fault or Negligence in relation to his Anti-Doping Rule Violation, no subsequent results of the Player will be disqualified.

C. Costs

31. Each party shall bear its own costs of dealings with this matter.

D. Publication

32. In accordance with TADP Articles 7.14.2 and 8.6, this decision will be publicly reported by being posted (in full and/or summary form) on the ITIA's website.

E. Acceptance by the Player

33. The Player has accepted the consequences proposed above by the ITIA for his anti-doping rule violations and has expressly waived his right to have those consequences determined by the Independent Tribunal at a hearing.

IV. Rights of appeal

34. This decision constitutes the final decision of the ITIA, resolving this matter pursuant to TADP Article 7.14.
35. Further to 2023 TADP Article 13.2.1, each of WADA and the NADO Italia has a right to appeal against this decision to the CAS in Lausanne, Switzerland, in accordance with the procedure set out at 2023 TADP Articles 13.8 and 13.9.
36. As part of this resolution of the matter, the Player has waived his right to appeal against or otherwise challenge any aspect of this decision (both as to the finding that the Player has committed anti-doping rule violations and as to the imposition of the consequences set out above), whether pursuant to 2023 TADP Article 13.2.1 or otherwise. However, if an appeal is filed with the CAS against this decision either by WADA or the NADO Italia, the Player will be entitled (if so advised) to exercise his right of cross-appeal in accordance with 2023 TADP Article 13.9.4.

Issued Decision of the ITIA

London, 7 February 2024

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