CYCLING INDEPENDENT REFORM COMMISSION

REPORT TO THE PRESIDENT OF THE UNION CYCLISTE INTERNATIONALE

DR. DICK MARTY (PRESIDENT)
MR. PETER NICHOLSON (VICE-PRESIDENT)
PROF. DR. ULRICH HAAS (VICE-PRESIDENT)

ACKNOWLEDGMENTS

In the course of its mandate, the Commission was assisted by a Project Director and a team of specialists with legal, technical, investigative and analytical skills. The Commissioners wish to acknowledge and thank the following:

Ms Aurélie Merle, Project Director
Ms Erika Riedl, Anti-doping Consultant
Mr Daniele Boccucci, Legal Consultant
Ms Louise Reilly, Barrister
Ms Kendrah Potts, Legal Counsel to the Commission

The Commission sent many requests for assistance to UCI and the Cycling Anti-doping Foundation for archive documents and other information that were all answered in a professional and timely manner. The Commission would like to express its gratitude to UCI and Cycling Anti-doping Foundation staff members for their cooperation and time in assisting the CIRC in fulfilling its mandate. Similar thanks are due to the World Anti-doping Agency and to the many National Anti-doping Agencies for promptly sharing documents and information with the Commission.

The Commission would also like to thank all the people who volunteered to cooperate with its mandate and those who responded positively to a request for an interview.

Dick Marty
Ulrich Haas
Peter Nicholson

Lausanne, February 2015

ABBREVIATIONS

AAF	Adverse Analytical Finding
ABP	Athlete Biological Passport
ADAMS	Anti-doping Administration and Management System
ADC	UCI Anti-doping Commission
ADO	Anti-doping Organisation
ADR	Anti-doping Rule(s)
ADRV	Anti-doping Rule(s) Violation
ADU	UCI Anti-doping Unit
AFLD	Agence Française de Lutte contre le Dopage
ASO	Amaury Sport Organisation
CADF	Cycling Anti-doping Foundation
CAS	Court of Arbitration for Sport
CERA	Continuous Erythropoietin Receptor Activator
CIRC/Commission	Cycling Independent Reform Commission
CONI	Comitato Olimpico Nazionale Italiano
DCO	Doping Control Officer
EPO	Erythropoietin
Giro	Giro d'Italia
HGH	Human Growth Hormone
IF	International Federation
In-/Out-of-Competition Test	ICT/OoCT
IOC	International Olympic Committee
LADS	Legal Anti-doping Service
LH	Luteinizing Hormone
LNDD	Laboratoire national de détection du dopage
MPCC	Mouvement Pour un Cyclisme Crédible
NADO	National Anti-doping Organisation
NAS	Nuclei Antisofisticazione e Sanità
NF	National Federation
PED	Performance Enhancing Drug
RTP	Registered Testing Pool
SSCC	UCI Sports Safety and Conditions Commission
Tour	Tour de France
TUE	Therapeutic Use Exemption
UCI	Union Cycliste Internationale
UNESCO Convention	International Convention against Doping in Sport
USADA	United States Anti-doping Agency
USCF	United States Cycling Federation
Vuelta	La Vuelta a España
WADA	World Anti-Doping Agency
WADA Code	World Anti-Doping Code

TABLE OF CONTENTS

EXECUTIVE SUMMARY

INTRODUCTION

The Cycling Independent Reform Commission ("Commission" or "CIRC") was established by the Union Cycliste Internationale ("UCI") "*to conduct a wide ranging independent investigation into the causes of the pattern of doping that developed within cycling and allegations which implicate the UCI and other governing bodies and officials over ineffective investigation of such doping practices*." (Terms of Reference, paragraph 3). This Executive Summary sets out the CIRC's key findings on the serious allegations of corruption made against UCI and its officials, allegations that it failed to apply and enforce its own anti-doping rules, and CIRC's conclusions following an assessment of UCI's governance structures and anti-doping policies. The summary then addresses the state of doping in cycling today, and the main factors that led to a doping culture, before listing some of the key recommendations.

UNION CYCLISTE INTERNATIONALE (UCI)

ALLEGATIONS CONCERNING IRREGULARITIES BY UCI IN RELATION TO DOPING

The CIRC has considered a number of allegations made against UCI; these include allegations that, if true, could potentially amount to corruption, as well as failures to apply or enforce its own anti-doping rules.

Uncorroborated allegations of corruption

The Commission specifically considered two allegations in respect of payments by Lance Armstrong to UCI; however the Commission found no evidence to support the allegations:

1. Despite allegations that Lance Armstrong tested positive during the June 2001 Tour de Suisse and paid UCI to cover up it up, reports from the laboratory show that he did not test positive during the Tour de Suisse (although three of his five samples came back as suspicious for EPO). A donation of $25,000 was made by Lance Armstrong to UCI for the fight against doping, but it was not paid until May 2002 and there is no evidence that the two were linked.

2. It was also alleged that Lance Armstrong paid money to help finance the Vrijman report, which had been commissioned by UCI to investigate accusations by *L'Équipe* in August 2005 that Lance Armstrong tested positive for EPO during the 1999 Tour de France. Six months earlier, in January 2005, Lance Armstrong had proposed to contribute USD 100,000 to UCI's anti-doping programme and in July, a Sysmex machine was bought by UCI, which was finally paid for by Lance Armstrong in January 2007. There is no evidence to link the donation by Lance Armstrong and the Vrijman report, and the timing indicates that the two were not related.

Failure to apply or enforce its own rules

One area where UCI consistently failed in the past to apply its own anti-doping rules properly was Therapeutic Use Exemptions. Two clear examples of this were the cases of Laurent Brochard (1997) and Lance Armstrong (1999), when both riders were permitted to provide backdated prescriptions to avoid sanction.

Another example of UCI failing to apply its own rules was the decision to allow Lance Armstrong to compete in the Tour Down Under in 2009, despite the fact that he had not been in the UCI testing pool for the prescribed period of time. Whilst there is no direct evidence of an agreement between Pat McQuaid and Lance Armstrong, information in the Commission's possession shows that: (i) Pat McQuaid made a sudden U-turn and allowed Lance Armstrong to return 13 days early to participate in the Tour Down Under, despite advice from UCI staff not to make an exception, and (ii) there was a temporal link between this decision, which was communicated to UCI staff in the morning, and the decision of Lance Armstrong, which was notified to Pat McQuaid later that same day, to participate in the Tour of Ireland, an event run by people known to Pat McQuaid.

Preferential treatment for Lance Armstrong

UCI saw Lance Armstrong as the perfect choice to lead the sport's renaissance after the Festina scandal: the fact that he was American opened up a new continent for the sport, he had beaten cancer and the media quickly made him a global star. Numerous examples have been identified showing that UCI leadership "defended" or "protected" Lance Armstrong and took decisions because they were favourable to him. This was in circumstances where there was strong reason to suspect him of doping, which should

have led UCI to be more circumspect in its dealings with him. UCI exempted Lance Armstrong from rules (see above), failed to target test him despite the suspicions, and publicly supported him against allegations of doping, even as late as 2012 when UCI threatened to challenge USADA's jurisdiction. In addition, requesting and accepting donations from Lance Armstrong, given the suspicions, left UCI open to criticism.

In respect of the Vrijman report (see above), UCI purposely limited the scope of the independent investigator's mandate to procedural issues contrary to what they told stakeholders and the public and against Emile Vrijman's own suggestion. UCI, together with the Armstrong team, became directly and heavily involved in the drafting of the Vrijman report, the purpose of which was only partly to expedite the publication of the report. The main goal was to ensure that the report reflected UCI's and Lance Armstrong's personal conclusions. The significant participation of UCI and Armstrong's team was never publicly acknowledged. In the CIRC's view, based on an assessment of documents in its possession, UCI had no intention of pursuing an independent report; UCI's approach prioritised the fight against WADA and the protection of its star athlete.

UCI GOVERNANCE

From the late 1980s, UCI grew rapidly as an institution. It vested extensive powers in the office of president, which created an entity run in an autocratic manner without appropriate checks and balances. Internal management bodies appear to have been devoid of any real influence and the governance structure was such that if the president wanted to take a particular direction, he was able to do so almost unchallenged. This style of management was (and sometimes still is) not uncommon in sports governing bodies, although this does not justify either the governance structure or the decisions that were taken.

Lack of transparency

One of the clearest examples of the absence of good governance within UCI is the previous presidential elections. In 2005, Pat McQuaid, unlike other candidates, received considerable benefits and other support from UCI and Hein Verbruggen. These actions were strongly criticised by a UCI Management Committee member, but management rejected her claims and took action to quash the allegations. In the 2013 elections, Pat

McQuaid sought to rely on a nomination by the Moroccan and Thai Federations (the Swiss having withdrawn their support and the Irish having refused to nominate him), despite the rules providing that a candidate's own federation should nominate him. There are also unproven allegations regarding the 2013 election: a Management Committee member accused Pat McQuaid of corruption in a confidential report (parts of which were leaked to the press) and the same Management Committee member was himself accused of having given money to a National Federation to finance Brian Cookson's election. These incidents highlight both the serious problems with UCI's governance and the deficiencies in its democratic process.

The CIRC also identified a lack of transparency and oversight in respect of financial matters, including in respect of expenses and approvals for some costly projects.

Impact on anti-doping

For a long time, the main focus of UCI leadership was on the growth of the sport worldwide and its priority was to protect the sport's reputation; doping was perceived as a threat to this. The allegations and review of UCI's anti-doping programme reveal that decisions taken by UCI leadership in the past have undermined anti-doping efforts: examples range from adopting an attitude that prioritised a clean image and sought to contain the doping problem, to disregarding the rules and giving preferential status to high profile athletes, to publicly criticising whistleblowers and engaging in personal disputes with other stakeholders. These actions severely undermined the credibility of UCI and therefore the reputation of the sport. However, the CIRC is not suggesting that UCI leadership knowingly or deliberately allowed doping and high-profile dopers to continue within the sport knowing or suspecting them to still be doping, but rather that a lack of proper institutional checks and balances within UCI, meant that these matters were not subjected to the rigorous scrutiny and application of the rules and best practice that they should have been.

ANALYSIS OF UCI'S ANTI-DOPING POLICY

1992—2006

The doping problem was well known to the UCI leadership and it was clear to everyone that doping was endemic in cycling. Hein Verbruggen had acknowledged this, in principle,

in his campaign manifesto when running for president of UCI in 1991. After his election, UCI employed a strategy of diverting public opinion from the fact that UCI was responsible for the doping issue in cycling. Doping was portrayed by UCI leadership as the faulty (and surprising) behaviour of a few individuals, but not as endemic group behaviour or as a structural problem within its sport.

Not only did UCI leadership publicly disregard the magnitude of the problem, but the policies put in place to combat doping were inadequate. Credit should be given to the UCI insofar as it was at the forefront of anti-doping in introducing new testing techniques. However, the science is only one part of anti-doping strategy. To have an effective anti-doping strategy, it is essential to get the right sample from the right rider at the right time and to the right laboratory. In the CIRC's view, there was not enough willingness to put such a system in place. The approach to doping was one of containment, with a focus on protecting health. Looking at the tools available to UCI to combat doping, there was no satisfactory commitment to push the fight against doping beyond the limits of health protection. Anti-doping policy was for the most part based on a predictable and quantitative approach. Going after the cheaters was perceived as a witch-hunt that would be detrimental to the image of cycling.

Since UCI's anti-doping strategy was directed against the abuse of doping substances rather than the use of them, only the visible tip of the iceberg was tackled. Deterrence was not an integral part of the strategy. Instead, the CIRC considers that the policies of announcing sample collections, notifying riders and leaving them unattended, gave riders the opportunity to adapt and to evade testing positive through medical supervision, whilst at the same time giving the impression to the public that cycling was trying to address the doping problem.

The emphasis of UCI's anti-doping policy was, therefore, to give the impression that UCI was tough on doping rather than actually being good at anti-doping. UCI portrayed itself as always being at the forefront of the fight against doping. However, there was more that could have been done to address the roots of the doping problem or to discuss strategies against doping proactively. Such an active policy was seen as an impediment to the development of cycling and was, therefore, not encouraged. There was little incentive for

self-reflection within UCI leadership or to reassess its anti-doping policy. This is true even when concrete problems were brought to the attention of the UCI leadership.

2006/2007—today

The period starting from 2006/2007 has been marked by steady improvements and a growing willingness to combat doping at its roots. The original policy of containment was abandoned in favour of a policy that sought to catch the cheaters. Within a short period of time, important changes were agreed and implemented, such as the introduction of out-of-competition testing, more targeted testing, the introduction of the athlete biological passport, and the transformation of the anti-doping unit into the Cycling Anti-doping Foundation (CADF). Funding for anti-doping also improved, and teams and event organisers now contribute substantially to the funding of the anti-doping programme. All these measures have, so the CIRC has been credibly told, changed the behaviour of elite road cyclists considerably.

The reason why the public has not acknowledged and given credit for these positive changes is probably due to the hesitant and poor leadership of UCI. Interference with anti-doping operations, continuing disputes with other stakeholders, ineffective public management of crisis situations (for example the Lance Armstrong comeback, Alberto Contador, jurisdictional disputes, accepting donations from Lance Armstrong), general problems of good governance, close relationships between UCI leadership and riders (in particular with Lance Armstrong), obvious conflicts of interest as well as a devastating election campaign in 2013 have ruined UCI's credibility in the eyes of the public, including in respect of anti-doping. The new leadership that took over in 2013 now seeks to avoid these past mistakes: relationships with other stakeholders have significantly improved and influence over CADF's anti-doping operations has ceased. However, it appears to the CIRC that the transition to a more independent CADF also presents challenges, which are addressed in the Report.

Anti-doping is not a static matter. Once a new level is attained, the battle is still far from won. Instead, the history of anti-doping is marked by constant adaptation by those who seek to cheat and those who seek to catch them. Therefore, a good anti-doping policy is distinguished by a constant effort to improve the existing tools, search for new strategies,

and coordinate with others in the field and to prevent the kinds of predictable routines that facilitate and encourage dopers to adapt. Even though UCI's anti-doping programme today is one of the best among international federations, the CIRC sees room for further improvement.

ELITE ROAD CYCLING

The general view is that at the elite level the situation has improved, but that doping is still taking place. It was commented that doping is either less prevalent today or the nature of doping practices has changed such that the performance gains are smaller. The CIRC considers that a culture of doping in cycling continues to exist, albeit attitudes have started to change. The biggest concern today is that following the introduction of the athlete biological passport, dopers have moved on to micro-dosing in a controlled manner that keeps their blood parameters constant and enables them to avoid detection.

In contrast to the findings in previous investigations, which identified systematic doping organised by teams, at the elite level riders who dope now organise their own doping programmes with the help of third parties who are primarily outside the cycling team. At the elite level, doping programmes are generally sophisticated and therefore doctors play a key role in devising programmes that provide performance enhancement whilst minimising the risk of getting caught.

Factors still exist that could be seen to encourage or facilitate doping. For example: there is financial instability throughout the sport (teams often depend entirely on one sponsor, and teams, and therefore riders, can be under huge pressure to obtain good results to keep sponsors or get an extension of their short-term contract); riders often train predominantly away from the team and might engage their own doctors (and doctors operating outside the sport are hard to regulate); riders who rode in an era when doping was acceptable continue to work in the sport which makes it hard to change the culture; and although the influence of the classic omerta has declined, riders are still reluctant to report doping or suspicious conduct to the authorities.

At the elite level there are now teams that have a strong anti-doping culture and that are trying to foster an environment in which riders can ride clean. However, interviewees expressed concern that this was not the case in all teams. Ultimately, riders who dope have shown themselves to be highly adaptable. Consequently, anti-doping tests, combined with proper procedures and complemented by investigative powers of national authorities, are the most effective deterrent. Therefore UCI and other stakeholders must ensure that resources continue to be devoted to improving the anti-doping programme.

Conclusions

It was well known to UCI that use of performance enhancing drugs was pervasive in the sport. The direction of UCI's anti-doping policy was determined by UCI management until the late 2000s when greater operational control was given to the CADF. It was only then that UCI started to move away from a policy of containment and protecting the sport to seek instead to tackle the problem. It is fair to note that UCI took more steps as part of its anti-doping policy than many other international federations. However, whilst there is a debate as to whether it should receive much credit for this given the scale of the doping problem, the more significant point is that despite adopting new tests, many of the other steps it took prior to 2006/2008 served to undermine anti-doping efforts. In addition, the governance failures and specific actions of UCI's presidents/management seriously undermined UCI's credibility.

It is clear that positive developments have been made in UCI's anti-doping policy in the last six years, although there is still considerable room for improvement. The Commission considers that in addition to addressing operational issues in anti-doping policy, one of the key lessons from the Report should be that good governance is an essential part of a strong commitment to anti-doping. As the issues described above demonstrate, good governance is critical not only to anti-doping, but also to the management and credibility of a sport more generally. It is essential that institutions put in place clear rules that provide for fair processes, and which will be properly implemented by management. The recommendations focus on anti-doping and governance issues as well as areas for UCI to develop with other stakeholders, who are also essential if UCI is to combat the doping issue in the future.

RECOMMENDATIONS

The Commission refers readers to the full Recommendations section of the Report. However, some key recommendations include:

1. Primary responsibility for controlling doping in sport lies with the sporting world. Only subsidiary responsibility lies with governments. The CIRC recommends that UCI works closely with governments/national authorities that make their investigative tools available to the fight against doping and that, together with other stakeholders, it urges other governments to have these tools in place and work towards closer cooperation with sports bodies on criminal matters in anti-doping.
2. In addition to serving any sport sanction, doctors who are found guilty of an anti-doping rule violation should be investigated to determine whether they are fit to continue their general medical practice. Anti-doping bodies should have an obligation to inform the doctor's professional regulatory body that he has been sanctioned for a sport violation so that the regulatory body may open an investigation against the doctor.
3. The CIRC has observed that "public shaming" is frequently used to put pressure on other stakeholders. In particular, allegations that are not fully investigated or not investigated at all are put into the public domain by anti-doping organisations. Such conduct should not be employed. It infringes on fundamental rights, leads to a waste of resources and undermines the credibility of the fight against doping. In the same way that WADA-accredited laboratories are bound by a duty of confidentiality, the same principle should apply to anti-doping organisations in respect of allegations.
4. The CIRC recommends that "prevalence studies" of doping in different countries, teams, levels (including amateur) and disciplines, should be undertaken by UCI/CADF to establish the level of doping in those different populations; this would enable UCI/CADF to define better how to deploy resources and support an effective anti-doping strategy. All the statistical data from testing should be integrated into these studies.
5. UCI/CADF should move to a qualitative rather than quantitative testing plan and collect and integrate all available information. At present, CADF concentrates

solely on testing. There must also be a focus on non-analytical means of establishing anti-doping rule violations. The CIRC recommends that intelligence-led testing and broader, non-analytical investigations should target individual riders and support staff when most likely to be engaged in doping activities, particularly in out-of-competition time periods.

6. The no testing window from 11pm to 6am helps riders who micro-dose to avoid being caught. The CIRC is conscious of the principle of proportionality but the absence of night-time testing is a weakness in the current system and needs to be addressed. UCI/CADF should make more use of the exception contained in Article 5.2 of the 2015 UCI Anti-Doping Rules ("*serious and specific suspicion that the Rider may be engaged in doping*") to test at night-time.
7. Re-testing should be an integral part of the testing programme. A coherent re-testing strategy should be developed that is systematic and regularly undertaken, with additional tests when new science is available, and well publicised. Retrospective sample testing is perhaps as great a disincentive to riders as today's testing is, even more so for the more successful riders. A sample given by a rider should have a mandatory re-testing programme attached to it.
8. CIRC recommends that in order to encourage people to come forward with information, UCI should set up an independent whistleblower desk. UCI should also proactively make full use of substantial assistance provisions (every athlete who is sanctioned should be approached to enquire whether he is interested in providing substantial assistance).
9. The most effective way of cleaning up the sport is to pursue individuals through investigations as soon as a suspicion is raised. UCI/CADF should make efforts to investigate those individuals that it believes were involved in doping in the past, observing the principles of due process, and make full use of the extended statute of limitations.

The Recommendations section also contains suggestions regarding UCI's governance structures.

BACKGROUND TO THE CIRC

The Cycling Independent Reform Commission ("CIRC", or the "Commission") was established by the Union Cycliste Internationale ("UCI") on 8 January 2014. The CIRC was asked to report to the UCI President at the end of its mandate on 31 January 2015. This deadline was extended for one month, at the CIRC's request, and the CIRC report ("Report") was given to the UCI President on 26 February 2015.

The CIRC comprised three Commissioners, a Project Director and a team of specialists with legal, technical, investigative and analytical skills. The purpose of the CIRC was to assist the UCI in understanding the past endemic problem of doping in cycling, and to assist the UCI in making changes to improve the future of the sport.

The CIRC has three main objectives, derived from its Terms of Reference:

. To conduct a wide-ranging independent investigation to establish the roots, historical reasons, causes, mechanisms, processes, procedures, practices, patterns, networks, providers, instigators and facilitators that enabled the endemic problem of doping in cycling.

. To investigate whether UCI officials directly contributed to the development of a culture of doping in cycling, in particular by mismanaging the testing and/or by covering up positive tests, and whether the UCI and other governing bodies and officials were implicated in ineffective investigation of doping practices.

. To produce a report at the end of the CIRC mandate for the President of the UCI, that provides knowledge and understanding of the past endemic culture of doping in cycling, and provides targeted recommendations to the whole cycling community for the future.

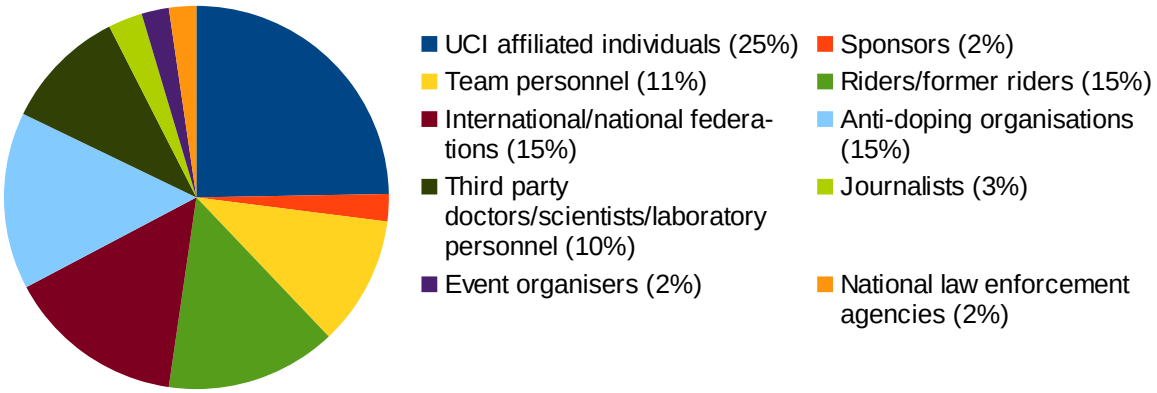
I. METHODOLOGY

The Commission was given disciplinary capacity to deal with doping violations. It appeared at an early stage that this would not be the only, or even the main, source of information. Therefore the Commission also interviewed those who came forward from within the sport and beyond, and reached out to individuals from stakeholders involved in all aspects of the sport. It also collected documentary, academic, statistical and visual information from a number of varied sources.

The Commission was provided with electronic information by the UCI, relating to UCI's affairs over many years. The Commission established an internal research and analysis programme to examine the data, and used the information along with all other sources of information to support mainly its second, but also its first objectives.

Stakeholders were consulted from within the sport, including riders, managers, directeurs sportifs, doctors, scientists, owners, sponsors, and event organisers. From the sport's administration, the World Anti-Doping Agency ("WADA"), national anti-doping organisations ("NADO" or "NADOs"), international federations ("IF" or "IFs"), national federations ("NF" or "NFs"), former and current UCI members, and anti-doping laboratories were consulted.

The CIRC spoke to 174 interviewees. Some of those interviews were less than half a day, some lasted three days or more over extended time periods and in different locations around the world. The interviewees have been grouped into the following categories: UCI affiliated individuals; cycling team personnel; NFs and IFs; third party doctors, scientists and laboratory personnel; event organisers; sponsors; riders and former riders; anti-doping organisations; journalists; and national law enforcement agencies. The proportion of each type of interviewee is represented in the pie chart below. As each interview was conducted on a confidential basis, interviewees will be referred to anonymously throughout the Report. Annex 1 sets out the list of interviewees who agreed to their name being published in an annex to the Report.



No rider came forward to voluntarily admit an anti-doping rule violation ("ADRV"). Only sanctioned riders volunteered to provide the CIRC with information with the purpose of obtaining a reduced sanction, and these cases were dealt with according to the Terms of Reference. Looking back, the Commission was not surprised that this was the case, and the findings reflected throughout this Report indicate why.

Articles 12 and 13 of the Terms of Reference specified that the investigation period shall focus on the period from 1998 until 2013, but the CIRC had discretion to extend the length of the investigation period or opt for an alternative period. The Commission decided that in order to fully appreciate the problems of doping in cycling, it was necessary to go back to cycling's earlier days. Clearly such a project could have lasted indefinitely and draw from an inexhaustible source of material. Instead, the Commission has balanced the need for a complete picture with the mandate given to the CIRC. The Report will give a brief overview of the problem of doping in elite road cycling and the anti-doping measures that were undertaken to combat it, from cycling's earlier days until today.

The CIRC confirms that it conducted its work autonomously and that apart from the Terms of Reference, it did not receive any instruction from UCI, WADA or any other stakeholders at any stage of the process relating to the substantive nature of its work. Meetings with UCI were limited to discussion on the budget and logistical matters of relevance to the work of the CIRC.

II. SCOPE OF MANDATE

The Commission points out it was not established to answer all questions related to doping, at all levels, in all areas of the sport, over the last 50 or so years. Nor is it the task of this Commission to cleanse the sport of its cultural doping problems. This Commission is in particular not intended to substitute or complement existing NADOs or Anti-doping Organizations ("ADO or "ADOs"). This is mentioned because from the beginning of its mandate, the Commission encountered all of the above expectations from many inside sport, who were unrealistic in what could be achieved, given the scale of the problems.

Individuals asked to cooperate with the CIRC were under no obligation to participate in the process and several people including riders, scientists, ex-riders or former UCI staff members refused to be interviewed by the CIRC. The Commission also had no coercive measures against people who may have lied during their interview. Only UCI licence holders who provided false information to the CIRC could be sanctioned with the imposition of an up to 8-years world-wide ban.

The Commission was mandated to provide its Report to the UCI President. It is within the sole responsibility of UCI to publish the Report. The Commission has included information that it considers should not be published for legal reasons in confidential annexes to this Report.

The CIRC notes that its mandate was limited to examining the problem of doping in cycling, but it is clear that doping is a problem for many sports.

CHAPTER 1: ELITE ROAD CYCLING

1.1. INTRODUCTION

In some respects, the sport of elite road cycling has changed dramatically over the last few decades. However, some characteristics, deeply embedded and at the core of the sport, have not changed. Doping and denial found their way into cycling and, over time, they became cemented across the sport. This situation became the norm and impeded cycling's capacity to successfully tackle its doping problems.

Today, many aspects of the sport have changed for the better. The sport is trying to remain on an upwards trajectory, despite setbacks that have occurred. Today, the UCI administration is putting in place policies and initiatives, and improving external relationships, which are for the benefit of cycling. However, the sport continues to struggle with presenting a new approach to its stakeholders and the public, in part as a result of the huge "backstory" that cycling created for itself over the last few decades.

Doping and cheating remain evident in the peloton, though it is probably not as endemic as it used to be. There are a good number of individuals, teams and team personnel striving to participate in the sport without doping. It seems that today riders have a choice as to whether to dope or not, whereas before there was no real choice if a rider wanted to be competitive in the big races. Yet there are a number who continue to cheat. Therefore, it cannot be said that there is a genuine sport-wide consensus by all participants to reject doping. The problem is that in a climate in which doping has become the norm for a long period of time, ethical values can be undermined.

The fans of cycling have been misled for decades. Yet they still seem to believe in the sport itself. The sport retains a strong fan base, which is broadening. The words of the International Olympic Committee ("IOC")/ United Nations Office on Drugs and Crime report (albeit on match-fixing) are pertinent to cycling and serve as watchwords to the sport.

"*The spirit of sport, expressed in its unpredictability, is the one which [attracts] millions of people, taking part in different sport events at different levels, hoping and believing that they are part of a "community", an "environment" which is characterized by fairness and respect of others. Destroying this spirit by illegally influencing the results or courses of competitions may destroy the essence of sport itself.*"[1]

It was therefore incumbent on the highest managing body to identify the strategic threat that was posed, and prioritise its efforts in taking all possible steps to resolve it. The steps taken by UCI will be examined in the UCI chapter of this Report.

1.2. INITIAL COMMENTS

The Commission found in the course of its work that a number of fundamental themes emerged on which there were significantly differing attitudes. The Commission found that these themes threaded through much of its collected information and considers that it is necessary to clarify them now, given their importance as background context to the rest of the Report.

1.2.1. What is meant by "being clean"?

There is no "one size fits all" definition from within the sport of what clean means. The generally accepted understanding of being clean is that an athlete does not take products that are on the WADA Prohibited List. Some riders will take substances on the List but, having not been caught, consider themselves clean. Some will take substances that are on the List but are not yet detectable, and therefore believe that they are clean. Some riders stop doping before a big event and therefore consider themselves to be riding clean. All definitions have been described by riders and other stakeholders. The Commission heard that some riders also experiment with performance-enhancing substances and practices that are not yet on a banned list.

[1] International Olympic Committee and United Nations Office on Drugs and Crime, "Criminalization approaches to combat match-fixing and illegal/irregular betting: a global perspective" (July 2013), p.17. Available: http://www.unodc.org/documents/corruption/Publications/2013/Criminalization_approaches_to_combat_match-fixing.pdf.

There is a considerable amount of spin around what being clean means to riders and teams. It can be used today in the same way that the phrase, "*I have never tested positive*" was sometimes used in the past to suggest that a doping rider had never doped. For the public, the presumption that a rider is clean has been eroded by the scandals over the years.

The Commission notes that despite the statements from riders and teams today that they are clean, the Commission was informed that hardly any riders in the peloton today are willing to allow their samples to be used anonymously for research purposes into developing new methods of drug detection. A box on doping control forms today can be ticked to enable such testing. The Commission was told that over 95% of the time, it is not ticked.

1.2.2. What is meant by "a culture of doping"?

A culture could be defined as a series of customs, attitudes and behaviours absorbed and practiced by a group of people, perhaps over more than one generation, until they become embedded in the group as norms. A culture shapes and influences how the group and individuals conduct themselves.

The World Anti-Doping Code ("WADA Code") defines doping.[2] A "culture of" doping indicates that doping was widespread in the sport, was accepted by the majority of participants, and had continued for a long time, in this case across more than one sporting

[2] Article 1 of the 2015 WADA Code, defines doping as the occurrence of one or more of the ADR violations set out in Article 2.1 through 2.10. These violations are as follows:
(i) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample;
(ii) Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method;
(iii) Evading, Refusing or Failing to Submit to Sample Collection;
(iv) Whereabouts Failures;
(v) Tampering or Attempted Tampering with any part of Doping Control;
(vi) Possession of a Prohibited Substance or a Prohibited Method;
(vii) Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method;
(viii) Administration or Attempted Administration to any Athlete In-Competition of any Prohibited Substance or Prohibited Method, or Administration or Attempted Administration to any Athlete Out-of-Competition of any Prohibited Substance or any Prohibited Method that is prohibited Out-of-Competition;
(ix) Complicity;
(x) Prohibited Association.
Full text available: https://wada-main-prod.s3.amazonaws.com/resources/files/wada-2015-world-anti-doping-code.pdf.

generation. Time is a key factor in the development of a culture, and also in effecting change. If a culture takes many years or even decades to develop, it is highly unlikely to be changed within only a year or two.

Many individuals who were interviewed by CIRC identified the same common factors that contributed to a culture of doping in cycling. They stated the culture dates back a long time and has existed since before the Tour de France ("Tour") started, and before the introduction of Erythropoietin ("EPO"). Interviewees felt the Grand Tours were different from other kinds of endurance sports, and other cycling competitions, and the three-week races required special forms of performance assistance and substances for recovery.

Many riders stated that cycling is a particularly tough sport. Riders doped to be able to compete at the highest levels over sustained periods of time. Some stated doping helped them make the suffering bearable. Many also stated that there is widespread mistrust in competitors' performance. If an athlete is beaten in competition it is an easy excuse to attribute the difference in performance to doping. Sometimes however, the explanation is much more simple but difficult to accept, *i.e.,* "*you cannot make a racehorse out of a donkey*".

More recent research studies on doping in sport suggests that "*…if athletes believe that others are taking doping substances, [they can] start using them as well, and this… feeds the pro-doping culture*."[3] There is also the "*false consensus effect*" where athletes with a history of drug use overestimate the prevalence of drug use among other athletes.[4] That said, from the early 1990s to the mid/late-2000s, it would have been hard to overestimate the prevalence of drug use in the peloton.

The Commission believes the culture was born from cycling's earliest days, where pain relief was taken as part of the sport's ethos. These substances were not only not illegal, but were in some respects part of the folklore heroics of the sport. However, anti-doping

[3] Morente-Sanchez et al., "Attitudes towards Doping and Related Experience in Spanish National Cycling Teams According to Different Olympic Disciplines," *PLoS ONE* 8(8) (2013). Available: http://www.pilarmartinescudero.com/bibliografia_dopaje/australianos/zabala_2013.pdf.
[4] Jaime Morente-Sanchez and Mikel Zabala, "Doping in Sport: A Review of Elite Athletes' Attitudes, Beliefs, and Knowledge," (2013). Available: http://www.pilarmartinescudero.com/bibliografia_dopaje/australianos/actitudesdopajeZabala.pdf.

rules and measures were being clearly set out over 50 years ago, and the opportunity to rely on an old argument that doping was part of the tradition of the sport is long gone.

There was a culture of doping in cycling, and today it is probably less pervasive and all-encompassing than it was. All cultures evolve, or change, and doping is no different. Doping still exists, and it is expert at changing its shape.

1.2.3. What is meant by "omerta"?

The Commission believes this term loosely covers individual and collective attitudes and behaviours to keeping quiet about doping in cycling, to not exposing those who participated in it, and to side-lining people who did not take the same approach. A former directeur sportif described omerta as a system in which riders were open among themselves about doping, and omerta operated externally so doping was not spoken about in public.

An academic paper highlighted that those who broke the code of silence within cycling were ostracised and sometimes pushed out of the sport because they were not willing to support or join in with doping.[5] Any rider who did speak out about doping could find himself informally sanctioned by the rest of the peloton. By way of example, one rider who refused to dope with their team found that the team was ordered to ride against them at the next event. Christophe Bassons' career was effectively ended when he spoke out against doping in the peloton at the 1999 Tour.[6] Another rider stated that confessing was not encouraged, because it became difficult to find another team, whereas a doper who took his sanction often found his way back into cycling.

Omerta remains an intrinsic part of the culture of the sport. Elite cycling is one of the toughest sports and the endurance nature of it creates a bond between riders. This leads

[5] L. Whitaker, S. H. Backhouse and J. Long, "Reporting doping in sport: National level athletes' perceptions of their role in doping prevention," *Scand J Med Sci Sports* (2014) p.13. Abstract available: http://onlinelibrary.wiley.com/doi/10.1111/sms.12222/abstract.
[6] John MacLeary, "Lance Armstrong's 'reconciliation tour' continues as disgraced former cyclist meets Christophe Bassons", *The Telegraph* (7 December 2013). Available: http://www.telegraph.co.uk/sport/othersports/cycling/10503192/Lance-Armstrongs-reconciliation-tour-continues-as-disgraced-former-cyclist-meets-Christophe-Bassons.html.

to the development of a different set of rules that become more important to that group than the regular norms and rules of society. Omerta was at the core of cycling behaviour, and was a strong "protecting force" within the sport.

It was also underpinned by a litigious approach from participants and other stakeholders to protect vested interests that may have come under threat of discovery. Omerta has changed its shape over the years. Previously, it was evidenced across all the peloton, it was very strong irrespective of riders' country of origin and especially prevalent in Europe. However, individuals do not talk about doping so openly today and the "classic" omerta has been punctured by an environment of mistrust and not-knowing.

Omerta may have changed from being overtly practised as a cultural norm within cycling, to being covertly practised behind closed doors. This makes it harder to attack and eradicate, but does arguably indicate progress because it suggests that opinion has shifted to recognise that doping is not acceptable.

1.2.4. What is meant by "cheating"?

Cheating includes the fixing of stage or race outcomes, and can also be found in technological advances where small gains can be squeezed from cumulative non-legal technical enhancements. There have been examples of cheating in cycling since its earliest days. Such cheating may be becoming more significant today, as doping benefits are reduced.

Based on interviews with current stakeholders in the cycling community, the Commission believes that partly as a response to improvements in anti-doping, technical cheating has increased. The Commission was told that today doping performance gains are perhaps around only 3-5%, compared to 10-15% ten years ago. Other cumulative gains derived from technical cheating can make up the 3% doping gains. By doping *and* by broader cheating, maximum gains can be made.

1.3. HISTORICAL SECTION

This part of the Report provides a non-exhaustive historical narrative of the culture of doping in elite road cycling from earlier days to today. It examines the roots, historical reasons, causes, mechanisms, processes, procedures, practices, patterns, networks, providers, instigators and facilitators that enabled the endemic problem of doping in cycling. It will also examine the corresponding developments in anti-doping policy, science, and measures that were taken during the same period.

The Commission believes it is important to go back to the earliest days, albeit briefly, as it helps to identify behaviours that developed and became embedded before anti-doping rules, regulations and entities were created. It is useful to bear in mind that the culture of doping grew from an approach to the sport where taking performance enhancement substances was not illegal and indeed was perhaps seen as "the done thing". There is an element of "inheritance" referred to by interviewees.

The Commission was told of many impacting factors that were woven into the doping and anti-doping environment. The role of sponsors will be examined, as will the funding levels for anti-doping research, the race calendar, and the role or impact of event organisers, team managers, doctors and medical staff. The law, science, technology, the role of education, the public and the media will be touched upon, and the disparity between teams and their funding streams will be discussed.

The above-mentioned themes are broad, and the Commission cannot provide a complete history of doping and anti-doping in cycling. That said, in order to examine those themes, this Report will look at some of the main doping incidents and significant events. This will demonstrate how the culture of doping unfolded, as representative of the wider problem. This section will also use statistics and analysis where the data is sound enough to draw reliable conclusions as a means to test the narratives drawn from interviews.

The Commission remained mindful of its broad mandate and its short period of time in existence, in deciding what it should and could look in to. Many individual incidents in the history of cycling merit further investigation, given the extent of the alleged doping

and denials that have plagued cycling for decades. The Commission was not configured to do this. Given the extent of its resources and time to undertake its work, the Commission will move rapidly through history and concentrate on more recent events.

1.3.1. 1890s—1980s

The earliest accounts of doping practices from the 1890s and early 1900s indicate that athletes would rely on various stimulants, or combinations thereof, such as alcohol, caffeine, strychnine, heroin, cocaine and amphetamine to alleviate fatigue and enhance their performance.[7] In the late 19th century, one particular cycling coach was known for his little black bottle, the contents of which he apparently used to revive riders.[8] In the early 1900s, endurance events lasted for days without rest.

The female cyclist Margaret Gast cycled 2,600 miles in thirteen days in 1900, during which time she included small amounts of brandy and ale in her diet.[9] In Europe, 24-hour cyclists drank rum and champagne for refreshment and in order to reduce the sense of fatigue.[10] None of these stimulants were banned at the time and they were being used

---

[7] *See* Larry D. Bowers, "Anti-Dope Testing in Sport: The History and the Science," Vol. 26 *The Faseb Journal* 3936 (2012). Available: http://www.fasebj.org/content/26/10/3933; Morente-Sanchez *et al*., "Attitudes towards Doping and Related Experience in Spanish National Cycling Teams According to Different Olympic Disciplines," *PLoS ONE* 8(8) (2013). Available: http://www.pilarmartinescudero.com/bibliografia_dopaje/australianos/zabala_2013.pdf; *and* Mike Rissanen, "Beer breaks during the Tour de France. Some observations on beer and cycling in the early 1900s," *Ludica*, 17-18, (2011-2012). Available: https://www.academia.edu/7065151/Beer_breaks_during_the_Tour_de_France._Some_observations_on_beer_and_cycling_in_the_early_1900s.

[8] Duncan R. Jamieson, review of "The Little Black Bottle: Choppy Warburton, the Questions of Doping, and the Deaths of his Bicycle Riders" by Gerry Moore *Journal of Sport History* Vol. 40, 1, (Spring 2013). Excerpt available: http://muse.jhu.edu/login?auth=0&type=summary&url=/journals/journal_of_sport_history/v040/40.1.jamieson.html. Choppy Warburton was one of the best known trainers in England at that time, and trained a number of champions including Jimmy Michael, who Warburton sued for libel after Michael accused him of poisoning him during a race. *See* "'Choppy' Warburton Dead: Trainer of 'Jimmy' Michael, the Welch Bicycle Rider, Passes Away", *New York Times* (19 Dec. 1897). Available: http://query.nytimes.com/mem/archive-free/pdf?res=9D07EED71630E132A2575AC1A9649D94669ED7CF.

[9] Mike Rissanen, "Beer breaks during the Tour de France. Some observations on beer and cycling in the early 1900s," *Ludica*, 17-18, (2011-2012). Available: https://www.academia.edu/7065151/Beer_breaks_during_the_Tour_de_France._Some_observations_on_beer_and_cycling_in_the_early_1900s.

[10] Mike Rissanen, "Beer breaks during the Tour de France. Some observations on beer and cycling in the early 1900s," Ludica, 17-18, (2011-2012). Available: https://www.academia.edu/7065151/Beer_breaks_during_the_Tour_de_France._Some_observations_on_beer_and_cycling_in_the_early_1900s.

without sanction. It is likely that these early practices of drugs use began to develop the culture of doping as a behavioural norm.

By 1908, the English Jockey Club may have been the first sport organisation to ban certain substances.[11] In 1928, the International Association of Athletics Federations (IAAF) became the first international sporting federation to ban the use of stimulants.[12] The use of stimulants and doping continued across sport in those intervening 20 years and the recognition that something had to be done seemingly took a long time to develop. There were no doubt social norms of the time that shaped the pace of the anti-doping response.

By 1955, there was an account of the use of Performance Enhancing Drugs ("PED" or "PEDs") in cycling, and of 25 urine samples taken from riders in a 1955 race, five were positive for stimulants.[13] Ten years later, tests conducted on Belgian cyclists showed that 37% of professionals and 23% of amateurs were using amphetamines, while reports from Italy showed that 46% of professional cyclists tested positive for doping.[14] Based on these statistics, widespread use of stimulants was evident during this era.

The death of Danish cyclist Knud Jensen at the 1960 Rome Olympic Games brought national government and sporting bodies' attention to the potential risks associated with stimulant use.

In 1965, Belgium and France legislated against doping, and in 1966, the first drug tests were carried out at the Tour.[15] They were opposed by riders, and five-time Tour winner,

---

[11] Johan Lindholm, "Does Legislating Against Doping in Sports Make Sense?: Comparing Sweden and the United States Suggest Not," *Virginia Sports & Entertainment Law Journal,* vol. 13 nr. 1 (Fall 2013) pp. 21-34. Available: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2399336. The author suggests that the purpose of the ban was to keep the public interested in betting on horseraces.

[12] Larry D. Bowers, "Anti-Dope Testing in Sport: The History and the Science," Vol. 26 *The Faseb Journal* 3936 (2012). Available: http://www.fasebj.org/content/26/10/3933.

[13] Charles E. Yesalis and Michael S. Bahrke, "History of Doping in Sport," *International Sports Studies*, vol. 24, no. 1 (2002). Available: http://library.la84.org/SportsLibrary/ISS/ISS2401/ISS2401e.pdf.

[14] Charles E. Yesalis and Michael S. Bahrke, "History of Doping in Sport," *International Sports Studies*, vol. 24, no. 1 (2002), citing Donohoe, T., & Johnson, N. (1986) "Foul play? Drug use in sport". Oxford:Blackwell. Available: http://library.la84.org/SportsLibrary/ISS/ISS2401/ISS2401e.pdf.

[15] Christopher S. Thompson, "Tour de France: A Cultural History" (2 ed., University of California Press, 2008) p. 232. Available: https://books.google.ch/books?id=UpzzPqexF00C&pg=PA232&lpg=PA232&dq=1965+belgium+doping+laws&source=bl&ots=tnhk7bZtrg&sig=MAKZxHViRjvhAErRJCWtW-

Jacques Anquetil, who admitted to taking amphetamines, stated, "*We find these tests degrading*."[16] Jacques Anquetil led a revolt by cyclists and stopped the race the next day.

By 1967, the IOC had adopted a form of anti-doping regulations and instituted doping controls for the 1968 Olympic Games in Grenoble and Mexico City. It also created the Medical Commission in 1967 "*to deal with the increasing problem of doping in the sports world*".[17] The goal of the Medical Commission was to establish an anti-doping framework for sport, which also covered athletes' health, respect for medical and sports ethics, and equality for all athletes. The UCI established a list of doping agents in 1967.[18]

In 1967, the Council of Europe adopted a Resolution which dealt with doping. It defined doping as "*the administration to or the use by a healthy person, in any manner whatsoever, of agents foreign to the organism, or of physiological substances in excessive quantities or introduced by an abnormal channel, with the sole purpose of affecting artificially and by unfair means the performance of such a person when taking part in a competition*". It recommended that governments persuade sports organisations to take steps to have adequate regulations and to penalise offenders.[19]

Also in 1967, the British cyclist Tom Simpson died during the Tour, on Mont Ventoux. The post mortem carried out on his body found amphetamines and alcohol in his blood, and police discovered amphetamine tablets in the pocket of his jersey and in a team support car.[20]

In the 1978 Tour, Belgian champion Michel Pollentier won the Alpe d'Huez stage and took the yellow jersey. During a post-race drug screening, a synthetic bladder containing clean

---

cCb5Y&hl=en&sa=X&ei=eVXnVOewIoT8UunxgIgB&ved=0CB4Q6AEwAA#v=onepage&q=1965%20belgium%20doping%20laws&f=false

[16] Mark Janis, "Doping Part of Professional Cycling's Culture", (29 June 2012). Available: http://thesportdigest.com/2012/06/doping-part-of-professional-cyclings-culture/.

[17] *See* http://www.olympic.org/medical-commission.

[18] "40 years of fighting against doping," UCI (2001). Available: http://oldsite.uci.ch/english/health_sante/docs/40_ans.pdf

[19] Council of Europe, Resolution on the Doping of Athletes (67/12). Available: http://www.coe.int/t/dg4/sport/resources/texts/spres67.12_en.asp.

[20] Brendan Gallagher, "Tom Simpson haunts Tour 40 years on", *The Telegraph* (13 July 2007). Available: http://www.telegraph.co.uk/sport/columnists/brendangallagher/2316933/Tom-Simpson-haunts-Tour-40-years-on.html.

urine was found connected to a tube under his armpit.[21] Michel Pollentier was expelled from the Tour and suspended for two months.

According to a former rider interviewed by CIRC, doping was not seen as a bad thing when he started riding in the early 1980s. He explained that the principle of injecting non-prohibited substances to aid recovery was the same as injecting prohibited substances to enhance performance.

After the 1984 Olympic Games in Los Angeles, a number of the U.S. men's cycling team admitted that they had undergone blood transfusions prior to the Games.[22] The riders retained their medals and were not disciplined. Apparently no rules were violated and they had followed the guidance of coaches and officials.[23] Upon investigation by the United States Cycling Federation ("USCF") a letter of reprimand and 30 day suspension without pay and a six months delay in salary review were imposed on the national coach, staff physiologist, and a letter of reprimand, removal, demotion, and request for resignation from various positions were imposed on the USCF Vice President, who were considered architects of the scheme.[24]

In January 1985, USCF became the first sports organisation in the world to adopt explicit rules barring "blood boosting". During this time, blood transfusions were also being administered in Europe. Francesco Moser twice broke the hour record in 1984, reportedly helped by Dr Francesco Conconi and Dr Michele Ferrari.[25] Francesco Moser is reported to have admitted using – at the time not illegal – blood transfusions in 1999, however in 2014 he apparently stated that: "…*There wasn't any blood transfusions, before the first or second attempt. The benefits of altitude were enough*". Seized documents from

[21] Michel Pollentier Rider's Biography. Available: http://www.cyclinghalloffame.com/riders/rider_bio.asp?rider_id=204.
[22] Valerie J. Nelson, "Mark Whitehead dies at 50; cyclist was part of U.S. team that participated in blood doping during 1984 Summer Olympics", *LA Times* (9 July 2011). Available: http://articles.latimes.com/2011/jul/09/local/la-me-mark-whitehead-20110709.
[23] Les Earnest, "Blood dopes of the 1984 Olympic Games" (1988). Available: http://web.stanford.edu/~learnest/cyclops/dopes.htm.
[24] Les Earnest, "Blood dopes of the 1984 Olympic Games" (1988). Available: http://web.stanford.edu/~learnest/cyclops/dopes.htm.
[25] Cycling News, "Report: Indurain and Banesto were Conconi clients" (26 February 2013) http://www.cyclingnews.com/news/report-indurain-and-banesto-were-conconi-clients. Letizia Paoli and Alessandro Donati, "The Sports Doping Market: Understanding Supply and Demand, and the Challenges of their Control", p. 73 (Springer 2014).

Dr. Francesco Conconi in proceedings against him apparently however showed that Francesco Moser had been treated with EPO around that time.[26]

Blood doping can be defined as the use of substances and methods that enhance the transportation of oxygen in blood,[27] thereby increasing aerobic power.[28] This in turn elevates the athlete's level of performance, especially in sports where endurance and stamina are required, and aerobic recovery is sought. Blood doping can be either autologous or homologous. Autologous doping involves riders injecting their own blood, and homologous doping involves riders injecting a donor's blood.

Anti-doping experts consider that blood doping is one of the most dangerous forms of doping due to the health risks associated with it and because of the clear performance enhancement.[29]

Anabolic steroids were used by the Soviet Union in the 1970s to encourage muscle growth in strength sports and by the 1980s and early 1990s these drugs had apparently made their way into professional cycling.[30] The winner of the 1988 Tour, Pedro Delgado, was found to be using probenecid, a substance used to mask the use of steroids. However, he received no penalty and was permitted to complete, and win, the Tour. Pedro Delgado denies that he took probenecid for illicit purposes. Some sources say he took the probenecid to "*take care of problems with his legs*"[31] and in an interview in 2010, Delgado

[26] Alessandro Donati, "Lo sport del doping: Chi lo subisce, chi lo combatte" (2 ed. Torino: Gruppo Abele, 2013) p. 150.
[27] Mario Zorzoli and Francesca Rossi, "Case Studies on ESA-doping as revealed by the Biological Passport", *Drug Test. Analysis* (2012). Available: https://www.researchgate.net/publication/224708690_Case_studies_on_ESA-doping_as_revealed_by_the_Biological_Passport.
[28] WADA defines blood doping as: the Administration or reintroduction of any quantity of autologous, allogenic (homologous) or heterologous blood, or red blood cell products of any origin into the circulatory system. Artificially enhancing the uptake, transport or delivery of oxygen. Any form of intravascular manipulation of the blood or blood components by physical or chemical means. *See* M. 1 Manipulation of Blood and Blood Components, 2015 List of Prohibited Substances and Methods. Available: http://list.wada-ama.org/list/m1-enhancement-of-oxygen-transfer/.
[29] Mario Zorzoli, "Biological passport parameters", *J. Hum. Sport Exerc.* Vol. 6, No. 2, pp. 205-217 (2011). Available: http://www.jhse.ua.es/jhse/article/view/215.
[30] Mark Janis, "Doping Part of Professional Cycling's Culture", (29 June 2012). Available: http://thesportdigest.com/2012/06/doping-part-of-professional-cyclings-culture/.
[31] Bill and Carol McGann, "The Story of the Tour de France", (Indiapolis: Dog Ear Publishing, 2008) p. 182.

is quoted as saying he used probenecid "*to assist draining from the kidneys*".[32] Although probenecid was on the IOC prohibited list, it was not on the UCI list at that time. Tour Director, Jean-Pierre Courcol, captured the ethical gulf between what was legally permissible and what was within the spirit of the sport: "*I know today that the letter of the law can replace its spirit and that one can play with the rules. So, today, I'm ashamed, and perhaps tomorrow, I must ask my children not to get too involved in competitive sports.*"[33]

In 1989, the Council of Europe published its Convention against doping.[34]

By the end of the 1980s, doping in cycling had evolved from being unsophisticated and occasional to more frequent and organised. Doping was mainly used to reduce fatigue, enhance performance and alleviate pain but was not perceived as illegal. Evading the burgeoning anti-doping measures was easy. Early methods included riders' using catheters at the time of doping control and substituting their urine with someone else's who they knew was clean.[35] Another was to drop out of a race before the finish line to avoid being selected for doping control.

1.3.2. Late 1980s—2001: the EPO era

EPO as a "Game Changer"

The real revolution that emerged in the late 1980s and became prevalent in the 1990s was the introduction of EPO to the peloton. While some of the literature concludes that the 1980s, and not the 1990s, appear to be key in the rapid evolution of pro cyclists'

[32] Peter Cossins, "Pedro Delgado turns 50 and reflects on his career", *Cycling News* (16 Apr. 2010). Available: http://www.cyclingnews.com/news/pedro-delgado-turns-50-and-reflects-on-his-career.
[33] Samuel Abt, "Tour de France; Delgado Wins Amid Cheers, Criticism", *New York Times* (25 July 1988). Available: http://www.nytimes.com/1988/07/25/arts/tour-de-france-delgado-wins-amid-cheers-criticism.html.
[34] Council of Europe Anti-Doping Convention (1989). Available: http://www.coe.int/t/dg4/sport/Source/CONV_2009_135_EN.pdf.
[35] Emma O'Reilly, "The Race to Truth: Blowing the Whistle on Lance Armstrong and Cycling's Doping Culture" (Bantam Press, 2014) p. 88, citing as an example that the wife of a mechanic used to provide clean urine samples.

performances,[36] former riders and other actors in the sport identify the late 1980s or early 1990s as the period when EPO was introduced, and when the peloton started "flying". At this time, riders were also using anabolic steroids, primarily for faster recuperation, and human growth hormone ("HGH") had also become very popular for the same purpose.[37]

Almost all whom the Commission interviewed, who were direct members of the cycling community, stated that the introduction of EPO into the peloton was a "*game changer*". Taking it enabled an athlete to be competitive, particularly in the grand classification races. The average gains in performance varied depending on the individual's physiology, but estimates put that gain at between 10-15%. Not one person the Commission spoke to felt EPO had no performance benefit.

One academic study reports an approximately 10% improvement in VO2max (a measure of a person's aerobic fitness) after taking EPO.[38] Another concludes that when haematocrit is increased from base values to around 50%, VO2max is increased by 8–12%.[39] These figures, together with riders' comments, show the huge gain to be had.

One former rider referred to two tiers of doping: "*low octane*" cortisone and caffeine; and "*high octane*", EPO and blood transfusions. All riders and former riders stated that EPO was the key substance that provided the biggest performance enhancement.

The use of EPO as a form of blood doping is particularly dangerous in lengthy cycling races. It thickens the blood, and race dehydration concentrates the blood further, which can cause clotting, stroke or heart failure. The Commission was told by former riders of

---

[36] Hein F.M. Lodewijkx, Bram Brouwer, "Tour, Giro, Vuelta: Rapid Progress in Cycling Performance Starts in the 1980s," *International Journal of Sports Science* (2012). Available: http://article.sapub.org/10.5923.j.sports.20120203.02.html.
[37] Vest Christiansen, "The Legacy of Festina: Patterns of Drug Use in European Cycling Since 1998", *Sport in History*, Vol. 25, No. 3 (2005). Available: http://pure.au.dk//portal/files/48656108/09_Legacy_of_Festina_Christiansen.pdf.
[38] Ken Fitch, "Proscribed drugs at the Olympic Games: permitted use and misuse (doping) by athletes," *Clinical Medicine 2012*, Vol 12, No 3. Available: http://www.clinmed.rcpjournal.org/content/12/3/257.long.
[39] Carsten Lundby and Niels Vidiendal Olsen, "Effects of recombinant human erythropoietin in normal humans," *J Physiol 589.6* (2011) pp 1265–1271. Available: http://onlinelibrary.wiley.com/doi/10.1113/jphysiol.2010.195917/full.

the need to get up in the middle of the night and ride on a fixed bicycle in their room in order to get the blood circulating. The media speculated that the deaths of 18 European cyclists in the late 1980s were related to EPO.[40] Other estimates suggest that between 1987 and 1990, approximately 20 professional cyclists died from suspected EPO abuse.[41]

In 1988, the IOC Medical Commission received unconfirmed reports regarding the possible use of EPO.[42] EPO was included on the IOC's list of prohibited substances in 1990,[43] and the UCI list in 1991,[44] but the fight against EPO was hampered by the lack of a reliable testing method. Although there was a rule banning EPO use during this period, the absence of a test meant it could not be enforced. This represents a stark example of the anti-doping regime lagging well behind, both in terms of funding and science.

Despite the use of doping in cycling for over a century, it is difficult to quantify how prevalent the problem was, due to the reluctance of participants to speak fully and truthfully about doping, and the lack of objective and comprehensive data from even 20 years ago. However, according to a 1994 report on EPO use in Italian professional cycling, between 60 to 80% of all riders were using EPO.[45] From riders' testimony to the CIRC, it is possible that this estimate may be modest for the peloton in that era, given that some put the percentage at 90+% across the peloton.

Health and safety measures to counteract the absence of an EPO Test

The Italian doctor Francesco Conconi was considered by some to be the father of Italian "*doping physicians*."[46] In the early 1990s, Conconi received over EUR 2million in funding

[40] Larry D. Bowers, "Anti-Dope Testing in Sport: The History and the Science," Vol. 26 *The Faseb Journal* 3936 (2012). Available: http://www.fasebj.org/content/26/10/3933.
[41] Daniel M. Rosen, "Dope: A History of Performance Enhancement in Sports from the Nineteenth Century to Today" (Praeger Publishers: 2008) p. 206.
[42] Marcel Reinold, "Arguing against doping: A discourse analytical study on Olympic anti-doping between the 1960s and the late 1980s" (7 May 2012). Available: https://doc.rero.ch/record/29383/files/ReinoldFinalReportIOC2011.pdf_attachment_.pdf.
[43] *See* https://www.wada-ama.org/en/who-we-are/a-brief-history-of-anti-doping.
[44] "40 years of fighting against doping," UCI (2001). Available: http://oldsite.uci.ch/english/health_sante/docs/40_ans.pdf.
[45] Copy on file with CIRC.
[46] Letizia Paoli and Alessandro Donati, "The Supply of Doping Products and the Potential of Criminal Law Enforcement in Anti-Doping: An Examination of Italy's Experience," (2013). Available: https://wada-main-prod.s3.amazonaws.com/resources/files/2013-Paoli-Donati-Report-Executive-Summary-EN.pdf.

from the Comitato Olimpico Nazionale Italiano ("CONI", the Italian National Olympic Committee) to carry out doping "research", and further funding from the IOC to develop a test for EPO.[47]

Francesco Conconi was a member of the IOC's Medical Committee and President of UCI's Medical Commission. Whilst he was receiving funding from CONI and the IOC to carry out doping research and to develop a test for EPO, Francesco Conconi was simultaneously providing EPO to athletes and a number of cycling stars, including Marco Pantani, Claudio Chiappucci and Gianni Bugno.[48] Francesco Conconi failed to develop a test for EPO and at the end of the 1990s, the Ferrara Prosecutor's Office indicted Francesco Conconi and two of his assistants for the crime of sporting fraud. Despite "*the seriousness and convergence of all the evidence*", delays in the trial meant the case had to be dismissed in 2003 due to the statute of limitations.[49]

In 1997, seven years after speculation that riders were dying from EPO overdoses, UCI introduced the "No Start Rule" (see below). Its stated purpose was to protect riders' health and safety and to prevent further deaths from EPO. It was not an anti-doping rule, but a health and safety measure. Under the rule, the UCI carried out blood tests before and during competition and any rider with a haematocrit reading higher than 50% (for men) or 47% (for women) was deemed unfit for competition and prevented from competing for 15 days from the date of the test.[50] The Commission was told that the UCI had originally sought a 53% limit, but riders wanted to set the limit at 50%.

---

[47] Letizia Paoli and Alessandro Donati, "The Supply of Doping Products and the Potential of Criminal Law Enforcement in Anti-Doping: An Examination of Italy's Experience" (2013). Available: https://wada-main-prod.s3.amazonaws.com/resources/files/2013-Paoli-Donati-Report-Executive-Summary-EN.pdf.
[48] Letizia Paoli and Alessandro Donati, "The Supply of Doping Products and the Potential of Criminal Law Enforcement in Anti-Doping: An Examination of Italy's Experience" (2013). Available: https://wada-main-prod.s3.amazonaws.com/resources/files/2013-Paoli-Donati-Report-Executive-Summary-EN.pdf
[49] Letizia Paoli and Alessandro Donati, "The Supply of Doping Products and the Potential of Criminal Law Enforcement in Anti-Doping: An Examination of Italy's Experience," (2013). Available: https://wada-main-prod.s3.amazonaws.com/resources/files/2013-Paoli-Donati-Report-Executive-Summary-EN.pdf
[50] A haematocrit reading measures the percentage of red blood cells in blood. As EPO stimulates the production of red blood cells, an elevated haematocrit reading above 50% is "*a strong indication of EPO use*". *See* Letizia Paoli and Alessandro Donati, "The Supply of Doping Products and the Potential of Criminal Law Enforcement in Anti-Doping: An Examination of Italy's Experience" (2013). Available: https://wada-main-prod.s3.amazonaws.com/resources/files/2013-Paoli-Donati-Report-Executive-Summary-EN.pdf. *See also*, 40 years of fighting against doping," UCI (2001). Available: http://oldsite.uci.ch/english/health_sante/docs/40_ans.pdf

One unintended consequence of the 50% haematocrit threshold on all riders, regardless of their natural levels, was that riders with haematocrit levels naturally in the low-mid 40s could gain an advantage by using EPO up to 50%. According to one former rider, the introduction of the 50% haematocrit value rule was perceived by riders as legalising EPO up to a certain limit. He stated that if a rider had not used EPO beforehand, he had certainly started using it after the rule was introduced in 1997.

Another rider explained he always tested himself after using EPO to ensure that he was not going over 50% (his natural level was 43–45%). This was done by using a blood centrifuge to monitor his levels. An anti-doping expert confirmed that a rider could easily keep his haematocrit reading below 50%. Either he would use a careful adjustment of his dosage, or he could use saline to dilute his blood.[51] Some riders performed these monitoring functions themselves, others had assistance. To the extent that the rule served its purpose from a medical point of view, since it probably prevented EPO-related deaths, this was a commendable step. However, from an anti-doping perspective the "one-size-fits-all" approach was criticised. Very few riders told the CIRC they had a natural haematocrit level above 45% and so there was implicit "*permission*" to dope up to 50%. This issue will be addressed in more detail later in the Report.

"EPO scandals"

EPO doping was documented by numerous investigations and scandals that emerged in the 1990s and early 2000s, as summarized below:

PDM Intralipid Affair and alleged EPO use

The 1991 Tour was marked by the "intralipid affair", which resulted in the entire Dutch PDM team, who was favourite to win that year, becoming sick and withdrawing from the Tour. PDM stated that the team got food poisoning from unpublicized but legal injections of liquid food, and that salmonella was the main suspect.[52] The French doctor, Jean-Daniel Fleysakier is reported as saying that the riders "*would have been very ill with '[symptoms]*

[51] Andy Shen, Interview with Michael Ashenden (04/03/2009). Available: http://nyvelocity.com/content/interviews/2009/michael-ashenden.
[52] Samuel Abt, "For Cyclists, an Injection of Controversy", *New York Times* (6 Aug. 1991). Available: http://www.nytimes.com/1991/08/06/news/06iht-bike.html?pagewanted=all.

typical of an overdose of EPO".[53] The use of EPO by PDM was also mentioned in a 1994 report on EPO use in Italian professional cycling.[54]

Bologna Investigation

In 1997, an investigation of the Italian pharmacy "Giardini Margherita" in Bologna revealed the alleged existence of a network of importation, production and administration of pharmaceutical products for athletes of various disciplines. Doctors, including Michele Ferrari, and 22 riders were implicated. In 2006, although previously sentenced for a 1-year imprisonment and a EUR 900 fine, and suspended from his medical profession for 11 months and 21 days (all sanctions suspended) for sporting fraud and abusive abuse of the pharmacist profession, the Appeals Court of Bologna acquitted Dr Michele Ferrari.

The Festina Affair

In 1998, a team car of the French team Festina was stopped and searched at the French/Belgian border and found to contain 234 doses of EPO, 80 doses of HGH and 160 doses of testosterone.[55] The car was being driven by the team soigneur, Willy Voet, who was arrested for smuggling drugs across the border. French police subsequently arrested Festina team manager Bruno Roussel and the team doctor Eric Rijkaert for drug trafficking and incitement to consume drugs and the Festina team was ejected from the Tour.[56] In subsequent legal proceedings, the French Court established that a system of doping was in place on the Festina team.[57] Festina's expulsion was apparently the first time since the Second World War that a team had been expelled from the Tour.[58] The French police carried out raids on other teams and arrested Cees Priem, directeur sportif

---

[53] *Cycling News*, "Dutch Drugs Scandal - Part 6, PDM: Pills, Drugs and Medicine" (1 Dec. 1997). Available: http://autobus.cyclingnews.com/results/archives/dec97/dec1.html.
[54] Copy on file with CIRC.
[55] Cour d'Appel de Douai, 6eme Chambre, Dossier N. 01/01764 (5 March 2002) French Court judgment, at p. 23.
[56] William Fotheringham, "Ten years on from the Tour of Shame that blew the lid off organised doping", *The Guardian* (10 July 2008). Available: http://www.theguardian.com/sport/2008/jul/10/tourdefrance.cycling.
[57] Cour d'Appel de Douai, 6eme Chambre, Dossier N. 01/01764 (5 March 2002) French Court judgment, at p. 23-24. The case against Erik Rijkaert was discontinued due to his ill health. Willy Voet was given a 10-month suspended sentence and fined 30,000 francs. Bruno Roussel was given a one-year suspended sentence and fined 50,000 francs.
[58] BBC News, "Drug scandal team thrown off Tour" (18 July 1998). Available: http://news.bbc.co.uk/2/hi/special_report/1998/07/98/tour_de_france/134842.stm.

of Dutch team TVM and four riders, who ultimately got suspended and fined by a court in Reims.[59] TVM were expelled from the race when doping products were found in bins at the team hotel. Other teams pulled out of that year's Tour, among them ONCE, Banesto and Risco Scotti.[60] The Festina scandal made it clear to everyone that "*doping was being systematically used within the sport of cycling*"[61] and caused the French newspaper *Le Monde* to talk of "*the end of all our childhood dreams*".[62]

Doping on Team Telekom/T-Mobile

According to the 2009 Freiburg Report investigating allegations of doping on German Team Telekom/T-Mobile, "*systematic EPO doping of Team Telekom under medical supervision began at the training camp in Mallorca in January 1995*".[63] Two physicians at Freiburg University Clinic, Dr Lothar Heinrich and Professor Dr Andreas Schmid, were team doctors for Telekom/T-Mobile. The Report found that EPO was administered partly by the soigneur, Jef D'hont, partly by Dr Andreas Schmid and Dr Lothar Heinrich and partly by riders themselves, and at least 7 riders were involved. Bjarne Riis won the Tour for Team Telekom in 1996. The Interim Report stated that D'hont knew – even though not treated by him or the Freiburg Clinic – that Riis' preparation included taking 4,000 units of EPO every second day during the Tour and two units of HGH. As a result, his haematocrit values were at least 60% and as high as 64%.[64]

Doping on the USPS/Discovery Channel teams

Members of the USPS/Discovery Channel teams were alleged by United States Anti-doping Agency ("USADA") to have engaged in systematic doping from 1998—2005.[65] In

[59] Christopher McKenzie, "The use of criminal justice mechanisms to combat doping in sport" (2007). Available: http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1003&context=slej. Cees Priem was given an 18-month suspended sentence and fined 80,000 francs.
[60] Matt Majendie, "The Festina affair still lingers", *The National* (14 July 2008). Available: http://www.thenational.ae/sport/the-festina-affair-still-lingers.
[61] Vest Christiansen, "The Legacy of Festina: Patterns of Drug Use in European Cycling Since 1998", *Sport in History*, Vol. 25, No. 3 (2005). Available: http://pure.au.dk//portal/files/48656108/09_Legacy_of_Festina_Christiansen.pdf.
[62] John Henley, "Tour de farce", *The Guardian* (14 June 1999). Available: http://www.theguardian.com/theguardian/1999/jun/14/features11.g25.
[63] "Commission of Experts investigating accusations of doping against doctors at the Sports Medicine Department of Freiburg University Clinic: Final Report", (12 May 2009). Copy on file with CIRC.
[64] "Commission of Experts investigating accusations of doping against doctors at the Sports Medicine Department of Freiburg University Clinic: Final Report", (12 May 2009). Copy on file with CIRC.
[65] United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 Oct. 2012). Available: http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf.

the case of the USPS/Discovery Channel teams, where at least 10 riders were alleged to have been involved, charges were brought against six people by USADA, Lance Armstrong (rider), Michele Ferrari (doctor), Johan Bruyneel (team director), Pedro Celaya (doctor), Luis Garcia del Moral (doctor), and Jose "Pepe" Marti (trainer).[66] Lance Armstrong won the Tour seven times (from 1999 to 2005) with the USPS/Discovery Channel teams.

Organised and systematic team doping

The above-mentioned investigations demonstrated systematic doping by multiple riders in the teams throughout the period, with the participation of team and external doctors, support staff and team managers.

They uncovered the use of EPO, testosterone, and cortisone and of sophisticated methods of acquisition of drugs and detailed the timing and methods of medical administration and the combining of substances used. One of the more elaborate methods of EPO delivery was by "motoman", a motorcycling enthusiast, whose job was to follow the Tour on his motorcycle and make deliveries of EPO to Pepe Marti or another USPS team personnel.[67] One of USPS soigneur's, Emma O'Reilly, admitted to transporting testosterone and disposing of a package, in which she assumes were used syringes.[68] The Freiburg Interim Report found that EPO and other pharmaceuticals were procured by Dr Lothar Schmid and were either handed over to Jef D'hont at races or sent via DHL.[69] Those investigations laid out the depth and breadth of which doping was integral to the teams' success in professional cycling.

[66] Appeals by Johan Bruyneel, Pepe Marti and WADA are currently pending before the CAS and are due to be heard on 2 March 2015.
[67] Tyler Hamilton and Daniel Coyle, "The Secret Race: Inside the Hidden World of the Tour de France: Doping, Cover-ups, and Winning at All Costs" (London: Bantham Press, 2012) p. 83; USADA v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 Oct. 2012) p. 30. Available: http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf.
[68] Emma O'Reilly's affidavit to USADA investigation, at paras. 33-37; 62-65, 12 Oct. 2012. Available: http://d3epuodzu3wuis.cloudfront.net/OReilly,+Emma+Affidavit.pdf.
[69] "Commission of Experts to examine accusations of doping against physicians at the Sports Medicine Department of Freiburg University Clinic: Interim report by the Commission of Experts to examine accusations of doping against physicians in the Sports Medicine Department", (17 March 2008). Copy on file with CIRC.

During that time period the provision and supply of illegal drugs appear to have come originally from pharmacies, private clinics and hospitals. The Commission has not found any evidence that pharmaceutical manufacturers supplied any team directly. Some riders stated, as examples of easy access, that it was easier to obtain EPO from pharmacies in Switzerland than from Italy, that drugs were easily acquired in Spain and Portugal, and riders from Belgium and the Netherlands drove to Germany to buy their drugs.

One former rider estimated that 90% of EPO in Italy was stolen from pharmacies in hospitals. According to the Freiburg Report, the doctors involved in providing doping substances to the team were ordered from and delivered by German pharmacies, and in individual cases pharmacies abroad.[70]

In this era, many young amateur riders, often from a lower socio-economic background, had a chance to gain recognition and earn good money as professional cyclists, where their alternatives for other types of employment were perhaps less appealing. A typical narrative from that period was of a gifted non-doping amateur, who had previously competed closely with riders from the rest of the world, turning professional. He would find that his former amateur competitors were now significantly faster than him, and he soon realized that doping was the difference, and not a hugely increased training schedule, advanced nutritional supplements or professional team technology. The rider was confronted with a stark choice, either to fall away from professional riding or dope.

Those few who rejected doping and left the sport appear to share a common factor in that they had an alternative, perhaps a university degree or an option to pursue a career in another walk of life. It was also suggested that in the sport of cycling, fame and financial rewards are greatest in road cycling, which is why doping was most prevalent in that discipline and youngsters gravitated towards it. This may be in large part correct, and should serve as a warning indicator for other cycling disciplines.

[70] "Final Report of the Expert Commission investigating the accusations of doping against doctors in the Sports Medicine Department of the Freiburg University Clinic" Cologne (23 March 2009, last updated 12 May 2009). Available: http://d3epuodzu3wuis.cloudfront.net/2009-03-23+Final+Report+of+Expert+Commission+Freiburg+Univ.+Clinic.ENGLISH.pdf

Some riders stated that doping may have been prevalent in their team, but it was not obvious, as groups within teams could be compartmentalised. Elite riders were sometimes grouped together, so young riders coming in had no exposure to the senior team members. Some teams ensured that doping was eased into the training schedule when a young rider realised he was not making the grade, and others were just told they'd need to take "*something*" to compete.

Some teams dealt with doping requirements through the manager initially, whilst others left it to the doctors to administer. Many riders were not privy to team discussions between managers and doctors, and the activity was compartmentalised.

These investigations also highlighted the strategic and prominent role played by doctors during this era to "*prepare athletes*" for the races. The Freiburg Report found that as early as 1995, Dr Lothar Heinrich "*was fully integrated in the doping system, and very quickly became the 'local boss' in charge.*"[71] In a written declaration, Dr Lothar Schmid admitted "*Upon request, I gave the riders access to doping substances, in particular EPO*".[72]

Blood doping through transfusions became less significant in the late 1980s with the arrival on the market of EPO. This produced the same effect as blood doping but by a simple injection, avoiding the complexity of removing, storing and transporting blood, and the risk of contracting infection or disease through transfusion. The introduction of EPO into the peloton and the absence of an EPO test were real games changers to the sport of road cycling. Doping became the norm in the peloton, not only to increase performance but also just to keep up with the rest of the peloton. Doping became organised, sophisticated, widespread and systematic. Evading anti-doping measures remained easy and gave the riders/teams a total sense of impunity. Many interviewees commented that without EPO, it would have been difficult for even the best riders to win

[71] "Final Report of the Expert Commission investigating the accusations of doping against doctors in the Sports Medicine Department of the Freiburg University Clinic" Cologne (23 March 2009, last updated 12 May 2009) , pp. 15-16. Available: http://d3epuodzu3wuis.cloudfront.net/2009-03-23+Final+Report+of+Expert+Commission+Freiburg+Univ.+Clinic.ENGLISH.pdf.

[72] "Final Report of the Expert Commission investigating the accusations of doping against doctors in the Sports Medicine Department of the Freiburg University Clinic" Cologne (23 March 2009, last updated 12 May 2009) , p. 14. Available: http://d3epuodzu3wuis.cloudfront.net/2009-03-23+Final+Report+of+Expert+Commission+Freiburg+Univ.+Clinic.ENGLISH.pdf.

the Grand Tours. According to an interviewee, the Festina scandal "*really shook cycling*" and exposed these new behavioural doping patterns in the peloton that were not a secret to anyone within the cycling world. The sport community had no option but to react after being confronted with a scandal demonstrating that basic principles of fairness were not being respected and consequently "*the essence of the sport*" was being destroyed.

1.3.3. 2001—2007: The peloton adapts: blood transfusions and EPO micro-dosing

Anti-doping efforts strengthen

The Festina scandal "*highlighted the need for an independent international agency, which would set unified standards for anti-doping work and coordinate the efforts of sports organizations and public authorities.*"[73] The IOC convened the First World Conference on Doping in Sport in Lausanne in February 1999, following which the WADA was established on 10 November 1999. The principal aim of WADA, was to coordinate and harmonize the fight against doping globally. WADA established a list of prohibited substances and prohibited methods, and the WADA Code in 2003. In 2005, the International Convention Against Doping in Sport was adopted in Paris on October 19th ("UNESCO Convention").[74] It recognised the prevention of, and the fight against, doping in sport as a critical part of the mission of the sports movement and governments. Furthermore, it recognised the fundamental role of the WADA Code. The purpose of the UNESCO Convention was to bind governments to support the World Anti-Doping Programme and WADA.

In August 2000, the IOC announced it had developed a test for EPO which it would use at the Sydney Olympic Games.[75] The test was two-part and relied on both a blood screening and a urine analysis to detect EPO.[76] In April 2001, UCI carried out its first EPO testing at

[73] *See* https://www.wada-ama.org/en/who-we-are/a-brief-history-of-anti-doping.
[74] Available: http://www.unesco.org/new/en/social-and-human-sciences/themes/anti-doping/international-convention-against-doping-in-sport/.
[75] Christopher Clarey, "EPO Tests Are Approved For Sydney", *New York Times* (29 Aug. 2000). Available: http://www.nytimes.com/2000/08/29/sports/olympics-epo-tests-are-approved-for-sydney.html.
[76] Andy Shen, Interview with Michael Ashenden (04/03/2009). Available: http://nyvelocity.com/content/interviews/2009/michael-ashenden.

the Tour of Flanders.[77] The test used by UCI was developed by the French laboratory of Châtenay-Malabry and relied solely on a urine sample to prove the presence of EPO.

In 2000, Italy introduced legislation making doping a criminal offence which was considered by commentators to be "*some of the most severe anti-doping legislation worldwide*".[78] A very significant feature of this new legislation was the ability to use a wide range of investigative tools (not available to sports' bodies) to investigate athletes and, in particular, athlete support personnel for doping violations. The ability to apply these wide ranging powers, including searches at the athlete's home and telephone tapping, helps to uncover doping activities of both the rider and those behind the scenes. On 6 June 2001, 200 officers from the Italian drug squad (Nuclei Antisofisticazione e Sanità, "NAS") raided the hotel rooms of the 20 teams participating in the Giro d'Italia ("Giro") and found a number of banned substances, including stimulants, corticoids, testosterone, caffeine, adrenal and anabolic steroids; police also discovered unlabelled medicine bottles, syringes and vials of blood, along with a plasma/protein-based solution.[79]

Numerous doping scandals

In addition to the 2008 Freiburg Report and the 2012 USADA Reasoned Decision that *a posteriori* described doping patterns during this era, numerous scandals occurred that revealed to the public and sport authorities, new doping patterns within the peloton. This was assisted by the introduction in 2004 of a test for homologous blood doping, which was used for the first time at the Athens Olympic Games.[80]

[77] "40 years of fighting against doping", UCI (2001). Available: http://oldsite.uci.ch/english/health_sante/docs/40_ans.pdf.
[78] Letizia Paoli and Alessandro Donati, "The Sports Doping Market: Understanding Supply and Demand, and the Challenges of their Control", p. 155 (Springer 2014).
[79] Cycling News, "84th Giro d'Italia, Complete Report of Stage 18" (7 June 2001). Available: http://autobus.cyclingnews.com/results/2001/giro01/results/stage18livecomp.shtml.
[80] Ross Brown *et al*., "Testing for Homologous Blood Transfusion in Elite Athletes – RPAH AT ATHENS 2004", *Transfusion Medicine* (2005) 15: 69–82. Abstract available: http://onlinelibrary.wiley.com/doi/10.1111/j.1365-3148.2005.00554ax.x/abstract.

The Hamilton and Pérez cases

During the Athens Games, Tyler Hamilton won gold in the men's individual time trials, but tested positive for homologous blood doping. Tyler Hamilton's A sample could not be confirmed because the B sample could not be tested, so he kept his medal.[81] Six weeks later, Tyler Hamilton failed a test for blood doping at the Vuelta a España ("Vuelta") and was banned for two years. The same month, Spanish rider Santi Pérez also tested positive for homologous blood doping and was banned for two years.[82] Both riders were in team Phonak at the time.

"Oil for Drugs" Investigation

In 2004, another significant investigation carried out by NAS uncovered the prescription and sale of illegal PEDs to upwards of 146 elite and recreational athletes from different sports, and led to the seizure of large quantities of doping products together with blood-doping equipment.[83] One Italian physician identified as playing a key role in prescribing and encouraging the use of PEDs was Dr Carlo Santuccione who was banned for life by CONI in December 2007. Several riders were also sanctioned for the use of prohibited substances received from Dr Carlo Santuccione and for "*prohibited association*" with him, including the winner of the 2007 Giro, Danilo Di Luca, who received a three-month ban for the offence.[84]

Leinders scandal

Dr Geert Leinders was named the chief team doctor for Rabobank team from 1996—2009 in the American Arbitration Association decision concerning him dated 16 January 2015.[85] He was banned for life from practising as a sports doctor for doping offences

---

[81] CAS 2004/A/748 Russian Olympic Committee (ROC) & Viatcheslav Ekimov v. International Olympic Committee (IOC), United States Olympic Committee (USOC) & Tyler Hamilton. After he admitted doping in 2011, Hamilton surrendered his Olympic medal to USADA and in August 2012, the IOC officially stripped him of his medal.

[82] Reuters, "Perez banned two years" (1 Mar. 2005). Available: http://www.eurosport.com/cycling/vuelta-a-espana1/2005/perez-banned-two-years_sto692914/story.shtml.

[83] Letizia Paoli and Alessandro Donati, "The Sports Doping Market: Understanding Supply and Demand, and the Challenges of their Control", p. 70 (Springer 2014).

[84] The offence of "prohibited association" was included in Article 2.10 of the 2015 WADA Code.

[85] United States Anti-Doping Agency v. Geert Leinders (16 Jan. 2015). Available: http://www.usada.org/wp-content/uploads/AAA_decision_Leinders_December_2014.pdf.

committed after June 2004.[86] Geert Leinders was found, among others to have been in possession of prohibited substances and methods and to have been involved in trafficking blood bags of riders for blood transfusions, of trafficking testosterone, and also of the administration, or attempted administration to riders of blood transfusions, luteinizing hormone ("LH") and cortisone.

The Cofidis Scandal

In November 2006, British cyclist David Millar and nine others, including six riders from the Cofidis team, went on trial in France for their alleged role in systematic team doping. The riders were charged with acquiring and possessing banned substances.[87] A cycling technician, pharmacist and former Cofidis trainer, who were accused of encouraging the riders to dope and supplying them with PEDs, were also prosecuted.[88] David Millar, had already served a two-year ban whilst at Cofidis in 2004 for taking EPO.

Operation Puerto

"Operation Puerto" was an investigation carried out by the Spanish Guardia Civil predominantly into the Spanish doctor, Eufemiano Fuentes. In May 2006, Dr Eufemiano Fuentes' home was raided, and anabolic steroids, blood transfusion equipment and over 200 refrigerated bags of blood were found.[89] The Guardia Civil also used phone tapping to gather evidence. The trial before the Criminal Court in Madrid was limited to crimes under public health laws because doping was not illegal in Spain at the time. It was alleged that up to 200 athletes were involved, and about 60 professional cyclists were named in connection with the scandal.[90]

---

[86] ADRVs committed before that date could not be taken into account as they were outside the limitation period.
[87] David Millar and Massimiliano Lelli were acquitted as it was not established that the doping infractions occurred on French national territory. *See* Cycling News, "Millar and Lelli" (20 Jan. 2007). Available: http://www.cyclingnews.com/news/millar-and-lelli-acquitted.
[88] Associated Press, "Millar, 9 others go on trial for cycling doping scandal" (6 Nov. 2006). Available: http://sports.espn.go.com/oly/cycling/news/story?id=2651301.
[89] Elena Atienza-Macías, "The Fight against Doping: Controversies over 'Operation Puerto' and Recent Spanish Legislation," *Sport and EU Review*, vol. 6, no. 1 (2014). Available: https://www.academia.edu/7581125/The_Fight_against_Doping_Controversies_over_Operation_Puerto_and_Recent_Spanish_Legislation.
[90] Daniel M. Rosen, "Dope: A History of Performance Enhancement in Sports from the Nineteenth Century to Today" (Praeger Publishers: 2008) p. 212.

Jesús Manzano was the first rider to testify that Dr Eufemiano Fuentes had given him EPO, cortisone, steroids, Actovegin, and Oxyglobin.[91] Several cyclists served suspensions for their links to the case, including Ivan Basso, Michele Scarponi, Jörg Jaksche and Alejandro Valverde.[92]

Dr Eufemiano Fuentes was convicted of endangering public health for his role in doping athletes and received a one-year suspended sentence, a four-year ban from practicing medicine and fined $6,000.[93]

Floyd Landis and Alexander Vinokourov Cases

2006 Tour winner Floyd Landis riding for the Phonak cycling team, tested positive for an unusually high ratio of the hormone testosterone to the hormone epitestosterone (T/E ratio). Floyd Landis was suspended from professional cycling for a period of two years and dismissed from his team.

In 2007, Astana withdrew from the Tour after its leader Alexander Vinokourov tested positive for homologous blood doping.[94] This was the first time since the Festina scandal that an entire team withdrew from the Tour.[95] Alexander Vinokourov was the third rider to test positive for homologous blood doping, and shortly afterwards his team-mate Andrei Kashechkin was also caught and suspended for the same violation.[96] Alexander

[91] Juliet Macur, Judge Orders Blood Bags Destroyed in Doping Case", New York Times (30 Apr. 2013). Available: http://www.nytimes.com/2013/05/01/sports/cycling/spanish-doctor-sentenced-in-operation-puerto-doping-case-in-cycling.html?pagewanted=all.
[92] Nigel Wynn, "WADA raps Spanish court over Puerto blood bag delays", *Cycling Weekly* (19 May 2014). Available: http://www.cyclingweekly.co.uk/news/latest-news/wada-raps-spanish-court-puerto-blood-bag-delays-123804.
[93] Juliet Macur, Judge Orders Blood Bags Destroyed in Doping Case", *New York Times* (30 Apr. 2013). Available: http://www.nytimes.com/2013/05/01/sports/cycling/spanish-doctor-sentenced-in-operation-puerto-doping-case-in-cycling.html?pagewanted=all.
[94] Velo News, "Vinokourov tests positive; Astana withdraws from Tour" (24 July 2007). Available: http://velonews.competitor.com/2007/07/news/vinokourov-tests-positive-astana-withdraws-from-tour_12910; *and* CAS 2008/A/1458 UCI v/Vinokourov & KCF.
[95] Velo News, "Vinokourov tests positive; Astana withdraws from Tour" (24 July 2007). Available: http://velonews.competitor.com/2007/07/news/vinokourov-tests-positive-astana-withdraws-from-tour_12910.
[96] Janwillem Soek, "The Athlete's Right to Respect for his Private Life and his Home", *The Int. Sports Law Journal* (2008) No. 3-4, pp. 3-13. Available: http://www.asser.nl/upload/documents/1182010_44041ISLJ%202008_3-4.pdf.

Vinokourov was subsequently banned from cycling for two years,[97] then returned to cycling and is today the manager of the professional cycling team Astana.

New doping patterns

The introduction of a viable test for EPO in addition to the increased power of law enforcement authorities in France and Italy resulted in a change to doping methods.

"Doping doctors" and athletes changed the route of administration from subcutaneous to intravenous. They also decreased the dosage but increased the frequency in order to avoid detection.[98] A former rider stated that by micro-dosing and administering EPO intravenously, the detection window for EPO was significantly shortened. Micro-dosing involves an athlete taking small, barely detectable amounts of a substance. Both EPO and testosterone can be taken in micro-doses to avoid detection. Several riders gave evidence to the USADA investigation that testosterone could be taken either sublingually or through testosterone patches and the detection window was significantly shortened.[99] With EPO, the usual dose was 500 ml per day, which was unlikely to be detected by urinary EPO test, and various masking agents (proteases) could be used, although they were probably unnecessary at those dosage levels. EPO was also used in connection with blood transfusions in order to stimulate reticulocyte production following a transfusion and to more quickly replenish blood supply following an extraction.[100]

Testosterone was widely used during this time period as illustrated by the Floyd Landis case as well as cortisone and HGH as demonstrated by the Freiburg Report.

Blood transfusion also returned to the peloton as a result of the EPO test being introduced. The USPS team shifted from EPO to blood transfusion in the 2000 Tour as "*it*

[97] CAS 2008/A/1458 UCI v. Vinokourov & KCF.
[98] Larry D. Bowers, "Anti-Dope Testing in Sport: The History and the Science," Vol. 26 *The Faseb Journal* 3936 (2012). Available: http://www.fasebj.org/content/26/10/3933.
[99] United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 Oct. 2012) p. 138. Available: http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf.
[100] United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 Oct. 2012) p. 67. Available: http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf

was rumoured that a new EPO test would soon be implemented"[101] and team Telekom was suspected to have used it around 2003.[102]

The Commission was informed that some of the methods used in blood transfusion could include a rider giving 2-3 bags over a one month period, usually in winter, with or without using 500 ml of EPO intravenously per day. Every month the blood would be exchanged to maintain blood volume and prevent a decrease in performance, avoid changes in blood parameters, and to always have some blood available for transfusion. The maximum deficit was usually 3 units of blood taken over 3 weeks or longer.

With transfusions, it was believed that one unit of blood was difficult to detect, and could be given every 5-7 days in a major Tour, with or without Human Albumin Solution to lower haematocrit levels. If more than one unit was given, then 1 unit (200mls) of 20% of Human Albumin Solution were to be given with each unit of blood. Each unit of Human Albumin Solution lasted for approximately 2 days and could be given repeatedly. Alternatively, Desmopressin could be taken at night with 1.5 to 2 litres of water in order to mask the blood transfusion. They were not to be taken during the morning of a race however, as they restricted the ability of a rider to urinate excess liquid before the start of a stage. For a major Tour, a first transfusion could be given after the first anti-doping blood test was carried out, or on departure for the Tour, if the controls were less organised.

Frozen blood was available from clinics in Slovenia and elsewhere in Eastern Europe. It took around 10 hours to thaw before use, but could be carried in normal luggage or a cool box. An alternative method of transport was to administer the thawed blood and use the rider to "carry" it within his circulation, and it could then be removed at the destination. One rider provided information confirming that he would be given 2 to 3 units of blood

[101] United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 Oct. 2012) pg. 37. Available: http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf.

[102] "Final Report of the Expert Commission investigating the accusations of doping against doctors in the Sports Medicine Department of the Freiburg University Clinic" Cologne (23 March 2009, last updated 12 May 2009) p. 33. Available: http://d3epuodzu3wuis.cloudfront.net/2009-03-23+Final+Report+of+Expert+Commission+Freiburg+Univ.+Clinic.ENGLISH.pdf.

in Madrid, and he would then travel to France where the units would be removed immediately, to be used later throughout the Tour.

Much of EPO and testosterone doping was done outside competitions as out of competition tests were still in their infancy and easily avoided. Autologous blood transfusions were taking place in and out of competition as they were undetectable. One example, according to Patrick Sinkewitz's witness statement in the Freiburg investigations, is Dr Lothar Heinrich carrying out autologous blood doping and reinjecting Patrik Sinkewitz, Matthias Kessler and Andreas Klöden during the 2006 Tour.[103]

The involvement of law enforcement agencies in different scandals made teams very nervous. Riders no longer spoke openly about doping but referred to it in the third person or used code-names for various substances. One former rider commented that before Festina, people carried doping products around, and handed them to riders after races, but after Festina such practices vanished. Talking about doping no longer happened between the teams, only between riders of the same team and not as openly as before.

The prominent role of "doping doctors"

With the reintroduction of blood transfusion into the peloton, "doping doctors" cemented their key position in the teams' doping programme during the 2001—2008 era.

One rider told the Commission he had spent more than EUR 30,000 in two years with Dr Eufemiano Fuentes, to plan and administer his PED programme. His team arranged and paid for his flights to Madrid. The rider used EPO, HGH, blood doping and masking agents during that period under Dr Eufemiano Fuentes' guidance. George Hincapie from USPS indicated to USADA that he agreed to hire Dr Michele Ferrari to assist him with his blood doping programme and was told that it would cost him USD 15,000 for the season.[104] He

[103] According to media reports, Andreas Klöden denied any allegations of doping and Mathias Kessler has never confirmed the 2006 Tour alleged blood doping incident.
[104] George Hincapie's affidavit to USADA investigation, at para. 63 (24 Sept. 2012). Available: http://d3epuodzu3wuis.cloudfront.net/Hincapie,+George+Affidavit.pdf.

testified, "*Dr. Ferrari told me that the team doctors would assist me with the blood doping program and they did*."[105]

The recent American Arbitration Association decision against Geert Leinders summarised the role given to the Rabobank doctor in the team's doping programme such as keeping insulin on the team bus and having it delivered nightly to a rider, supervising the use of EPO, assisting in blood transfusions, assisting with the administration of LH and Dehydroepiandrosterone (DHEA), providing advice regarding visits to a Human Plasma clinic for advanced blood doping, writing false medical certificates, and having testosterone pills manufactured and disguised to avoid detection.

The following excerpt from the USADA Reasoned Decision encapsulates the omnipresence of an external doctor in a rider's life: "*From team training camps in Austin, Texas; St. Moritz, Switzerland; Alicante, Spain; Puigcerdà, Spain; and on the island of Tenerife in the Canary Islands, to personal training sessions and meetings with Lance at those camps and at other times in Austin, Texas; Girona, Spain; Valencia, Spain; Milan, Italy; Sestriéres, Italy; St. Moritz, Switzerland; the island of Tenerife, and along roadsides throughout Europe, on many occasions where Lance could be found, Michele Ferrari was there also*".[106]

Dr Michele Ferrari was reported to be conservative in terms of how he recommended and administered doping programmes. In comparison, a number of riders characterised Dr Eufemiano Fuentes as the "go-to" doctor if you wanted to try new, sometimes "experimental", ideas in doping.

If blood is not stored and administered correctly, the transfusion can be fatal for the athlete. In Jesús Manzano's case, the blood was poorly conserved, without his name on the bag, and it made him ill. "*It didn't say 'Manzano' on it; it could have been Joe Bloggs' blood*," he said. "*They put 125ml into me and I began to feel bad, really bad. I was shivering;*

[105] United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 Oct. 2012) p. 49. Available: http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf
[106] United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 Oct. 2012) pg. 47. Available: http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf.

I felt colder than if I'd been at the North Pole. If they'd put in half a litre, I would have gone home in a box".[107]

In the Freiburg Report, Dr Andreas Schmid was found to have acted in "*gross violation of a doctor's duty of care*" by allowing the riders travel back from Freiburg to Strasbourg without further medical supervision, exposing them to a risk of "*severe complications in the form of septic shock or a lung embolism with possible fatal consequences*".[108] A former rider interviewed by the CIRC, commented that the Freiburg clinic positioned itself as an anti-doping crusader, regularly exchanging information with the Cologne laboratory. Using the university clinic, team Telekom/T-Mobile was told how to avoid testing positive and what new tests might be coming. This is another example where a party which was allegedly engaged in the fight against doping, was actually complicit in it and playing both sides for personal gain.

Sponsors and German TV Withdraw

In July 2007, German state networks ARD and ZDF stopped live broadcasts of the Tour after a positive test of German rider Patrik Sinkewitz and other Puerto-linked issues.[109] They broadcast again the Tour from 2008—2011, and finally withdrew in 2012.[110]

Two sponsors also announced exits from the sport. Phonak's sponsorship collapsed after Floyd Landis was convicted of doping in 2006, and Gerolsteiner announced in 2007 that it would stop sponsorship at the end of its contract, stating that recent doping scandals

[107] William Fotheringham, "It can kill, but blood doping is in vogue again", *The Guardian* (22 Sept. 2004). Available: http://www.theguardian.com/sport/2004/sep/22/cycling.cycling.
[108] "Final Report of the Expert Commission investigating the accusations of doping against doctors in the Sports Medicine Department of the Freiburg University Clinic" Cologne (23 March 2009, last updated 12 May 2009) p. 7. Available: http://d3epuodzu3wuis.cloudfront.net/2009-03-23+Final+Report+of+Expert+Commission+Freiburg+Univ.+Clinic.ENGLISH.pdf.
[109] Deutshce Welle, "German TV Stops Broadcasting Tour de France After Doping Case" (18 July 2007). Available: http://www.dw.de/german-tv-stops-broadcasting-tour-de-france-after-doping-case/a-2696396.
[110] Berno Buechel *et al*., "Nobody's Innocent – The Role of Customers in the Doping Dilemma," (2013). Available: http://mpra.ub.uni-muenchen.de/44627/1/MPRA_paper_44627.pdf. According to a recent press report, ARD will start live-broadcasting the Tour again from 2015; the broadcasting contract will apparently contain a get-out clause in the event of new doping scandals. See *L'Équipe*, "Le Tour revient sur la télévision allemande", (4 Jan. 2015). Available: http://www.lequipe.fr/Medias/Actualites/Le-tour-revient-a-la-tele/525689 (in French).

had played a part in reducing the value of cycling as a communications platform.[111] Some other sponsors, such as Cofidis following the scandal of their team introduced a new anti-doping policy. Riders had to agree to unannounced testing 4 to 5 times per year on urine, blood and hair samples, and had to tell the team if they received treatment from a third-party doctor.

The 2001—2007 era has shown how quickly the peloton managed to adapt to new anti-doping measures by swiftly moving from an EPO-focused doping regime to a cocktail of EPO micro-dosing, testosterone and blood transfusions. Doping was still prevalent, very much the norm and organised around the central figure of the doping doctor. Following the Festina scandal, several team managers shifted the burden of responsibility of doping to the athletes, still expecting them to dope but outside the team and leaving them in the hands of external team doctors. Anti-doping measures and tests were still insufficient to tackle the doping problem: there was no test for autologous blood transfusion and out of competition tests were still embryonic. The fear of being caught had more to do with a law enforcement investigation than anti-doping tests so that countries with more relaxed or non-existing anti-doping legislation were favoured for training and/or living purposes.

However, the combination of sponsor and TV withdrawal demonstrated that the public and major stakeholders in cycling were growing wary of the culture of doping that undermined the sport and called for major advances on the anti-doping front to give back to cycling the credibility it was losing.

1.4. 2008–TODAY: THE END OF WIDESPREAD AND TEAM ORGANISED DOPING?

The Athlete Biological Passport ("ABP") brought about another major change in doping practices. Since its introduction by the UCI in 2008, being the first IF to do so, the ABP has been the mainstay of the anti-doping framework in cycling. Many riders advised that its introduction changed the doping landscape, and riders and doctors had to adapt their practices, processes and procedures to avoid detection.

[111] Susan Westemeyer, "Gerolsteiner ends sponsorship after 2008", *Cycling News* (4 Sept. 2007). Available: http://autobus.cyclingnews.com/news.php?id=news/2007/sep07/sep04news2.

1.4.1. The introduction of the Athlete Biological Passport

The ABP was perhaps the biggest anti-doping innovation since the EPO test was introduced in 2000. The aim of the ABP was to focus on the effects of prohibited substances and methods on an athlete's body, where "*each athlete should become his own reference, meaning that individual limits should be applied instead of population limits, and one could use the athlete's previous measurements as basal levels*".[112]

Individuals were evaluated against their own levels over time, not against a "one-size-fits-all" threshold at a single moment. If an athlete had an abnormal profile from tests taken during a specified period, an ADO could also target an athlete with regular anti-doping tests or, if the evidence was compelling, pursue a possible ADRV pursuant to article 2.2 of the WADA Code.[113] Riders told the Commission the ABP transformed the doping landscape, and made doping much harder.

Prior to the ABP, only 3 riders were convicted of blood doping. In the first three years of the ABP, 26 riders were found positive for the presence of EPO stimulating agents in their specimens.[114] In 20 out of the 26 positive cases, it was the abnormal blood profile which raised suspicions leading to a targeted anti-doping urinary or blood test.[115]

[112] Mario Zorzoli, "Biological passport parameters", *J. Hum. Sport Exerc.* Vol. 6, No. 2, pp. 205-217 (2011). Available: http://www.jhse.ua.es/jhse/article/view/215.
[113] Mario Zorzoli and Francesca Rossi, "Case Studies on ESA-doping as revealed by the Biological Passport", *Drug Test. Analysis* (2012). Available: https://www.researchgate.net/publication/224708690_Case_studies_on_ESA-doping_as_revealed_by_the_Biological_Passport.
[114] Mario Zorzoli and Francesca Rossi, "Case Studies on ESA-doping as revealed by the Biological Passport", *Drug Test. Analysis* (2012). Available: https://www.researchgate.net/publication/224708690_Case_studies_on_ESA-doping_as_revealed_by_the_Biological_Passport.
[115] Mario Zorzoli and Francesca Rossi, "Case Studies on ESA-doping as revealed by the Biological Passport", *Drug Test. Analysis* (2012). Available: https://www.researchgate.net/publication/224708690_Case_studies_on_ESA-doping_as_revealed_by_the_Biological_Passport.

1.4.2. Main doping incidents/cases

Tour 2008

The new test for CERA (Continuous Erythropoietin Receptor Activator "CERA"), a third generation EPO variant, was introduced during the 2008 Tour. Unusually, that year's race was invigilated not by UCI but by the French anti-doping agency (Agence Française de Lutte contre le Dopage "AFLD"). The new generations of EPO, such as CERA, proved to be better because the release and red blood cell creation was slower which meant less frequent injections for a rider (a laboratory director explained to the CIRC that only 1 injection per month would be needed in contrast to 1 to 3 injection per week with EPO generation 1 and 2). It appeared from documents from the Operación Puerto investigation that CERA was known to the peloton prior to 2006.

Riccardo Riccò, Leonardo Piepoli, Bernard Kohl and Stefan Schumacher, tested positive for CERA,[116] as did Manuel Beltran and Moises Duenas. This is a good example of anti-doping measures reasonably quickly catching up with clandestine doping practices.

One rider who tested positive at the Tour explained that he had received CERA from his doctor, who had got it from a person in Monaco, who in turn had acquired it from Germany. He had previously been using EPO in micro-doses and blood doping. He took it regularly in the Giro and leading up to the Tour, every 4 or 5 days, injecting it subcutaneously.

The Mantova Investigation

The Mantova investigation coordinated by Public Prosecutor Antonino Condorelli uncovered doping practices in the Lampre Team in 2009 with assistance from a pharmacist from northern Italy.[117] It was alleged that at least 25 people were involved in the doping scheme, including directeurs sportifs and the teams' general manager. The team management allegedly sent riders for doping from across Italy, and numerous

[116] Andrew Hood, "Doping scandals in Europe include Giro sample re-tests and intercepted text messages in Spain", *Velo News* (30 Oct. 2009). Available: http://velonews.competitor.com/2009/10/news/doping-scandals-in-europe-include-giro-sample-re-tests-and-intercepted-text-messages-in-spain_99668.

substances were code-worded to help avoid detection by the authorities.[118] The hearings following this investigation are ongoing and therefore there has not yet been any conclusion on the allegations.

The Contador case

Alberto Contador won the 2010 Tour riding for Astana. He tested positive for clenbuterol and was stripped of his title. The Court of Arbitration for Sport ("CAS") found that Contador probably tested positive due to a contaminated food supplement.[119] The case will be further addressed in the UCI section of this Report.

The Padova Investigation

The investigation coordinated by Padova public prosecutor Benedetto Roberti is focused on Dr Michele Ferrari's doping activities in the period 2010-2011. 38 current and former professional riders have been reported as being clients of Dr Michele Ferrari.[120] The inquiry has been running for several years and a report totalling 550 pages was submitted recently to CONI.

USADA Reasoned Decision

As previously discussed, USADA released their Reasoned Decision on 10 October 2012. The resulting confessions and public story of the USPS/Discover Channel team's doping shed light on the doping activities of the American team and its key rider from 1998 until 2005. The Reasoned Decision represents a strong step forward in the evolution of eradicating doping in cycling. It demonstrated that sporting legacies can be dismantled, even years after an athlete's retirement, where there is the will to pursue dopers, supported by science and improved investigation techniques. It also showed the importance of whistleblowers in doping cases in addition to anti-doping tools such as

---

[118] Stephen Farrand, "Report: Details of the Lampre Mantova investigation emerge" *cycling news* (30 Jan. 2014). Available: http://www.cyclingnews.com/news/report-details-of-the-lampre-mantova-investigation-emerge.

[119] Arbitration CAS 2011/A/2384 Union Cycliste Internationale (UCI) v. Alberto Contador Velasco & Real Federación Española de Ciclismo (RFEC) & CAS 2011/A/2386 World Anti-Doping Agency (WADA) v. Alberto Contador Velasco & RFEC.

[120] Gregor Brown, "Michele Ferrari issues new denial of involvement with riders in Padova investigation", *cycling weekly* (11 Dec. 2014). Available: http://www.cyclingweekly.co.uk/news/latest-news/michele-ferrari-issues-new-denial-of-involvement-with-rider-padova-investigation-148903

reductions of sanctions in return for cooperation, tests and the ABP, and the action of law enforcement agencies.

The Reasoned Decision also highlighted the failure of anti-doping measures focussed solely on testing, to catch athletes and athlete support personnel involved in doping activities (USADA, WADA and UCI cumulatively tested Lance Armstrong around 200 times). It was only with the assistance of law enforcement authorities, and despite the reported political pressure that led to the US federal investigation being closed, that USADA was able to take over the Lance Armstrong case and prosecute it. The Reasoned Decision also highlighted certain behaviour by the rider, such as witness intimidation or retaliation against witnesses.

1.4.3. What is the situation in respect of doping in cycling today?

It is clear from the analysis above, that doping practices have changed over time as riders have adapted to new anti-doping tests and new and better doping techniques were discovered. Today the situation in cycling is likely still changing, and, certainly, it has become more opaque as riders have now been forced to dope "*underground*". A common response to the Commission, when asked about teams, was that probably 3 or 4 were clean, 3 or 4 were doping, and the rest were a "*don't know*". A number of top riders, and others in the sport, discussed other rider's top performances, or changes in appearance due to dramatic weight loss, and were unable to explain how they were achieved.

One respected cycling professional felt that even today, 90% of the peloton was doping, although he thought that there was little orchestrated team doping in the manner that teams had previously employed. Another put it at around 20%. Many people simply stated they "*didn't know*" who was clean and who was not. A lot of these discrepancies may be caused by the definition of doping being used by individuals (see above).

The ABP was a paradigm shift in anti-doping and began to reduce the percentage performance gain that EPO had previously offered because riders had to take smaller quantities to avoid detection. This in turn gave clean riders the chance to compete and win, particularly in shorter stages in the Grand Tours. Gradually, 10-15% gains have

become a thing of the past. It has been reported that increases in performance by micro-dosing EPO (as one form of continued doping) are now perhaps between 3-5%. This has had a significant impact on the doping landscape today because by reducing the performance gains, riders will start to believe that they can have a career riding clean. This is a key development in the fight against doping.

However, the Astana case in 2014 is an example that shows the problem has not been eradicated at the higher levels. The Astana world tour and pro-continental teams collectively incurred five doping violations in 2014, two by the world tour team (EPO) and three by the pro-continental team (steroids).[121]

Finally, it should be noted that the ability of NADOs and laboratories around the world, as well as the substances that are routinely tested for, differ considerably and that most riders know exactly what the weak spots in the various countries are and are able to adapt and/or take advantage of this lack of a level playing field.

Doping Substances and Prohibited Methods Used

The core elements to achieve performance enhancement through doping in cycling have remained the same over the years: firstly, increasing the blood's oxygen carrying capacity, and, secondly, stimulating muscle growth and aiding muscle recovery. Over the years riders have adapted the substances and methods used to achieve these goals in response to: (i) the type of substances available and accessible on the pharmaceutical market (*e.g.,* various EPO generations); (ii) specific drug detection capabilities of laboratories, (*e.g*., the switch from EPO to blood transfusions or to ozone therapy, or even towards the so-called "oxygen in a pill" in the form of GW1516 and AICAR); and (iii) other anti-doping tools, such as the ABP which has led to micro-dosing (see below).

Another way in which riders seek to improve their performance is through reducing their weight in order to increase their power/weight ratio. Interviewees noted cases of

[121] The world tour team was granted a licence, provisional upon the findings of an external audit. The audit was to look into the circumstances of the doping cases in question to determine whether, and to what extent, the team and/or its management was responsible for the doping events.

dramatic weight loss in certain riders, which they felt could only be explained by use of performance enhancing products. The Commission heard that the desire to lose weight might also be leading to an increase in eating disorders amongst riders.

Micro-dosing and other oxygen enhancing techniques

As noted above, the introduction of the ABP has had a significant effect on doping practices. The ABP makes it difficult for riders to use EPO or blood-transfusions to the extent that they were previously used because riders are now forced to ensure that their blood parameters stay within their normal range. Riders therefore turned to micro-dosing of EPO, which enabled them to improve their performance to some extent whilst avoiding the "spikes" in blood values that could be detected by the ABP. One rider confirmed to the Commission that following the introduction of the ABP he was told by his doping doctor to only conduct transfusions of a maximum of 150—200 ml blood, whereas the size of the blood bags previously used by USPS/Discovery Channel and Team Telekom/T-Mobile (according to the Reasoned Decision and Freiburg Report) amounted to 500 ml.

Consequently, despite improvements to the science underlying the ABP, it is still possible for riders to micro-dose using EPO without getting caught. The Commission also heard that riders are confident that they can take a micro-dose of EPO in the evening because it will not show up by the time the doping control officers ("DCO" or "DCOs") could arrive to test at 6am. One top rider noted that riders take more risks when they are at home because they know they will be tested at competitions if they make the top 5. Further, it was commented that the variety of "biosimilar" EPOs makes it more difficult to prove administration under the WADA technical documents.

The Commission also heard that riders are using ozone therapy, which involves extracting blood, treating it with ozone and injecting it back into the blood. One rider informed the Commission that by way of using ozone therapy he felt stronger, and that the muscles recovered, but that it had however not been as efficient as EPO. Several interviewees mentioned that AICAR, which supposedly has similar effects to EPO, has become popular in the peloton.

Steroids and HGH

As the detection window for anabolic steroids is relatively long, riders today have sought alternative ways to try to obtain the same performance enhancing effect through stimulating muscle growth.

One method that riders have employed has been to use HGH, or growth hormone releasing peptides and Gonadotropin-releasing hormone. These substances are more difficult to detect than steroids, although the HGH test introduced in 2012 has extended the detection window for certain HGH products.

In order to avoid detection, riders have for some time been using testosterone patches and gels because they release smaller quantities and the detection time is therefore shorter. These are sometimes used in combination with the HGH products mentioned above to increase their effectiveness. However, HGH is generally expensive and, certainly at lower levels of competition, it appears that riders therefore continue to use steroids. The Commission also heard that the same muscle enhancing effect can be gained by taking a combination of very small quantities of a variety of steroids. Again, by taking such products in such small quantities, it makes detection significantly more difficult.

The Commission understands that in an effort to seek the same performance enhancing benefit without violating the rules, riders may also be using a homeopathic pill that could potentially increase their testosterone levels.

Corticoids

Corticoids are widely used today both to reduce pain and therefore improve endurance capability and to achieve weight loss to improve power/weight ratio. On the WADA Prohibited List all corticoids are prohibited when administered by oral, intravenous, intramuscular or rectal routes, but Therapeutic Use Exemptions ("TUEs") can be requested for such administration.

One doctor stated that it was impossible to lose the weight that some riders achieve without assistance, and that the TUE is taken advantage of to enable this practice.[122] He stated that riders use corticoids to "lean out" *i.e.* to lose weight quickly, and keep it off, without losing power. By way of example he explained that to lose 4kg in 4 weeks by using corticoids would provide a 7% power/weight improvement. He added that when used in large quantities and in conjunction with other substances, they supported performance gains. Another doctor stated that some quite recent big wins on the UCI WorldTour were as a result, in part, of some members of the team all using corticoids to get their weight down to support the individual who won (who also used the same weight-loss technique). It was reported that this had been a planned approach by that group's management.

TUEs

TUEs is a complicated and delicate area.[123]. Interviewees reported that TUEs are systematically exploited by some teams and even used as part of performance enhancement programmes. One team doctor stated that he believed the TUE system had been regularly abused, particularly as previously mentioned, in the area of corticoids.

Today there appears to be concern among riders about the way in which TUEs are used for corticoids and insulin in particular, and the extent to which they are being abused. One difficulty, raised by a laboratory, is that it is difficult to tell from a sample whether corticoids have been administered through permitted routes of administration. A former rider stated that taking insulin before meals helped to enhance recovery. In general, there was a feeling that it is too easy to obtain a TUE; one rider who had doped reported that he was told to ask for a TUE for triamcinolone acetonide (Kenacort) claiming that he had tendonitis; he had no problem obtaining the TUE.

[122] "*The Therapeutic Use Exemption (TUE) process is a means by which an athlete can obtain approval to use a prescribed prohibited substance or method for the treatment of a legitimate medical condition*". See http://www.ukad.org.uk/about-TUE.

[123] According to data made available to CIRC, a minimum of 550 TUEs were registered with UCI between 2008 and 2014, of which 368 were for riders who registered only once, nearly 90 riders registered twice, and five registered five times or more.

The Commission heard different views on the use of TUEs for corticoids. According to the head of one laboratory, and many others interviewed, corticoids should generally only be administered for acute conditions, which would mean that if a rider needed to use them, they should not be able to compete. Certainly, on that basis a constant or long-term use of corticoids could not be justified medically. On the other hand, it was pointed out that in cases of real emergency, corticoids might be medically justified in order to enable the rider to compete (particularly, for example, where there is an important event coming up or during a competition held over several weeks in order to allow the rider to finish the race).

The Commission heard that the problem of abuse of TUEs also exists in women's cycling, where some riders would turn up at the race registration with extensive folders of TUE-related documentation.

The Commission further heard that riders and team personnel find the current system for TUE application much easier to abuse than during the period when only a so-called "Declaration of Use" had been required instead, *i.e.* where riders had to declare any corticoids used at the time of the doping control. At that time most teams had a person responsible, generally the team doctor, to ensure that not too many riders declared the use of such substances at once.

In one rider's opinion, 90% of TUEs were used for performance-enhancing purposes. Concern that a system of granting certificates for the therapeutic use of prohibited substances under medical supervision could be used by athletes to take prohibited substances when not medically justified, was apparently voiced in a report to a symposium on doping control in 1979.[124] It appears that this concern has materialised and is a significant problem even today.

[124] Marcel Reinold, "Arguing against doping: A discourse analytical study on Olympic anti-doping between the 1960s and the late 1980s" (7 May 2012). Available: https://doc.rero.ch/record/29383/files/ReinoldFinalReportIOC2011.pdf_attachment_.pdf.

Today, some teams aligned to the Mouvement Pour un Cyclisme Crédible ("MPCC") have decided that any TUE application for intra-articular corticoid injections should be accompanied by an automatic 8 day rest period.[125]

Other substances used

It was clear from interviews that some riders are prepared to try a wide range of substances to gain an advantage. One rider, for example, told the Commission that he had used at least 12 different types of substances throughout his professional career, some of which were highly experimental and which were even designed only for horses.

By way of example, GW 1516 is a substance that sends more oxygen to the muscles, burns fat and increases muscle mass. However, regulated development of the drug stopped before it was given clinical approval because it was thought to cause cancer.[126] It is illegally manufactured today and a number of riders have been found to use it, despite WADA issuing a warning to athletes about its effects. The Commission heard that riders will use products which are only at trial stage and which are yet to receive clinical approval.

There also appears to be an increase in the availability of "designer" steroids, which can be found on the internet and often originate from China. One rider informed the Commission that he has been provided with a "new artificial" form of Testosterone.

The Commission was also told by a rider of a "pills system" used during races in 2011, involving up to 30 pills daily. They were to be taken during a stage to enable better breathing, develop greater power and to help finish a stage strongly, as well as afterwards for recovery. He said team riders also took tranquilisers at night and anti-depressants in the morning. He believed some of his crashes were due to the effects of these drugs. He also stated that there was a drink given to a rider who may be able to win, which made the heart beat faster and which caused the body to burn sugars immediately.

[125] *See* http://www.mpcc.fr/index.php/en/mpcc-uk.
[126] UKAD, "WADA issues alert on substance GW501516" (23 March 2013). Available: http://www.ukad.org.uk/news/article/wada-issues-alert-on-gw501516

The Commission has collected a long list of substances or medical products that riders are using today or have been using in the last few years. They are listed to demonstrate the breadth and extent of drugs available to professional and amateurs alike.

. Some of the substances or methods used to enhance blood oxygen capacity or "normalise" blood values are: Aicar, Xenon gas, ozone therapy, ITPP, Gas6, Actovegin, various forms of EPO such as CERA, "Eprex", EPO zeta, EPO Retacrit, Neorecormon, and Albumina (to normalise blood values).

. Products used to increase muscle growth and recovery (in the general classes of anabolic substances, HGH, Growth Hormone releasing peptides and Gonadotropin-releasing hormone) which have been reported include: Kryptocur, Lutrelef, Gonasi, TB-500, Glucagone, Geref, Menogon, Proviron, Deca Durabolin, Testovis, Triacana, Dynatrope, Monores, and Hypertropin.

. Others products that have been mentioned to the CIRC are: IGF-1, Kenacort and Redux.

These lists indicate the relentless flow of substances coming into the sport. It is obvious that mere rules and regulations cannot alone stem the tide; other approaches to anti-doping are also required.

Substances not on the WADA Prohibited List

The Commission also heard that riders will take a wide range of non-banned substances to create a performance-enhancing effect. For example riders seem to be taking an array of painkillers and caffeine tablets, as well as nutritional supplements. Even though these are not currently Prohibited Substances on the WADA List, the CIRC has been told that the administration of some of these substances has the sole purpose of performance enhancement. They are therefore highlighted for completeness of the range of substances that riders will take to gain an advantage. Products and substances that have been mentioned include Viagra, Cialis and various nutritional supplements and homeopathic

products: Testis, Coenzyme Compositum, Spirulina, Levothyroxine, Acetylcarnitine, Levocarnitine, Fructose; Levomefolate calcium, beta-alanine, iron products, Vitamin B12 and folic acids, Omega 3, and Oxazepam.

Further, Tramadol, a narcotic-like pain reliever, has been in the media recently.[127] The Commission was told by some that it is used widely because it is an extremely strong pain killer and is not on the banned list. Again, there was a body of opinion that if a rider needed to take the product, the rider should not be riding. It was also thought that Tramadol could cause impairment of judgement in a rider, which in turn could cause crashes.

Sources of PEDs

The traditional sources of drugs have been false prescriptions, pharmacies and hospitals, and riders have either obtained drugs directly or gone through intermediaries, such as other riders or team staff. These continue to be sources of PEDs for riders today. In Italy, for example, it is suspected that only half of EPO sales from pharmacies are used for the treatment of a medical condition, and it is suggested that the other half is used for doping purposes. However, it is noted that access to, and tracking of, certain drugs via pharmacies has been tightened up in some countries by the introduction of electronic systems, for example in Spain and The Netherlands.

Two newer sources of PEDs are the internet and gyms, which are favoured sources for acquiring drugs for those without access to the right doctors. The internet has opened up a market in new designer steroids and allows riders to identify and obtain drugs that are still in clinical trials. The internet also makes it easier for riders to obtain new variants of drugs, for example the EPO variants, which help them to avoid detection.

Riders who dope predominantly use doctors who are outside the teams today for their doping requirements. In some cases, the doctors and riders only communicate

[127] Press Association, "Team Sky urges ban on Tramadol after former rider reveals usage", *The Guardian* (28 Apr. 2014). Available: http://www.theguardian.com/sport/2014/apr/28/team-sky-urges-ban-tramadol.

electronically or through intermediaries. Certain anti-aging or wellness-type clinics are also mentioned as operating a doping facility for riders who can afford it. The Commission was also told of well-known "doping doctors", still operating in the sport today (seemingly through intermediaries and in other countries). Despite sanctions and public condemnation, they continue to have a market in which to ply their doping trade. The new offence of prohibited association in Article 2.10 of the 2015 WADA Code may provide a way to discourage riders from working with them, although it still does not address the underlying problem that such doctors often still have their medical licence.[128]

It has been difficult to establish where, geographically, riders obtain PEDs today. Interviewees talked about drugs coming from Eastern Europe and further east, although this was rarely specified in any greater detail. And, through the internet designer drugs from China appear to have become available. However, the ability to purchase PEDs on the internet makes it very difficult to track the original source of products. This emphasises the need for ADOs to work with law enforcement and, particularly, customs.

Modus operandi

One of the most significant changes in doping programmes is that, at the UCI WorldTour level, they are no longer organised systematically by teams. Programmes today are often individually organised, clandestine programmes. However, the fact that cycling teams are not organising the programmes does not mean that they are always entirely separate or that riders do not have sophisticated "teams" around them, comprising predominantly people outside the cycling team. In these new "teams", which are often initiated through introductions and facilitated by intermediaries, riders are well-protected and well-funded. The extent of the knowledge within the team may be highly limited, with managers perhaps adopting a "don't ask, don't tell" mantra. The largely non-orchestrated nature of doping today was echoed by a number of knowledgeable and reliable people. They were of the view that there is an elite who are still doping in a sophisticated way today.

[128] Available: https://wada-main-prod.s3.amazonaws.com/resources/files/wada-2015-world-anti-doping-code.pdf.

Some examples that have been reported by interviewees and taken from recent investigations emphasise that riders still need to rely on external people to help, whether this is purely with the medical side of the programme or simply to source PEDs for them. One of the key roles remains that of the doctor. Now that riders at the top level have to provide samples for the ABP, they need to take a more sophisticated approach to doping in order to avoid a positive test. Therefore, for those riders who can afford it, a sophisticated doping programme requires a doctor to carefully monitor their blood values to ensure that they stay within the parameters. The situation has moved on significantly from the days when riders could purchase their own centrifuge and simply monitor their haematocrit level. For this reason that much more emphasis needs to be placed on targeting and investigating athlete support personnel.

Media reports on the Padova criminal investigation in Italy mention that Dr Michele Ferrari and others, including a rider's agent, bankers and a lawyer, were being investigated for belonging to a criminal syndicate with the aim of trafficking and administration of doping substances, as well as tax evasion and money laundering[129]. The allegations suggest that a "package" of support was offered to riders, which included tax evasion advice, training and doping programmes, legal advice, false contracts, the involvement of tax consultancy companies to manage secondary contracts, and money laundering. Athletes from other sports are alleged to have been involved, and a variety of "service levels" were offered to cater for the elite professional through to the amateur with connections and money. Most activities are alleged to have taken place in Italy and Switzerland (and to a more limited extent in Tenerife and Monaco).

In his affidavit to USADA, Leonardo Bertagnolli confirmed that he cooperated with Dr Michele Ferrari from the end of 2006 until 2010. Dr Michele Ferrari's involvement in the later years were mainly in relation to blood doping. In 2010, Michele Ferrari advised Leonardo Bertagnolli that according to him only "*crazy suicidal*" people would still be using EPO.[130]

[129] Gazetto dello Sport, "Ecco il sistema Ferrari Conti svizzeri, contratti finti", (18 Oct. 2012). Available: http://www.gazzetta.it/Ciclismo/17-10-2012/sistema-ferrari-%3Ccs474%3Econti-svizzeri-contratti-finti-cosi-si-ricicla-tesoro-doping-912938790314.shtml (in Italian).
[130] United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 Oct. 2012) – Annex I to affidavit of Renzo Ferrante. Available: http://d3epuodzu3wuis.cloudfront.net/Bertagnolli%2c+Leonardo%2c+Witness+Statement.pdf.

The Commission was also told that Dr Eufemiano Fuentes is apparently still treating athletes despite being banned in 2013 from practising sports medicine for 4 years.[131]

In another example, one rider explained how he had got caught for using EPO in 2013. He stated that he had received the substance from an amateur rider working in local pharmacies in northern Italy. The rider had been using Dr Michele Ferrari's services remotely, through the amateur rider who in return provided Ferrari with doping substances. The amateur rider ordered products from abroad that were unavailable in his local pharmacies, and had them delivered to a Swiss pharmacy where he collected them. The amateur rider told the rider that he also provided substances for professional riders from four pro teams.

It also appears that team organised doping is more likely still to take place at lower levels of competition, where anti-doping efforts are less concentrated. The Commission was told of a team below the UCI WorldTour recently involved in doping. It was claimed that the team manager and sports director brought a nutritionist into the team who advised a selected group of riders within the team on a doping programme. The instructions were to administer 1000 ml of EPO Zeta every second day after 11pm at night, and alternate in the winter with HGH and Lutrelef, a hormone. Their haematocrit levels were to be tested every third day, and amounts of EPO Zeta reduced to 500 ml as the season approached. The nutritionist owned a gym, through which substances were procured from Eastern Europe. Other riders were said to have procured substances via a hospital and a pharmacy more locally. It was further explained that the team manager was also a senior person in a prominent anti-doping movement, and had later on introduced strong anti-doping clauses in the team contracts, including the imposition of significant fines for anyone caught doping.

As one interviewee told the Commission, another way that riders might get access to doping products is through their agents. This distances the rider from the doping source thereby minimising exposure. Agents are well connected and by representing many

[131] According to an interviewee, Dr Eufemiano Fuentes is currently operating from South America.

riders can create a network to cater for all the riders' needs, from contractual and financial matters to, in some cases, doping.

Methods to avoid detection

Over the years riders have shown themselves to be highly adaptable in their doping practices in order to avoid detection. It appears that many riders who dope continue to have in-depth knowledge of the products and how and when to take them in order to avoid detection. For example, riders know that they should micro-dose in the evening and that they will then be fine if tested in the morning. For this reason riders no longer have the same fear of out-of-competition testing. One rider explained that he would take EPO until 3 to 4 days prior to the start of a competition and administer HGH up until 5 days prior to competition, but would start using corticosteroid injections 3 to 4 days prior to the competition.

Ironically, the ABP is also used by riders to avoid detection. Anti-doping experts noted that the fact that riders had access to their blood values, allowed them to ensure that they stayed within their limits when blood-doping. Interviewees also explained that riders deliberately schedule high altitude training camps and use oxygen tents, not only for their potential training effects, but also in order to explain a potential jump in their values if there is a test.

Several interviewees also confirmed to the CIRC that riders are able to "play" the whereabouts system, for example by changing their whereabouts frequently and at the last minute or providing vague information so that they could not be found. The Commission was also told that riders felt that they had the comfort of being able to have a missed test.

Amateur cycling

The Commission believes that doping in amateur cycling is becoming endemic. This was confirmed by amateur riders, as well as professionals, managers and anti-doping personnel who had exposure to it. It has been caused by a combination of ease of access

to drugs via gyms and the internet, the reduction in costs for substances, a spread of knowledge in means and methods of administration, and a lack of funding for regular testing at the amateur level.

Masters races were also said to have middle-aged businessmen winning on EPO, with some of them training as hard as professional riders and putting in comparable performances. Some professional riders explained that they no longer ride in the Gran Fondos because they were so competitive due to the number of riders doping.

Youth cycling was mentioned as being particularly vulnerable as anti-doping testing is concentrated at the elite level so doping may go undetected at lower levels. If youth riders want to reach higher ranks, the incentives are there to dope at an early age. As a result, some managers try to identify good quality amateur riders in their mid-teens to sign them clean before they got exposed to doping.

The Commission heard from a NADO that it took the view that testing at the amateur level was not done because "*they are only amateurs and we concentrate on professionals*". However, other NADOs indicated that they carried out some testing at amateur level. Budgetary constraints restrict the amount of testing that can be done at amateur level. As a consequence, as amateur riders told the Commission, they know that it is highly unlikely that they will be tested so they know that it is easy to dope and get away with it. The more widespread doping at the amateur level means the concept of doping is reinforced at the broader amateur level *i.e.* within the wider fan base. Internet chat rooms provide significant information in the many discussions about doping.

The issue of testing at amateur events raises the issue of funding in anti-doping. The Commission notes the comments in the 2013 WADA Report that, "*The real problems are human and political factors. There is no general appetite to undertake the… expense of a successful effort to deliver doping-free sport.*"[132]

[132] Report to WADA Executive Committee on Lack of Effectiveness of Testing Programs, published on 5 Dec. 2013, at p. 3. Available: https://www.wada-ama.org/en/resources/world-anti-doping-program/lack-of-effectiveness-of-testing-programs.

Women's road cycling and other cycling disciplines

The Commission regrets that it did not have more time to examine all other cycling disciplines as it believes there are valuable parallels to be drawn and reasons to be examined as to why a discipline does or does not have widespread doping within it. The Commission did however briefly examine women's elite road cycling. It believes that it is under-developed and potentially offers a great opportunity for cycling.

The Commission found that doping occurs in women's cycling, although it most probably is not as widespread and systematic. This is likely because far less money is available in women's road racing currently. The Commission was told of doping at the highest levels nevertheless, and it is logical to assume that when women's cycling is finally developed to a status comparable to the men's sport, it will attract the same problems as the men's unless steps are taken now to protect it from that fate.

The Commission was told that women's cycling had been poorly supported in past years, and was given examples where riders in the sport had been exploited financially and even allegedly sexually. The Commission was told that the managers were often from male cycling, and were not of a quality to get a job in men's road cycling, and that glaring opportunities to recognise women's cycling for its potential were tainted by a male-dominated sport that failed to realise the potential of women's cycling.

A discipline like mountain bike is culturally very different from road cycling; they attract a different type of person and the sport requires different physical, technical and mental approaches. The Commission was told of people who had crossed disciplines, from mountain bike to road cycling, and how one or two mountain bikers were already doping before they made the transition.[133] The Commission encourages UCI to investigate the doping situation also in other disciplines of cycling.

[133] The Commission was told about the issues in mountain bike during the road cycling interviews, hence their mention in the Report.

1.4.4. Themes and factors that continue to encourage or facilitate doping practices in cycling today

Having looked above at the doping situation in cycling today, from which it is clear that doping remains a problem for the sport, it is necessary to consider what are the factors that have in the past and potentially continue today to encourage riders to dope or which facilitate doping practices.

Structure of teams

Doping can continue "out of sight" because many teams' riders spend large periods of time apart from their team or colleagues. They often train individually or in informal groups, and only come together as "the team" periodically during the racing year. The Commission has, for example, also been informed that one of the Astana riders, who tested positive in 2014, had been outside the team environment for 2 months and 11 days during an important preparation period, during which he was doping. The CIRC was told by some elite cyclists that they do not even know who most of the people in their team are, including even other riders, and would not be able to recognise them. They have their own people and rely on them for most of their requirements. This makes it harder for teams to exercise any degree of control or to guide riders away from the temptation to dope. Clearly it is harder to create a "clean culture" if riders are not together in a team environment.

Some teams today have tried to change this approach by creating a team environment in which riders are expected to train with the team, use team staff and doctors rather than their own. The Commission was told that the teams taking this approach have seen the benefits, not least in terms of reducing the exposure to doping. However, it was noted by interviewees (both from teams that employ a new team approach and others) that the team cannot watch riders the whole time and cannot control what they do in their own time. Therefore, whilst a stronger team ethos can be helpful, it is only one of the tools.

Structure of the sport

The Race Calendar and point system?

The Commission was told on a number of occasions that the points system caused riders to be more likely to risk doping towards the end of the season. This was done to achieve better placing in order to acquire extra points to help with contract negotiations, particularly if they were out of contract or in cases where the team might not obtain a licence the following year.

The Commission was told by some interviewees that the race calendar is too busy. Some raised the fact that the three Grand Tours, the Giro, the Tour and the Vuelta were too close together in the calendar, and recovery time was not sufficient to enable a top rider to attempt seriously all three. One doctor explained that by the end of a 3-week tour, some riders would find it difficult to sleep due to the toxins in their body and the extreme effects on the body. The fact that riders have used products to get through races since the early 1900s, at a time when financial gain would not have been a determining factor, demonstrates that the degree of suffering is part of what pushes people to dope, which is still the case today according to a number of interviewees; however, it was also acknowledged that this was part of the sport and should not be an excuse.

One option suggested by some riders, including those at the top of the sport, was to reduce the Giro and the Vuelta from 3 weeks to 2 weeks. This would allow time for recovery between the Grand Tours without moving their position in the calendar, which would allow top riders to attempt all three races. However, rearranging a calendar is a complex business for many sporting, financial and other reasons. Furthermore, the Commission is of the view that the race calendar and the point system have a negligible impact on doping and consequently are not an excuse for doping.

Clustering

A phenomenon that seems to have begun at least 20 years ago, and which seems as prevalent today, is that of riders “clustering” in certain locations. The riders may not all be from the same team, but they gravitate to living and/or training in certain places.

Some of the high profile scandals suggested that clustering occurred to facilitate doping programmes. Whilst there were no doubt advantages in doping terms to riders clustering, there appear today to be numerous considerations woven into the decision of where to base themselves: for example, avoiding higher tax (*e.g.* Monaco) and beneficial training environments. Ease of accessibility to an international airport, especially for a sport where international travel is a prerequisite, does not appear to be high on the list.

It is impossible not to consider too that a weak anti-doping environment, for example caused by difficult accessibility for testing in certain geographical locations together with the close proximity to doctors, might still be factors for some.

Sponsorship and financial instability of the sport

The Commission was frequently told that cycling has always been too dependent on income from sponsorship. This has had an effect at two levels: firstly, it put pressure on teams to encourage doping to ensure that the team obtained results to keep the sponsor happy, and, secondly, in some cases the short-term nature of a sponsorship deal might result in short-term contracts for riders (even some elite road riders only had short-term contracts) which put them under a separate pressure to dope.

The role and involvement of sponsors over time has been varied. It costs a significant amount of money to fund a UCI WorldTour team and therefore sponsors will want to see a return on their investment. The best return for sponsors was for their team to win and achieve greater exposure for the brand. This return could, depending on the levels of success, be significant relative to costs. For example, in 2012, one sports brand invested approximately USD1.5m in a successful World Team and the assessed return for the brand was USD 100m.[134] Another major sponsor explained that its brand recognition over time grew from 2% in 1996, to 25% in 1999 to 45% today.

It is clear that the need to obtain results to keep sponsors happy encouraged doping; however, there is also a question as to how involved the sponsors were, or how much

[134] Ferrand and Beckett, "Cycling News Sponsorship Report on Pro Cycling" (2013). Available: https://www.tageswoche.ch/attachment/3142/Sponsorship%20Report%20Cyclingnews.pdf.

they knew, about the doping programmes in their teams. The CIRC spoke to a number of sponsors in the sport, and the extent of the sponsors' knowledge of team or individual doping appears to have been varied. It has also evolved over time. Prior to the high profile scandals and investigations in the 2000s, it appears that some sponsors either had knowledge of the doping practices or took a "turn a blind eye" approach. However, by the mid/late 2000s sponsors viewed the risk differently and started to look at alternative sports as a safer and more reliable investment, despite the significant potential returns on investment in cycling.

In terms of the different approaches of sponsors, one former rider commented that sponsors wanted to win, but did not want to know about doping. Another rider described that on one of the teams he rode with, he did not think the sponsor knew much. Another rider stated that the sponsor would buy the riders' plane tickets to visit a known doping doctor in Spain. A former directeur sportif stated that sponsors were never included in discussions about doping and were left completely outside, although there was implicit understanding of what it took to win. According to the Freiburg Report, the investigating commission had no reason to believe that the two main sponsors were involved in doping activities.[135] One sponsor told the CIRC that during their lengthy tenure funding a European team, they got a better hold of the team's management in order to ensure the team was not doping. This included actively avoiding riders whom it was not convinced were clean. Unfortunately, over time, it realised that it was unsuccessful and that its sponsorship was in any event tarnished by other teams' doping scandals. Despite the perfect fit for its marketing purposes, the sponsor withdrew from men's road cycling.

As noted above, one of the main ways to keep sponsors happy is to win races to increase the brand exposure. However, it is worth noting that other methods of providing a return for sponsors exist. Firstly, participation in the Tour was and remains critical for many sponsors. The impact on doping attitudes can be seen in the French teams, which have over the last 10 years generally been thought of as clean; because French teams know that they will be able to participate in the Tour, they are able to provide exposure for the

[135] "Final Report of the Expert Commission investigating the accusations of doping against doctors in the Sports Medicine Department of the Freiburg University Clinic" Cologne (23 March 2009, last updated 12 May 2009) at p. 9. Available: http://d3epuodzu3wuis.cloudfront.net/2009-03-23+Final+Report+of+Expert+Commission+Freiburg+Univ.+Clinic.ENGLISH.pdf.

sponsor without the pressure to dope to obtain results. Secondly, in the peloton, one reason why so-called "suicide breaks" might occur, was in order for riders to win front place exposure for their sponsor for a period during a race stage. The peloton would know the break was doomed from the start, and it would be largely ignored, but the riders making the break were ensuring the sponsor was getting TV coverage for a period.

It is interesting that riders are also aware of the general pressure to keep sponsors in the sport, not just their own team's sponsor, but more widely. The Commission was told that sometimes riders would agree to lose stages to another rider whose sponsor might have been considering withdrawing from cycling. In this way, the sponsor would have a stage win and podium exposure, perhaps putting off the withdrawal decision. The CIRC found no evidence that sponsors were aware of this type of behind the scenes deal, which often was arranged between riders during the course of a stage.

By the late 2000s, some sponsors were taking active measures to reduce the risk of riders doping in their teams, although clearly no sponsor could guarantee the team it sponsored was 100% clean. Today, sponsors protect themselves through contractual provisions that enable them to terminate the contract for damage to reputation. Riders' contracts also contain provisions that provide that their employment will be terminated if they dope. Some sponsors have also introduced their own procedures to ensure better oversight of team management, testing, and medical frameworks, in order to minimise their risk. One sponsor explained that it took a rider with a potentially suspicious ABP out of competition temporarily to conduct tests at altitude and sea level to improve their understanding of the ABP results to assess whether or not he was doping. In another case, a team fired a rider who they strongly suspected of doping, despite the potential legal repercussions for the team. Another spoke of the additional blood tests they perform on their team members, beyond those of the UCI.

Another important development is that some managers have sought to manage sponsor expectations, for example by explaining to them that they should not expect to win long races, especially the grand classification races, but rather they should set expectations at perhaps a stage win. This approach needs to be combined with more creative approaches to monetising a return on investment, for example through other innovative marketing

and event-driven ideas associated with the team, such as the public being able to meet the riders, or hospitality events organised at big races. These approaches require a better understanding of the sport by sponsors, coupled with a stronger, more ethical management of the teams.

The significant risk for cycling is that the number of doping scandals and damage to the sport's reputation will cause both existing sponsors to leave the sport and deter new sponsors. This has not always been the case; in the past, sponsors have stuck by their teams despite the scandals, which is presumably because they considered that the returns still justified the investment (*i.e.* there is no such thing as bad publicity). However, it appears that attitudes to doping among sponsors are starting to change. A recent example of this is the exit of Rabobank from the sport. One major global sponsor of sports told the CIRC that cycling was a wonderful, broadly appealing sport, but that until the anti-doping narrative changed within the sport, it would never consider associating its name with men's road cycling. However, it was interesting that the sponsor stressed that it did not require a 100% clean sport for a period of years before investing, but rather a sport that was doing all it could to tackle the doping problem.

The other major source of finance for the sport is through the sale of broadcast rights. The financial benefits of this go to the UCI and/or event organisers. The fact that German television broadcasters announced in 2012 they would no longer broadcast the Tour live because there was insufficient public demand demonstrates that doping scandals not only impact team sponsors, but can also affect the appeal of the sport more broadly, and therefore the ability to monetise it.

The relationship between sponsors and UCI also needs to be reconsidered if cycling is to encourage sponsors to stay in the sport. For example, the CIRC was told that better sharing of information about riders would be a good start, as it would enable teams to make more informed decisions when deciding whether to hire riders.

The role of bike manufacturers, or makers of associated equipment, as sponsors is a complex one. Given that their whole business is cycling, they have an even more vested interest in its image. Whilst this would suggest that such companies have an even

stronger incentive to ensure the team rides clean, it is not necessarily the case that doping scandals equate to fewer bike or equipment sales, nor clean victories equate to more.

The Commission has been told that the role of high net worth individuals in owning a team, or state sponsorship/ownership, can be a complicating factor in the sponsorship and business aspects of cycling. The CIRC considers that the amount of money invested is not a contributing factor per se. What is a factor however is the way a team is structured and the level of checks and balances in place. Therefore it is difficult to conclude that the type of investor, *i.e.* individual or corporate, has an impact on doping.

On an individual level, top riders told the CIRC that despite having won at the highest level, they were sometimes unable to obtain individual contracts with bigger sponsors because of the broader risks for the sponsor of investing in the sport. The Commission was told that top paid cyclists, at the peak of their sport globally, might earn perhaps only 10% of the income an athlete at 50th or less in world sports earning rankings.

Ultimately, it is clear that sponsors take a more discerning approach to sponsoring cycling today. In large part this is because doping has become culturally unacceptable and therefore association with a "tainted" sport is now considered damaging to a brand. However, the rewards for sponsors in cycling are still significant, because it is a sport with broad appeal across society and geographically. A change in attitude from sponsors is necessary, but whilst teams are entirely reliant on a single sponsor to survive, the lack of financial stability will continue to foster an environment that pushes teams and riders to do all they can to achieve results.

Science

The 2013 WADA Report stated that whilst there was an apparent lack of success with testing programs, the science now available is robust and reliable. The Commission met a number of scientists, including some who are involved in the research and development of new anti-doping tests. The general view appears to be that the science behind the physical tests is robust; however, this should be qualified by the widespread belief that there needs to be greater understanding of the ABP.

The ABP has been one of the most significant developments in the fight against doping. However, as discussed further in the section on UCI's anti-doping policies, there are many occasions when the medical experts reviewing ABPs are unable to reach a conclusion as to whether or not an abnormality has been caused by doping. Interviewees from NADOs, teams and laboratories commented that there needed to be more research into the science behind the ABP, particularly for example the effects of non-doping factors on the body.

Further, whilst the science available today may be robust, it is clear that further scientific development is necessary. As seen above, new products become available and riders adapt their doping techniques. The fact that micro-dosing is still extremely difficult to detect demonstrates that there is still room for scientific development.

The Commission understands there are some innovative scientific ideas out there that promise much for the future of anti-doping. Two examples are of new techniques for detecting autologous blood doping, and for detecting gene doping by identifying fluctuations in Ribonucleic Acid (RNA). Unfortunately, it appears that at present, it can take several years for new projects to be fully developed. The Commission was informed of three areas where innovation can be stifled and slowed: organisational administrative and regulatory processes can cause promising projects to be slow in coming to fruition; the value of project grants available can be tiny in comparison to the funds needed to complete a significant research project; and securing the number of tests required to validate research can hamper progress. Clearly one of the biggest issues here is the funding of research.

The Commission notes the 2013 WADA report's findings about its funding of research and the problems it had encountered, and, having interviewed stakeholders, acknowledged the complexities surrounding it. In the 2013 WADA report, it stated that a refocusing of its budget on Code compliance was in order, and hinted at a move away from research. This is a concern for the anti-doping community. The doping community is well-funded, with serious money to be made from it. It is clear that careful consideration needs to be given to how anti-doping research can be properly funded in

the future. In this regard, the CIRC notes that some sponsors are willing to contribute to anti-doping efforts, but have not found it easy to do so.

Former riders/dopers coming back into the sport

The Commission found a recurring theme within the sport was that doping and cheating were perpetuated in the sport because of the transfer of knowledge across teams. In the past, particularly when doping was predominantly organised by teams, the movement of riders and staff (from soigneurs, to doctors or managers) between teams was an easy way for knowledge of doping practices to spread throughout the peloton. Sometimes, these doping working relationships lasted for many years and could involve individuals working in teams or doctors outside the team.

As noted above, doping is not talked about openly today and the more common issue now appears to be the return to the sport of riders who doped in the past and take up roles as directeur sportif or trainers. Many interviewees commented that they felt that it was difficult for the sport to change whilst individuals who rode in the doping era continue to have such a strong influence on the sport. This was also seen as a reason for the existence of the last remnants of the omerta, as older attitudes were to shun whistleblowers.

Underpinning this situation over many years was the moving amongst teams of "doping doctors", complicit soigneurs and other doping-versed medical and team support staff. This way too, doping approaches and methods were dispersed across many, if not all teams. Some doctors sold their services to more than one team, offering different levels of packages and service.

It is clear that athlete support personnel continue to play an important role in the sport. Their attitudes to doping have a strong influence on riders and therefore all possible steps to investigate and sanction team staff must be pursued. It is noticeable that with a few high profile exceptions, there has not in the past been enough focus on ADRVs by team staff. The Commission notes the new provisions in the 2015 WADA Code that are designed to put greater responsibility on support personnel, and therefore a greater onus on federations like UCI to investigate them.

Role of doctors

There have been numerous high profile examples of the significant role that doctors have played in the development of doping in cycling. Whilst in the earliest days riders might have been able to self-medicate, at the elite level, riders have relied on doctors for many years to devise sophisticated doping programmes that enable them to achieve performance enhancement without getting caught. Therefore, one issue is how to address the problem presented by these doctors, who today operate outside the sport and under the radar. A second issue is the role of team doctors today.

At least 69 different doctors between 1985 and 2014 assisted in the doping of riders. The various investigations have revealed that many of the doctors treated a large number of riders at the same time and worked across teams.[136] These doctors played an integral role in doping programmes. The Commission has heard that even doctors who are subject to sporting sanctions continue to work with riders today. The access to doctors with extensive knowledge of doping in the sport, and particularly doctors "specialised" in doping who seek to improve doping methods to provide greater performance benefits, continues to provide a huge threat to the sport.

The more complicated area is the role of the team doctor. The Commission heard from a number of doctors who had worked in cycling for some time, who explained that they felt that they were put in a difficult position. A common rationalisation for doctors who had facilitated doping was that it was necessary, otherwise a rider would have done it himself without medical supervision (which in any event many did). The doctor felt that this could have endangered the rider's health, and thus the doctor felt compelled to assist the rider in order to protect him. Doctors also explained that they could not report riders to the authorities as they needed to retain the trust of the riders so that the riders would come to them. Whilst it is clear that the medical obligations owed by medical

[136] Information provided to the CIRC show that 46% of doctors have been involved with only one team. Of the remaining, 20% were involved with two or three teams, and 34% have been involved with at least four teams. Three well-known "doping doctors" have been involved with 19 or 20 teams, and two of them were mentioned in 22 and 15 incidents over 16 and 18 years respectively. Another doctor has been involved in 8 doping incidents over 6 years.

professionals can place them in conflict with their duties to the authorities, it is difficult to accept that this could justify participation in doping riders.

A number of interviewees commented that team doctors today should be employed by teams only to treat the ailments of riders and team members, and to assist with physical sports movement issues. Riders are elite athletes and generally in excellent physical shape and should not need to take extensive quantities of drugs. It has also been suggested that team doctors should not spend all their time with teams as they de-skill. Some team doctors rotate in and out of teams and have regular medical jobs outside the sport; this is a good system. It is arguable that where doctors have other employment, they are less beholden to teams and better able to resist pressure to dope riders.

Many of the teams that are trying to create a more "team" approach to encourage zero tolerance to doping, take the approach that riders are only allowed to be treated by the team doctor. If they do need to see a specialist, this needs to be reported to the team.

The allegations that some doctors were involved in the fight against doping and also in facilitating doping are well documented, including in the Freiburg Report. Dr Francesco Conconi is alleged to have acted on both sides of the doping line in the early 1990s. He was apparently being paid to develop a test to detect EPO and was simultaneously being paid providing elite athletes with EPO to enhance their performance.[137] It took perhaps 9 or 10 years before a test for EPO was produced.

Auxiliary powers of investigation

Whilst the WADA Code has brought a level of consistency to sports governing bodies' rules on anti-doping, there is no consistency in the approach to the use of public authority investigative powers in the field of anti-doping. The significance of respective investigative powers is evidenced by the fact that riders commented that they are far

[137] Letizia Paoli and Alessandro Donati, "The Supply of Doping Products and the Potential of Criminal Law Enforcement in Anti-Doping: An Examination of Italy's Experience," (2013). Available: https://wada-main-prod.s3.amazonaws.com/resources/files/2013-Paoli-Donati-Report-Executive-Summary-EN.pdf.

more scared of criminal investigations than doping controls, as it is much easier to adapt to the latter.

The absence of such investigative tools at national level can be a factor that allows doping programmes to be perpetuated. The Italian investigations provide a good example of the significant powers that the authorities can use and which are not available to anti-doping organisations (such as telephone tapping, surveillance, and financial investigations). It is part of the shared responsibility between the sports movement and the governments that such investigative tools are used in the fight against doping and the information derived thereof shared between the competent stakeholders. The history of the fight against doping shows that a lot of the big anti-doping scandals have been unearthed or initiated by criminal proceedings. The reasons for this are manifold. The Commission, however, would like to stress that the use and implementation of these auxiliary powers of investigation cannot be a substitute for the sports movement's efforts to fight doping or diminish their primary responsibility to take care of the problem.

It is highly unlikely that there will be greater harmonisation of national laws on criminalisation of doping in the near future. The question as to whether it is for States to regulate sport is a complex one and States have reached different views: even in countries that have strong anti-doping stances and strong NADOs, it has not been considered necessary to criminalise doping.

The Commission considers that the criminalisation of doping per se is not necessarily the most important factor. Rather the key is to ensure that anti-doping organisations build good relationships with the police and other authorities such as customs and border control, to benefit from their greater investigative powers. In most countries the production, movement, importation, distribution and supply of drugs is a crime, and some of the PEDs used by riders will fall under this legislation. There have already been cases where information from law enforcement, in countries where doping in sport is not a crime, has assisted the relevant anti-doping organisation. This leads on to a second important point, which is that law enforcement and anti-doping organisations must be able to share relevant information.

The role of the media

The media has had a difficult relationship with cycling over the years. The environment was openly hostile, highly litigious and deeply protective of riders in an effort to protect the sport. This environment made it difficult, or certainly acted to dissuade, the media from delving into rumours of doping. One prominent team manager told the Commission that journalists were refused access if they wrote about doping. At the same time, the Commission was told of reporters who enjoyed being on the inside, mixing with athletes and teams, and were seduced by the environment which affected their objectivity.

There are notable exceptions to the general reticence of the press to investigate and report on doping stories. The journalists who did investigate and sought to inform the public of the extent of the doping were often confronted with law suits. It is clear that efforts to protect riders and ignore stories which raised strong suspicions of doping activity was another factor that allowed an open culture of doping to exist for so long.

Anti-doping measures

Riders have adapted their doping programmes in response to new anti-doping measures. The absence of tests to detect products for a period of time allowed use of those products and methods to become widespread (*e.g.* EPO and today micro-dosing). There is a direct relationship between the anti-doping tests and measures in place and the extent and nature of doping. This is addressed in more detail in the UCI section of this Report, but must be borne in mind here as a significant factor when considering the circumstances that continue to allow doping practices to exist in cycling.

1.4.5. Other features of elite road cycling

Education

The Commission's discussions with federations, NADOs, and other stakeholders have highlighted the many initiatives in anti-doping education in cycling. Many ideas are innovative, and some federations and NADOs have jointly invested heavily in education

programmes, often aiming at younger riders in the hope of warning them of the dangers before they are faced with any pressure to dope.

Some education programmes encouraged riders, or prospective riders, to develop occupational alternatives in their lives, for example through study or training in another field; this had the double advantage of providing riders with a better choice if they are faced with a situation where they are asked to dope, as well as better preparing them for when their career was over. In a few countries, anti-doping education programmes are also directed at non-professional cyclists, where the vulnerability to dope can be as acute as it is professionally. Some education programmes have successfully used former dopers to speak to young riders about the pitfalls of doping.

The Commission notes that UCI and national licensing systems at present could address the need for formal education in professional cycling's team support positions. As it stands, it appears that a licence is granted to a person and then they are a licence holder. There is no specificity attached to that licence, for example for a trainer, manager, directeur sportif or a technical director. The levels of training and education required, for any of those roles, in anti-doping and broader criteria, are not formalised.

MPCC

The MPCC initiative is a self-help initiative aimed at improving teams' anti-doping credentials. This movement asks teams to sign up to a series of voluntary rules that are in addition to the existing formal and enforceable anti-doping rules. As of February 2015, 11 out of 17 UCI WorldTeams were signatories, 19 out of 19 UCI Professional Continental Teams, and 32 out of 145 UCI Continental Teams had joined, and 8 out of 36 UCI Women's Teams had signed up. Other, non-team members of MPCC included 8 national cycling federations, the European Cycling Union (UEC), 6 organisers, 8 sponsors of cycling teams and 7 agents.[138]

[138] *See* http://www.mpcc.fr/index.php/en/membres-uk.

The Commission commends the enterprise of MPCC. Some of the MPCC rules have been adopted in the mainstream UCI rules, which is indicative of the "gaps" in regulation.

However, the ultimate goal must be for there to be one set of rules that regulate the sport, as this will ensure equality of treatment of all teams. As the leadership of MPCC noted, it should be out of business if the sport is doing the right thing; through the UCI adopting some of its rules, the move is in the right direction for this to happen. However, the Commission believes MPCC remains a valuable entity to cycling for the time-being.

Cheating

Technical Cheating

Today's elite road cycling equipment has never been more scientifically produced, brimming with technological innovation. It is developed to elicit performance gains or benefits for an athlete, and in the broader sense to help companies market and sell products within the sport. These are all good factors, as technological development is part of the life-blood of the sport, and innovation should be embraced. However it should also be carefully monitored and clearly regulated to ensure performance benefits are legal.

The question is, "*When does performance advantage become technical cheating*?" To prevent technical cheating, a strong adherence to the regulations, a strong interpretation of the spirit of the sport, coupled with UCI's open communication with teams and manufacturers of cycling equipment is desirable. A clear, unambiguous set of technical rules are critically important for this aspect of the sport. They require continuous review and update, given the pace of technological development.

The Commission was told of varying efforts to cheat the technical rules, including using motors in frames. This particular issue was taken seriously, especially by top riders, and was not dismissed as being isolated. Other forms of cheating were explained, relating to frames construction, saddle specifications, and the wearing of illegal clothing and apparel. One interviewee alleged that another had heated a cycling track to elicit an advantage to the home team, by enabling them to use more advantageous tyres.

The Commission was told that funding streams to examine such allegations from regulatory, technical and investigative perspectives are limited and even being reduced. This is not ideal given technical cheating may be emerging as a more significant avenue for illicit gains than ever before.

Fixing outcomes

Since cycling's earliest days, riders have agreed race or stage outcomes with other riders. It is often seen as part of team and individual tactics in the peloton. A good number of today's top riders and former riders openly discussed these practices with the Commission. They were described as part of the cut and thrust of professional competitive cycling and were not seen by riders as in any way wrong.

The motives for agreeing outcomes are many and varied. For example: for assistance in accumulating points in a season, to maintain a time lead, to enable a sponsor to be a stage winner, to prevent a rival from succeeding or simply because they were paid to lose. In some cases, it might be linked to doping, for example riders have deliberately lost stages to avoid doping scrutiny or to appear less dominant when doping. Bartering can take place not only between riders, but also at team level with team managers negotiating deals. This is despite the fact that riders have a strong incentive to place as high as possible because, unlike spot-fixing in sports such as football which do not affect the result, their placing directly affects their individual points tally and therefore their ability to negotiate contracts.

The question for cycling is when do cycling tactics cross the line into cheating? In the past, there appears to be little understanding of where the line is drawn, even though some of the "cut and thrust" type of tactics of the peloton resulting in fixed outcomes would be against anti-corruption rules in other sports. Both the Council of Europe Convention on the Manipulation of Sports and the IOC and UNODC defined match fixing.

IOC/UNODC definition. "*Match-fixing shall mean the arrangement or an irregular alteration of the course or the result of a sporting competition or any of its particular events in order to remove all or part of the uncertainty normally associated with a competition.*"[139]

Council of Europe definition. "*Manipulation of sports competitions means an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others.*"[140]

To date, there is little indication that the sport of cycling is affected by spot-fixing or match-fixing related to betting activity in the same way as other sports (such as football). Nevertheless, it would be wrong to believe the sport does not lend itself to that form of corruption if the betting market for cycling developed.

Ethics

The Commission was told by some that the use of any number of non-banned substances to enhance performance is part of the single-minded drive for victory, which involves pushing the rules as far as possible. However, there is a question whether this goes too far when riders take products that are clearly performance enhancing, but which are perhaps unknown to the authorities and not yet on the WADA Prohibited List. In many cases the WADA Prohibited List anticipates this problem by including substances and any derivatives.

On the one hand, it can be argued that the onus is on the authorities to identify performance enhancing substances and include them on the Prohibited List; sport is about winning and athletes should be entitled to take whatever they are legally permitted

[139] International Olympic Committee and United Nations Office on Drugs and Crime, "Criminalization approaches to combat match-fixing and illegal/irregular betting: a global perspective" (July 2013). Available: http://www.unodc.org/documents/corruption/Publications/2013/Criminalization_approaches_to_combat_match-fixing.pdf

[140] Council of Europe Anti-Doping Convention (1989). Available: http://www.coe.int/t/dg4/sport/Source/CONV_2009_135_EN.pdf.

to take. As one person told the CIRC, "*There is no room for ethics in sport*". The counter argument is that there is no room for no ethics in sport, and that sport should uphold strong ethical values. As one interviewee stated, it would be ethical if you can tell a journalist what you're doing and feel ok about it. This is a good way of identifying and differentiating the ethical issue from the "follow the rules only" issue.

The public too, have a role to play in the application of ethics in the sport. It was commented by one interviewee that "the public was responsible for doping in cycling". This seemed to the Commission to be an extraordinary comment to make. However, the more relevant point is that expectations need to be managed. As noted above, the change in attitude of sponsors derives in large part from a change in public attitudes to doping given that marketing is driven by public views. The fans are crucial to the success of any sport and cycling fans are extremely passionate, highly knowledgeable, and want doping to be a thing of the past. It remains of great importance that all stakeholders, of which the public is one, get behind clean riders and teams.

Conclusion

The Commission did not hear from anyone credible in the sport who would give cycling a clean bill of health in the context of doping today. However, the general view was that doping is either less prevalent today or that the nature of doping practices has changed such that the performance gains are smaller. There was a general feeling that this has created an environment where riders can now at least be competitive when riding clean.

There has been a move away from systematic, team organised doping, and that riders now organise their own doping programmes, often with the help of third parties who are primarily based outside the teams. New anti-doping methods have forced riders to adopt doping techniques such as micro-dosing and, at elite level, they often have a sophisticated understanding of how and when to take substances to maximise the benefit whilst reducing the risk of getting caught. The internet has opened up quick and easy access to new drugs, often from Eastern Europe and the Far East, as well as to drugs that are still in clinical trials and substances made only for doping purposes. Together with the internet, gyms have provided an easy source of PEDs for amateurs and lower level riders.

Factors that originally encouraged riders to start doping, as far back as the late 1800s, still exist today. Cycling is a tough sport and the suffering that riders experience, together with a lack of financial stability create an environment that today still could encourage riders to turn to doping. The ease of access to doctors who can facilitate doping programmes, potentially under the influence of, or through, people who were involved in doping when they were riding, is another contributing factor. Ultimately, the main deterrent is the risk of getting caught and the sanctions (both sporting and criminal) that will follow; therefore the effectiveness of anti-doping methods (addressed in the UCI section of this Report) is essential in the fight against doping.

The challenge to the UCI is huge, given that the culture of doping has not been eradicated. However, there have been many positive developments that evidence a desire, at least in some parts of the sport, to move away from the doping culture: many teams have signed up to the MPCC and the higher standards that it lays down, a number of teams have sought to change their team culture to create a "clean team" environment and ADOs and NFs have recognised the importance of education programmes to emphasise the health risks and dissuade people from doping. Only the participants themselves can decide when enough is enough, and act to effect change. UCI has to be ready. Cycling has the potential to become a sport with integrity, ethics and accountability, but it can only become so if all participants are prepared to contribute.

CHAPTER 2: UNION CYCLISTE INTERNATIONALE

The Commission was asked to investigate whether UCI officials directly contributed to the development of a culture of doping in cycling, in particular by mismanaging testing and/or by covering up positive tests. The Commission was further asked to conduct a wide-ranging independent investigation into the allegations that implicate the UCI and other governing bodies and officials in respect of their investigation of doping practices.

To that end, the Commission decided to examine more specifically three different areas within the UCI in order to provide as comprehensive and complete an answer as possible. Firstly, the Commission decided to undertake an in-depth analysis of the UCI structure and policies in anti-doping over time. Secondly, it looked at the most serious allegations available in the public domain that implicated the UCI and/or some of its members in relation to anti-doping. Thirdly, because leadership and good governance of an IF are vital principles for any effective anti-doping policy, it examined UCI's structure and democratic process.

2.1 BACKGROUND

In order to understand better the UCI's role and properly assess its responsibility in the matter of doping, it is necessary to take into account the historical background and information available at that time.

Many accusations and criticisms have been levelled at the UCI. The organisation was alleged not only to have neglected the issue of doping but also to have protected the most high-profile athletes, and Lance Armstrong in particular. Many interviewees spoke of conspiracy and corruption. Serious allegations were made which were often not followed up; it was these issues that the CIRC was given a mandate to investigate.

Before examining the allegations in detail, a number of which have been discussed and commented upon in the public domain, it is useful to take note of certain facts and circumstances that offer an insight into the historical background and the environment from which these serious accusations arise.

2.1.1. The complexity of the sport of cycling

As described in the chapter on professional road cycling, the structure of competitive cycling is complex and not easily compared with that of other sports. Cycling is often associated with the Grand Tours and more specifically with its leading event, the Tour, the "Grande Boucle", which is considered the most prestigious cycling event in the world, but also one of the most difficult in terms of endurance and the intense effort involved. The suffering that results from the huge efforts required of the riders means that cycling is a “high-risk” sport compared with others when it comes to the likelihood of doping.

In cycling, a rider is both an individual athlete and a team member. Teams usually have no particular connection to a city or country (unlike football for example). Teams are made up of athletes who very often live in different countries and even different continents. This makes it complicated for the team management to monitor riders’ whereabouts. Very few teams have a structure and economic foundation that assures their long-term existence. Riders change teams frequently, their professional organisation is weak and their earning capacity, with the exception of a few star riders, is quite limited.

The organisers of major cycling events are the most stable and economically robust entities in professional cycling. Among the event organisers, the French company Amaury Sport Organization (“ASO”) owner of the Tour and other major classic events, enjoys a dominant position, taking the majority of the revenue in competitive cycling. This influence is all the more pronounced as ASO is belonging to the same group as the main French-language sports newspaper (*L’Équipe*), which has a major influence extending beyond linguistic barriers. To this must be added the external support that ASO enjoys from France Télévision’s extensive coverage of the Tour. Given this background, when UCI took up a more active role in managing the sport, conflicts arose.

2.1.2. UCI: rapid growth

Although founded in Paris in 1900, for many years UCI was an institution with a minimal structure and no real power. In 1965, the IOC required that there should be two

federations, one for amateurs (who would be the only riders allowed to compete in the Olympic Games) and another for professionals. The International Amateur Cycling Federation ("FIAC") was based in Rome while the International Professional Cycling Federation ("FICP") had its headquarters in Brussels and then Luxembourg. These two federations were coordinated by the UCI from Paris. In total, these three organisations employed fewer than 10 people, many not even on a full-time basis. Compared with ASO, the teams and the sponsors, this embryonic umbrella organisation did not have much influence.

In 1979, Hein Verbruggen became a member of the FICP Board and he was appointed President in 1984. In contrast to the leaders of many sporting organisations, Hein Verbruggen did not come from an athletic background. His background was in business and he had considerable experience in marketing. In 1991, he became the UCI President, and in 1996 he became an IOC member. The IOC abandoned the distinction between amateur and professional athletes and the two international cycling federations merged back into the UCI in 1992. This marked the start of the UCI's rapid development. In 1996 the UCI only had some 15 employees. The federation now has a staff of over 100 if the Cycling Anti-doping Foundation ("CADF") (now legally independent) is included. UCI also has an extensive network of external consultants.

With the inclusion of professional cycling in the Olympic Games, revenue from the IOC and television rights started to increase dramatically. Hein Verbruggen, with his business experience, understood that a celebrity rider would make cycling more attractive to broadcasters and consequently to sponsors. Lance Armstrong arrived at the perfect time: after the Festina scandal he won what was dubbed the *Tour of Renewal*. Lance Armstrong was American, which opened up a new continent to conquer, he had beaten cancer and the media quickly made him a global star. The UCI President recognised that this was a good opportunity to bolster the organisation's plans for growth and, above all, his ambitions for power which would inevitably lead to conflict with other entities' interests. The disputes with WADA and ASO were particularly fierce and, especially in the case of ASO, absorbed a lot of time and resource of UCI personnel. In all likelihood, this led to other major issues being neglected. Most notable among these was the issue of doping which had finally been thrust into public view in 1998 with the Festina affair.

In 10 years, UCI transformed itself into a major IF with a significant logistical structure, human and financial resources and a prestigious World Cycling Centre in Aigle.

2.1.3. Conflict between two strong personalities

Richard ("Dick") Pound, a lawyer and former elite athlete, was elected as an IOC member in 1978, later becoming Vice-President. He then worked towards establishing WADA of which he was the first President from 1999 to 2007. There was an intense personal conflict between Hein Verbruggen and Dick Pound, which had negative consequences for the UCI and the public perception of the federation.

In 2001 Dick Pound was a candidate to succeed Juan Antonio Samaranch but he was beaten by the Belgian Jacques Rogge, who was supported by Hein Verbruggen. It was reported to the CIRC that this was the main reason and starting point of the conflict between the two men.

As will be explained below, it is the CIRC's view that the conflict between these two men as well as their very different philosophies of fighting doping in sport soured the relationship between UCI and WADA, which adversely affected the fight against doping.

2.1.4. Conflict with ASO

The conflict between UCI and ASO provided headline news for several years and was likened to a war by senior UCI staff. The dispute absorbed a lot of time and resource of UCI personnel which considerably harmed the fight against doping. This power struggle led to an aggressive confrontation that had a negative effect on the entire world of cycling. As the previously diminutive UCI increased in size and ambition, it wanted to control how races were conducted. In 2004 it launched the *ProTour* which, in particular, allowed UCI to specify which teams could take part. Above all, UCI wanted sole control over the television rights for major races and, of course, to benefit financially from this. This inevitably met with hostility from teams that were excluded and, above all, clashed with the interests of the organisers of major events, primarily ASO. As noted above, ASO had, and still has, a dominant position in the market for professional cycling. To illustrate the

different strengths of the two parties, ASO's annual profit of some EUR 30 million approximately corresponds to the UCI's total current annual budget.

Hein Verbruggen aspired to transform UCI into an important IF by giving cycling a solid and unified foundation. He did it as business man, in a somewhat forceful manner with a lack of transparency and in breach of certain sporting requirements.

Through the mediation of the IOC, the conflict with ASO came to an abrupt end at a meeting in Beijing during the 2008 Olympic Games. However, this did not mean that all problems were definitively resolved and the presence of ASO, which still had a dominant position in professional cycling, continued to present a potential source of tension.

2.1.5. Politics intervenes

There is a relationship between politics and high-level sport that is not always particularly transparent. Elite sport involves significant sums of money; the choice of one country over another to host a major competition can have significant economic consequences for the host region. As a result, the issue becomes a question of power and a fight for influence (including through trading favours).

When Lance Armstrong paid a visit to the French President to present a gift of a racing bike, it was reported that the President interrupted an important meeting to receive him. The same President spoke publicly in glowing terms about the American rider (reportedly stating that "*even Astérix was taking magic potion*.")[141]

It was reported that the French Minister of Sport brought criminal proceedings against the director of the AFLD, an independent institution, for defamation in relation to comments about the Minister's views regarding the sanction to be applied to Floyd Landis after he tested positive. The candidature of the city of Paris for the 2012 Olympic Games was also subject to political pressure. Politicians attempted to influence decisions in the field of anti-doping that were likely to compromise the candidate city's chances. Conflicts

[141] Pierre Ballester, "Fin de cycle – Autopsie d'un système corrompu", (La Martinière, 2013) p. 189.

arose between the UCI and the AFLD and ministers also got involved. According to some sources, Hein Verbruggen credited himself with being instrumental in the failure of the candidature of Paris for the Olympic Games. Another example is the political pressure on UCI to allow Lance Armstrong to participate in an event in Australia, despite the fact that UCI rules prohibited it.

CIRC was provided with information from interviewees that indicates that the state authorities in certain countries, such as Kazakhstan, have intervened directly in the everyday affairs of teams and riders. This is not necessarily a positive development.

We consider that these episodes contributed to create a climate which certainly did not encourage coherent action against doping. As described later in the report, other parties also contributed to establishing an atmosphere that was highly unlikely to produce an effective, combined response to the widespread doping problem.

2.1.6. New challenges represented by EPO and omerta

As described earlier in the report, the arrival of EPO was a pivotal moment in the history of doping (see above). In short, EPO was a challenge for almost all sectors of sport, although it was cycling that most often came under the spotlight. This was to such an extent that we can, in fact, talk of the pre-EPO and post-EPO eras.

The challenge presented by endemic use of EPO and the Festina scandal placed the world of cycling in a particularly delicate situation. At this time, UCI was still at the development stage and did not yet have significant human and financial resources. Further, there was no international anti-doping agency and the response to the threat suffered from a lack of coordination. It was in the interests of all parties, particularly UCI and event organisers that the star riders were able to continue to race and that there were no doping scandals.

As touched upon in the chapter, Elite Road Cycling, the omerta was an important component of the doping culture within the peloton. Everyone knew it existed but no one was allowed to speak openly about it without risking to be side-lined.

The extent of the doping and the lack of any effective means to detect it led to concern not only within the UCI, but for all actors in the sporting world. It is reasonable to suggest too that the rise in doping in cycling, and more broadly in many sports, reflected a proliferation of drugs in broader society.

2.1.7. Cycling as a scapegoat?

Road cycling is perhaps one of the toughest endurance sports. Consequently, road cyclists are particularly vulnerable to the temptation to dope, not only to improve their performance during a race but also to assist in recovery during long stage races. However, cycling is not the only sport to be affected by doping. Competition inevitably leads to some athletes being determined to achieve their objectives by any means possible. The UCI has repeatedly been the target of criticism with regards to doping. There may be justification for this, but it is also clear that, despite obvious failings and errors, UCI has also been a pioneer in the field of anti-doping.

The UCI leadership has however experienced some frustration – it considers that other sports do little or nothing when it comes to anti-doping. This allowed these sports to claim that they do not have a doping problem, if there are no positive results, there is no talk of doping and the sport is clean. "*Doping is other people"* is how the French Senate Commission of Enquiry on the effectiveness of the fight against doping described this attitude.[142] The Senate Commission asserted that "*both statistics and the testimonies gathered...show that skills-based sports and those in which tactics are dominant are not spared from doping*".[143] The statistics in question were based on WADA data and quite clearly showed that other sports were just as affected by doping as cycling, in some cases even more so, but did not attract media headlines.

[142] N° 782 Sénat session extraordinaire de 2012-2013, rapport fait au nom de la commission d'enquête sur l'efficacité de la lutte contre le dopage. Available: http://www.senat.fr/rap/r12-782-2/r12-782-21.pdf (in French).
[143] N° 782 Sénat session extraordinaire de 2012-2013, rapport fait au nom de la commission d'enquête sur l'efficacité de la lutte contre le dopage, p.24. Available: http://www.senat.fr/rap/r12-782-2/r12-782-21.pdf (in French).

2.1.8. Ineffective governance

In a similar way to other sporting federations, the UCI vested the office of the President with a wide range of powers. This was facilitated by the passive nature of the large majority of the members of the UCI's governing bodies. This authoritarian management perhaps facilitated the rapid growth of the organisation but in the CIRC's view it also led to serious problems of governance and deficiencies in internal control processes, in particular with regard to the direction and implementation of anti-doping policy as well as to the use of resources. By way of example, Hein Verbruggen, with the agreement of the majority of his colleagues on the Management Committee,[144] chose his successor and found the means to ensure his election (see further below).

Current events demonstrate that problems of governance are not unusual in the domain of sporting organisations. In addition to reviewing the organisations themselves, questions should also be asked of the public authorities which often, in one form or another, support the activities of these federations, in particular by means of tax exemptions. Sponsors also have a responsibility and could play a more significant role in the governance of sporting organisations.

2.1.9. Poor communication strategy

The 2012 Armstrong affair was a major blow for sport as a whole and cycling in particular. On this occasion, the UCI's public statements, although assisted by a specialist agency at great cost, was passive and inadequate. Certainly, UCI had reason to reproach itself. But further, the weakness and clumsiness of the UCI's reaction only served to reinforce and amplify criticisms and rumours about the federation. It appears to the CIRC that the President at the time seemed to take the view that responsibility for the whole affair lay with the previous president and that it belonged in the past.

[144] According to documents in CIRC's possession, Hein Verbruggen himself referred to having Management Committee approval, but CIRC was not able to confirm this from minutes of meetings around that time.

The poor communication strategy of the UCI was demonstrated also on other occasions when the UCI President called Floyd Landis and Tyler Hamilton "scumbags"[145] (see below) or when it provided contradictory information in relation to Lance Armstrong's donation[146] to UCI or as to whether USADA had jurisdiction on the Lance Armstrong case (see below).

2.2 UCI AND ANTI-DOPING

Organisation and policies in anti-doping within UCI have evolved and changed considerably over time. This section provides in a first step an overview of UCI's past organisational structure in respect of the fight against doping. In a second step, this section describes and evaluates the anti-doping policy undertaken by UCI for various periods in time.

2.2.1. Organisation of the fight against doping

The distribution of tasks in anti-doping matters within UCI was and still is rather complex. In essence, one can differentiate between two periods of organisational development: the period up until the creation of the CADF, and the period thereafter.

2.2.1.1. Organisation prior to the creation of CADF in 2008

Before 1992 all anti-doping issues were dealt with by the UCI Medical Committee. Doping at that time was perceived to be primarily a health issue. When anti-doping matters started to dominate the work of the Medical Committee, the UCI set up an Anti-Doping Commission ("ADC") in 1992.[147] This development took account of the fact that anti-

[145] Barry Ryan, "McQuaid: Landis and Hamilton are far from heroes" *cycling news* (23 Oct. 2012). Available: http://www.cyclingnews.com/news/mcquaid-landis-and-hamilton-are-far-from-heroes
[146] The Guardian, "UCI admits accepting Lance Armstrong donation was a mistake" (25 May 2010). Available: http://www.theguardian.com/sport/2010/may/25/uci-lance-armstrong-donation-mistake; and Stephan Farrand, "McQuaid reveals Armstrong made two donations to the UCI" *cycling news* (10 July 2010). Available: http://www.cyclingnews.com/news/mcquaid-reveals-armstrong-made-two-donations-to-the-uci

[147] "40 years of fighting against doping," UCI (2001). Available: http://oldsite.uci.ch/english/health_sante/docs/40_ans.pdf.

doping was not solely a medical issue, but a more complex issue involving also legal, social and biochemical aspects. It was felt that this should also be reflected in the composition of the Commission.[148] The members of the ADC initially acted on a voluntary basis and met about twice a year.[149] In the early days the administrative staff supporting the ADC was minimal. It consisted of a sole anti-doping manager who was initially employed only part-time. The staff number increased slowly (also due to budgetary constraints) and eventually turned into an Anti-Doping Unit ("ADU"). By 2003 the ADU was headed by a coordinator and two assistants. By 2007 the ADU comprised of a head of department and four assistants.

The head of the ADC

The ADC was headed originally by a lawyer, Werner Goehner. He was succeeded by the ADC's first Vice-president, Lon (also referred to as Leon) Schattenberg (2003—2006). It is reported, however, that Werner Goehner had a health problem and that, therefore, during his presidency Lon Schattenberg was acting as *de facto* ADC president. Even though the ADC was composed of three members (also during Lon Schattenberg's presidency), it was Lon Schattenberg who effectively ran the ADC.[150] The separation originally planned between medical and anti-doping was blurred, by making a doctor the *de facto* head of anti-doping, as the medical approach is determined by the code of Ethics of Physicians on the protection of public health.[151] It is reported and appears from communications on file that the other members of the ADC were only sporadically kept up-to-date on ADC matters. Lon Schattenberg would supervise the ADU and take operational decisions that the ADU then implemented. Lon Schattenberg's influence on the ADU's operations was therefore considerable (even though he did not reside in Switzerland). Lon Schattenberg had daily contact with the ADU staff to discuss all anti-doping matters. It is reported for example that Lon Schattenberg would decide details of

[148] The first members in 1992 were Werner Goehner (a lawyer), Manfred Donike (a biochemist from the Cologne laboratory) and Lon Schattenberg ("médecin de travail"/occupational therapist).
[149] "40 years of fighting against doping," UCI (2001) Appendix I. Available: http://oldsite.uci.ch/english/health_sante/docs/40_ans.pdf.
[150] Lon Schattenberg was invited to speak with CIRC but declined to do so.
[151] Art 33bis of the Swiss Medical Association states that: "*In every sports medicine activity, monitoring and protection of the athlete's health are a priority for the doctor. The doctor knows he can be faced with a dilemma between the duty "to not harm" and the obligation to respect the personal responsibility of the athlete*" (translation from French).

the Anti-Doping programme, such as during which races riders would be tested and who would be the DCO at a specific race.

Lon Schattenberg is reported to have been involved in cycling before joining the UCI and as someone who adored the sport of cycling. He has been described by ADU/CADF staff as a pioneer in anti-doping; however due to his professional background (occupational therapist) the focus of his work was on health concerns rather than on the disciplinary aspects of anti-doping. The idea that the athlete's health should play the central role in the fight against doping was shared and backed by UCI leadership.[152] This approach has also been described as "old school" and led to a culture clash when Anne Gripper later took over the ADU in October 2006 (see below). UCI staff reported that trying to catch the cheaters amounted to a witch hunt in Lon Schattenberg's opinion. Interviewees criticised him for effectively applying a double standard, *i.e.*, concentrating on health aspects of doping, instead of catching the cheaters. Lon Schattenberg is also described as having a very "human" approach to anti-doping.

The Legal Department

Another influential figure in UCI's anti-doping activity, even though not a member of the ADC, was Philippe Verbiest, a lawyer from Belgium. Philippe Verbiest had made contact with Hein Verbruggen in the mid 1980's and was involved in the merger of the International Amateur Cycling Federation ("FIAC") and the International Professional Cycling Federation ("FICP") in 1992. Before that he had revised the UCI Anti-Doping Rules ("ADR"). Philippe Verbiest worked for the UCI as an external consultant until 2013. However, this formal status does not fully capture his true position within UCI. *De facto* he was the uncontested head of the judicial unit/legal department of UCI. In the context of anti-doping he was mainly involved in results management and appeals. All important legal decisions in this field went through him. Furthermore, he participated in all of UCI's directors' meetings.

[152] *See* Zotter/Zorzoli/Schattenberg/Robinson/Saugy/Mangin, "An International Medical Follow-up applied to the 1,200 best professional road cyclists, 2002" (workshop paper), p. 3. Copy on file with CIRC.

Tasks of the ADC

The ADC's main task was to devise and organise the testing of the athletes. Results management was only partly under the ADC's jurisdiction. When the laboratory reported an Adverse Analytical Finding ("AAF") to the UCI, the ADU would match the number reported on the sample and on the laboratory form with the name of the rider on the sample collection form. The ADU would inform Lon Schattenberg of the AAF who would then review the documentation. Only in exceptional cases would Lon Schattenberg involve the other members of the ADC in case of an AAF. If the AAF was confirmed, the rider's NF was informed who then took over the case. From that moment on, the results management was no longer with the ADU. The ADU was neither involved nor routinely informed about the further developments of the case. In relation to the Tour, results management was different. All AAFs were communicated directly to Lon Schattenberg who then contacted the relevant individuals and initiated the relevant proceedings.

There were basically three key tasks in the context of anti-doping that were not dealt with by the ADC: (1) Once an AAF was reported to the ADC/Lon Schattenberg, a disciplinary proceeding had to be initiated. This "legal part" of the results management was dealt with by UCI's legal department/Philippe Verbiest. Philippe Verbiest contacted the relevant stakeholders and informed them of the alleged ADRV (initially, *i.e.*, 1998-2008/2009 only the NF was informed, and later the athlete and the NF were both informed.)[153] After the relevant notification it was up to the NF to conduct the disciplinary hearings and, as far as necessary, prosecute the ADRV. (2) Once the NF had taken a decision in relation to the athlete, the decision was communicated back to the UCI. The legal department/Philippe Verbiest then checked whether the decision was in conformity with the applicable UCI ADR or whether an appeal would have to be lodged against the NF's decision to CAS. (3) Finally, TUE applications were not dealt with by the ADC, but by another UCI department.

[153] As from 2008/2009 onwards, two notification letters were sent (to the athlete and the NF).

The "Health Program"

For a period of time another department within UCI was also involved in anti-doping. In 1997 the UCI became increasingly concerned that health risks associated with cycling were not adequately being dealt with, following riders' deaths in the late 1980s and early 1990s. Even though the anti-doping program was an effective means of limiting the use of certain substances that were dangerous to the health of the athletes, its effectiveness was obviously limited to those products that were detectable. Therefore, the UCI established a Health Program in 1997 designed to check and safeguard the general health of the riders and also help, indirectly, in the fight against doping. The health test and the medical follow-up performed were seen as an important chance for doctors to open the discussion with the riders about all aspects of health concerns, including doping. Such interaction was seen by Lon Schattenberg and the leadership of the UCI as "*the best way to fight doping*".[154]

In order to implement the Health Program the UCI established the Sports Safety and Conditions Commission ("SSCC"). Lon Schattenberg was the first president of the SSCC and held the position until 2001. Furthermore, the UCI hired Dr Mario Zorzoli to oversee the Program. One of the main responsibilities of the SSCC was to organise and plan blood tests in order to establish certain blood parameters of the athlete.[155] These blood tests were used to detect abnormalities in the peloton, be it health issues (*e.g.,* extreme high concentrations of ferritin) or indications (but not clear proof) of doping.[156] These tests formed the basis of the so-called "no-start rule" (according to which a rest period could be imposed on a rider for 15 days if certain blood parameter thresholds were exceeded). This practice of conducting health tests was also followed well after the EPO test had been

[154] *See* Zotter/Zorzoli/Schattenberg/Robinson/Saugy/Mangin, "An International Medical Follow-up applied to the 1,200 best professional road cyclists, 2002" (workshop paper), p. 6. Copy on file with CIRC.
[155] The tests were taken by the Medical Inspectors. As with the DCOs (see above) there have been numerous complaints regarding a lack of necessary skills of this personnel, *see* Report of the Independent Observers Tour de France 2010 (28.10.2010), p. 42. Available: http://d3epuodzu3wuis.cloudfront.net/2010-10-28+WADA+Independent+Observers+Report+TDF+2010.pdf.
[156] *See* Zotter/Zorzoli/Schattenberg/Robinson/Saugy/Mangin, "An International Medical Follow-up applied to the 1,200 best professional road cyclists, 2002" (workshop paper), p. 6. Copy on file with CIRC; *and* UCI, "40 years of fighting against doping," UCI (2001). Available: http://oldsite.uci.ch/english/health_sante/docs/40_ans.pdf 15, 17.

introduced. Only after the refinement of the EPO tests and installing the ABP was it felt that there was no longer a need to collect this data in the context of a Health Program.

Some coordination took place between the Anti-Doping Program and the Health Program. Lon Schattenberg was head of the ADU as well as of the SSCC (and a member of the Medical Commission). He would select cyclists with suspect health test for In-competition Tests ("ICT").[157] On an operational level things were also coordinated informally, *i.e.* by the fact that, for a certain period of time, the coordinator of the ADU and the SSCC shared the same office within UCI. Some coordination also occurred through the fact that the UCI doctor participated along with the DCO in the taking of the sample.[158] This provided a good opportunity for the exchange of information between the UCI doctor and the athlete and his/her support personnel, because the UCI doctor was, unlike the DCO, not perceived as a "prosecutor." Information that might be relevant to doping that was obtained by the UCI doctor in the field was then passed on to the ADU. This practice was stopped at a later point in time (2012) and the taking of the samples was solely conducted under the authority of the DCOs (or Medical Inspector who was, however, not a UCI Doctor).

UCI Leadership

UCI's leadership had a significant influence on anti-doping matters. It is clear that UCI leadership took the strategic decisions in anti-doping (*e.g.* funding, organisation, recruitment of staff, etc.). In addition UCI leadership was informed and aware of, as well as involved in, decisions in relation to all important anti-doping matters on an operational level. This is confirmed by the interviews conducted by the CIRC.

The information on anti-doping operations was provided to the UCI leadership via Lon Schattenberg or Philippe Verbiest (depending on the nature of the information). Furthermore, in the relatively rare cases in which the ADC met, it is reported that Hein Verbruggen would be present. It is also submitted that under the presidency of Hein

[157] *See* Report of the Independent Observers Tour de France 2003, p. 10 *et seq*. Available: https://wada-main-prod.s3.amazonaws.com/resources/files/WADA_IO_Report_TourDeFrance_2003_EN.pdf.
[158] According to the applicable UCI ADR testing was conducted by an Anti-Doping inspector and a Medical Inspector (see Art. 98 *et seq* 2004 UCI ADR).

Verbruggen "secret meetings" were regularly held between Lon Schattenberg, Philippe Verbiest and the president (referred to by interviewees as the "Flemish-" or "Dutch-connection") to discuss and decide important anti-doping matters. The then head of the ADU would not participate in these meetings nor in the regular UCI directors' meetings or other strategic meetings or decision-making processes. It appears that during the presidency of Hein Verbruggen, there was little direct contact between him and the ADU staff. Information provided to the president would not be provided via the ADU, but (only) through Lon Schattenberg or Philippe Verbiest.

Under the presidency of Pat McQuaid the flow of information appears to have changed once Anne Gripper became head of the ADU in October 2006 (and even more so when Lon Schattenberg left the UCI in February 2007). Secret meetings between Lon Schattenberg/Philippe Verbiest/(former) president continued to take place. However, Anne Gripper as head of the ADU had constant and direct access in respect of anti-doping matters to Pat McQuaid and regularly updated him on all important issues. Furthermore, as head of the ADU (later on the director of the CADF), she took also part in the directors' or management meetings (and was kept informed and included in the flow of information concerning disciplinary hearing and appeals).[159]

It appears from the interviews that the UCI leadership was not only informed of all relevant anti-doping matters, but that it also interfered in the decision-making. In the era of the presidency of Hein Verbruggen, it has been reported that he would rarely interfere with ADU operations directly. Only some general advice would come directly from the president to ADU staff. In order to implement operational decisions interviewees told the Commission that Hein Verbruggen would go through Lon Schattenberg or Philippe Verbiest who would pass the decision on to "their" staff. Through Philippe Verbiest and Lon Schattenberg the UCI leadership had a firm grip on the ADU operations. Neither Philippe Verbiest nor Lon Schattenberg acted autonomously or independently on important matters. It is repeatedly noted by interviewees that Lon Schattenberg and Philippe Verbiest would not take a single important decision without obtaining the prior consent of the president. In interviews conducted by the CIRC, Hein Verbruggen has been

[159] *See* KPMG, UCI Governance and Independence Assessment 2013 – Summary for the Management Committee Members, dated 7 June 2013, p. 7. Copy on file with CIRC.

described as a charismatic "*patron absolu*". The organisation was completely focused on him and he controlled every aspect of the federation through his key figures in the various departments (be it external or internal staff).

This autocratic structure based on loyal hand-picked colleagues in key roles persisted also through the era of the presidency of Pat McQuaid. This is not only evidenced by the interviews conducted by the CIRC but also expressed in the KPMG report in which it is said that: "*The President has taken many decisions alone or based on external advice during critical times…Critically important matters…are taken solely by the President*." However, unlike Hein Verbruggen, Pat McQuaid would communicate and interact more directly and openly with the ADU. It is reported that Pat McQuaid would advise the ADU staff, *e.g.*, to test certain riders at a certain time or to test them more frequently, to notify an athlete personally of an ADRV (instead of following the usual procedure), (when) to open a disciplinary procedure against a rider, decide to shorten the waiting period for a come-back to competition of a cyclist or decide to take action against a team doctor if the latter was not cooperative in the context of a doping control. Despite frequent interference at an operational level, most ADU staff at the time felt that the ADU was "*rather independent*". The role of Philippe Verbiest in the era of Pat McQuaid was, at least up until 2011, still very dominant. He is described by ADU/CADF staff as an "*éminence grise*" who always knew what was going on in the ADU/CADF.

Unlike Hein Verbruggen, Pat McQuaid has been described by the majority of the current and former UCI staff as a rather "*weak leader*". It has been reported that he did not manage to dissociate himself from Hein Verbruggen. Hein Verbruggen remained Vice-President of UCI, kept an office at UCI's headquarters and was physically present a lot of the time. The control structure that Hein Verbruggen had installed during his presidency and that remained in place under the presidency of Pat McQuaid continued to report and meet with him. Hein Verbruggen had a strong influence on Pat McQuaid throughout the latter's presidency. Emails directed at Pat McQuaid would be forwarded to Hein Verbruggen and answered by the latter or answered by Pat McQuaid, however, drafted by Hein Verbruggen. UCI staff reported that they thought that Pat McQuaid felt obliged to Hein Verbruggen, because the latter had put him in office. Pat McQuaid is described as being under Hein Verbruggen's "*umbrella*" when taking important decisions. This close

relationship with Hein Verbruggen also meant that Pat McQuaid was not willing and capable "*to cut*" with the past and disassociate himself from Hein Verbruggen or the problems stemming from his presidency. Only gradually, at the end of his presidency, did Pat McQuaid become more independent. Nevertheless, it is reported that Pat McQuaid never succeeded in establishing a convincing governance style of his own.

Conflicts of interest

UCI leadership kept very close ties with some of the riders that were highly suspected of doping. This was seen as a source of conflict of interests, because UCI leadership regularly interfered with anti-doping operations. Conflicts of interests were present in particular in relation to Lance Armstrong as discussed in more detail below.

Constant fights with other major stakeholders

From very early on, UCI wasted a lot of its time and resources fighting other important stakeholders in the sport. Real or, often only, perceived conspiracies were taken as an excuse to stage counter-attacks and to initiate proceedings that absorbed and somewhat blinded the UCI leadership (see *e.g.* Vrijman affair, Schenk affair). This is also true for the relationship with ASO (see above) or with the AFLD.[160] However, this is particularly true also for the relationship between the UCI and WADA leadership.

[160] Relationships between UCI and AFLD were often tense. An example of this is the 2009 Tour where it appears that there was some kind of battle between AFLD and UCI to get or stay in control of anti-doping performed at the Tour. While in 2008 the AFLD was basically in control, in 2009 the controls were mainly under the control of the UCI. The AFLD heavily criticized UCI's testing program at the 2009 Tour. The (then) President of the AFLD alleged that there had been violations of the applicable rules (see Bilan du déroulement des contrôles antidopage effectués lors du Tour de France 2009): "*Un grand nombre d'écarts tant par rapport aux standards internationaux de contrôle que vis-à-vis du règlement antidopage de l'UCI ont pu être relevés à différents stades de la procedure.*". Translation into English: "Many differences between the International Standard for Testing and the anti-doping regulations of UCI have been identified at different stages of the procedure." In addition, the AFLD criticised what they called the purely quantitative approach of UCI's anti-doping program at the Tour *("… mener une politique antidopage … qui privilégient les données quantitatives (grandes nombre de contrôles urinaires et sanguins) qui permettent d'afficher ces chiffres impressionnants, et ceux qui privilégient des choix qualitatifs, c'est-à-dire basés essentiellement sur le ciblage et le caractère aussi peu prévisible que possible…*) (translation into English: "...to conduct an anti-doping policy...that emphasizes quantitative data (large number of urine and blood tests) that display these impressive figures, and those who prefer qualitative choice, that is to say, essentially based on targeting and being as unpredictable as possible…) and that UCI's policy displayed favouritism to the Astana team (The World – 5.10.2009). This prompted a strong public reaction from UCI (see letter 5 August 2009) and a counter-reaction from AFLD (see Commentaires de

The history of WADA and UCI are strongly tied together. It was the Festina scandal (see above) that sparked the creation of WADA, which was founded in 1999. The relationship between WADA and UCI was from the beginning tense and is evidenced through several examples. One of them is the WADA Code, which resulted from several rounds of consultation that took place in 2002/2003. From the beginning, UCI in the shape of Hein Verbruggen and Philippe Verbiest strongly opposed the standard sanction of two years of ineligibility in case of a first ADRV that was advocated by most stakeholders of the Olympic Movement. Instead, UCI lobbied for much lower sanctions as has been standard practice within UCI (see below). As a result UCI was one of the last federations to accept the WADA Code. In 2004, the UCI leadership strongly criticized the WADA Code sanctioning regime.[161] In the lead-up to the World-Anti-Doping Conference in Copenhagen in 2003 (where the text of the WADA Code was adopted) further events lead to the deterioration of the relationship, in particular the incident surrounding the salbutamol case of Gonzalo de Galdeano in the 2002 Tour,[162] and the subsequent resignation in protest of Hein Verbruggen from the WADA Board. After the Independent Observer Report of the 2003 Tour was released (that contained positive as well as negative aspects in relation of UCI's anti-doping policy)[163] the UCI decided to forbid WADA Independent Observers from carrying out any activities in further events.[164] Furthermore, the publication of the Independent Observer report was overshadowed by the fact that its contents had been leaked to the press prior to its official publication and contrary to the protocols established. The source of the leak could not be established.

A crippling impacting factor for the relationship between WADA and UCI was, besides a personal conflict between Hein Verbruggen and Dick Pound, the question of what the

---

l'ALFD à la réponse de l'UCI relative au rapport sur les mesures prises contre le dopage lors du Tour de France 2009).

[161] *See* Mihir Bose, "Drugs agency under fire from big guns", *The Telegraph* (11 Aug. 2004). Available: http://www.telegraph.co.uk/sport/olympics/2384475/Drugs-agency-under-fire-from-big-guns.html, where Hein Verbruggen is quoted as follows: "*Two years' blanket ban will not work, and the judge will seek arguments not to give it. You may be guilty but there may be circumstantial evidence to say two years is a lot of time for this. The result is the guilty might go totally unpunished*."

[162] Gonzalo de Galdeano had tested positive for the substance salbutamol. UCI did not qualify this as a positive test contrary to the French Anti-Doping Council (CPLD), because the rider had provided a medical certificate. The CPLD, however, did not accept the medical certificate because the amount found in the athlete's bodily specimen was not compatible with a regular use of the (authorised) asthma medicine. WADA sided with the CPLD and sent a letter to UCI explaining WADA's position (19 July 2002).

[163] *See* Report of the Independent Observers Tour de France 2003, p. 32 *et seq*. Available: https://wada-main-prod.s3.amazonaws.com/resources/files/WADA_IO_Report_TourDeFrance_2003_EN.pdf.

[164] Independent Observers were only allowed again at the 2010 Tour.

proper role of WADA was in relation to sports federations and therefore to UCI. It was UCI's opinion that WADA should not interfere with internal matters and affairs of cycling.[165] According to UCI, WADA's role was to assist sports federation, but not to criticise them nor interfere in the governance of the federation's (anti-doping) policy. Of course it is well-known that, from the very beginning, WADA assumed a different role.[166] This inevitably lead to conflicts, since it was precisely these kinds of public discussions and moral finger-pointing that UCI leadership had always tried to suppress within its sphere of control, because it was felt that it was detrimental to the development of cycling (see below). WADA, however, was and remained outside UCI's sphere of control, regardless of how hard UCI leadership lobbied against it. Any interference or criticism by WADA in relation to UCI's anti-doping policy, or the sheer mention that cycling had a doping problem, was perceived by the UCI leadership as completely unacceptable and seemed to have been interpreted as a personal attack on the UCI leadership.[167] This prompted excessive counter-attacks against both WADA and in particular against its (first) president Dick Pound. A further negative climax of the relationship arose right after the election of Pat McQuaid in 2005 with the so-called "Vrijman affair" (see below). Although Hein Verbruggen was no longer president of the UCI, the matter was handled mainly by him. Pat McQuaid inherited the difficult relationship between Hein Verbruggen and WADA/Dick Pound. Pat McQuaid did not disassociate himself from that dispute. Instead, it appears that he sided from the beginning of his presidency with Hein Verbruggen and that he did little to ease the conflict. Examples of this can be found in Pat

[165] *See* Mihir Bose, "Drugs agency under fire from big guns", *The Telegraph* (11 Aug. 2004). Available: http://www.telegraph.co.uk/sport/olympics/2384475/Drugs-agency-under-fire-from-big-guns.html, where Hein Verbruggen is quoted as follows: "*Dick Pound keeps insulting governments and federations all the time. Thanks to Mr Pound, we get 700 times more publicity for every positive [test] than they get in other sports. I think people like Dick Pound should look at the facts. WADA in 2003 conducted 242 out-of-competition tests in cycling and we had one positive. The WADA president, instead of throwing mud at the innocent athletes, should look at the efficiency of his own organisation. Dick Pound keeps insulting governments and federations all the time. Thanks to Mr Pound, we get 700 times more publicity for every positive [test] than they get in other sports. I think people like Dick Pound should look at the facts. WADA in 2003 conducted 242 out-of-competition tests in cycling and we had one positive. The WADA president, instead of throwing mud at the innocent athletes, should look at the efficiency of his own organisation. … Pound is positioning WADA as the watchdog and that is not its role. It should be an aid agency for sport, not a police agency against sport. WADA should help us, but it is continuously shouting at us.*"

[166] *See* Mihir Bose, "Drugs agency under fire from big guns", *The Telegraph* (11 Aug. 2004). Available: http://www.telegraph.co.uk/sport/olympics/2384475/Drugs-agency-under-fire-from-big-guns.html, where Dick Pound is quoted as follows: "*We are not just a support agency, quite the opposite…WADA is the international agency whose job is to report on compliance and non-compliance with the code.*"

[167] CIRC acknowledges that some of the wording used in public was relatively strong. However, this is equally true for the responses that were being made.

McQuaid's published letter to the French Ministry of Sport and Dick Pound (dated 3 July 2006) and in his calling publicly for Dick Pound's dismissal from WADA.[168] When Anne Gripper came into UCI, the relationship between UCI and WADA seemed to improve for a short while at the working level. At the presidency level, however, the relationship was still negative and combative. Evidence of an improved relationship at a working level can be found in the common development of the ABP. However, this cooperation ended abruptly with the initiation of defamation proceedings by the UCI against Dick Pound before Swiss Courts.[169] Defamation suits over anti-doping related issues were brought by Hein Verbruggen/Pat McQuaid also against other stakeholders in cycling and got high media coverage.[170] It seemed to have been part of UCI's strategy to threaten and/or serve their opponents or critics with legal actions, be it before state courts or ethical commissions (see below). Such legal actions would sometimes be preceded or accompanied by staged "open letters" of Hein Verbruggen's network within the sporting community to important decision-makers (see *e.g.* Vrijman-affair, Schenk-affair). These actions highlight the absence of a culture of dialogue as well as an inability to accept different opinions.

[168] *See* Associated Press, "UCI chief calls for dismissal of WADA chief Pound" (23 Sept. 2006). Available: http://sports.espn.go.com/espn/wire?section=cycling&id=2599527.

[169] The requests read *inter alia* as follows: "*Interdiction est faite à M. Richard W. Pound, sous menace des sanctions pénales prévues à l'art. 292 du Code pénal suisse pour insoumission à une décision de l'autorité, d'évoquer 'Union Cycliste Internationale (UCI), M. Henricus Verbruggen, et/ou d'autres dirigeants ou collaborateurs de 'Union Cycliste Internationale, en affirmant ou en suggérant d'une quelconque manière, que ceux-ci ont un lien avec le dopage en ce sens qu'ils en sont des acteurs, qu'ils en sont complices, qu'ils le couvrent, ou qu'ils ne luttent pas à son encontre.*" Translation into English: "Richard W. Pound, under threat of criminal sanctions provided for in s. 292 of the Swiss Penal Code for failure to respect an official decision, is forbidden from referring to the International Cycling Union (UCI), Mr Henricus Verbruggen, and/or other leaders or employees of the Union Cycliste Internationale, claiming or suggesting in any way that they are linked to doping in that they are actors, they are complicit, they cover it up, or they do not fight against it."

[170] *See e.g.* media reports of the defamation proceedings of Pat McQuaid and Hein Verbruggen against Paul Kimmage: Simon Mac Michael, "Pat McQuaid, Hein Verbruggen and UCI launch defamation action against Paul Kimmage" (30 Jan. 2012), available: http://road.cc/content/news/51325-pat-mcquaid-hein-verbruggen-and-uci-launch-defamation-action-againsty-paul; Cycling News, "Kimmage action against McQuaid and Verbruggen dismissed by Swiss court" (30 Aug. 2013), available: http://www.cyclingnews.com/news/kimmage-action-against-mcquaid-and-verbruggen-dismissed-by-swiss-court or against Floyd Landis; *and* Cycling News, "Swiss court finds in UCI's favour in Landis defamation case" (3 Oct. 2012), available: http://www.cyclingnews.com/news/swiss-court-finds-in-ucis-favour-in-landis-defamation-case.

2.2.1.2. Creation of CADF and the time thereafter

In March 2008 the CADF was created. As a foundation, the CADF is a legally independent entity from UCI according to Swiss law. The original reason for creating the CADF was to facilitate financial contributions to the (ever more expensive) fight against doping by third parties (UCI ProTeams, Continental Pro Teams and event organisers). These third parties did not want any money they gave for anti-doping to be handled by UCI. The purpose for creating CADF was to guarantee the financial independence of the Anti-Doping Program from UCI.

Continued interference from UCI leadership and effect of previous management decisions

In the beginning, apart from financing (and the formal legal independence of CADF) very little changed in the organisational structure of UCI's anti-doping framework. In particular, the CADF kept the former offices of the ADU at the UCI headquarters and operated under the UCI logo.[171] The staff of the CADF originally had contracts with and were employed and paid by UCI. Furthermore, the CADF staff worked together with UCI personnel and got directions from the UCI leadership. The governance of the CADF was formally in the hands of a foundation board. However, the latter was chaired by Pat McQuaid and ultimately, the CADF was directed and controlled like any other department within UCI. As a result, policy and operational decisions were taken either by UCI leadership directly, or by the CADF with the UCI leadership's consent.[172] Pat McQuaid inherited a number of problems from his predecessor, which continued to plague UCI during his tenure. In particular, poor relationships with stakeholders, including WADA and AFLD (and also USADA), continued to hamper the development of anti-doping at UCI.

[171] *See* Minutes of the Board of the Cycling Anti-Doping Foundation dated 2.12.2010. Copy on file with CIRC.
[172] *See* Minutes of the Board of the Cycling Anti-Doping Foundation dated 2.12.2010. Copy on file with CIRC.

Difficult Transition Period

The transition from the ADU to the CADF was not easy and presented a number of different problems. On a legal level the new status of the CADF brought it into conflict with the UCI ADR, which provided that all anti-doping measures had to be taken by UCI (and not by an external CADF). The CADF personnel had no authority to act on behalf of, or to engage with, the (different legal entity) UCI.[173] This problem was initially solved by shifting the results management function back to UCI's legal department, which was then responsible for all letters and communications in anti-doping matters (to the relevant stakeholders). CADF was reduced to providing only the operational and logistical aspects of doping control to the Anti-Doping Program. In the course of redefining the responsibilities in results management, it appears that some AAF cases were "forgotten" and not followed-up in a timely manner. These were for athletes competing at the lower levels of competition. Once competences were clarified and appropriate protocols put in place (in particular with the arrival of Dominique Leroux) at the legal department (later on Legal Anti-doping Service) things became clearer.

It is also reported that the transition (in March 2010) from the first head of the CADF Anne Gripper to Francesca Rossi (pharmaceutical/scientific background) did not go smoothly, because the handover apparently had to be effected in a couple of days. Furthermore, it has been reported that financial or budgetary problems surfaced in 2011 that impacted the CADF's Anti-Doping Program. Under Francesca Rossi's leadership, the CADF overcame these budgetary problems and underwent complex and formal structural changes to prepare for ISO-accreditation. In 2012 the accreditation (ISO 9001:2008) was obtained. During this process of reorganisation a considerable number of the CADF staff was replaced.

Move to more independence

After the publication of USADA's Reasoned Decision and the allegations contained therein, there was discussion as to whether CADF should acquire more operational

[173] *See also* KPMG, UCI Governance and Independence Assessment 2013 – Summary for the Management Committee Members, dated 7 June 2013, p. 8. Copy on file with CIRC.

independence from UCI leadership.[174] In that respect, the 2013 KPMG Report states as follows: "*According to the statutes, the Management Committee designates CADF foundation board members, which can impair the independence of CADF. Until now, UCI's President and General Director have been president and member of the CADF foundation board, creating a perception of impaired independence. In addition, it is not clear where CADF and UCI Legal process start and where they end, making the distinction between CADF and UCI departments difficult.*"[175] The KPMG Report recommended that UCI redefine the status and degree of independence of the CADF in relation to UCI and concluded, with respect to the lack of legitimacy/authority of the CADF in relation to the ADR, to maintain the ADC, "*which shall be complimentary to CADF, shall regularly meet and report to the Management Committee.*"[176]

In light of the above, UCI decided in January 2013 as a first step to restructure the foundation board in order to increase the independence of the CADF. The UCI president was no longer chairman of the CADF foundation board. In September 2013 the foundation board was completely renewed. The new members of the CADF foundation board do not hold any positions within UCI. The foundation meets 3 times a year. The financial situation of the CADF was, and still is, monitored by the CADF funding committee.[177] Members of that committee comprise representatives from teams, event organisers, riders and from UCI as well as the chairman of the CADF foundation board. The CADF's priorities in terms of testing strategy and broad line of approach are determined through a contract of services with UCI. The contract is amended on an annual basis after the evaluation of the results obtained and the situations arising from the tests carried out.[178]

The CADF today manages part of the UCI Anti-Doping Program for all riders of all disciplines in- and out-of-competition and the ABP. As part of the Anti-Doping Program the CADF is also involved in education and prevention activities in collaboration with UCI. Three main aspects of the Anti-Doping Program are still not taken care of by the CADF.

[174] *See also* CADF Presentation Bergen 2013. Copy on file with CIRC.
[175] KPMG, UCI Governance and Independence Assessment 2013 – Summary for the Management Committee Members, dated 7 June 2013, p. 7. Copy on file with CIRC.
[176] KPMG, UCI Governance and Independence Assessment 2013 – Summary for the Management Committee Members, dated 7 June 2013, p. 8. Copy on file with CIRC.
[177] *See also* CADF Presentation Bergen 2013. Copy on file with CIRC.
[178] *See* www.uci.ch/clean-sport/anti-doping/.

First, according to the rules in force (2014) results management is still not under the CADF's remit,[179] and rather rests partly with the Legal Anti-Doping Service ("LADS") and partly with the NFs (however see also below for the 2015 changes). The LADS is a department of the UCI composed of legal experts. The body intervenes (and is provided with scientific and administrative support by the CADF) when a potential ADR breach is reported to it. The LADS is a separate unit from the rest of UCI in order to afford it greater independence. In particular, the LADS does not receive any instructions from the UCI Management. Once the first part of the results management process is completed, the file is sent to the NF. Second, appeals in anti-doping matters (against decisions of NFs) are as of 2014, a matter for the LADS/external Legal Counsel and not of the CADF. Third,[180] according to the rules in force (2014) the issuance of TUEs is a matter dealt with (only on an administrative level) by the CADF. The CADF has access to the contact address, where the athletes register their TUEs, and the request for TUEs. However, the medical follow-up of the TUE, *i.e.* the substantive part of the TUE process is done by UCI medical. The CADF may, if needed, provide administrative and scientific support to the relevant TUE Committee.

Evaluation

The organisation of anti-doping within UCI has evolved considerably over time both in size and structure. Anti-doping is recognised as a key issue in cycling and the independence of the CADF is a key element in restoring the UCI's damaged credibility in anti-doping matters; independence prevents any inappropriate influence of UCI leadership on the Anti-Doping Program. However, CIRC is also aware that moving the CADF away from UCI may enable other stakeholder to have more influence on CADF operations. The fact that a large proportion of the CADF's budget comes from pro teams (and the fact that the pro teams are represented on the financial board of the CADF) may create a certain dynamic whereby professional teams want to see what controls apply to them and thereby influence the overall testing strategy for all disciplines in cycling.

[179] *See also* iNADO Report – Final Audit report Doping Control Program – The UCI and CADF, 25 February 2014, p. 2. Copy on file with CIRC.
[180] *See also* iNADO Report – Final Audit report Doping Control Program – The UCI and CADF, 25 February 2014, p. 2. Copy on file with CIRC.

It appears that CADF is ultimately striving for a type of independence that is based on the model of domestically operating NADOs (UKAD, AFLD, USADA, etc.). These NADOs are independent and operate outside the influence of organised sport. An internal CADF strategy paper stated that "*there is no reason why such a model* [like the domestically operating NADOs] *cannot be put in place internationally…through an independently run organisation which has fully autonomous powers of decision making*."[181] However, whether CADF will ever attain a level of independence equal to that of the NADOs seems questionable under the regime of the current WADA Code. This is particularly because IFs are signatories to the WADA Code and, therefore, have to comply with the responsibilities of the Code, *i.e.,* are accountable for all the obligations placed on them by the WADA Code. It appears questionable (or would require discussion with the WADA at least) whether an IF could comply with these obligations under the WADA Code by simply externalising and shifting them to a separate legal entity and dissociating itself from it.

As long as full independence cannot be obtained from UCI, tasks have to be divided between UCI and CADF. Furthermore, protocols must be put in place to prevent UCI leadership from exerting inappropriate influence on the CADF's operations. However, these protocols should be intelligent, transparent and accountable and, at the same time, not overly formalistic, since there are also dangers associated with a formalistic approach to independence. In particular:

- There is a danger that coordination becomes more difficult at a governance level.[182] It appears that since governance over CADF is performed through the CADF foundation board, whose members have no function within UCI, the relationship between CADF and UCI has become more formalistic and distant. The UCI is viewed by the CADF as "only one of their stakeholders".
- Difficulties may also arise at a communication level (for example in terms of consistency across homepages, content, press releases, interviews). It is obvious that on a communication level coordination must take place when communicating

[181] *See* Word-UCI Independent doping Unit 21.8.2013. Copy on file with CIRC.
[182] *See* also iNADO Report – Final Audit report Doping Control Program – The UCI and CADF, 25 February 2014, p. 3. Copy on file with CIRC.

with the public. At the moment, at least from the public perception, it is not very transparent who is responsible for what.[183]

. Coordination and exchange of information is difficult for those departments/commissions both legally[184] and on a practical level (within UCI and CADF) that must work together in anti-doping (*e.g*. results management, TUEs, appeals). It appears from the interviews that, *e.g*., the sharing of information and collaboration between CADF and the legal department/LADS proved to be an issue.[185]

In view of all of the above the further move towards independence should be undertaken carefully. The concept of independence should not be understood in a formalistic way, but be smart and inclusive, with the necessary protocols and respect for the roles and organisational integrity of both entities. The goal should be to make any influence transparent, traceable and accountable without detrimental side-effects of preventing the necessary flow of information.[186] There are certainly disadvantages to the current situation. The formulation of a comprehensive anti-doping strategy is complicated at the moment by the fact that different commissions/departments inside UCI (ADC, TUE Committee, LADS and the UCI Management Committee) and outside UCI (CADF) are involved in different parts of the decision-making process. This demands appropriate level of reporting and coordination.

2.3. THE ANTI-DOPING PROGRAMME

Evaluating UCI's Anti-Doping Programme is a difficult task, since the question is what the benchmark is. In this context some interviewees pointed to the fact that other IFs had done or still do much less in anti-doping than the UCI and that, therefore, UCI should get credit for its Anti-Doping Programme. The CIRC is of the view that a comparison with

[183] *See* also also iNADO Report – Final Audit report Doping Control Program – The UCI and CADF, 25 February 2014, p. 3. Copy on file with CIRC.
[184] Passing forward information from and to CADF might pose a problem in light of the ISPPPI, because CADF is independent but not a signatory to the Code.
[185] *See* also iNADO Report – Final Audit report Doping Control Program – The UCI and CADF, 25 February 2014, p. 3. Copy on file with CIRC.
[186] *See* also iNADO Report – Final Audit report Doping Control Program – The UCI and CADF, 25 February 2014, p. 3. Copy on file with CIRC.

other IFs forms only a minor part of the benchmark when assessing UCI's Anti-Doping Programme. The decisive factor rather is the magnitude of the doping problem with which UCI was faced and the knowledge UCI leadership had (or should have had) of said problem. In the CIRC's view the bigger the scale of the problem, the more an IF is expected to do in order to solve it. The CIRC finds that two periods of time must be distinguished in order to fairly assess UCI's anti-doping policy.

2.3.1. The period of containment (until 2006/2007)

From 1992, the UCI had an Anti-Doping Programme in place. It was operated on a daily basis by the ADU, whose staff was interviewed and recruited by the UCI leadership (Lon Schattenberg/Philippe Verbiest/President) and supervised by Lon Schattenberg. Initially the staff had little expertise in anti-doping and "learned on the job".

The Health Tests

The creation of the ADC happened at a time when EPO had already found its way into the peloton (see above). Since the late 1980s, EPO had been administered to athletes,[187] and had allegedly resulted in the deaths of perhaps 20 riders between 1987—1990. By the mid-1990s, EPO was widely used by riders.[188] The proliferation of EPO was enhanced by a number of factors (see also above): however, one of the main reasons was that the science lagged behind and there was no test available to detect EPO and therefore deter riders from taking it. In addition, EPO had a huge performance-enhancing effect in cycling (see above) and its use was much easier logistically and less risky to health than comparable methods of manipulation (*e.g*. blood transfusion).[189] Furthermore, a number of cycling-specific aspects acted as a driver for the proliferation of EPO, such as the high mobility of riders (constant change between teams), the similar professional and cultural

[187] Mario Zorzoli and Francesca Rossi, "Implementation of the biological passport: The experience of the International Cycling Union" (2010) DOI 10.1002/dta.173. Available: www.drugtestinganalysis.com.
[188] Inside the Games, "Independent Report finds 95 per cent of Dutch cyclists used banned drugs" (17 June 2013). Available: http://www.insidethegames.biz/sports/summer/cycling/1014707-independent-report-finds-95-per-cent-of-dutch-cyclists-used-banned-drugs.
[189] *See See* Zotter/Zorzoli/Schattenberg/Robinson/Saugy/Mangin, "An International Medical Follow-up applied to the 1,200 best professional road cyclists, 2002" (workshop paper), p. 1. Copy on file with CIRC.

background of riders at the time,[190] and the fact that the cycling community was rather small and a closed shop (athletes becoming coaches and athlete support personnel – "*incestuous*"). That the peloton was EPO-infested was known to UCI leadership and is evidenced by the fact that as early as 1995 the UCI held a meeting with the heads of various laboratories to discuss with them what could be done about EPO misuse. The problem had also been discussed in the public domain.[191] The problem grew more alarming when in 1996 riders informed UCI leadership that the misuse of EPO had spiralled out of control and that there was a serious and acute danger that riders would die on the Grand Tours. It was the various team doctors and managers who went to the UCI and begged them to start blood controls.[192] It is this health aspect that made the UCI, and in particular Lon Schattenberg, step in, and at the end of 1996 it was decided to introduce and later on (1997) to implement the 50% haematocrit level together with the "no-start-rule" (see above).

The 50%-level was chosen for health reasons[193] and managed to exclude serious abuses of EPO at competitions (some riders previously had haematocrit levels as high as 58/60%). It was established taking into account standard deviations in relation to the normal population. Most people (including riders and teams) found the 50% level "reasonable" (because most riders had natural haematocrit level clearly below that threshold). It was clear from the beginning that this health approach had little deterrent effect on the misuse of EPO. It was only when the rule was first introduced that blood tests taken in-competition caused some concern to the teams. Very quickly, the teams (through the expertise at their disposal) adapted a technique to stay below the 50% radar. Within 30 minutes one could manipulate the thresholds in order to stay within the limits. That the riders were adapting such techniques was clearly visible to the personnel performing the tests. They reported to the CIRC that while blood tests were being taken fresh punctures in the rider's armpits could be observed. Furthermore, quite often the riders would be warned of up-coming health tests by DCOs (see below) or other persons. The UCI was also rather lenient in relation to the time the athletes were given to present

[190] Cycling in the 90's was still very much a European sport.
[191] *See* Sandro Donati "*L'utilizzazione dell'eritropoietina nel ciclismo professionistico italiano*". Copy on file with CIRC.
[192] The Outer Line Perspectives on Doping in Pro Cycling – 1. Available: http://www.theouterline.com/perspectives-on-doping-in-pro-cycling-1-theo-de-rooij-2/.
[193] UCI was among the first IFs to introduce such a rule.

themselves for blood controls after being notified either directly or through the team. Information to the riders was also provided by laboratories. A rider also referred to the 2002 Vuelta when allegedly his team was advised to lower the athletes' haematocrit levels. The health tests were for the most part performed in the morning and were, thus, predictable (see below). Little targeting took place. It has been reported to the CIRC that only those riders who were "*exaggerating*" were specifically targeted, because they were a potential threat to cycling.

It became apparent that even though the health test may have protected the lives of riders, it also acted as a catalyst to spread even further the use of EPO in the peloton, because in essence it condoned the use of EPO up to a certain limit. The message was basically that "*you could dope, but not too much*". According to an anti-doping expert, over 90% of the riders had a natural haematocrit level of around 42-43% and, thus, had a strong incentive to raise their levels closer to 50% and achieve considerable performance-enhancing effects without breaking the no-start rule. The Festina scandal is a clear example of that development. In this environment, in which nearly every rider was using EPO, it lost any sense of wrongdoing. Anyone who used EPO was not "*cheating*", *i.e.* getting an undue advantage over his competitor; rather he was just applying the moral standards of the cycling community. This general feeling in the peloton is very well described by a statement attributed to Jan Ullrich who is reported to have been involved in doping.[194] He allegedly stated when retiring from cycling that "*he had a clear conscience*" and that "*throughout his career he had never defrauded or exploited anyone.*"[195]

EPO-test

Since the mid-1990s the anti-doping community had concentrated on finding a test to detect EPO. In 2000 such a test had been developed by the French laboratory. Shortly after the analysis technique was developed it was introduced by the UCI (April 2001) at a stage when the test had not yet been validated by the WADA. The test at that time was

[194] *See e.g.* CAS 2010/A/2083 Union Cycliste Internationale (UCI) v. Jan Ullrich & Swiss Olympic (9 Feb. 2012).
[195] Jan Ullrich, "Ich habe ein reines Gewissen" (8 Apr. 2007). Available: www.focus.de/sport/mehrsport/jan-ullrich_aid_52964.html (in German).

cumbersome ("technician-dependent and time consuming"), expensive and not very robust. The lack of robustness posed a problem from a legal point of view, which is evidenced, *inter alia*, by the "Olga Yegerova,"[196] and "Bo Hamburger" cases.[197] Nevertheless, the UCI was one of the first sports organisations to implement the test (and the first Summer Olympic IF) and in doing so took a certain degree of legal risk in pursuing EPO cases.[198] Following the CAS decision in the Roland Meier case, the test was approved by the legal community.[199] The analysis technique was then improved over the years to render it more robust. It is obvious that a robust test for EPO on its own has little deterrent effect on the riders. In order to uncover an ADRV a logistical structure needs to be put in place that collects the "right" sample from the "right" athlete at the "right" time. Thus, an effective deterring anti-doping policy is built upon a testing strategy (Test Distribution Planning) that is intelligent (targets riders that are likely or suspicious to dope), takes them by surprise so that they cannot "*prepare themselves*" for sample collection and is robust enough to prevent any form of manipulation when the rider is giving the sample. In addition, EPO can only be found in the athlete's urine sample if the sample is specifically tested for it. However, samples were, and still are, only tested for a standard list of substances (standard menu). A test for EPO has to be specially ordered and paid for by the organisation that orders the test. Even after the EPO test grew more robust, not every sample was tested for EPO. For smaller races sometimes no EPO tests were performed at all. One laboratory, for example, informed the Commission that between January and November 2014 it conducted 278 samples for the UCI. However only 29 samples were analysed for EPO.

Inadequacy of ICTs

The anti-doping community distinguishes between two different kinds of tests to obtain a sample from a rider: ICTs and Out-of-Competition Tests ("OoCT" or "OoCTs"). What is meant by the term "In-Competition"/ICT is not always clear. While originally the term referred basically to tests that were taken immediately after the competition/stage,[200]

[196] BBC News "Yegorova doping case dropped" (2 Oct. 2001). Available: http://news.bbc.co.uk/sport2/hi/athletics/1576050.stm.
[197] *See* CAS 2001/A/343 Union Cycliste Internationale (UCI) / H., (28 Jan. 2002).
[198] The same is true for the IRMS test for T/E cases (1995).
[199] *See* CAS 2001/A/345 M. / Swiss Cycling (28 Jan. 2002).
[200] See *e.g.* Art. 108 et seq. 1998 UCI ADR.

the term became more complex later on,[201] when the In-Competition period defined a period starting prior to the first stage of the stage race and finishing at midnight on the day on which the stage race finished.[202] During that time period different kinds of tests could be performed that were all referred to as ICT. The different kinds of tests could be described as "Individual Testing" (whereby an athlete would be chosen to provide a sample at any time and any place during the In-Competition period and without prior notice) and "Post-Competition Testing" (whereby at stage races and following each stage certain riders would have to undergo testing). As of today,[203] the time frame for establishing whether a test should be considered in-competition remains the same. In addition to this, however, the UCI ADR stipulates that "*for the purpose of Prohibited List, In-Competition is the period commencing twelve hours before a Competition in which the Rider is scheduled to participate through the end of such Competition and the Sample collection process related to such Competition*". OoCT are defined by a negative reference as all tests which are not ICT.

It has been reported to the CIRC that for most of the period up until 2006/2007 the aim of the ICT was at least partially undermined by a number of deficiencies in the testing process. First, ICT did not take place at all international events.[204] Furthermore, it has been submitted that when unannounced ICT were performed, they often lacked a surprise element enabling the athletes to "prepare" for sample collection. The reasons for this were various. According to the evidence available to the CIRC, UCI would routinely perform unannounced ICT in the evenings and not in the morning. By doing so the athletes had comfort that after a certain hour of the day they would no longer be tested. Furthermore, UCI staff explained that when the DCOs wanted to perform an unannounced ICT on an athlete at the hotel where the athlete was staying, the DCO would first have to contact the team personnel of the rider (manager/doctor) before making direct contact with the athlete, because the DCOs had no exact whereabouts information for the athletes (room, etc.).[205] This enabled the teams to warn the riders of the upcoming test.

[201] *See* Art. 112 et *seq.* UCI ADR 2004.
[202] *I.e.*, one day before or, in the case of a major tour, three days before the starting date of the event.
[203] See definitions of "Event Period", "In-Competition" and "Out-of-Competition" in the 2015 UCI ADR.
[204] In a CAS decision dated 7 April 2005, the Panel stated that "*drug testing does not occur at all international events…*" *See* CAS 2004/A/632 (7 April 2005).
[205] *See* Report of the Independent Observers Tour de France 2003, p. 20. Available: https://wada-main-prod.s3.amazonaws.com/resources/files/WADA_IO_Report_TourDeFrance_2003_EN.pdf; Report of the

Furthermore, the degree of cooperation of the various teams varied considerably. While some would have a list available that showed in which rooms their riders were staying, other teams would not, thus, obliging the DCOs to perform a time-consuming search.[206]

It is reported that information about who would be tested in an unannounced ICT would frequently be leaked to the riders that were supposed to be tested. One source of such leaks were some DCOs themselves.[207] Up until 2006/2007 the UCI used DCOs who were current or former Commissaires. These individuals were often very close to the teams.[208] Some DCOs were also appointed upon recommendations by the relevant NFs (such as, in particular, the FFC). The basis of such recommendations was frequently to reward certain people from the sports community by allowing them to attend events and being close to their heroes. DCOs were employed who were fans of the riders or that were appointed for "*political reasons*". There are also serious allegations that in one country riders paid race officials in order not to be tested, to make sure that the samples were not analysed in the laboratory or that the samples would be substituted by "*clean samples*". According to an interviewee, these payments were referred to as an "*anti-doping tax*".[209]

In addition it has been pointed out that DCOs received little training, were often not sufficiently qualified and not effectively monitored. In one case, it was alleged by a rider that information about testing was leaked from a member of the ADC itself. The CIRC could not corroborate this statement through other evidence.

It has further been alleged that UCI staff advised team doctors what prohibited substance to take. Specifically, the 2015 American Arbitration Association ("AAA") Leinders award

---

Independent Observers Tour de France 2010 (28.10.2010), p. 43. Available: http://d3epuodzu3wuis.cloudfront.net/2010-10-28+WADA+Independent+Observers+Report+TDF+2010.pdf.

[206] *See* Report of the Independent Observers Tour de France 2010 (28.10.2010), p. 43. Available: http://d3epuodzu3wuis.cloudfront.net/2010-10-28+WADA+Independent+Observers+Report+TDF+2010.pdf.

[207] See Report of the Independent Observers Tour de France 2010 (28.10.2010), p. 42. Available: http://d3epuodzu3wuis.cloudfront.net/2010-10-28+WADA+Independent+Observers+Report+TDF+2010.pdf.

[208] The Report of the Independent Observers for the Tour de France 2010 (published 28.10.2010) still recommends in that respect (p. 41): "*The UCI should consider the implications of using retired or active Commissaires as DCOs…"*

[209] As CIRC received information regarding these allegations at the end of its mandate, it did not have time to fully investigate them. CIRC has passed details of these allegations to UCI for further investigation.

states: "*Mr. Rasmussen testified that in either 2004 or 2005, Dr. Leinders told him that Mario Zorzoli recommended that Leinders give Rabobank riders DHEA because "all the other teams are doing it as well.*""[210] CIRC has investigated this statement regarding Mario Zorzoli (which amounts to an ADRV being committed by a UCI staff member), and at the time of completing its Report has been unable to confirm any allegation regarding his supposed advice about taking a prohibited substance.[211] The CIRC considers it unacceptable and a severe breach of proper procedures that such serious accusations, based on double hearsay, were made public without the individual first being consulted and the allegations being fully investigated. This is all the more disturbing since this accusation was completely immaterial to the case investigated. In addition, CIRC notes that several interviewees expressed their high regard for Mario Zorzoli, both for his scientific expertise and his honesty.

Logistical problems would also sometimes mean that unannounced ICTs were not in fact unannounced. At stage races several teams would often stay at the same hotel. If a team of DCOs arrived to perform a test on a team or a rider, this fact would not go unnoticed by all the others staying at the same hotel. This is even more so if the car was branded with certain logos or if the DCOs wore "official" clothing.[212] Concurrent team testing seems to have been rare. Indications that a test was being prepared could also be deduced from the fact that the DCOs would arrive at a particular time of the day, carry cumbersome equipment or travel in a van (in order to transport the equipment or machines for blood samples). In addition, the athletes and their team personnel might know the DCOs (in person or by sight) from other testing occasions (at the same or from a previous event). In the early days, UCI would house the DCOs in the same hotels as some of the teams. This facilitated leaks of information. In addition, team personnel would note when and in what direction the DCO was heading when leaving their hotel for a doping control.

[210] United States Anti-Doping Agency v. Geert Leinders (16 Jan. 2015) par. 44. Available: http://www.usada.org/wp-content/uploads/AAA_decision_Leinders_December_2014.pdf.
[211] Geert Leinders did not respond to a request for an interview.
[212] See Report of the Independent Observers Tour de France 2010 (28.10.2010), p. 43. Available: http://d3epuodzu3wuis.cloudfront.net/2010-10-28+WADA+Independent+Observers+Report+TDF+2010.pdf.

Problems have been reported also for post-competition ICTs. In particular, it has been submitted that these tests were conducted in a way that enabled manipulation of the samples by the athletes. Only a fairly narrow window is needed for manipulation. In addition the athletes were in general well-informed in relation to the various strategies to evade or manipulate a test.[213] It is noteworthy that the UCI for a long time failed to use chaperones or escorts.[214] Riders had to report within a certain time-slot to the doping control station and were left completely or partially unattended between notification of a post-competition control and the passing of the sample.[215] Furthermore, it is reported that failure to report within the prescribed deadline to sample collection was dealt with rather leniently. UCI staff submitted that this system favoured cheating riders especially on the occasion of less important races, where not so much attention was focused on the riders. UCI justified its practice by pointing out the peculiarities of cycling and the additional costs that would have been incurred when using chaperones. Chaperones became a mandatory requirement of the Tour only in 2008.[216] In addition, the riders randomly selected for testing in post-competition tests were usually identified quite some time before the end of the race.[217] Their names/jersey numbers would be displayed at the finish-line so that they would know that they had been selected for testing once they crossed the finish line at the end of the race/stage.[218] This of course gave the team personnel the possibility of calling the athlete still cycling in the race via ear-pieces to warn him of the up-coming testing. This in return gave the rider the possibility to "prepare" for the sample analysis, drop out of the race, etc. In addition, riders not selected for testing had the opportunity to take fast-acting stimulants during the final stages of the race because they knew that they would not be tested. UCI staff informed the CIRC that on several occasions riders selected for testing had been observed to adopt unusual attitudes. At the 2010 Tour, the Independent Observers noted that there was significant interest in the list of notification at the finish-line from team representatives, media and

[213] The Outer Line Perspectives on Doping in Pro Cycling – 1. Available: http://www.theouterline.com/perspectives-on-doping-in-pro-cycling-1-theo-de-rooij-2/.
[214] *See* Report of the Independent Observers Tour de France 2003, p. 14. Available: https://wada-main-prod.s3.amazonaws.com/resources/files/WADA_IO_Report_TourDeFrance_2003_EN.pdf.
[215] *See* Report of the Independent Observers Tour de France 2003, p. 13. Available: https://wada-main-prod.s3.amazonaws.com/resources/files/WADA_IO_Report_TourDeFrance_2003_EN.pdf.
[216] However, according to statements of UCI staff this system was not welcomed by the event organizers because of the additional costs associated with hosting the chaperones.
[217] *See* also Report of the Independent Observers Tour de France 2003, p. 13. Available: https://wada-main-prod.s3.amazonaws.com/resources/files/WADA_IO_Report_TourDeFrance_2003_EN.pdf.
[218] *See e.g.* CAS 2004/A/632 (7 April 2005).

even the event organizer (ASO). The Independent Observers further observed that teams recording the notification list on a daily basis would have a running record of who the UCI was testing.[219]

The above deficiencies could not be cured by in-competition testing through other authorities (in particular NADOs), as the IFs have full and (practically) exclusive testing authority for international events. Furthermore, it is in the discretion of the IF to define "international event". As the UCI has a rather broad approach to what is an international event, NADOs cannot step in to compensate for the ICTs deficiencies.

Warning Riders and Teams

The deterrent effect of sample collection was further undermined by the fact that teams were informed on occasion what new analysis techniques would be applied at races. Documents on file and interviews with the CIRC show that in particular, Lon Schattenberg advised the teams of newly implemented detection methods. Furthermore, Lon Schattenberg would inform the teams also on the detection window. In one of his letters to the teams he says: "*…even though it was announced that the urine test could only detect EPO in the 3-4 days after it was first taken, the laboratories have noted that in certain cases, it can even be detected one week later!!*"[220] It is evident that, as confirmed by a NADO representative, this practice of UCI of warning riders had an impact on the efficacy of the tests. In this context it was submitted that in 2008 the tests at the Tour were undertaken without the involvement of UCI and for the first time a new testing method was used without prior notice to the riders, which resulted in many additional AAFs.

UCI also provided intelligence obtained through the analyses of the samples to riders. Instead of using this information to perform target testing on suspicious athletes, the athlete would be warned, and sometimes in case of important riders even invited to the UCI headquarters to discuss the abnormal values. This practice was ongoing for a very

[219] Report of the Independent Observers Tour de France 2010 (28.10.2010), pp. 26-27. Available: http://d3epuodzu3wuis.cloudfront.net/2010-10-28+WADA+Independent+Observers+Report+TDF+2010.pdf.
[220] Letter dated 31 January 2002, signed by Lon Schattenberg. Copy on file with CIRC.

long time.[221] An early example can be found in a letter dated 23 October 1997 to Kevin Livingstone signed by the anti-doping coordinator at the time. In the letter the athlete was advised that "[a]*lthough we decided that the concentration…is low enough to not declare this case positive, we hereby would like to warn you for the future. In fact, should this concentration exceed…we will be obliged to ask your National Federation to open a procedure, according to the UCI Antidoping…Regulations*." The Report of the Independent Observers for the 2003 Tour stated as follows: "*When the analyses, which were carried out immediately as soon as the samples arrived, showed abnormal profiles (abnormal values or trends), the UCI…let him know that he would have another test carried out during the race and that he would be classified as being suspect by the UCI Anti-doping Commission*."[222] This practice continued well through 2006,[223] and was consented to by the UCI leadership.[224]

OoCT

In the arsenal of tools available to fight doping, OoCT has for a very long time been considered vital, because unlike ICT it has the biggest deterrent effect due to its surprise element (when conducted diligently). Riders have told the CIRC that the phase in which an athlete is most likely to be caught doping is the one preceding competition, *i.e.* when he is preparing for competition. Thus, there is no effective anti-doping strategy without

---

[221] *See also* United States Anti-Doping Agency v. Geert Leinders, (16 Jan. 2015), para. 67, 40. Available: http://www.usada.org/wp-content/uploads/AAA_decision_Leinders_December_2014.pdf.

[222] *See* Report of the Independent Observers Tour de France 2003, p. 7. Available: https://wada-main-prod.s3.amazonaws.com/resources/files/WADA_IO_Report_TourDeFrance_2003_EN.pdf.

[223] *See e.g.* the letter signed by Lon Schattenberg and Mario Zorzoli and sent to Tyler Hamilton, which states as follows in relation to a sample taken during the Tour de Romandie (2004): "*En effet, vos valeurs sanguines présentaient des signes forts pouvant laisser penser `une éventuelle manipulation. Aussi, nous vous informons que nous porterons une attention particulière à votre suivi…durant la saison 2004…*" Translation into English: "In fact, your blood values showed strong signs that may suggest a possible manipulation. Also, we inform you that we will monitor you closely during the 2004 season..." Copy on file with CIRC.

[224] *See also* Telegraph Sport, "Former president of the International Cycling Union Hein Verbruggen admits riders were tipped off" (23 Jan. 2013). Available: http://www.telegraph.co.uk/sport/othersports/cycling/9821664/Former-president-of-the-International-Cycling-Union-Hein-Verbruggen-admits-riders-were-tipped-off.html: "*Verbruggen said last week that the UCI turned a blind eye to his misdemeanors but now maintains they did what they could to warn riders who appeared to be at risk of failing doping tests because their hematocrit or red blood cell count was too high. 'The UCI took the line, as did other sporting federations, to talk to racers whose blood test results appeared suspect,' he was quoted as saying in an interview with the Dutch news agency ANP. 'That sent out a signal to those who were doping but who had yet to turn in a positive test that they risked getting into hot water. And if the anomaly was not down to doping that allowed the rider to have a medical analysis.'; see also* Graham Dunbar, "UCI's McQuaid replaced on IOC panel" *Associated Press* (23 Jan. 2013) "*Riders who were doping (but who had yet to fail a test) were effectively warned that they were being watched and that they would be targeted in future with the aim of getting them to stop doping.*" Available: http://www.fortwayne.com/apps/pbcs.dll/article?AID=/20130123/AP01/301239924/1032/SPORTS08

OoCT. The need for a sound OoCT-programme was manifest to most stakeholders. In an environment that adapts very quickly to new conditions it is obvious that deterrence may only be achieved by taking the riders by surprise. This is not achieved through routinely performed sample collection at competitions. The need for OoCT was also evidenced in a change of doping tactics. From 2001 teams started to move away from centrally managing doping treatments for their riders. Instead they left it up to the riders (combined with pressure/advice on whom to consult) to do the necessary "preparation" for the competition. This preparation of course occurred in the intervals in between competitions. One of the reasons that was given by a large number of interviewees for why Lance Armstrong never produced an AAF for EPO was that there was no effective OoCT at the time. Riders knew shortly after the new EPO test was introduced how to manage their EPO treatment in the out-of-competition period in order to be "clean" at the races. They were helped of course by the information policy of Lon Schattenberg (see above). Even though this insight was obvious to most stakeholders in anti-doping, CIRC was told that anybody expressing such a view would be treated as a "subversive" within UCI.

It is reported that Lon Schattenberg in particular did not see any need for OoCT. The CIRC was told that according to him, OoCT was cumbersome and a waste of money. Furthermore, the whole idea of OoCT ran contrary to Lon Schattenberg's philosophy which was rather based on health prevention, instead of catching cheaters. Lon Schattenberg had little desire to take the athletes by surprise with doping controls. Instead his strategy was built on warning the athletes (see above) and managing the health risks associated with doping. The (official) justification put forward against OoCT was, inter alia, that cycling provided for an intense sporting calendar and that the riders on the team were already sufficiently tested in-competition all year round. This argument is not sound from a medical point of view, because testing in competition only does not prevent athletes from abusing medications all year around. From an anti-doping perspective, however, this policy is completely counter-productive, since it enables riders within particular time frames to "prepare" themselves for competitions and, thus, to cheat. Riders have confirmed to the CIRC that certain riders had taken off a month to six weeks from racing and had come back "flying", or that riders even appeared from "nowhere" and won major competitions. ICT are, by definition, announced tests to which

the athletes can easily adapt. The effectiveness of well-managed OoCT from an anti-doping perspective is evidenced by an incident in 2003 when the Italian Cycling Federation carried out OoCTs on the under 23s. Out of 80 tests that were analysed in the Lausanne laboratory more than 50% were positive for prohibited substances.

The UCI introduced OoCT in 2001. However, OoCT was not a top priority. According to WADA, from 2002 until 2005 of the 21,345 doping tests carried out by UCI only 2.5% were OoCT. The number increased thereafter. It has also been reported to CIRC that the OoCT were administered poorly. CIRC was told that up until 2004 there was in fact no obligation imposed on riders to provide whereabouts information. There was only an obligation on teams to provide their whereabouts prior to some competitions. Thus, OoCTs in effect were pre-competition tests that were absolutely predictable. With no system in place to locate the riders in the OoCT-period, OoCT could easily be avoided by the athletes. This anti-doping policy by UCI in respect of OoCT was criticised by WADA. The legal framework changed with the adoption and implementation of the 2003 WADA Code. The Code required athletes to detail their movements in three-month periods of time for every day of the week. The details were supposed to enable OoCT to be carried out on athletes. According to a former UCI employee, UCI and the riders objected to the extent of whereabouts information required, on the basis that riders were constantly moving from race to race, making it impossible to provide exact locations for every day or to update whereabouts information in real time. It is only starting from 2006/2007 that both the number of OoCT and the efficiency of the OoCT significantly improved (see below). In addition, the rules in place made it difficult for NADOs to test cyclists out-of-competition, since, according to the WADA Code, the definition of the ICT-period rested with the IF and the NADOs were excluded from testing in the ICT-period of an international event. By broadly defining the ICT-period, UCI could effectively limit OoCT by the NADOs.

Test Distribution Planning

It follows from the interviews conducted by CIRC that Lon Schattenberg was in charge of devising the Test Distribution Plan insofar as the testing was not already laid down in the UCI ADR (see Post Competition Testing). Lon Schattenberg determined the plan at his

discretion, *e.g*., how many riders had to be tested for anti-doping and how these riders were to be selected. The UCI staff interviewed by the CIRC reported that Lon Schattenberg would not focus on a specific team or group of riders for testing and that he would never draft in advance a list of riders to be tested during the events.

It was also within Lon Schattenberg's discretion to decide when and how health tests would be performed whilst these were still used and he would designate the medical inspector for the medical tests.[225] According to the staff interviewed by the CIRC the testing strategy in relation to the ICT-period was for the large part a routine operation (urine tests after the race, blood tests before the race in the morning) and frequently lacked targeting or sport-specific selection criteria. This was the case even though practice had shown that when modifying the routine, riders would return positive results. When for example it was suggested during the Giro in 1999 that they carry out the health test on riders, in a break from usual practice according to the ranking of the riders, Marco Pantani was caught with an elevated haematocrit level. Interestingly, this incident was, according to former UCI staff who were interviewed, not considered to be a success because they caught someone (which is telling about UCI's attitude to anti-doping strategy at that time). This being said, the case was followed up according to the rules. Accordingly, this strategy was not used again. Instead, in the context of blood tests, the test distribution adopted would frequently be dictated by considerations of practicability and viability. If several teams were in the same hotel, then for logistical reasons all riders from all teams were tested. This was completely predictable. When OoCT was first introduced (2001), targeting criteria were rarely applied. It is reported that for this reason the UCI's OoCT-programme produced so few AAFs. In the opinion of certain UCI staff, the testing was not effective in detecting the doping that was going on. If there is no good testing strategy it does not make a big difference whether one tests an athlete once or ten times.

[225] "UCI Information" journal no. 25 (May 1998) at p. 16. Copy on file with CIRC.

Sanctions

An important deterrent in the fight against doping besides the risk of being caught (see above) is the disciplinary sanction (period of ineligibility) that is issued at the end of the results management process when the athlete has been proven guilty. Of course the purpose to deter must be balanced with the fundamental rights of the athlete. Up until the implementation of the WADA Code, UCI's practice in relation to sanctions was, compared to other sports, rather lenient.[226] Since the coming into force of the 2003 WADA Code the question of the appropriate length of sanction has been harmonised throughout the various sports. Prior to this, it was within the autonomy of the federations to draw up the respective rules. The UCI strongly opposed initiatives of harmonisation of sanctions by pointing out the following: "*The standardisation of…the sanctions applicable in doping cases is inadequate because it does not take account of the specific nature of each of the sports concerned. The physical fitness required to practise this exacting discipline would inevitably be destroyed by a suspension that is too long. More than ever, the UCI remains implacably opposed to any form of cheating, but it believes that the imposition of linear sanctions (suspension of identical lengths) in types of sport as different as cycling, walking or shooting would be inequitable because the repercussions for one and the other are such that they cannot be compared…The relative shortness of the suspension imposed by the UCI, far from suggesting any leniency, or worse, a pseudo clemency for doping, is in fact the result of a persistent search for an approach to dealing with doping that is both effective and equitable."*[227] Evidence on file suggests that Hein Verbruggen strongly opposed the concept of a "standard sanction" in the form of two years of ineligibility for a first ADRV as proposed by the 2003 WADA Code.

[226] See *e.g.,* CAS 1997/A/175 (anabolic agent and heavy stimulant): 1 year; CAS 1998/A/192 (anabolic agent): 9 months; CAS 1998/A/212 (anabolic agent): 9 months; CAS 1998/A/213 (anabolic agent): 9 months; CAS 1999/A/239 (anabolic agent): 8,5 months; CAS 2000/A/289 (EPO): 6 months out of which 3 months were suspended; CAS 2001/A/345 (EPO): 8 months; CAS 2002/A/358 (EPO): 1 year; CAS 2002/A/395 (growth hormone): 6 months; CAS 2002/A/431 (heavy stimulants and 2nd infraction): 4 years; CAS 2003/A/505 (narcotics): 6 months; failing to present to ICT (inadvertent ADRV): 1 month.
[227] "40 years of fighting against doping," UCI (2001) p. 5. Available: http://oldsite.uci.ch/english/health_sante/docs/40_ans.pdf.

TUE

During this period UCI appeared to have had a policy of accepting backdated prescriptions and to be rather lenient in applying the rules on TUEs. The practice was justified by arguing that, from a health perspective, it made little difference whether the prescription was provided before or after testing. Prescriptions were seen by riders as a means of covering up positive tests results at the competition. Even if those prescriptions were evidently made up (or if there were strong indications thereof), the matter was not investigated by the ADC. This leniency was criticised by the Independent Observers' report at the 2003 Tour.[228] Comparable cases, however, allegedly took place before that date with the examples of Laurent Brochard who won the 1997 World Championships in San Sebastian and tested positive for a prohibited substance, or the acceptance of a back-dated prescription for the corticosteroid case of Lance Armstrong at the 1999 Tour. Both these cases will be discussed below in the chapter related to UCI allegations.

This lenient approach only started slowly to change after the harmonization of the TUE requirements in the WADA Code. Only in 2004 did the UCI introduce a TUE process.

2.3.2. Evaluation of UCI anti-doping policies and structures (to 2006/2007)

The doping problem was well known to the UCI leadership and it was clear to everyone that doping was endemic in cycling. It is noteworthy that Hein Verbruggen in his programme to be elected President of the UCI in 1991 stated that "*doping is the most important problem the sport of cycling is confronted with. In order to efficiently fight it, in addition to controls, sanctions and close collaboration with other sporting agencies, a*

[228] Report of the Independent Observers Tour de France, p. 29 *et seq*.:"*The IO team reviewed the drugs declared in the reports and noted that 71.8% of the samples taken the riders had declared that they had taken a drug. In 60.6% of the samples taken, glucocorticosteroids were administered … The IO team confirmed that, in spite of the information from the UCI Anti-Doping Commission about the existence of justified medical grounds in every case where there was a positive result for glucocorticosteroids, the timescales between the date the sample was taken and the date entered in the health booklet when the substance was administered were extremely large. The IO team calculated these differences in twenty of the twenty-eight positive reports with triamcinolone … The IO team could find no reliable scientific data which could support a urinary excretion time of this duration. On two occasions the IO team did not find that there was any medical justification concerning the cases showing a positive result for glucocorticosteroids.*"

bigger place should be given to prevention as doping is a crucial problem for cycling."[229] After 1992, similar public statements became rare.

Instead, after becoming UCI president, it appears that the communication strategy was primarily to divert public opinion from the idea of responsibility for the doping problem lying with UCI. Doping was portrayed by UCI leadership as the faulty and surprising behaviour of a few individuals, but not as endemic group behaviour or as a structural problem within its sport. This is evidenced *inter alia* by various statements attributed to Hein Verbruggen in the press.[230] Furthermore, the UCI portrayed doping cases as erratic and unethical behaviour of certain few individuals beyond its control.[231] If anyone was to be blamed, it was others, but not the UCI.[232] Essentially, UCI management seemed to be of

---

[229] *See* Pierre Ballester, "Fin de cycle – Autopsie d'un système corrompu" (La Martinière, 2013) p. 41.
[230] *See e.g.* the "Cofidis affair": ""*There is no Cofidis affair and I don't have any interest in discussing it. I'm surprised that this is generating so much noise, two French cyclists who are positive. I see everybody getting involved, politicians, etc. … I've also seen that there were 45 tennis players on something and I haven't seen any involvement from the police or politicians there.*", cyclingnews on 28.1.2004; another example is Hein Verbuggen's alleged response when being confronted with reports in *L'Équipe* in which Gilles Delion and Nicolas Aubier complained how difficult it was to ride clean in a dirty peloton, he is quoted as saying "*I will presumably disappoint you, but I was not at all impressed, not at all, with the accounts given by riders like Delion and Obree. What we are dealing with here is guys at the end of their career who no longer can hang on. I found it cowardly, there is no other word.*"
[231] Hein Verbruggen: "*Jamais je pouvais m'imaginer l'ampleur du dopage dans une équipe comme Festina. C'était peut-être naïf de ma part, mais, quand je l'ai appris, je suis tombé de ma chaise, surtout que j'entretenais d'excellentes relations avec Bruno Roussel (directeur sportif de Festina, ndlr). Mais j'avais quand même entendu parler d'une caisse noire chez Festina. C'était une indiscrétion qui m'était parvenue par des coureurs qui avaient quitté l'équipe. Sur mon agenda, je note: "En parler avec Roussel. Malheureusement, quand je suis arrivé sur le Tour, Roussel venait de se faire arrêter. Même si j'avais su ce qui se passait réellement, qu'est-ce que j'aurais pu faire de plus?*" Translation into English: "I could never have imagined the extent of doping in a team like Festina. It was perhaps naive of me, but when I learned about it, I fell off my chair, especially as I maintained excellent relations with Bruno Roussel (sporting director Festina, ed.) But at the same time, I had heard of a black box with Festina. It was an indiscretion by riders who had left the team that reached me. On my diary, I noted, "In conversation with Roussel. Unfortunately, when I arrived at the Tour, Roussel had just been arrested. Even if I had known what was really going on, what more could I have done?" *see* Jean Louis Le Touzet, "Hein Verbruggen est à la tête du cyclisme mondial. 'Je ne suis pas le diable'. Le président de l'Union cycliste internationale justifie son action en matière de dopage, alors que l'UCI annonce aujourd'hui sa politique de suivi médical du peloton", *Libération* (10 Jan. 2000) http://www.liberation.fr/sports/2000/01/10/hein-verbruggen-est-a-la-tete-du-cyclisme-mondial-je-ne-suis-pas-le-diable-le-president-de-l-union-c_314896 (in French); This attitude remained unchanged during Pat McQuaid's era, *see* Tony Farrelly, "Tyler Hamilton and Floyd Landis are "scumbags" says UCI president", *road.cc* (23 Oct. 2012). Available: http://road.cc/content/news/69419-tyler-hamilton-and-floyd-landis-are-scumbags-says-uci-president.
[232] *See* Hein Verbruggen who was widely quoted as saying: "*If the public were satisfied with the Tour de France riders going 25 kilometers an hour (15 miles per hour), there wouldn't be a doping problem. But it wants 42 kilometers an hour, and there's only one way to get there -- by doping.*" Jonathan Mahler, "Lance Armstrong's Confession Is Just the Start", *Bloomberg* (17 Jan. 2013). Available: http://www.bloomberg.com/news/articles/2013-01-16/lance-armstrong-s-confession-is-just-the-start.

the view that doping scandals were not something that the UCI was responsible or accountable for.[233]

Not only did UCI leadership publicly disregard the magnitude of the problem, but the policies put in place to combat doping were inadequate. It is true that the UCI adopted and introduced the science that was available at the time (IRMS testing,[234] testing for haematological parameters, EPO-test). Credit must be given to the UCI insofar as it was at the forefront when introducing new testing techniques. The science, however, is only one part of the anti-doping strategy. In the context of an anti-doping strategy it is essential to get the right sample from the right rider at the right time to the right laboratory. In the CIRC's view more could have been done to put such a system in place. The approach to doping was one of containment, with a focus on health protection (you may dope, unless it is really bad for your health). There may have been times when there were not many other alternatives available besides this "health protection approach", because anti-doping science lagged behind (*e.g.* when the "no-start-rule" was introduced). However, one would have expected that at least when the EPO-test was developed, that UCI would have used all its efforts and resources to close the existing 10-year gap from the time EPO found its way into the peloton as quickly as possible and restore the credibility of cycling. However, this was not the case. When one looks at the tools available to UCI (Test Distribution Planning, ICT, OoCT, TUE, sanctions) there was no satisfactory commitment to push the fight against doping beyond the limits of health protection. There was little effort to be a step ahead of the dopers, rethink or assess the effectiveness of the Anti-Doping Program, change the testing strategy or to take riders by surprise in order to catch them out. Anti-doping policy was for the most part based on a predictable and quantitative approach. Going after the cheaters was perceived as a witch-hunt that would be detrimental to the image of cycling.

Since UCI's anti-doping strategy was directed against the abuse of doping substances rather than the use of them, only the visible tip of the iceberg was tackled. Deterrence was not an integral part of the strategy. Instead, CIRC agrees with the assessment that the

[233] *See* Hein Verbruggen in relation to the Festina Scandal (above); see Pat McQuaid's open letter to the French Sports Minister and to Dick Pound, dated 3 July 2006. Available: http://pedalmag.com/open-letter-from-uci-president-mcquaid-to-lamour-and-pound/.
[234] Isotope Ratio Mass Spectrometry.

policies of announcing sample collections, notifying riders and leaving them unattended gave riders the opportunity to adapt and to evade testing positive through medical supervision, whilst at the same time giving the impression to the public that cycling was trying to address the doping problem.[235] Once doping became visible in form of a rider testing positive the case was, if possible (*e.g.* through admittance of obviously back-dated prescriptions) "managed" away. In case an AAF had to be ascertained according to the rules, the available discretionary powers were used to issue relatively lenient sanctions. Deterrence was not part of the anti-doping strategy. All of this sent, willingly or unwillingly, the signal out to the peloton and the athlete support personnel that UCI condoned the use of doping substances as long as it stayed within acceptable medical limits.

The emphasis of UCI's anti-doping policy was primarily, therefore, to give the impression that UCI was tough on doping rather than actually being good at anti-doping. UCI portrayed itself as always being at the forefront of the fight against doping. However, it appears to CIRC that there was little impetus to address the roots of the doping problem or to discuss strategies against doping proactively; and it seems that such an active policy was seen as an impediment to the development of cycling and was, therefore, not encouraged. This impression of UCI's attitudes was also echoed by riders who spoke to the CIRC. The CIRC heard that people who knew better and criticised UCI's anti-doping approach inside or outside UCI could be threatened, silenced or did not dare to speak up. There appears to have been an environment in which any kind of criticism or even suggestion to improve the anti-doping strategy was regarded as subversive and not in the interests of cycling, and in which people that were vocal on anti-doping were side-lined.

There was little incentive for self-reflection within UCI leadership to reassess its anti-doping policy. This appears to have been true even when concrete problems were brought to the attention of the UCI leadership, and the CIRC considers that even then there was in general a refusal to analyse and to comprehensively investigate the matter and tackle the origins of that problem (*e.g.* DCOs, Lon Schattenberg-incident, Armstrong-incident, criticism by WADA, etc.). The CIRC considers that this general inability to follow-

[235] The Outer Line Perspectives on Doping in Pro Cycling – 1. Available: http://www.theouterline.com/perspectives-on-doping-in-pro-cycling-1-theo-de-rooij-2/.

up doping-relevant information and to actively investigate wrongdoings dominated also the following years of Pat McQuaid's presidency.

A factor that is reported to have continued UCI's institutional deficiency in the fight against doping is the lack of supervision over an IF's anti-doping policy. There are practically no sanctions against sport organisation and IFs in particular in case they do not implement an effective anti-doping strategy. It is true that the WADA Code contains wide-reaching obligations and sanctions for individuals who are implicated in doping. However, little sanctions and follow-up were provided for in the WADA Code for IFs not honouring their obligations.[236] It is the CIRC's view that too little substantive monitoring of the institutional obligations of the IFs and its Anti-Doping Program was practised in the past under the auspices of the WADA Code. Thus, there was little incentive for an IF to improve its anti-doping policy.

2.3.3. The period of improvements, new challenges and regular set-backs (2006—2013)

A turning point in UCI's Anti-Doping Program is when Anne Gripper took over the ADU in 2006. When she came in, UCI was under intense pressure. Operación Puerto (see above)[237] had been widely reported and the Landis scandal was all over the media. Anne Gripper had good contacts in the anti-doping community. Due to these contacts she was able to recruit people for the ADU that had previously gained experience in anti-doping with different ADOs. From 2006 onwards the staff recruited for the ADU/CADF is generally perceived internally and externally as dedicated and professional.[238] Lon Schattenberg left in 2007 which facilitated the change of strategy in anti-doping. Furthermore, Pat McQuaid raised the budget for anti-doping considerably. When Lon Schattenberg left, it appears that Philippe Verbiest's influence increased. It is reported that Philippe Verbiest always had the "*ear of the president*" and that he got more and more

[236] Furthermore, it appears questionable whether the IOC would make use of its powers to exclude an IF from the Olympic Movement, in the event the IF was not honouring its obligations.
[237] Several UCI staff stated that this scandal had a strong impact on UCI.
[238] iNADO Report – Final Audit report Doping Control Program – The UCI and CADF, 25 February 2014, p. 3. Copy on file with CIRC.

involved in political decision-making and anti-doping. The increase in workload for Philippe Verbiest made it necessary to enlarge the legal department.

Steady improvements to the existing tools

Beginning in 2006, the ADC/ADU gradually replaced a number of the existing DCO's (former Commissaires) for in-competition testing. Following various training sessions a lot of the old UCI DCOs were dismissed. New experienced DCOs were recruited, mostly from NADOs and NFs and regularly trained. Today, ICT is done for important races with CADF-trained DCOs or in cooperation, for example, with the NADOs of the country where the event takes place. The problems of the ICT-program described above (see above) were also tackled as of 2006. Counter measures both legally as well as logistically were put in place to better prevent leaking of information to teams and guarantee compliance with the rules.[239] Furthermore, chaperones were used. In addition, a more target-oriented testing strategy was put in place. This is also evidenced by the "secret list" that was leaked to *L'Équipe* in 2011.[240] The ADU (later on the CADF) would start collecting relevant information (riders' competition schedule, riders' performance, rumours, results from the ABP, etc.) and process them in order to better target riders for testing. Today nearly half of all the urine samples taken are tested for EPO (IC: 21%; OoCT: 93%).[241]

In addition, the ADU considerably improved the OoCT programme both quantitatively and qualitatively.[242] Quantitatively the number of OoCTs was considerably increased (2007: 1457; 2008: 5007; 2009: 6473; 2012: 6578). Today close to 50% of the tests are OoCTs (2012: 47%). In 2012, 53% of the CADF's budget was spent on the OoCT programme.[243] Qualitatively, there was a continuous effort to include intelligence in testing. In order to conduct OoCTs the ADU contracted professional external service

[239] However, rumors of non-compliance persisted for some time, *see* the 2009 AFLD report according to which UCI testers did not comply with the rules. Copy on file with CIRC.
[240] The "suspicious list" contained a ranking of the ten most suspicious teams for doping.
[241] See CADF business report 2012. Copy on file with CIRC.
[242] Vogelzang Committee Report on the Michael Rasmussen Case (12.11.2007), p. 14. Copy on File with CIRC.
[243] CADF Presentation Bergen 2013 (and CADF Business Report 2012). No figures are available for 2013 and for 2014. Copy on file with CIRC.

providers. This situation still continues to be in place. Today the OoCT and test distribution of the UCI/CADF is regarded as being comprehensive and allowing for target testing.[244] Some stakeholders have expressed that they feel that today UCI is a role model for other sports, or at least the anti-doping policy of UCI today is one of the leaders in the field.

Improvements were also made in relation to the TUE-process. Until 2004/2005 no real TUE-process had been implemented by the UCI. Riders would bring the relevant medical prescription/certificate to the doping control and Lon Schattenberg would examine the prescriptions/certificates and eventually accept them. Since it was relatively easy to get a TUE in the past a lot of riders were using prohibited substances in order to enhance their performance. Interviews with the CIRC suggest that more than half of the Tour were "*on cortisone with a prescription*". This is also backed by Pierre Bordry, former President of the AFLD who declared that "*in 2006, more than half of the riders of the Tour had TUEs.*"[245] These problems seem to have persisted also some time thereafter. Riders interviewed by the CIRC would state that the "old practice" was still common at the 2007 Giro and that a TUE could be obtained without any problems. The practice of applying for a TUE in order mask the use of doping substances without being sanctioned was also confirmed by a rider who declared to the CIRC that he himself had masked the use of prohibited substances through TUEs (see also above). From available information it appears that there was quite some tolerance in granting authorisations/exemptions to riders. Lon Schattenberg left UCI in 2007. The CIRC considers from its review of UCI's anti-doping programme that things seem to have improved significantly on an operational level by late 2007.

[244] iNADO Report – Final Audit report Doping Control Program – The UCI and CADF, 25 February 2014, p. 3. Copy on file with CIRC.
[245] N° 782 Sénat session extraordinaire de 2012-2013, rapport fait au nom de la commission d'enquête sur l'efficacité de la lutte contre le dopage. Available: http://www.senat.fr/rap/r12-782-1/r12-782-14.html#fn67 (in French).

Leap forward: ABP

The ABP represents the most significant step forward in the UCI's anti-doping programme. The history of the APB is best described in a paper by Francesca Rossi/Mario Zorzoli:[246]

> "*Several scientists were simultaneously developing different strategies related to the indirect detection of blood doping. The Australian and the Lausanne groups have intensively explored the possibility of introducing a multiparametric marker approach that takes into account different factors known to influence the biological variability, such as the technology applied, the athlete's gender, age, ethnic origin, and sports discipline. Contrary to what was applied at that time by the sporting authorities, a new concept was also taken into consideration: individual limits instead of population limits. As such, one could use the athlete's previous measurements as basal levels with each athlete becoming his or her own reference. The application of subject-specific reference ranges corresponds to what some authors had suggested at the beginning of the last decade. An initial practical application called the 'Swedish Blood Pass Project' was developed in 2005 by Berglund. All of these important scientific achievements convinced WADA to evaluate the feasibility of introducing an athlete's passport. The first step was the creation, in 2006, of a Haematological Working Group composed of scientists and representatives of international federations. These experts concluded that WADA could proceed with the implementation of an Athlete's Haematological Passport. They recommended measurement of indirect parameters (namely haemoglobin concentration and Off-hr score) in- and out-of-competition in order to generate profiles that would be computed with the Bayesian statistical model developed by the Lausanne Anti-Doping Laboratory. Each value, as well as the entire sequence of results, was to be evaluated, in the event that an athlete's profile Each value, as well as the entire sequence of results, was to be evaluated, in the event that an athlete's profile was found to be incompatible with typical physiological or medical conditions, a disciplinary procedure against the athlete could be initiated based on the presumption that a prohibited substance or method had been used. It was also agreed that standardized protocols should be established and followed in order to decrease the variability due to pre-analytical and analytical conditions. These protocols would explain how blood samples should be collected, transported, and analyzed. A meeting took place in Paris in October 2007, between WADA, the French sporting authorities, and the cycling family. There it was decided that UCI would launch, in 2008, a pilot project for the implementation of the haematological module of the Athlete's Biological Passport."*

On a procedural level the ABP operates basically as follows. An assessment of the rider's profile is made by a panel of three experts contacted by the Athlete's Passport Management Unit (*i.e.* the Lausanne laboratory). If the panel of experts comes (independently from each other) to the unanimous conclusion that the profile of the athlete is indicative of an ADRV, the CADF invites the rider concerned to provide an explanation for the abnormal values (*e.g.* medical explanations, such as pathologies, or

[246] Mario Zorzoli and Francesca Rossi, "Implementation of the biological passport: The experience of the International Cycling Union" (2010) DOI 10.1002/dta.173. Available: www.drugtestinganalysis.com.

further explanations such as training at high altitude, etc.). The expert panel will then reassess its previous evaluation in light of the explanations provided by the rider. In case the panel of experts confirms its findings, the LADS of UCI opens a disciplinary procedure against the rider.

The ABP had and still has a significant impact on the fight against doping in cycling. This was confirmed by all stakeholders (experts, CADF staff, riders, support personnel) interviewed by the CIRC and is also evidenced by statistical data.[247] The CIRC has been told that riders' profiles are much more normal today in comparison to the early days of the ABP. Even riders that in former times showed "abnormal" (*i.e.* suspicious) profiles show a more normal profile today. In the view of the experts this is not proof that no blood manipulation is going on today. Instead, the consequence to be drawn from this data is rather, as an expert has put it, that less blood doping is going on in cycling today and that the techniques are more refined (micro-doses). In that respect cycling is ahead of other sports in which still a much higher percentage of suspicious blood profiles (*i.e.* profiles that show much more variances) than in cycling can be detected. In summary it is therefore acknowledged that the ABP had a significant effect on the riders' behaviour and has helped to considerably level the playing field. Athletes, NADOs and laboratories have told the CIRC that only little advantage can be gained by applying refined doping techniques that stay under the ABP radar. Therefore, it is commonly held that it is much easier today to compete as a clean athlete competitively. Whether this change amounts to a "change in doping culture" as submitted frequently seems questionable. In interviews with riders and athlete support personnel it appeared to the CIRC that the basic problem was that athletes would go to the limit of what is detectable by the laboratories and this has not changed. Furthermore, the incentive to try out substances that might give a performance enhancing effect, but are not on the prohibited list is still very present in the peloton.

[247] Mario Zorzoli and Francesca Rossi, "Case Studies on ESA-doping as revealed by the Biological Passport", *Drug Test. Analysis* (2012): "*In the first three years of the UCI ABP project, 26 athletes who were part of the programme were found positive for the presence of ESA [erythropoiesis stimulating agents] in their bodily specimens (Table 1): 10 in 2008, 8 in 2009, and 8 in 2010. It is a very significant increase compared to 2007, the year prior to the introduction of the ABP, where only 3 athletes were convicted for blood doping (1 for ESA and 2 for HBT [homologous blood transfusion]). In most cases, it was the abnormal blood profile which raised suspicions leading to a targeted anti-doping urinary or blood test.*" Available: https://www.researchgate.net/publication/224708690_Case_studies_on_ESA-doping_as_revealed_by_the_Biological_Passport.

There are also problems related to the way the ABP operates.

. **Adaptation of the riders**: It appears that since the introduction of the ABP in 2008 the athletes have adapted to this new tool in the fight against doping (see above). In light of the fact that a lot of communication is going on in the peloton, most riders know everything about the ABP and how it works. There is, thus, a suspicion that a significant number of riders is out there that are not riding clean (see above). It is widely acknowledged that the "normalisation" of the riders' profiles is the consequence of a different doping strategy that enables the riders to stay below the ABP-radar. It has been submitted that the practice to make the ABP data immediately available to the athletes via Anti-doping Administration and Management System ("ADAMS") (or any other software) is counter-productive, since it furthers the process of adaptation by athletes. Athletes would be able to assess and monitor their blood values and make sure that they stay within pre-defined parameters through fine-tuning. In order to prevent the athletes from misusing the ABP-data for adaptation it has been suggested that the data should only be made available to the athletes with some delay. Whether this is the correct approach is highly disputed in the anti-doping community. Some oppose the delaying of the publication of the data for data protection reasons (the data belongs to the athlete or oppose it for medical reasons, in particular if the blood values could be indicative of serious illnesses). However, that fine-tuning by athletes is taking place is evidenced by the fact that some of the riders' ABP profiles are far too constant/stable, which cannot be considered to be normal in light of existing natural physiological variances.

. **Overly lengthy procedures**: It appears that a lot of ABP-proceedings take a long time. This is for example true for the recent Roman Kreuziger case. The rider was suspended after abnormalities were detected in his ABP dating back to samples taken in 2011 and 2012. It is no exception that riders are being sanctioned on the basis of the ABP-programme based on samples collected several years ago. Another example is the case of the rider Denis Menchov. On 14 July 2014 the UCI released the following statement with respect to the rider: "*The Union Cycliste Internationale (UCI) confirms that it has imposed a 2-year ban on Russian rider*

*Denis Menchov as a result of anti-doping rule violations based on his Athlete Biological Passport. The rider is declared ineligible until 9 April 2015 and is disqualified from the Tour de France 2009, 2010 and 2012, competitions during which abnormalities were clearly identified. The proceedings were initiated in 2013. The rider has exercised his procedural rights and accepted a proposal of sanction in accordance with the UCI Anti-Doping Rules. WADA and RUSADA have been duly inf*ormed".[248]

It is not quite clear what the reasons are for this situation. It has been submitted that the most cumbersome and time consuming part of the whole ABP-process was, for a long time, the administrative compilation of the documentation packages.[249] However, the expertise has also become much more difficult. This is due to the fact that much smaller variances in the ABP profile of riders are observed today (see above). Therefore the data has to be analysed carefully to prevent false positives. In order to qualify small variances as "abnormal" a lot of additional data has to be taken into account (time and place when the sample was taken, whether it is an ICT or OoCT, the competition schedule, results from urine analysis, patterns of analysis results, etc.). What the experts effectively are looking for is a doping scenario that explains the variances in the athletes' ABP. All of this takes time and may necessitate additional investigation (additional blood or urine tests taken at specific times and places). Some of the delays are also due to the complex ABP-procedure. CADF staff interviewed by the CIRC submitted that the procedure could take up to 8 months. The various steps leading to the opening of the procedure have been described above.

[248] Available: http://www.uci.ch/pressreleases/uci-statement-denis-menchov/ (emphasis added). The UCI was criticized for this because, *inter alia*: (i) there was no announcement of the opening of a proceeding against Menchov (contrary to the procedure adopted in other cases); (ii) the announcement of the sanction was inadequate (it is suggested that the UCI tried not to draw too much attention); (iii) a significant time lapse between the ADRV and the disqualification, *see e.g.* Shane Stokes, "Audio: UCI president Cookson rejects any suggestion of Makarov shielding Menchov", *Cycling Tips* (16 July 2014). Available: http://cyclingtips.com.au/2014/07/audio-uci-president-cookson-rejects-any-suggestion-of-makarov-shielding-menchov/.

[249] The burden of compiling the document package has improved a little recently. At the moment, document packages are no longer compiled for all the blood samples in the ABP. Rather the process concentrates on the "interesting" samples (mostly max around 10).

. **Statistics**: If one looks at the statistical data one observes that fewer athletes are being caught on the basis of the ABP today than in the early days (see above). Of course there are many reasons for this. First and foremost this is due to the adaptation of the riders to new doping techniques (micro-doses) to stay under the ABP-radar. These new techniques are much more difficult to detect. It has also been reported that the ABP-experts, at least to a certain extent, take too much of a conservative approach and that the lack of a plausible doping scenario is sometimes taken as an excuse to further investigate a case rather than bringing it forward as a disciplinary case. This has been described as frustrating by CADF-staff. It appears to the CIRC, however, that, at least in principle, there are good reasons for a cautious approach by the experts, which seems also to be in line with WADA recommendations. Apparently there is little data in relation to humans concerning natural variances of blood parameters over time and in different circumstances (altitude, stress, physical exercise).[250] In addition, there seems to be evidence that there are natural variances in the ABP of un-doped persons. Thus, it has been submitted to the CIRC that the search for a doping scenario is vital in order to protect the interests of the athletes. The amount of data available is also of concerns, because the more data is on file, the greater the likelihood that parts of the APB showing natural variances will coincide with a doping scenario. Therefore, it is important to look at the whole ABP and all the values and all the circumstances in which the data was collected. If variances are natural there will be no specific pattern, values will always be random. Things are different in case of a doping scenario because here values will vary from in and off-season, before, during and after races, etc. Variances will not be random at all times. At the end of the day the CIRC finds that it would be wrong to judge the effectiveness of the ABP by the number of riders sanctioned. First, it must be noted that all stakeholder acknowledge that the ABP has a huge deterrent effect. Secondly, the information gained through the ABP is a valuable source to target riders in the OoCT effectively. However, at this point in time there is little one can do to improve the ABP analytically, *i.e.* to make it more sensitive to doping. Improvement is only

[250] The CIRC is well aware that athletes know this, and will use these circumstances as an excuse even if they are not true, *i.e.,* claiming that they trained at altitude or slept in an oxygen tent, or (only then) provide certificates for medical conditions (sometimes alleging such conditions were existing for years).

possible by linking the information of suspicious ABP with the information obtained from the analytical results of urine samples as well as from investigations (whereabouts information, people the athlete works with, travel plans, etc.). All this data of course can no longer be processed manually, but needs computer programmes/algorithms in order to detect patterns.

Improvement in relationship with certain stakeholders

The working relationship with other NADO's in relation to testing improved once Anne Gripper was employed in 2006. This constituted a significant break with the past, as, according to the interviewees, many NADOs had generally experienced conflicts and resistance from UCI. Nevertheless, the early years of Anne Gripper were overshadowed by fierce conflicts with AFLD over testing at the Tour (see above). The relationship between both organisations only improved slowly. Since the CADF took over the relationship with all NADOs, cooperation has further improved. This holds in particular true for the NADOs in France, UK, Norway, Canada, Flanders, Switzerland, South Africa and New Zealand. Some problems, however, persisted in relation to the access to the ABP on ADAMS. These problems appear to have been solved today through various data sharing agreements. The good relationship has also been acknowledged in many interviews that the CIRC has conducted with NADOs.

Relationships between UCI's legal department/Philippe Verbiest and the various NADOs/NFs on a results management-level proved to be more difficult. The UCI was, up until 2015, one of the few federations that delegated disciplinary proceedings for its test results to the NADOs/NFs. This system was unsatisfactory for multiple reasons. First of all, it obliged the NADOs/NFs to defend a test ordered and conducted by the UCI and pay the costs for the respective disciplinary proceedings against the athlete.[251] Secondly, the NADOs, being responsible for all sports in their territory, would frequently not operate under the exact same rules as the UCI. Conflicts were, thus, due to and did arise. In addition, some of the NADOs have submitted that coordination between UCI's legal department and the NADO was bureaucratic and lacked transparency. It has also been

[251] These costs were sometimes very high.

submitted that delegating the disciplinary proceedings for UCI test results exposed some of the national bodies could give rise to bias, because they would frequently have to sanction a national hero and be under significant pressure.[252] Difficulties in relation to jurisdiction arose also from Art. 10 of the UCI ADR (ADRV where no sample collection is involved). According thereto "*UCI has jurisdiction for and these Anti-Doping Rules shall apply to any anti-doping violation committed by a License-Holder where no Sample collection is involved and that is discovered: (i) by the UCI, by one of its constituents or member Federations, by one of their officials, officers, staff members, members, License-Holders, or any other body or individual that is subject to the regulations of the UCI or one of its member Federations; or (ii) by a body or individual that is not an Anti-Doping Organization.*" Frequently disputes arose over who discovered what and who had jurisdiction over non-analytical cases.[253] The Lance Armstrong case (see above) is only one example of this.[254] The CIRC acknowledges and welcomes that these problems have been better dealt with in the new UCI ADR 2015.[255]

The relationship between UCI with the various laboratories was and is being described as very good. UCI was and is responsive to new analysis techniques available in the laboratories. Furthermore, UCI also provides doping relevant information to the laboratories and shares information on anti-doping activities with the laboratories through international scientific journals as well as workshops.

Ongoing Challenges

The above changes were implemented after 2006 in a difficult environment. Difficulties were due to budgetary restrictions, but also to UCI leadership. It is reported that Lon Schattenberg and Hein Verbruggen (who was no longer president of the UCI, but still around), unlike Pat McQuaid, were reluctant to embrace Anne Gripper's "*NADO-like*"

[252] Conflicts of interest have been reported, *e.g.*, for the Contador case. An exception to this rule, however, is the case of USADA and Lance Armstrong.
[253] See *e.g.* CAS 2008/A/1528 & 1546 (21 Jan. 2009); CAS 2007/A/1396 & 1402 (31 May 2010); CAS 2007/A/1362 & 1393 (5 May 2008).
[254] *See* United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 October 2012) p. 156 *et seq*. Available: http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf.
[255] *See* in particular Art. 7 and 8.1 *et seq*. 2015 UCI ADR.

approach. Furthermore, the relationship between UCI leadership and WADA leadership remained, for quite some time, particularly bad and progressively deteriorated (see above) to a point where employees of both organisations were not allowed to communicate with each other. Another source of difficulty was the bad relationship with ASO. There was constant speculation and accusations that one organisation was trying to harm the other through leaks of information to the public.[256]

Another important stakeholder with which UCI entertained particularly bad relations was USADA, which started the investigation against Lance Armstrong and was initially not supported by UCI in doing so. UCI did not or only reluctantly provided information to USADA in the course of its investigations and, in addition, also contested USADA's jurisdiction in order to protect Lance Armstrong from being pursued (see above). Eventually, UCI decided for the sake of its own public image to remain neutral on the issue of jurisdiction and to publicly distance itself from Lance Armstrong. In this climate of hostility between the two entities, USADA took the dispute a step further by publishing its Reasoned Decision on the internet.

The 2012 USADA Reasoned Decision and the 2015 AAA Leinders award contained a number of alleged wrongdoings of UCI (see Mario Zorzoli-case below; Floyd Landis allegations below and Martial Saugy case).[257] This manner of publishing allegations of ADRVs committed by third parties which are either not fully investigated or at all (public shaming), is not in line with the WADA Code. The WADA Code requires, in principle, that the ADO uncovering an ADRV either initiates anti-doping proceedings itself or provides the respective information to the competent ADO. Making allegations of ADRVs by disciplinary bodies in public is not provided for as a tool to combat doping in the WADA Code, since this touches upon sensitive issues such as personality rights of the persons involved and the right to be heard. The CIRC is of the view that if an ADO is not capable of

[256] See *e.g.* the Rasmussen incident.
[257] *See* Cycling News, "Lausanne laboratory gave Armstrong key to beating EPO test, says Tygart" (10 Jan. 2013). Available: http://www.cyclingnews.com/news/lausanne-laboratory-gave-armstrong-key-to-beating-epo-test-says-tygart; Owen Gibson, "Lance Armstrong: lab director denies helping cyclist beat drug tests", The Guardian (11 Jan. 2013). Available: http://www.theguardian.com/sport/2013/jan/11/lance-armstrong-lab-director-drug-tests; *and* Cycling News, "Saugy denies telling Armstrong how to avoid EPO positive" (11 Jan. 2013). Available: http://www.cyclingnews.com/news/saugy-denies-telling-armstrong-how-to-avoid-epo-positive.

conducting further investigations on its own, it should forward the information so far collected to the competent authority that is capable of doing so. Posting these allegations into the public domain is unacceptable. A coordinating and/or leadership role to follow-up on such information in case no appropriate ADO can be found to deal with the allegations could be given to WADA who should then decide what would be the best way forward considering the seriousness of the allegations while safeguarding the respective persons' fundamental rights.

Besides this difficult environment, implementation of improved anti-doping practices faced other legal and logistical obstacles that were not always easy to overcome:

. **Whereabouts information and missed tests**: the ADU started to operate a whereabouts system (that later on was taken over by the CADF). The collection of riders' whereabouts information was a paradigm shift both for the ADU-staff and the athletes. However, the system was also burdensome. This was true in respect of the information that had to be collected and managed from the athletes. Furthermore, the ADU was confronted with the fact that in order to administer the whereabouts system it was using a 20th century paper based fax and letterbox system with riders that were living in the 21st century and who were highly mobile. It appears that whereabouts filing, at least in the beginning, was not done consistently. Things started to improve only slowly, *i.e.* once ADAMS was implemented in 2007 and made compulsory for inserting the riders' whereabouts information (the implementation for the entire peloton was completed in 2008).

  The system was also not only burdensome for the athletes, but also for CADF/UCI because of the results management that went along with it. The ADU had to evaluate and assess the individual explanations given by the athletes in case of a missed test. The administrative burden was high and in order to cope with it the ADU initially adopted a "*more lenient attitude because in administrative terms the research required to find and explain the reasons for a missed test take a great deal of time and are very expensive*."[258] Despite the directions given in WADA's

[258] See "Minutes CADF-council meeting" (10 Sept. 2009). Copy on file with CIRC.

applicable International Standard it took the ADU/CADF considerable time to put protocols in place on how to deal with whereabouts failures and when and how to accept justifications provided by riders on filing failures. Because of this lack of transparency, it was reported that decisions taken in that respect were sometimes considered not to be just and fair.

The lack of protocols and the rather lenient approach in the context of results management concerning missed tests resulted in the so-called "Rasmussen incident" in 2007. Michael Rasmussen was wearing the yellow jersey in the 2007 Tour, when it was announced that he had been suspended from the Danish national cycling team for the forthcoming UCI World Championships and 2008 Beijing Olympic Games. Michael Rasmussen was also suspended by his team. The reason for his suspension was that he had provided wrong information on his whereabouts for a three-week training session during which he was supposed to be in Mexico but was spotted in Italy, and was unavailable for testing during that period. Michael Rasmussen had three missed tests/filing failures. According to UCI ADR a disciplinary proceeding should have been initiated against the rider. Furthermore, Michael Rasmussen would not have been eligible to participate in the 2007 Tour, because of Art. 220 UCI ADR, which provided as follows: "*In case of a recorded warning or a missed test in a period of 45…days before the start of a Major Tour, the Rider is not allowed to participate in that Tour*." Despite these provisions only a warning was issued against Michael Rasmussen and his team (after consultation between ADU and Lon Schattenberg). Available information suggests that the decision to issue a warning, contrary to the UCI ADR, was taken autonomously by the ADU/ADC without interference from UCI leadership. It appears that the ADU/ADC was scared of the legal consequences deriving from a strict application of the rules and that it did not want a "new style" doping issue hit the headlines prior to the Tour. Problems relating to the consistent handling of missed tests/filing failures persisted until 2011[259] when UCI's legal services/LADS

[259] Another case where problems arose in relation to the handling of missed tests/whereabouts information is the case of Gregory Baugé, who was sanctioned after three violations of whereabouts failures. See also *Le Monde*, "Dopage : Grégory Baugé, suspendu et déchu de son titre mondial pour manquement aux obligations de localisation" (6 Jan. 2012). Available: http://www.lemonde.fr/sport/article/2012/01/06/dopage-gregory-bauge-suspendu-et-dechu-de-son-titre-mondial-pour-manquement-aux-obligations-de-localisation_1626615_3242.html (in French).

took over the results management and created and implemented databases, logs and electronic filing systems.

. **OoCT**: the applicable rules for OoCT provide that the athletes must file whereabouts information (if they are in the RTP). In particular, athletes must provide a time-slot of 60 minutes (between 06:00 and 23:00) per day when they are available for testing. It has been submitted that the 60-minute time-slot was dangerous, as athletes and their doctors could regulate the doping administration around it. This fear is not far-fetched considering the skill of athletes to adapt their doping schemes to the regulatory framework. The whereabouts-system is also being put to test when riders change their whereabouts repeatedly and at the very last minute. This increases the logistical difficulties for the DCO to reach the athletes. Finally it has been submitted that NADOs have experienced a significant rise in missed tests or filing failures, since the rules provide for three strikes before being sanctioned. Thus, riders prefer having a missed test or a filing failure instead of risking an AAF.

. **Chaperone system**: UCI started to systematically use chaperones in 2008. However, it took some time for the chaperones to serve their purpose. Part of the reason for this, at least for post-competition ICT, was due to sport-specific logistical obstacles. For example, chaperones had to be well-positioned at the finish-line of the race in order to be able to identify and notify the riders selected for sample collection. Frequently riders would cross the finish-line in a pack of 30-50 or even more riders, at a fairly high speed with their faces or numbers on their jerseys being barely visible. Furthermore, the riders would not automatically stop at the finish line, but slow down for another 100 – 500 metres. Quite often, the finish area would be packed with coaches, fans, team personnel and cars. In such a context it was not easy for a chaperone to make contact with the rider and to monitor all of his movements.[260] Proper education of chaperones and experience was crucial for the chaperone system to work effectively.[261] It took a while to put

[260] See *e.g.* CAS 2009/A/1744 (27 July 2009).
[261] See iNADO Report – Final Audit report Doping Control Program – The UCI and CADF, 25 February 2014, p.7. Copy on file with CIRC.

such a system in place. By 2010 it was acknowledged that the chaperone-system was, in principle, working well.[262]

. **External service providers**: the use of external service providers was, at least in the early days, not by itself a sufficient guarantee for the required quality standard of testing. It has been repeatedly reported that there were problems with the behaviour of some of the DCOs recruited by external companies when carrying out an anti-doping control. Some of these problems seem to persist today. The external companies, in principle, chose their personnel autonomously. Neither the UCI nor the ADU/CADF had an influence on the recruitment policy of the service providers. The requirement for certification as well as the fact that the market for external anti-doping services is competitive helped to improve the situation. Furthermore, constant monitoring of the quality of the respective service providers is necessary. There is also a certain danger that the Test Distribution Plan as well as the testing strategy is weakened or watered down on an operational level by these profit-orientated external service providers, since these service providers must balance the testing requirements of their principal with costs-aspects. It comes as no surprise that some service-providers implement the anti-doping strategy of the ADU/CADF more stringently or apply more efforts than others. This is evidenced by the fact that some of the companies would, on average, declare more often than others that the athlete could not be reached at the venue/place indicated according to the whereabouts information.

. **Gaining field knowledge**: gathering field knowledge from the peloton to further improve the testing strategy is a difficult task. This sport specific information of what is going on in the peloton is difficult to access for the anti-doping community (ADU/CADF, NADOs), because they are perceived as "prosecutors" and, thus, little information is passed on from the peloton to "the other side". It appears to the CIRC that some opportunities were and are still missed to get access to this information:

[262] Report of the Independent Observers Tour de France 2010 (28.10.2010), p. 9. Available: http://d3epuodzu3wuis.cloudfront.net/2010-10-28+WADA+Independent+Observers+Report+TDF+2010.pdf.

- Whistleblowers: after Operación Puerto became public a few riders that had been discovered to be involved in the scandal decided to confess and contacted the UCI. These riders were in a difficult situation. One of the riders has put it as follows: "*At the moment, confessing is not encouraged and it is then difficult to find another team. Effectively a life ban is imposed by the teams (not by the relevant authority). Teams run by the same people - all in cycling for a long time and part of the omerta. At the moment the incentive to confess is zero*." However, the information provided from whistleblowers is important and necessary in order to improve the Testing Program. In addition, it might also provide intelligence for targeting specific riders or traffickers. There is evidence that the information provided by riders confessing to UCI was also used by the ADU/CADF for improving anti-doping testing strategies. However, it also seems that the primary focus of UCI was on the (difficult) disciplinary aspects of the cases, *i.e.* on deciding on the appropriate sanction for such riders. The focus, thus, was on the individual aspect of the case rather than tackling and investigating the structural problems of doping and the doping networks behind the individual cases. Furthermore, the general attitude in the context of disciplinary sanctions was to be strict on whistleblowers. There was no general strategy to actively encourage whistleblowing. Instead, riders reported that the message sent out by UCI leadership in case they went public was ambiguous and hostile. An example of this can be found when Bernhard Kohl went public. In relation to this incident Pat McQuaid is quoted in the press as follows: "*I would not put a lot of faith in what he [Kohl] says. It is always guys who get caught and thrown out who start reflecting a little bit, preparing a book, and they come out with anything. Unless we have proof, we can not go and do anything*."[263] Another example is the rider Jesús Manzano who went public with his claims of doping in the Kelme team and started the trial of Dr Eufemiano Fuentes (see above). In this context Hein Verbruggen is cited as follows: "*I was extremely, unhappily*

[263] Gregor Brown, "UCI president McQuaid defends Menchov", *cycling news* (30 May 2009). Available: http://www.cyclingnews.com/news/uci-president-mcquaid-defends-menchov.

surprised by Mr. Pitallier's statements saying he found it scandalous to sanction Mr. Manzano. Why not sanction a cheater for the simple reason that he decided to talk? We have to remember that it's the cheaters that are talking. If they're protected by the directors, we have to ask ourselves some questions."[264] When Floyd Landis finally told the public about his doping practices, Hein Verbruggen is quoted to have responded to him as follows: "*Now here comes a person like you (and with your records!) who tells me I am dishonest and even repeats this in public. What mentality one must have to do things like that to other persons?"*[265] Furthermore, Pat McQuaid is alleged to have qualified Tyler Hamilton and Floyd Landis, the two cyclists whose revelations did a lot to bring Lance Armstrong down, as "scumbags".[266] UCI-staff submitted that there were no directions by UCI leadership and no general policy guidelines to discourage riders from coming forward. However, UCI staff also declared that they were overwhelmed by these cases and had no time and resources to implement general guideline policies in order to make whistleblowing an integral part of fighting doping. Rather they dealt with them, depending on their resources, on a case by case basis. It has been felt that as a consequence of this lack of policy, athletes were discouraged from disclosing information to UCI instead of coming forward and, thus, that an important opportunity had been missed. The proper policy seems to the CIRC to be to routinely contact and invite riders that have tested positive to give "substantial assistance" on helping to prosecute other athletes or athlete support personnel in return for a reduction on sanctions. The substantial assistance strategy has been further enhanced in the new WADA Code. Some NADOs rightly seem to make extensive use of this possibility and, thus, gain impressive field knowledge and information for further investigations. The CIRC encourages the UCI/CADF to do the same. However, the CIRC also

[264] Cillian Kelly, "Hein Verbruggen: personification of the Omerta", *crank punk* (6 Dec. 2013). Available: http://crankpunk.com/2013/12/06/hein-verbruggen-personification-of-the-omerta/.
[265] Cillian Kelly, "Hein Verbruggen: personification of the Omerta", *crank punk* (6 Dec. 2013). Available: http://crankpunk.com/2013/12/06/hein-verbruggen-personification-of-the-omerta/.
[266] Tony Farrelly, "Tyler Hamilton and Floyd Landis are "scumbags" says UCI president", *road.cc* (23 Oct. 2012). Available: http://road.cc/content/news/69419-tyler-hamilton-and-floyd-landis-are-scumbags-says-uci-president.

acknowledges the necessity to carefully weigh and assess the information that is obtained through such plea bargaining. In particular before making allegations gained through plea bargaining public, allegations need to be corroborated and assessed. Such information should not be lightly accepted as truth, since riders have an incentive to distort the facts of their story in search of the highest sanction reduction possible.

- Antennas in the peloton: most of the ADU/CADF staff do not have a specific cycling background with links into the peloton. This may be good in relation to independence. However, this may be detrimental in respect of information gathering in the field even considering that the CADF-personnel might have a lot of (important) exchanges with NADOs and other ADOs (see above). It appears that CADF personnel are hardly ever in the field (even the ICT and OoCT are mostly performed by third persons, little first-hand knowledge in that respect). It is a challenge for ADU/CADF staff to spot and pick up information in the field,[267] which is even more difficult in view of the fact that the ADU/CADF is perceived in the field as a prosecutor. At the end of the day CADF is, in relation to "what is going on in the peloton", very much dependent on external antennas. An important source for "ground information" is the UCI itself, which has a lot of sport specific knowledge and on ground information. The desire for independence of the CADF, however, has made the flow of this kind of information (particularities of training, race calendars, informal contacts into the field, rumours in the peloton, etc.) more difficult. There is a certain danger that following CADF's move to independence it is being cut off from important UCI sources of information and is operating in isolation. This fear has been expressed inside UCI/CADF. However, this perception has also developed outside.

[267] It is unlikely that this challenge will be adequately addressed by creating a new pool of experts that will only meet twice a year to give inputs/information to the CADF, see CADF Presentation Bergen 2013, slide 22. Copy on file with CIRC.

. **Investigations**: the Anti-Doping Programme is usually described in a process-oriented way. According thereto certain tasks have to be undertaken (*e.g.* planning of ICT and OoCT, ABP, TUEs, investigations, results management, appeal, education, etc.). It is important to specialise in and focus on these various modules of anti-doping in order to improve things. However, there is also the danger that the big picture is lost through this kind of compartmentalisation. Information collected in one of these modules may also be vital for devising the best strategy in other modules. This is particularly true when devising the Test Distribution Plan or testing strategy, which should reflect a qualitative approach, *i.e.* a strategy based on intelligence rather than on a quantitative approach. The CADF has only started to implement such a system. When devising its Test Distribution Plan it tries to take various limited sources of information into account (information from riders coming forward to UCI and providing information,[268] observing the behaviour of riders, their results, their contractual situation with the teams, observations made by DCOs during doping control, information or suspicious results from the ABP/testing or if and to what extent the riders comply with their filing duties in respect to whereabouts information). However, the CADF concedes that much more could be done in a much more systematic and more comprehensive manner. CADF looks in this respect to UK Anti-doping ("UKAD") as a model for implementing an investigative department. As from January 2015 CADF plans to employ an analyst/intelligence coordinator with a criminological professional background in order to help devise and implement intelligent testing strategies. In addition an investigative software programme will be used that links and evaluates historical data of teams, riders and team managers. Furthermore, the CIRC is of the view that there should be a reporting system in place according to which investigations are launched as soon as certain structural failures are reported in the field of anti-doping (problems with DCO, external service-providers, etc.). There must be a professional follow-up in all cases in which deficiencies or irregularities are made aware to the UCI. In order to further such investigations, it should be made mandatory for staff, licence holders and other

[268] CADF participates in these interview sessions.

members of organs of UCI and its federations and subsidiaries to cooperate with these investigations.

. **Focusing on top road cyclists:** the focus of UCI's effort has had the effect that part of the doping problem has shifted to layers below the top road cyclist level. It has been reported by riders and ADOs that the doping problem has grown more prominent in the group of U23 riders and particularly within continental teams. In this group of cyclists there are many athletes that want to turn professional and/or look for good contracts and are, thus, particularly vulnerable to doping. Furthermore, it is reported that a lot of doping is going on in the Masters categories and among amateurs. This finding is corroborated also by the situation in Italy. In Italy the amateur sport is monitored by the Commission for the Monitoring and Control of Doping and the Protection of Health in Sporting Activities ("CVD"). It appears that the percentage of AAF in relation to the samples taken by the CVD is significantly higher than by the NADO (CONI).

. **Corticosteroids**: there is widespread dissatisfaction within the anti-doping community with the way the problem of corticosteroids is handled. The practice to allow certain routes of administration is generally perceived as problematic and provides a loophole for athletes to mask a prohibited use of that substance. The introduction by UCI of the corticosteroids test at the 1999 Tour highlighted the prevalence of its use in the peloton as 26 riders were found to have been using corticosteroids during that Tour. Corticosteroids are used primarily as an anti-inflammatory and for pain relief. They can be administered locally, or systemically through a pill or intravenously. Classic side-effects include digestive and neuropsychiatric complications, susceptibility to infections, problems with skin, movement and vision, and endocrine complications, as well as tendon rupture following corticoid infiltration. Long term corticoid use may have a negative effect on bones, leading to an increased risk of osteoporosis and fractures as well as osteonecrosis.[269]

[269] Laboratoire Suisse d'Analyse du Dopage, Glucocorticosteroids (or corticosteroids or corticoids). Available: http://www.doping.chuv.ch/en/lad_home/lad-prestations-laboratoire/lad-prestations-laboratoire-liste-methodes/lad-prestations-laboratoire-liste-methodes-corticos.htm.

. **TUE Committee**: the report issued by iNADO on 25 February 2014 contains the following conclusion: "[t]*he UCI Doctor handles and makes decisions on all TUEs and demonstrated simple cases and other more complicated cases during the audit. A TUE Committee was appointed several years ago but does not appear to be used. The International Standard for Therapeutic Use Exemptions requires a TUE Committee to be established and for this Committee to review TUE applications*". On the basis of this consideration a specific recommendation was formulated to the UCI and CADF, namely that "[t]*he TUE Committee should be revitalized, allowing them to review TUEs, thus also ensure that limited access to ADAMS is secured to medical personnel for the purpose of reviewing the TUE applications only*".[270]

In June 2014, the UCI was criticized for having granted a TUE to Chris Froome at the 2014 Tour de Suisse. At the centre of the criticism was the procedural issue raised already by iNADO in its report that the TUE had not been issued by a "TUE Committee", but by a single UCI staff member.[271] The TUE itself had not been covered up or hidden, since it was properly entered into on ADAMS. Thus, WADA had access to it and could have, in case it did not agree with the issuance of the TUE, reversed UCI's decision. Following this incident the practice was changed within UCI and a TUE Committee composed of 6 members was set up on 1 July 2014.[272] Despite being raised at the beginning of 2014, it took another high-profile incident before the deficiency was addressed.

. **Unequal treatment:** the concern was frequently voiced in interviews that the current anti-doping policy in place provides for unequal treatment. This however is detrimental for the fight against doping and the level of acceptance of the stakeholders involved. In this context several points have been raised:

---

[270] *See* iNADO Report – Final Audit report Doping Control Program – The UCI and CADF, 25 February 2014, p. 7. See also p. 2 of the same Report. Copy on file with CIRC.
[271] *See e.g.* Shane Stokes, "Audio: UCI president Cookson rejects any suggestion of Makarov shielding Menchov", *Cycling Tips* (16 July 2014). Available: http://cyclingtips.com.au/2014/07/audio-uci-president-cookson-rejects-any-suggestion-of-makarov-shielding-menchov/; *and* Velo News, "UCI accused of allowing Froome unfair use of corticosteroids" (15 June 2014). Available: http://velonews.competitor.com/2014/06/news/uci-accused-allowing-froome-unfair-use-corticosteroids_331970
[272] *See* Terms of Reference of the TUE Committee attached.

- Different testing capacities: it has been pointed out that one of the reasons for unequal treatment rested with the fact that the various laboratories had not the same testing capacities. It is true that WADA enforces certain minimum levels on WADA-accredited laboratories. However, it is equally true that some laboratories are able to detect smaller thresholds of prohibited substances than others. Thus, depending on where a sample is analysed it may turn out to be an AAF or not. The Alberto Contador case at the 2010 Tour is a good example for this,[273] as it was reported to the CIRC, only the Cologne laboratory was at that time capable of detecting the minuscule thresholds of clenbuterol in Alberto Contador's sample.

  It appears to the CIRC that to a certain extent the question where a sample ends up being analysed is not the result of a targeted strategy. Instead, it appears to be, at least in some instances, the result of a budgetary-driven decision. The laboratories are in competition with each other for sample analysis. Since testing is a cost-sensitive issue, a decision by an ADO where to send a certain sample for analysis is often not based solely on whether or not the laboratory in question has the best performance level. Instead, samples are frequently sent to the laboratory that provides the cheapest but not necessarily the best services. The CIRC, however, finds that any anti-doping policy should try to focus first and foremost on a qualitative approach.

- Differing testing menu: some of the prohibited substances and methods that are allegedly being used today are not routinely tested for in the laboratories, which only analyse a certain standard menu. Substances not included in the standard menu, for which there are tests, are only tested for upon request and charged extra. In principle, IFs are routinely informed what new tests have been developed by the laboratories. However, IFs very often stick with the standard menu and do not request extra tests also for cost reasons. For example, it has been reported to the CIRC that a certain doping product was being used by cyclists of a certain country. The CIRC inquired with laboratories

[273] *See* CAS 2011/A/2384 & 2386 (6 February 2012).

whether there was a robust test to detect that substance. Laboratories affirmed that some of the laboratories (however not in the country of the riders) were able to detect that substance, provided that this was requested by the ADO and paid for additionally. Depending on the capacities of a laboratory where the sample ends up being analysed and depending on whether or not the ADO ticks off the box for specific additional testing for that substance, the doping athlete will be caught or not. It appears that the likelihood for this will very much depend on the kind of links the respective ADO has into the peloton and on whether or not there are budgetary restrictions. To sum up, it appeared to the CIRC that the likelihood of a rider testing positive when competing in an event of the country where the laboratory was not able to perform the specific extra test was small. Some of these deficiencies will hopefully disappear once the new technical document of WADA (Technical Document for Sport Specific Analysis) will be applied.[274]

- Variances in sanctions: it has been submitted to the CIRC that there is inequality also in relation to sanctions. It is true that there is a striking difference when looking at the period of ineligibility of the sanction against Lance Armstrong and certain riders that have testified against him. The range goes from 6 months up to a lifetime ban. CIRC is of the view that this difference in treatment can hardly be justified by looking at the gravity and/or seriousness of the ADRVs in question.[275] It appears to the CIRC that the doping practices of Lance Armstrong were not any different to those of many other riders. CIRC has had the opportunity to interview a lot of other riders and team personnel who have confirmed that the peloton was for a long time doping infested and that more or less identical doping practices were adopted throughout the peloton. All of this is of course no excuse or justification for Lance Armstrong's behaviour and there cannot be a shadow of a doubt that

[274] *See* WADA publishes Technical Document for Sport Specific Analysis (2 Oct. 2014). Available: https://www.wada-ama.org/en/media/news/2014-10/wada-publishes-technical-document-for-sport-specific-analysis.
[275] The Reasoned Decision states that Lance Armstrong's achievements: "*were accomplished through a massive team doping scheme, more extensive than any previously revealed in professional sports history*", United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 Oct. 2012) p. 5. Available: http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf.

such behaviour warrants a harsh sanction. However, equal treatment is a fundamental principle on which the fight against doping and its acceptance by all stakeholders is based. At the end of the day, the difference in treatment can only be justified by the fact that some of the riders, contrary to others, chose to break the omerta. Whether this alone is justification enough for such a difference in treatment has been questioned by many people the Commission spoke to. By adopting the WADA Code the anti-doping community has decided, in the CIRC's view correctly, that the advantages of obtaining information through plea bargaining with athletes must be given priority over the principle of equal treatment of athletes. Of course this entails a great responsibility for ADOs that use this important tool in the fight against doping. They must offer the same opportunity to come forward with valuable information to all athletes alike and adopt similar protocols when it comes to rewarding the athletes with reductions/suspension on sanctions for the information provided.

- Little interest in Athlete Support Personnel: it appears that in the past the UCI/CADF's Anti-Doping Program was concentrated on testing athletes and to a far lesser extent to investigate ADRVs of athlete support personnel. One of the reasons for this is that ADRVs of athlete support personnel can only be detected through investigations. However, so far the UCI/CADF did not have a functioning investigation unit. Limiting the anti-doping strategies to athletes causes inequality to a certain extent, because it is hardly justifiable to pursue only athletes for an ADRV, but not the athletes support personnel that were involved in the same infractions. The CIRC encourages the UCI to investigate also past ADRVs of athlete support personnel within the statute of limitation period, if this support personnel is still working in cycling. It causes a great deal of inequality if some of them are sanctioned by individual NADOs and a large part of other athlete support personnel are allowed to continue working with teams and athletes.

. **Sanctions**: the WADA Code allows signatories little manoeuvring in relation to sanctions. According to Art. 23.2.2 of the 2015 WADA Code the provisions on

sanctions "*must be implemented by Signatories without substantive change*." However, it is compatible with the WADA Code to strengthen the responsibilities of cycling teams in relation to anti-doping and to provide sanctions for the team in case team members are found to have committed an ADRV. The CIRC welcomes the new provision on suspension in Art. 7.12 UCI ADR which provides, *inter alia*, as follows: "*If two Riders and/or other Persons within a Team registered with the UCI are notified within a twelve-month period of an Adverse Analytical Finding for a Prohibited Method or a Prohibited Substance that is not a Specified Substance, or receive notice of an asserted anti-doping rule violation arising from an Adverse Passport Finding or Atypical Passport Finding after a review under Article 7.5 or other asserted anti-doping rule violation as per Articles 2.5, 2.6, 2.7, 2.8, 2.9 or 2.10, the Team shall be suspended from participation in any International Event for a period determined by the President of the UCI Disciplinary Commission or a member of the Disciplinary Commission, taking into account all the circumstances of the case. The suspension shall not be less than 15 days and not more than 45 days*."

Retesting

UCI is one of the few IFs that perform long-term storage of samples, in order to allow re-analysis of suspicious samples with new technical means. In interviews with CIRC riders and other stakeholders, they have acknowledged that this anti-doping tool has a strong deterrent effect. However, it appears to the CIRC that until now there is no comprehensive strategy for retesting samples (what athletes, what events, how far back in time. Actions seem erratic and only minimum level.) The lack of strategy has also been reported to the CIRC by other stakeholders. Retesting is only done on specific request by the IFs. Such requests appear to be seldom.

Evaluation of UCI anti-doping policies and structures (after 2006/2007)

. The time period starting from 2006/2007 is marked by steady improvements and a growing willingness to combat anti-doping at its roots. The original policy of containment is abandoned in favour of a policy that tries to catch the cheaters. Within a short period of time important changes were decided and implemented,

such as the introduction of OoCT, better targeting of the testing, the introduction of the ABP and the transformation of the ADU into the CADF. Funding of anti-doping has equally improved. In particular, teams and event organisers contribute substantially to the funding of the anti-doping programme. All these measures have, so the CIRC has been credibly told, changed the behaviour of elite road cycling considerably. The CIRC considers that the reason why the public has not acknowledged and credited these positive changes the way it should have, is probably due to what CIRC views as hesitant and poor leadership of UCI. Constant directions from management in relation to anti-doping operations, persisting disputes with other stakeholders in the field of anti-doping, poor public management of crisis situations (*e.g.* comeback of Lance Armstrong, Alberto Contador, jurisdictional disputes over Reasoned Decision, accepting donations from Lance Armstrong), general problems in good governance, close relationships between UCI leadership with riders (in particular with Lance Armstrong) displaying obvious potential conflicts of interest and a devastating election campaign in 2013 have ruined UCI's public credibility also in anti-doping. The new leadership that came into power in 2013 tries to avoid these past mistakes. Relationships with other stakeholders have significantly improved, influence on CADF's anti-doping operations has ceased. However, it appears to the CIRC that the transition to more independence of the CADF has some challenges too. The concept to divide tasks between several units/departments within and outside of UCI is understandable when looking at past interferences from UCI leadership. However, the rather complicated division of tasks renders coordination more difficult and seems to hamper the flow of information.

. Anti-doping is not a static matter. Once a new level is attained, the battle is far from won. Instead the history of anti-doping is marked by a constant adaptation of those that seek to cheat and those that seek to catch them. Therefore, a good anti-doping policy is marked by the constant strive to improve the existing tools, search for new strategies, coordinate with others in the field and to prevent all kinds of routines that facilitate and encourage adaptation. Even though UCI's anti-doping programme today belongs to the best ones among IFs, the CIRC sees room for further improvement. This is true for information gathering through

investigation. CIRC welcomes the idea of the CADF to install an intelligence unit to better target doping athletes and to pursue non-analytical ADRVs. In addition, the CIRC is of the view that the tool of re-testing has not been sufficiently explored and applied. The CIRC encourages the UCI/CADF to look more into ADRVs of athlete support personnel. The CIRC is alarmed by interviews according to which CADF's concentration on elite road cycling has pushed the bulk of the anti-doping problems to other levels, such as the amateurs, the Continental Teams, young riders turning professional. In this regard coordination is needed between NADOs and the CADF to avoid blank spots on the sporting map.

. UCI/CADF staff involved in anti-doping is generally held in high regard. However, UCI/CADF are encouraged to install proper reporting so that they are able to better check and assess the quality of personnel employed by it and external service providers.

. Findings through the ABP take a long time. The CADF is encouraged to examine whether the process can be accelerated and what additional information, *e.g.* through investigation, could be used to facilitate the search of a doping scenario. Furthermore, UCI/CADF is encouraged to examine together with other stakeholders what can be done to further prevent the leaking of information into the public. This seems to be an ongoing problem.

2.4. FACTS AND ALLEGATIONS CONCERNING IRREGULARITIES BY THE UCI WITH REGARDS TO DOPING

CIRC investigated three types of allegation concerning irregularities by UCI in relation to doping, which are taken from open sources or direct testimony:

. Allegations of corruption;
. Allegations of breaches of the ADR; and
. Allegations concerning the preferential treatment of certain riders.

2.4.1. Allegations of corruption

The CIRC recognises that the definition of corruption varies across different jurisdictions. According to the Organisation for Economic Co-operation and Development (OECD), a frequently used definition that covers a broad range of corrupt activities is "*the abuse of a public or private office for personal gain*".[276] However, it is noted that the CIRC is not tasked with any prosecutorial role, and therefore the definition is provided merely to give context to the allegations below.

2.4.1.1. Disappearance of Lance Armstrong's positive test result at the 2001 Tour de Suisse

In their affidavits provided to USADA, Tyler Hamilton and Floyd Landis[277] declared that Lance Armstrong had told them separately that he tested positive at the 2001 Tour de Suisse. Lance Armstrong allegedly went to UCI's headquarters and managed to make the positive test disappear. Floyd Landis also claimed that this was as a result of a financial agreement with Hein Verbruggen.

On the basis of the documents in our possession, as well as oral testimony and results from the Lausanne laboratory for the 2001 Tour de Suisse, the CIRC has compiled the following facts:

. On 1 April 2001, UCI approved a test for EPO by means of urinary analysis alone, developed by the Châtenay-Malabry laboratory. This test was used for the first time at the end of the Flèche Wallonne on 8 April 2001 and resulted in the Swiss rider Roland Meier testing positive on 18 April 2001. Meier appealed to CAS against the decision of Swiss Cycling in August 2001 to apply an eight-month suspension. The Danish rider Bo Hamburger tested positive for EPO as a result of an OoCT on 19 April 2001. Bo Hamburger had not been sanctioned by the anti-

[276] *See* http://www.oecd.org/daf/anti-bribery/41194428.pdf, p. 22.
[277] Affidavit of Floyd Landis, p. 4, and Affidavit of Tyler Hamilton, pp. 13-14. *See* United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 Oct. 2012). Available: http://cyclinginvestigation.usada.org/

doping committee of the Sports Confederation of Denmark by August 2001,[278] which led the UCI to lodge an appeal with CAS.

. The EPO test was used during the Tour de Suisse from 19-28 June 2001 and samples were analysed by the Lausanne laboratory. Lance Armstrong was tested five times during the 2001 Tour de Suisse: on 19 June, 20 June, 26 June, 27 June and 28 June 2001. Only three samples were tested for EPO: those of 19, 26 and 27 June 2001. The report of the analyses of doping tests by the Lausanne laboratory noted a negative result for these three samples. It was added that negative meant "*according to the procedures implemented to examine the samples, the investigations did not reveal the presence of doping agents that appear on the list of substances prohibited by the regulations"*. With regard to the A samples of 19 June and 26 June 2001, the laboratory made the following comment: "*strong suspicion of the presence of recombinant erythropoietin (not all the criteria for a positive result were fulfilled)*". In the analytical report sent to UCI regarding the A samples of 19 June and 26 June 2001, the Lausanne laboratory indicated that for an A sample to be declared positive, the results of the analysis would have to equal or exceed 80%;[279] an A sample for which the result is over 70.2% but under 80% is declared strongly suspect. This report also mentioned a result of 75.1% for sample A-106209 and 70% for A-106106. It added that "*such results have never been obtained in the examined non-doped population*". The report concluded that these samples were therefore declared negative but with the suspicion of the presence of recombinant EPO. As the concept of "suspicious results" was an informal process, it is possible that other suspect results were identified which were not reported.

[278] CAS 2001/A/343 Union Cycliste Internationale (UCI) / H, which states: "*By letter of 16 May 2001 the DCU requested that the B sample be tested. The analysis of the B sample began on 5 June 2001 at the IUML. It was divided into two parts for testing. These resulted in levels of 82.4% and 78.6% rEPO respectively. By letter of 8 June 2001 IUML informed the Appellant that the results of the B sample were positive and therefore confirmed the results of the A sample. The complete laboratory report was sent to the Appellant by normal post on 22 June 2001. On 9 August 2001 the Doping Tribunal of the National Olympic Committee and Sports Confederation of Denmark acquitted the Respondent of doping. The decision was faxed to the Appellant on 17 August 2001*."

[279] At that time (before the validation of the EPO test by WADA), laboratories had different practices: *i.e.* the Châtenay Malabry laboratory only considered those above 85% as positive results, those between 80 and 85% as unclassifiable, and those below 80% as negative (according to Françoise Lasne statement to the French Senate).

. Several sources indicated that Lance Armstrong and his entourage were informed by the UCI of these suspect test results shortly after receipt of the results by the laboratory. This policy of informing riders who had suspect values will be discussed in the chapter on allegations concerning the ineffective nature of the anti-doping policy.

. On 28 January 2002, the CAS issued its ruling on the Bo Hamburger and Roland Meier cases. For Roland Meier, the CAS confirmed the eight-month suspension but reduced the fine from CHF 4,000 to CHF 2,000 "*to take into account the rider's difficult financial situation*". For Bo Hamburger, CAS stated that "*the laboratory had not applied the same criteria for the analysis of the A sample as for the B samples*". The CAS noted that one of the two samples used for the counter-analysis had provided a result below 80%, in other words, below the threshold allowing the use of exogenous EPO to be positively confirmed. "*In neither case was the credibility of the test seriously questioned even though it appeared that the analysis procedure was relatively complex and required greater care than other analytical anti-doping procedures*", emphasised the CAS. According to the CIRC's sources, the positive results for Roland Meier and Bo Hamburger and the counter-analysis for Bo Hamburger in June 2001 during the Tour de Suisse made a lot of noise in the professional cycling community and from 2002, cyclists began to micro-dose.

. On 2 May 2002, Lance Armstrong sent a letter to Hein Verbruggen. This contained a cheque for USD 25,000 from Lance and Kristin Armstrong, dated 5 May 2002, and payable to the UCI. "*I understand that the UCI is currently asking all of the professional trade teams to make a donation in support of further out-of-competition drug testing…In an effort to speed up this process along and to show my commitment to this effort, I enclose my personal donation to the cause in the amount of USD 25,000. Please use these funds in any way you deem appropriate to continue the fight for drug-free sport and to eradicate those who cheat from within our ranks*". Lance Armstrong added: "*While we both agree that the underlying science is very encouraging, I am not confident that the test has gone through the rigorous clinical analysis that is necessary to ensure it is 100% accurate…I stand with you in*

support of more and more out-of-competition testing. And, I stand ready to help in any way I can. I am confident that you will put my donation to furthering our parallel goals".

. On 27 May 2002, a UCI internal note signed by Hein Verbruggen requested that the donation of USD 25,000 from Lance Armstrong should be allocated to the 2002 budget of the Council for the Fight Against Doping (CFAD) and recommended that it should be used for testing juniors and under-23 categories. CFAD members were officially notified of this on 29 August 2002.

. The UCI cashed the cheque on 28 May 2002 and the UCI President Hein Verbruggen sent an official letter in response to Lance Armstrong to thank him for his donation: "*As discussed on the phone, we would like to spend this money in controls of the Juniors and -23 categories. The money will be added to our budget that has been established this year and that is composed of contributions from the UCI (over 50%), share of riders' prize money, National Federations, teams and organizers. This budget is managed by our CLCD (Conseil de Lutte Contre le Dopage) [Council for the Fight Against Doping]…The CLCD will be informed of your donation and the fact that this 2002 budget increase will be geared towards testing the younger age categories*". It is not clear whether the telephone contact between Lance Armstrong and Hein Verbruggen took place before or after receipt of the cheque by the UCI.

. The Critérium du Dauphiné Libéré was held from 9-16 June 2002. UCI was informally advised by the Châtenay-Malabry laboratory of "suspect" EPO tests during the event. The laboratory did not provide reports of the analyses considered "suspect" in terms of values approaching the threshold value. However, the UCI was informed that one (or more) of these suspect test results belonged to Lance Armstrong.

. On 4 July 2002, before the start of the Tour in Luxembourg, UCI asked Martial Saugy, Director of the Lausanne laboratory to meet with Lance Armstrong to defend the EPO detection method to him, in particular following criticism of the

reliability of the method after the CAS ruling in the Bo Hamburger case. A few months earlier, Martial Saugy had already made a presentation during the Medical Congress of Italian Cycling to all the team doctors and other doctors present, to defend the EPO test. On the matter of whether the presentation by Martial Saugy to Lance Armstrong, which was the same as that used during the Medical Congress, provided the latter with information that would allow him to circumvent the analytical detection procedures for the use of doping substances and EPO in particular, an independent analysis by the Director of the Montreal Doping Control Laboratory concluded that this was not the case.

. On 19 August 2002, Lance Armstrong met Hein Verbruggen at the new UCI headquarters in Aigle and visited the World Cycling Centre. Following this visit, communications between Lance Armstrong and the UCI suggest that he intended to discuss with his wife the possibility of setting up an annual donation to be directed towards the development of cycling for younger riders. The CIRC has not found any evidence to confirm whether any such donations were ever made.

Conclusion

On the basis of the information in its possession, the CIRC can conclude that Lance Armstrong did not test positive for EPO or any other doping substance during the 2001 Tour de Suisse.

CIRC has not found any indication of a financial agreement between Lance Armstrong and Hein Verbruggen or, as would follow from the absence of evidence of a positive test, of any attempts by UCI to conceal a positive test by Lance Armstrong at the 2001 Tour de Suisse.

CIRC confirms that on 5 May 2002, Lance Armstrong made a donation of USD 25,000 to UCI for the fight against doping and that Lance Armstrong visited Aigle on 19 August 2002, three months after Lance Armstrong's donation of USD 25,000 to UCI. Discussions were held about the possibility of a further donation to the World Cycling Centre, but this does not appear to have materialised.

CIRC has not found any evidence of corruption in relation to a positive test by Lance Armstrong during the Tour de Suisse in 2001, as alleged by Tyler Hamilton and Floyd Landis in their affidavits to USADA as part of the Reasoned Decision. CIRC considers that it is unfortunate that such serious accusations can be made public, without UCI first being consulted and the allegations being thoroughly investigated.

Notwithstanding the above, CIRC considers that UCI did not act prudently in accepting a donation from an athlete, all the more so given the rumours about him doping.

2.4.1.2. Lance Armstrong and payment for the Vrijman Report

In the summary of "A Report on Corruption in the Leadership at the Union Cycliste Internationale (UCI)" published by Velonews on 9 September 2013,[280] an allegation was made that Lance Armstrong had contributed to financing the Vrijman Report. This report had been commissioned by the UCI from the Dutch lawyer Emile Vrijman after the publication of an article by the newspaper *L'Équipe* entitled "*Le mensonge Armstrong"* ("The Armstrong Lie") on 23 August 2005. The article accused Lance Armstrong of having tested positive for EPO during the 1999 Tour following a retrospective analysis of his samples carried out by the Châtenay-Malabry laboratory.

On the basis of an analysis of the documents in the Commission's possession as well as oral testimony, CIRC has attempted to determine if payments were made by Lance Armstrong to UCI to finance the Vrijman report. CIRC has been able to determine the following facts:

. Discussions took place, from January 2005, between UCI and Lance Armstrong's entourage over a contribution of USD 100,000 by Lance Armstrong for the fight against doping for which UCI had to draw up proposals. On 16 March 2005, an agreement was reached for the purchase of a Sysmex blood testing machine. The invoice for CHF 76,616, not including VAT, for a Sysmex XT-2000i was sent to UCI

[280] Velonews, 29 September 2013. Available: http://cdn.velonews.competitor.com/files/2013/09/UCI-Dossier-document.pdf.

on 6 July 2005 and paid by the federation on 26 August 2005 from the budget of the SSCC under the heading *"funds paid by Lance Armstrong".* The invoice was sent to Lance Armstrong by UCI on 3 November 2005 with a promise to come back with proposals for the remaining USD 38,000. After several reminders from UCI on 1 June 2006, 28 December 2006 and 4 January 2007, USD 100,000 was credited to the UCI account from Lance Armstrong's bank account on 5 January 2007. CIRC has not managed to identify proposals made to Lance Armstrong by UCI for the allocation of the remaining USD 38,000, nor has it determined how this money was spent.

. *L'Équipe* published its article on 23 August 2005 and Emile Vrijman was confirmed as the independent investigator by UCI on 30 September 2005. With regards to payment of Emile Vrijman's fees, UCI documents show payments by UCI to two legal practices for which the lawyer worked, on 29 September 2005 and 5 April 2006. Disputes then arose between the UCI and the Scholten law practice about outstanding fees. The latter claimed that EUR 136,775.65 had not been paid by UCI.[281] After several months of negotiations, the two parties agreed to arbitration in December 2006. The arbitrator's first decision was issued in May 2007 and was revised in July 2007, requiring UCI to pay EUR 70,046.00 (out of the outstanding EUR 136,775.65) to Scholten/Vrijman. The amount due plus interest was to be fully paid to Scholten/Vrijman by August 2007.

. On 11 April 2008, Hein Verbruggen, then UCI Vice-President, requested Lance Armstrong to contribute USD 100,000 to the financing of the ABP. The CIRC has found no evidence to prove that Lance Armstrong complied with this request. The CIRC has not found any other evidence regarding payments made by Lance Armstrong to UCI or any of its members.

[281] Considerable payments had been already made by UCI.

Conclusion

In view of the above, CIRC has not found any evidence to corroborate the above-mentioned allegations that Lance Armstrong helped to finance the Vrijman Report. Lance Armstrong made a commitment to pay USD 100,000 to UCI for the fight against doping and, among other things, for the purchase of a Sysmex XT-2000i machine before the publication of the article in *L'Équipe* that ultimately gave rise to Emile Vrijman's mandate. Besides a temporal correlation between the actual payment by Lance Armstrong to UCI in January 2007 in respect of his promise to make a donation to the fight against doping and the discussions between UCI and Scholten/Vrijman on the payment of outstanding fees between December 2006 and July 2007, CIRC has found no relationship between the two financial transactions.

Notwithstanding the above, once again CIRC notes that UCI did not act prudently in soliciting and accepting donations from an athlete, and all the more so from an athlete in respect of whom there were suspicions of doping.

2.4.1.3. Allegations of corruption in the "Report on Corruption in the Leadership at the Union Cycliste Internationale (UCI)"

A dossier outlining allegations of corruption against UCI president Pat McQuaid and his predecessor Hein Verbruggen was commissioned by Igor Makarov and compiled by two private investigators during the 2013 presidential campaign and handed over to the UCI Ethics Commission at the beginning of 2014.[282] This report is confidential, although a summary of it was made available in the press and referred to as the "Makarov Report". CIRC will therefore only make reference in its report to allegations that are publicly known, in order to respect the confidentiality of the dossier.

In the course of its investigations, CIRC looked into allegations made in the dossier. While CIRC is not allowed to comment publicly on the confidential allegations and their veracity, it recommends that the UCI Ethics Commission or an independent body with

[282] Igor Makarov is a member of the UCI Management Committee, the owner of the team Katusha and President of the Russian Cycling Federation.

investigative powers set up by UCI investigate further some of the leads identified by the Commission and handed over to the UCI Ethics Commission. The Commission's findings in respect of allegations that found their way into the public domain have been outlined in the report.

CIRC considers that this type of conduct is entirely unacceptable: for a member of UCI to engage private investigators to draw up a report and publicly refer to the existence of that report, which included allegations [redacted] against an electorate candidate, at the time of the upcoming Presidential elections, and when also failing to give the report to the appropriate organs within UCI (until after the elections). This "*strategy of suspicion and public shaming*" is particularly inappropriate as it comes from members of the UCI Management Committee.

2.4.2. Allegations of breaches of the UCI ADR

2.4.2.1. 1996 and 1999 cases

CIRC has received information from three interviewees concerning positive tests by three cyclists, who were from the same country and practiced the same discipline between 1996 and 1999, that were deliberately concealed by the UCI leadership.

At that time, laboratory results were sent solely to IFs (except in the case of the Olympic Games when the IOC was also sent a copy). Only IFs could match up a sample number to an athlete's name.

Conclusion

CIRC did not discover information on positive tests for the three athletes in question in the UCI archives and does not have further information to confirm or refute the reported allegations.

2.4.2.2. 1997 Laurent Brochard case (lidocaine) and 1999 Lance Armstrong case (corticosteroids)

As discussed above, UCI appeared to have had a policy of accepting backdated prescriptions and being rather lenient in applying its rules on TUEs. The 1997 Laurent Brochard case and 1999 Lance Armstrong case were clear examples of this policy and are particularly significant given the justification provided by UCI in respect of their anti-doping procedural rules.

Laurent Brochard

French rider Laurent Brochard was crowned Road World Champion in San Sebastian, Spain, in October 1997. The former Festina soigneur Willy Voet and former Festina Sport Director Bruno Roussel both state in their books,[283] that Laurent Brochard tested positive for lidocaine during the World Championships. They assert that Brochard had not recorded that he had a therapeutic exemption on the form during the medical control, that a medical certificate was requested by UCI and that a backdated medical prescription was supplied to, and accepted by, UCI.

At that time, Article 43 of the UCI Anti-doping Examination Regulations stated: "*If the rider has any comments to add, he shall note them – or have them noted by the Examining Doctor – on the form. The rider must indicate on the form any drugs listed on the list of classes of doping substances and methods which he has taken but which may not be taken into consideration under the medical conditions specified in the same list. If he has not and any such substance is found by the laboratory, the test result shall be considered as positive and the rider shall be sanctioned even when he produces a medical certificate after the test.*"

Lidocaine was on the list of categories of doping substances and methods.

The fact that Laurent Brochard provided a backdated medical certificate was not contested by UCI. UCI President Hein Verbruggen commented in a March 1999 interview

[283] Willy Voet, "Massacre à la chaîne" (Calmann-Lévy, 1999),"Breaking The Chain" (Yellow Jersey, 2002). Bruno Roussel, "Tour de Vices" (Hachette Littérature, 20/06/2001).

for Vélo Magazine: "*A product was discovered that is allowed if you can provide a medical certificate. You journalists view everything with suspicion but we react with a bit more pragmatism. What difference does it make if the certificate is presented before or after the control? Is the former more credible? And even if it is backdated, what does that change? Brochard had a certificate to explain the minimal quantity of the product that had been revealed in his sample so he was not positive.*"[284]

Lance Armstrong

At the beginning of the 1999 Tour, UCI advised all teams that they would begin testing for corticosteroids. The 1999 UCI ADR were applicable to the Tour pursuant to Article 4 of the ADR: "*these Regulations and these alone shall apply to the events mentioned in Article 8 [Note: the Tour de France was one of those events]. They shall be binding upon all National Federations which may neither deviate therefrom nor add thereto*". Corticosteroids were included on the list of categories of doping substances and methods under the Classes of Substances Subject to Certain Restrictions, adopted by the UCI President upon the proposal of the ADC and effective from 1 May 1999. The list further adds that "*the use of corticosteroids is prohibited, except when used for topical application (auricular, opthmalogical or dermatological) inhalations (asthma and allergic rhinitis) and local or intra-articular injections. Such forms of utilisations can be proved with a medical prescription"*. The above-mentioned article 43 of the UCI ADR also applied during the 1999 Tour.

Lance Armstrong was tested 15 times during the 1999 Tour and four of these tests were positive for corticosteroids, on 4, 14, 15 and 21 July 1999. According to witness statements, soon after being informed by the French Laboratory about the positive tests, direct contact was initiated between high-level UCI officials and the Armstrong entourage, during which the latter was advised to produce a medical certificate. On his doping control form of 4 July 2014 the word "*nil*" ("*néant*" in French) was indicated in the section on "*remarks from the controlled rider and medicine taken"*. A medical prescription dated 3 July 1999, the day before the first positive test and written in the past tense "*the*

[284] Translation from French. Copy on file with CIRC.

rider has been using during the 2 and 3 of July…" was then provided to UCI for a corticosteroid cream. The medical certificate was clearly created after Lance Armstrong tested positive as confirmed by several interviewees and Lance Armstrong himself during his interview with Oprah Winfrey, which was broadcast on 17 January 2013.

According to data provided by UCI during the 1999 Tour, Lance Armstrong was one of 26 riders who tested positive for corticosteroids. They all provided a medical certificate that was authorised by Lon Schattenberg. For three of these riders, the CIRC established that "*nil*" ("*néant*" in French) was indicated on the doping control form in the section on "*remarks from the controlled rider and medicine taken*" clearly showing that no medical prescription was declared at the time of the control by the rider to explain the presence of the doping substance in his body. On one occasion, a medical prescription was clearly faxed days after the doping control had taken place. Not one of these three riders was sanctioned by UCI.

As discussed in the section on UCI and Anti-Doping, several interviewees advised the CIRC that after testing positive for a substance which required a medical certificate, riders were required by the UCI to provide a medical justification and consequently were not sanctioned when the medical prescription was considered adequate to explain the positive test. This policy was lenient towards riders, and failed to adhere to the strict provisions of article 43 of UCI ADR.

In a letter to the newspaper *Libération* about an article published on 22 July 1999 about Lance Armstrong's positive test, the UCI lawyer advised that *"use of a medication is not an act of doping when it is done with a therapeutic purpose but, on the other hand, constitutes an act of doping where there is no therapeutic justification*". The letter continued that "*the sole fact of having forgotten to declare the use of a medication should not lead to a doping sanction if the forgetting is excusable*" and further added: "*Article 43 of the Rules should not be a blind automatism allowing an abstraction of reality to arrive at a result that one knows is unjust"*.

Conclusion

. On the basis of the foregoing facts and of article 43 of the UCI ADR applicable at the time, the UCI acted in breach of its own ADR in asking the riders' entourages to provide a medical certificate after they tested positive when they had not declared the use of a substance on the doping control form. Further, when a medical certificate was produced for Lance Armstrong, it should have been obvious to UCI that the medical certificate provided by his doctor was backdated and solely provided to justify *a posteriori* the traces of triamcinolone found in the rider's urine.

. Therefore, disciplinary proceedings should have been opened by UCI against both Laurent Brochard and Lance Armstrong following their positive tests for prohibited substances on the basis that they did not declare the use of a medicine justifying that substance on their doping control form. This is regardless of the fact that they subsequently produced a prescription explaining that use after testing positive. Lidocaine and corticosteroids were on the list of categories of doping substances and methods prohibited by the UCI.

. UCI had a very flexible approach to the application of Article 43 of its own ADR, whereby exceptions to the rules were granted without any justification. If after the Brochard case Article 43 of the UCI ADR was considered to be unfair or inappropriate, it should have been amended or abolished by the UCI.

. The UCI failed to apply its own rules in the Laurent Brochard and Lance Armstrong cases which constituted a serious breach of its obligations as the international governing body for cycling to govern the sport correctly.

. Lance Armstrong admitted that he took the drug without therapeutic motivation and only to enhance his performance. His doctor issued a certificate where not only was the date wrong, but also what it attested. The CIRC considers that it was a case of a false medical certificate and therefore the case should have been reported to the criminal authorities and the relevant medical boards.

2.4.2.3. 2008: Lance Armstrong comeback

In the summary of "A Report on Corruption in the Leadership at the Union Cycliste Internationale,"[285] there is an allegation that "*in 2009 when Lance Armstrong was making a comeback to cycling, he had not been in the UCI doping testing pool for the previously proscribed period of time. Mr. McQuaid agreed to a bending of these rules, which allowed Mr. Armstrong to ride in the Tour Down Under for an appearance fee of $1 million and in exchange, Mr. Armstrong agreed to ride in the Tour of Ireland for free - a race he otherwise would not have participated in. Further, that Mr. McQuaid benefited from this agreement because his relatives or friends were involved in directing the Tour of Ireland*".

Based on documents, open source information and interviews, the CIRC has been able to identify the timeline of events below in relation to Lance Armstrong's comeback.

From January 2008 onwards, discussions took place between the Tour Down Under organisers and Lance Armstrong looking at the possibility of him attending the 2009 race as a special guest.

On 4 August 2008, USADA officially informed Lance Armstrong that he has been added to the USADA Registered Testing Pool ("RTP") effective 1 August 2008 and that he would regain eligible status on 1 February 2009. This was confirmed by UCI Anti-Doping Manager Anne Gripper who notified Lance Armstrong on 8 August 2008 that he must be available for out-of-competition testing for six months before regaining eligibility to compete internationally as per Article 77 of the UCI ADR.

On 16 September 2008, Mike Turtur the organiser of the Tour Down Under advised UCI that there were reports about Lance Armstrong intending to participate in the Tour Down Under, which took place from 20 to 25 January 2008. Considering the six month requirement for Lance Armstrong to be in the RTP before going back to competition, he asked whether this could be an issue for Lance Armstrong's participation. CIRC understands that Lance Armstrong was to be paid an appearance fee of USD1 million to

[285] Velonews, 29 September 2013. Available: http://cdn.velonews.competitor.com/files/2013/09/UCI-Dossier-document.pdf.

be given to his Livestrong Foundation, in exchange for his participation in the 2009 Tour Down Under. He would have received a total of USD 3 million for his participation in the 2009-2011 editions.[286]

At the time of his comeback, Lance Armstrong was paid a minimum salary by Astana and would receive money for his charity by doing appearances at different races.

On 29 September 2008, several news articles on the Lance Armstrong comeback quoted UCI President Pat McQuaid as saying that no exceptions would be made and that the rules would be applied. Lance Armstrong was quoted as saying he was "*hoping that a difference of 10 days to comply with UCI rules doesn't derail his planned comeback at the TDU*," and that the UCI "*would apply common sense when interpreting rules that require a retired rider to register in the anti-doping program six months before returning to competition*." He then said: "*We're not asking for any exception, but they don't always apply this rule. We all remember Mario Cipollini last year at the Tour of California. This rule was not applied to that. It's a tricky situation. You're talking about a few days overlap*." [287]

At the end of September 2008, internal discussions took place within UCI as to whether an exception to the rule should be made to enable Lance Armstrong to participate in the Tour Down Under. Strict application to the rule was recommended by UCI administration as the way forward, noting that Lance Armstrong should set an example. One argument was that he was informed of the rule in August and did not react. One former UCI staff member stated: "*the heroes should have ethics of the same level and show the example: comply with the rules*". Reference was also made to the significant political pressure the UCI President was under, mainly from Australia, which had planned a big event involving high-level politicians around Lance Armstrong's participation in the Tour Down Under.

---

[286] *See* Samantha Lane, "State, tour backed a 'loser'", *The Sydney Morning Herald (*22 Jan.2013). Available: http://www.smh.com.au/sport/cycling/state-tour-backed-a-loser-20130121-2d35g.html

[287] *See* Andrew Hood, "Armstrong Optimistic About Tour Down Under", *Velonews* (29 Sept. 2008). Available: http://velonews.competitor.com/2008/09/news/road/armstrong-optimistic-about-tour-down-under_83853; *and* Sandy Macaskill, "Lance Armstrong's Tour Down Under return thrown into doubt", *The Telegraph* (29 September 2008). Available: http://www.telegraph.co.uk/sport/othersports/cycling/3097563/Lance-Armstrongs-Tour-Down-Under-return-thrown-into-doubt-Cycling.html?mobile=basic

On 2 October 2008, the President of UCI, Pat McQuaid, informed the Lance Armstrong team that Lance Armstrong could not participate in the Tour Down Under.

On the morning of 6 October 2008, Pat McQuaid advised his senior team that he had decided that Lance Armstrong could ride the Tour Down Under. Several interviewees spoke about an abrupt "*change of mind*" by the UCI President that took many people at UCI by surprise and underlined the fact that the decision was unilaterally taken by the UCI President. No explanation was then given internally as to why Lance Armstrong was suddenly given an exemption to ride the Tour Down Under.

On 6 October 2008 in the afternoon, a letter was sent to Lance Armstrong by Pat McQuaid advising that according to article 77 of the UCI ADR he was ineligible for participation in races on UCI's international calendar until 6 February 2009, as he only informed UCI by fax on 6 August 2008 of his intention to return to competition. Pat McQuaid expressed disappointment with Lance Armstrong for referring to the case of Cipollini and did not deny that Mario Cipollini did not observe article 77 the UCI ADR before participating in the Tour of California. He added that this should not have happened and that there was no intention not to apply the rule or to grant an exception. Pat McQuaid concluded by noting, "*above all I cannot imagine that you would consider the failure of another rider to respect the rules as a justification for not respecting the rules yourself. Even in such case the norm has to be the respect for the rules and not the disregarding of the rules. By returning to cycling, one accepts the rules of cycling*".

Available documentation shows that there was concern inside UCI that Pat McQuaid was trying to cover his decision to let Lance Armstrong compete by publicly appearing to continue to deny him an exception to the rule.

On 6 October 2008, Lance Armstrong confirmed to Pat McQuaid that he had decided to participate in the Tour of Ireland. Sources and documentation available to UCI show that this decision was linked to the decision of Pat McQuaid to let him race in Australia. The last time Lance Armstrong participated in the Tour of Ireland was in 1992. That same day, Pat McQuaid advised his brother, Darach McQuaid who was the Project Director of the Tour of Ireland that Lance Armstrong wanted to come to Ireland. Darach McQuaid

responded few hours later that he already had the wheels in motion for letters to the high-level Irish personalities interested in helping.

Late on 6 October 2008, a letter was sent from Lance Armstrong to Pat McQuaid asking him "*to consider an exemption from a strict interpretation of Article 77*" and outlining several reasons that he considered outweighed the need for strict adherence to article 77.

On 8 October 2008, Lance Armstrong and the organisers of the Tour Down Under were officially informed by Pat McQuaid that Lance Armstrong was allowed to participate in the Tour Down Under. The letter stated: "'*The purpose of Article 77 is to ensure that riders are properly tested before returning to international races from retirement. Since the introduction of the rule in 2004, significant improvement in testing have been made. Indeed, with the implementation of the program '100% against doping' and the biological passport, the UCI is confident that the level of testing now required under the biological passport programme is far higher than that envisaged by the original post retirement testing rule. UCI's Anti-Doping Department has assured me that they will make arrangements to ensure that you will have been tested sufficiently prior to the Tour Down Under to enable you to have a biological passport which can be assessed by the UCI's group of scientific experts. Provided that you remain fully available for this testing program to be completed, the principle of the post retirement testing rule will be respected and the short period by which we are shortening the period you will have been in the RTP will not undermine the effect of the rule. As a result and given that you have been considered by USADA to have been reintegrated into their Registered Testing Pool on 1 August 2008, I am satisfied that we should allow you to participate in the Tour Down Under*".

On 8 October 2008, UCI released a statement entitled: "*Lance Armstrong to start the 2009 Tour Down Under*".

In an interview with Eurosport dated 9 October 2008, the UCI Anti-Doping Manager stated about the ABP: ''*We are in the early stages of the biological passport. This is a huge project in the fight against doping and I think we should move forward in a careful way. We must be patient and be assured that we have sufficient information at our disposal to put it*

in place. This year was a start-up phase. We tried to get maximum information about the riders carrying in particular out of competition controls. Unfortunately we are often looking for them to be able to do these tests…"[288]

In October 2008, after UCI's decision to authorise Lance Armstrong to participate in the 2009 Tour down Under, article 77 of UCI's 2008 ADR was amended after receiving approval from the Management Committee by a vote at the end of December 2008. Under the new provision, article 84 in the 2009 ADR that entered into force on 1 January 2009, a rider was required to give 6 months' notice of his intention to return to competition and to make himself available for out-of-competition testing for a period of 4 months.

On 4 December 2008, Lance Armstrong held an online press conference from the Astana team's training camp in Tenerife, Canary Islands, during which he expressed his interest in riding the Tour of Ireland.[289]

In January 2009, available documentation shows that UCI had difficulty organising a sample collection for Lance Armstrong because of inconsistent information regarding his whereabouts.

On 29-30 January 2009, in the minutes of the UCI Management Committee meeting under the section on "*UCI Pro Tour"*, it is recorded that Mike Turtur, organiser of the Tour Down Under stated that the Tour Down Under was a real success as there was very good media coverage and the public came in great numbers, notably because of the presence of Lance Armstrong. The President then recalled that UCI had authorised Lance Armstrong to go back to competition before the date set by article 77 of UCI's 2008 ADR to enable him to participate in the Tour Down Under. He then specified that Lance Armstrong had been the object of many anti-doping controls and that the fight against cancer campaign led by Lance Armstrong was a great success in Australia.

[288] Eurosport, "Gripper: 'Le passeport est en phase finale'", (9 Oct. 2008) (translation from French). Available: http://www.eurosport.fr/cyclisme/story_sto1722170.shtml.
[289] Cycling Weekly, "Armstrong to ride Tour of Ireland?" (4 Dec. 2008). Available: http://www.cyclingweekly.co.uk/news/latest-news/armstrong-to-ride-tour-of-ireland-91547.

On 22 February 2009, Livestrong announced that the launch of the first Livestrong Global Cancer Summit would take place in Dublin on 24-26 August 2009 following Lance Armstrong's participation in the Tour of Ireland, from 19-23 August 2009.

From March onwards, documents in CIRC's possession show that the Tour of Ireland race organisation was struggling to complete the budget. Consequently in June 2009, when the organisation was still €250,000 short, the UCI President asked Lance Armstrong if he knew any US contacts who would take up a sponsorship package. On 2 July 2009, Alan Rushton, Tour of Ireland race Director advised Pat McQuaid that due to a 50% reduction in the amount of their main sponsor funding that year, they had decided to reduce the length of the Tour that year to 3 days, a decision which greatly disappointed Pat McQuaid.

On 21-23 August 2009, the Tour of Ireland was held and on 24-26 August 2009 the Livestrong Global Cancer Summit took place in Dublin. Pat McQuaid, his wife and mother were Lance Armstrong's special guests at the Summit's dinner. The day after, Pat McQuaid thanked Lance Armstrong for the invitation and particularly for "*his gracious words*"', which were very much appreciated by his mother, as well as for "*the Nike assistance*".

In an interview with the North Queensland Register dated 18 October 2012,[290] the former UCI Anti-Doping Manager Anne Gripper stated about the Lance Armstrong comeback: *''I have always said that Armstrong's influence was a danger in the sport. He was allowed to ride in the 2009 Tour Down Under. He shouldn't have been. Once again, for Lance, special consideration was provided. The justification was that [former South Australia premier] Mike Rann and [race director] Mike Turtur had announced to the whole people of South Australia that Lance was going to be there. For the UCI to say, 'Sorry, he can't, would have appeared churlish and mean-spirited and really what difference do 13 days make? ''For me, it was a case of, 'Well, sure 13 days may not make a lot of practical difference' but the perception of once again rules being different for Lance than other riders shows his influence was so great, he basically told the sport how to administer its rules.*''

[290] Rupert Guinness, "Armstrong got special treatment: drug chief", *North Queensland Register* (18 Oct. 2012). Available: http://www.northqueenslandregister.com.au/news/metro/national/sport/armstrong-got-special-treatment-drug-chief/2629561.aspx?storypage=2.

According to documents in the CIRC's possession and confirmed by interviewees, Lance Armstrong's decision to have his Livestrong summit in Dublin was made after his decision to compete in the Tour of Ireland as an excuse to explain why he was riding the Tour of Ireland. It would otherwise have made no sense for Lance Armstrong to take part in the Tour of Ireland for free. Lance Armstrong's participation made a huge difference to such a small race, particularly when big races were ready to pay around a million dollars to get him to participate.

Conclusion

Based on the above facts, documents in the CIRC's possession and information provided by several interviewees:

. When Pat McQuaid made the decision to allow Lance Armstrong to compete in the Tour Down Under, UCI failed to apply its own rules by not applying Article 77 of the 2008 UCI ADR. In doing so, UCI damaged its reputation by sending the message that rules applied differently to some athletes compared to the rest of the peloton.

. The decision to amend Article 77 of the 2008 UCI ADR was made after UCI gave Lance Armstrong permission to compete in the Tour Down Under and in order to enable him to compete without being in breach of the rules. Again, it is clearly not appropriate for a governing body to change its rules for the benefit of one of its stars. It is also noted that UCI appears to have considered that because the new provision took effect from 1 January 2009 the rules were complied with; however, it appears that it failed to appreciate that Lance Armstrong had still not complied with the requirement to give 6 months' notice of his intention to return to competition and there was therefore still a failure to apply the rules.

. The Management Committee Members displayed a lack of judgement by not challenging the decision of the UCI President to allow Lance Armstrong an exemption to return to competition early.

. By October 2008, the ABP was being put in place and out-of-competition testing was not sufficiently operational for the UCI to be able to decide confidently to shorten the qualifying period for Lance Armstrong on the basis of an improvement of the level of testing.

. In terms of governance, the decision to shorten the qualifying period for Lance Armstrong should not have been taken unilaterally by the UCI President but rather should have been considered by the UCI Management Committee. This is particularly so given the political implications for the UCI as an institution, the President's own acute awareness of the problems that would arise if Armstrong was allowed to race, and the advice of UCI administration to its President to follow the rules.

. UCI and particularly the President missed an opportunity to demonstrate that the organisation was committed to applying its own rules and to stamp its authority on the sport, which would have generated greater respect.

Without detracting from the comments above, it is however noted that Lance Armstrong put UCI in a difficult situation by publicising his participation in the Tour Down Under after having been informed that he was not eligible to participate. As a result, UCI was in the position that whichever decision it took, it would have been criticised by either the Tour Down Under organisers, the South Australian government, the public in Australia and Lance Armstrong for being too strict or by WADA and the media for amending their rules to favour of Lance Armstrong.

CIRC has considered all the evidence and whilst there is no direct evidence of an agreement between Lance Armstrong and Pat McQuaid, documents in the CIRC's possession show a temporal link between the two decisions: in the morning Pat McQuaid told UCI staff that he had changed his mind and decided to let Lance Armstrong participate in the Tour Down Under, and that same evening Lance Armstrong told Pat McQuaid that he had decided to participate in the Tour of Ireland.

2.4.3. Allegations concerning the preferential treatment of certain riders

2.4.3.1. Allegations concerning the preferential treatment of Lance Armstrong by the UCI leadership

Several sources, notably UCI staff and former UCI staff, reported that the UCI leadership had on several occasions "defended" or "protected" Lance Armstrong or taken favourable positions towards Lance Armstrong indicating that he had received preferential treatment. Among the explanations given to the CIRC was the UCI's promotion of a "celebrity rider" after the Festina scandal. The idea was to shine a spotlight on the sport through its best athletes, like the "*people's heroes*" such as Lance Armstrong. The Vrijman report was one example of this policy.

The Vrijman Report

The "Vrijman Report" was prepared by Emile Vrijman,[291] a former director of the Netherlands Centre for Doping Affairs who was appointed by UCI to conduct an independent investigation following the publication on 23 August 2005 in the French newspaper *L'Équipe.* The article reported that drug test results from the 1999 Tour showed that Lance Armstrong tested positive for the prohibited substance EPO. The positive test was identified in the course of a research project by the French Laboratory of Châtenay-Malabry ("LNDD"). Emile Vrijman commenced the investigation in early October 2005. His report was released to the public on 1 June 2006.

Available information shows that following the publication of the *L'Équipe* article, WADA urged UCI to conduct an enquiry into the allegations and offered its assistance. However, UCI focused instead on investigating issues regarding potential breaches of the relevant rules and procedures and how confidential information became public. Considerable tension between UCI and WADA ensued, such that by 16 September 2005, UCI had engaged UK lawyers to consider potential legal proceedings against Dick Pound, as suggested to UCI by the Lance Armstrong's team at the beginning of September.

[291] Emile Vrijman was invited to speak to CIRC, but did not respond.

On 5 October 2005, WADA informed UCI that it would be conducting its own investigation. The following day, after Lance Armstrong's agent, Bill Stapleton, assisted UCI in drafting a press release, UCI announced its decision to conduct an independent investigation, and to appoint Emile Vrijman.[292] The press release stated that Emile Vrijman would conduct a comprehensive investigation regarding all issues arising out of the testing conducted by the LNDD.

On 9 November 2005, in response to a request from WADA for an "*official mandate indicating [Vrijman's] jurisdiction and terms of reference*", the UCI issued a Letter of Authority to Emile Vrijman. That letter appointed Vrijman "*to undertake an independent and comprehensive inquiry*" regarding the facts and circumstances surrounding the LNDD's analysis of the 1998 and 1999 Tour urine samples and "*the subsequent alleged adverse analytical findings*". The Letter of Authority was provided by Emile Vrijman to the relevant parties (WADA, the LNDD, the French Ministry of Sport and Lance Armstrong) in the course of making his enquiries with them. Significantly, when the Letter of Authority was sent to Emile Vrijman, it was accompanied by a separate message from UCI President Pat McQuaid, a message which was not provided to the interested parties or otherwise published. That fax message directed Emile Vrijman that "*this investigation must clearly be restricted to the formal irregularities which have led to the revelations [in L'Équipe*]". It could potentially be read from the message that UCI's primary concern was not to examine the veracity of the allegations and the consequences that derive thereof, but rather to restrict the inquiry from the outset to procedural issues and alleged breaches committed by other stakeholders. Pat McQuaid's direction to Emile Vrijman appears to contradict the undertaking that he gave to WADA on 29 September 2005 and 6 October 2005 to the effect that *"[t]he UCI is concerned [with]…investigating all aspects of this case*". It was equally in contradiction with Emile Vrijman's proposition to the UCI that, among other matters, the reliability of the EPO test used by the LNDD should be examined.

[292] UCI press release dated 6 October 2005. Copy on file with CIRC.

The Vrijman Report drafting process was protracted over several months between January and May 2006, before its distribution to the relevant parties on 31 May 2006 and its "official" release on 1 June 2006. UCI had originally set Emile Vrijman a deadline of 3 months from November 2005, informing him that his conclusions were expected by the end of January 2006. It is to be noted that Hein Verbruggen had commenced IOC ethics proceedings against Dick Pound in December 2005 and that a mediation between Hein Verbruggen and Dick Pound in relation to the IOC proceedings was due to take place in Torino on 14 February 2006. It appears that the original plan was to have Vrijman's report ready for that meeting with Dick Pound.

During the drafting process UCI repeatedly placed pressure on Emile Vrijman to complete the report and, later, purported to terminate his contract on at least two occasions by reason of his delay and a loss of confidence in him. Hein Verbruggen and Lon Schattenberg met with Emile Vrijman on 16 January 2006. As a result of those discussions, it was determined that Emile Vrijman would now prepare two reports: namely, an "interim report" or "preliminary report" and a "final report". Later that week, Emile Vrijman provided the UCI with his preliminary findings and a draft table of contents for both reports.

On 3 February 2006, Emile Vrijman sent "*a copy of the confidential preliminary report in the matter of the analysis of the urine samples from the 1999 Tour de France by the French WADA-accredited doping control laboratory*" to the UCI. The preliminary report comprised 16 pages and only dealt with matters associated with the LNDD's research. Emile Vrijman concluded that "*even under the presumption that the measurement results are regarded as reliable and trustworthy, they can absolutely not be regarded as proof in the context of doping control. Therefore, the positives do not qualify as adverse analytical findings*". This first version of the report contains no references to WADA's role in relation to the research or to communication that may have taken place between WADA and the LNDD.

The preliminary report was subsequently revised by Lance Armstrong's lawyer, Mark Levinstein, in collaboration with Emile Vrijman, during the following week. Emile Vrijman had personally sent Mark Levinstein a soft copy of the report. Mark Levinstein

inserted substantial amounts of text into the interim report to make it more critical of WADA and criticising in detail the credibility of the LNDD's methods and procedures from a doping control perspective, citing numerous alleged deficiencies and inconsistencies. Mark Levinstein's second mark-up of the report included an entirely new section to the report entitled "Confidentiality". This section was highly critical of Dick Pound and Jacques De Ceaurriz, the then Director of the LNDD. In addition, this version of the report concluded with a list of 20 questions that needed to be answered which concerned specifics about the LNDD's research and the communications between the LNDD, WADA and the French government in its regard. Mark Levinstein provided his mark-ups of the interim report to Hein Verbruggen on 8 and 9 February 2006, respectively.

On 24 February 2006, Emile Vrijman informed UCI that the final version of the preliminary report would be sent by fax the following day, and that it would comprise a total of 55 pages. However, Emile Vrijman did not send anything through and by 17 March, Emile Vrijman explained that he no longer intended to issue a "first report" and suggested instead, "*to ensure that all relevant parties are dealt with in an equal manner and to avoid any discussion regarding the independent nature of the investigation*", he would request further information and materials from the LNDD and WADA, await their response, and then issue a final report.

By letter dated 20 March 2006, the UCI purported to terminate Emile Vrijman's mandate. Notwithstanding UCI's notice of termination, Vrijman continued to work on the report, liaising with Mark Levinstein regarding recent correspondence he had received from the LNDD and WADA.

In April 2006, Philippe Verbiest started reviewing a draft of the final report prepared by Emile Vrijman. Specifically, he set out a number of observations on the report structure and attached a marked-up report. Philippe Verbiest was careful to state that his comments and amendments were "*suggestions…submitted to [Vrijman for his] consideration*".

Dick Pound had been advised that the final report had been received by the UCI and on 18 April 2006 he followed up with a request for a copy of the report to be provided

to him, but that request was ignored. Dick Pound also requested the draft copy that Hein Verbruggen claimed to have had in his possession at the mediation in February 2006. Hein Verbruggen responded to Dick Pound by expressly stating that he "*had NO draft copy of any report from the independent investigator*".

Hein Verbruggen then proceeded to draft an executive summary of the report for which he received extensive input from Mark Levinstein. Between 22 and 29 April 2006, Emile Vrijman and Philippe Verbiest exchanged further drafts of the report as both of them continued to work on it. Philippe Verbiest introduced several portions of new text into the report and made numerous suggestions for changes, additions and corrections throughout (although his view was that he was merely providing information and it was for Emile Vrijman to determine what to include in the report).

On 29 April 2006, Emile Vrijman sent a final draft report to UCI for its review and comment. Hein Verbruggen responded on 30 April 2006 by expressing "*a very disappointing feeling*" advising Vrijman that: *"The only party you really dare to tackle with hard hitting conclusions is the UCI. You are running with such an incredible bow around WADA that I am asking myself if they are the client…"*

Hein Verbruggen reiterated his total disappointment with the report to Mark Levinstein, stating that the report was totally unacceptable "*since there is no one definite conclusion in the whole report about the very doubtful role that WADA has played"*. He adds that "*there is full evidence that Dick Pound has been targeting [Lance Armstrong] and they just dodge any conclusion in that direction*". Mark Levinstein reassured Hein Verbruggen confirming that he spoke to Emile Vrijman and that he would work with him.

During the following week, Mark Levinstein and Philippe Verbiest continued to collaborate with Emile Vrijman, providing him with further comments, suggestions and input. By 9 May 2006, Hein Verbruggen insisted to Emile Vrijman and Mark Levinstein that the report be ready by the next day given that the WADA Board was due to meet that weekend. On 11 May 2006, when the proposed deadline passed, Hein Verbruggen terminated Emile Vrijman's contract on behalf of the UCI. Mark Levinstein reiterated that he would work with Emile Vrijman to help him complete the report. Bill Stapleton sought

to reassure Hein Verbruggen that the report was good and that: *"[T]he document is going after WADA as I know you (and we) want them to do and as they should."*

Finally, on 31 May 2006, a pdf version of the final report was emailed to all of the interested parties and the "official version" was published the following day. The same day, Lance Armstrong commented in the press on the results of the investigation by thanking the investigator and his staff "*for all their hard work and diligence in this process*'. He added that he '*had not had an opportunity to study the report yet*". [293]

Emile Vrijman did not give UCI notice of his intention to publish the report. Hein Verbruggen informed Emile Vrijman on 1 June 2006 that UCI had no option but to publish the report on its own website but that would not change the UCI's position regarding the termination of his contract and the issue of outstanding bills.

Lastly, during the lead-up to the UCI Presidential elections, on 19 July 2013, Pat McQuaid wrote to Paul Scholten in his capacity as UCI President. In the letter, he asked Paul Scholten to make a statement or send a letter which Pat McQuaid could forward to the UCI Management Committee. The statement/letter should include confirmation that the Vrijman report was compiled independently from the UCI, that Lance Armstrong's lawyers wrote no part of the report, and that indications to the contrary would lead to legal action against any party that suggested it. Paul Scholten replied by letter that Emile Vrijman was solely responsible for the content and conclusions, logically because it was called "The Vrijman Report". He further stated that when Emile Vrijman had told him that suggestions had been made to Emile Vrijman to put [information] into the report, he had warned Emile Vrijman to stay independent, but could not confirm whether he had precisely done that. He stated he reserved his rights regarding any allegations made against himself. Finally he stated that UCI refused to pay his invoices until settlement at arbitration, that he had never received monies from Lance Armstrong's "camp", and stated he had sacked Emile Vrijman immediately after the arbitration proceeding.[294]

[293] Velo News, "UCI, Armstrong and WADA react to Vrijman Report" (31 May 2006). Available: http://velonews.competitor.com/2006/05/news/uci-armstrong-and-wada-react-to-vrijman-report_9933#0yH7GYoTXcmVX6BM.99

[294] This is all the more surprising since on 25 September 2006, Paul Scholten wrote to UCI concerning the continuing dispute over fees for the Vrijman report. He stated that in relation to the extensive amount of correspondence between UCI and Emile Vrijman during the investigation and report drafting period, he

Based on information available to the CIRC, the Commission is of the view that:

. The UCI purposely limited the scope of the independent investigator's mandate to procedural issues contrary to what they told stakeholders and the public, and in contradiction to Emile Vrijman's own suggestion. The CIRC agrees with the consensus that the research results of the LNDD could not have been used for disciplinary purposes; it is true that this was not a positive test, but it raised strong indications of doping and should have been followed up (*e.g.*, re-test other samples, target test, launch investigations). However, UCI specifically excluded from Emile Vrijman's mandate an examination of the EPO test, meaning that the allegation that Lance Armstrong used EPO during the 1999 Tour could not be directly considered.

. UCI, together with the Armstrong team, became directly and heavily involved in the drafting of the Vrijman report, the purpose of which was only partly to expedite the publication of the report. The main goal was to ensure that the report reflected UCI's and Lance Armstrong's personal conclusions. The significant participation of UCI and Armstrong's team was never publicly acknowledged, and was consistently denied by Hein Verbruggen.

. Emile Vrijman failed to exert his independence and demonstrated a serious lack of impartiality: firstly, by allowing UCI and Armstrong's team to define the scope of the mandate and letting them add to, and redact large parts of his "independent" report, secondly, by not giving all parties the same opportunities to contribute to the investigation or to comment on the report and, thirdly, by not disclosing the true facts to the public.

. UCI had no intention of pursuing an independent report. UCI leadership failed to respect the independence of the investigator they commissioned by restricting the mandate of the investigator, allowing the primary subject of the investigation to

did not think it was in UCI's interest to show this correspondence to the outside world, especially to WADA and to Dick Pound in particular.

participate in the drafting of the report and, by constantly influencing the content of the investigator's work and the conclusions reached. This is again consistent with UCI leadership's approach of prioritising the fight against WADA and the protection of its star athlete.

Separately, the Commission notes that the leak of information (*e.g.,* results from the laboratory and Lance Armstrong doping control forms) that led to the *L'Équipe* article was unacceptable and in breach of the athlete's privacy rights. This breach was repeated in 2013 during the hearings of the French Senate when a list was published with the names of dozens of riders with positive EPO samples during the 1998 and 1999 Tours, which were identified in the course of the 2004 research project by the LNDD.

However, it should also be emphasised that without the voluntary disclosure of the sample collection forms from UCI to *L'Équipe*, no link could ever have been made between Lance Armstrong and the analysis of the samples. Thus the CIRC is of the view that the speculation by UCI leadership that the incident was staged by third parties to attack UCI or UCI leadership is highly unlikely.

On the subject of the "Vrijman" affair, an additional opinion was expressed in the Commission by its President Dick Marty, which if not different is at least supplementary.

Consequently, it seems necessary to reiterate the circumstances of this affair. This could allow a different assessment of the facts described above. While it is true that the drafting of the report has clearly shown the existence of inappropriate preferential relationships between certain members of the UCI leadership and Lance Armstrong, the circumstances that can be described, at the very least, as disquieting at the root of the affair should not be overlooked:

- Between 2004 and 2005, for scientific purposes the Châtenay-Malabry laboratory conducted analyses of samples that had been taken during the 1998 and 1999 Tours de France: this research was conducted in agreement with WADA to test a new positivity criterion for EPO.
- Informed of the positive outcome of several tests as early as February 2005, WADA informed the laboratory that it would be interested to receive the results of these

analyses as well as the code numbers of the samples. The laboratory accepted this on the express condition that WADA would not use the results for disciplinary proceedings.

- Scientific research carried out on human material must be carried out while respecting the strictest conditions of anonymity. The laboratory manifestly displayed a certain negligence by retaining the same sample numbers that had been used at the time of sampling: this allowed the potential identification of the athletes concerned which represented a breach of the accepted rules in the scientific domain.
- The identification of Lance Armstrong was, in fact, only possible following a breach of medical confidentiality (or at least professional confidentiality). The analyses had been conducted for scientific purposes rather than for anti-doping proceedings and this of course engaged the matter of privacy.
- The identification of Lance Armstrong was possible by at least two different means. A journalist from *L'Équipe* requested the UCI for access to the forms drawn up at the time of the doping control. According to the journalist, this was to verify that Armstrong had not used doping substances prescribed by his doctor following his cancer during his return to competition. When requested, Armstrong gave his consent in the knowledge that no doping substances had been prescribed or listed on the form. However, this was not the journalist's real motivation. He was actually interested in the control number on the form. During interviews, the journalist admitted to having knowledge of the results of the analyses. By showing these forms to the journalist, UCI executives displayed a certain carelessness, if not considerable naivety. Furthermore, Lance Armstrong's agreement did not represent informed consent as would be required in such circumstances. We will not draw any conclusions on the ethical nature of the journalist's behaviour.
- For completeness, it should also be reiterated that the French Ministry of Health, Youth Affairs and Sport – to which, in the organisational hierarchy, the laboratory reported – also possessed the identification numbers from the 1998 and 1999 samples. The Minister in question at the time was Jean-François Lamour, a member of the WADA Committee, then Vice-President and potential presidential candidate (however, following controversy over his sporting career, he ultimately declined to stand).
- In any event, upon learning – following an unauthorised leak – that the samples from the prologue of the 1999 Tour had been discovered to be positive in the scope of scientific research conducted by the French laboratory, it was not difficult to implicate Armstrong.

The US rider had won the prologue and as a result had been subject to an anti-doping test (it should be recalled that at the time EPO was not detectable and was very widely used in the peloton). All the tests from the prologue had returned positive results.

- According to one testimony, the publication of the article by *L'Équipe* had been delayed upon the express request of the Minister to avoid it occurring before or during the 2005 Tour. The article was published on 23 August 2005 and WADA, in its press release at the time, confirmed that the laboratory had sent it the results on 22 August and that it had acknowledged these on 25 August. According to the USADA decision regarding Armstrong, it appears that the French laboratory conducted the analyses on the Armstrong samples between November 2004 and March 2005. In the same press release, WADA mentioned the 15 forms obtained by the journalist; these were then personally shown to Hein Verbruggen by Dick Pound.
- It is furthermore rather significant that among the positive retroactive analyses for EPO, the leaks had only targeted Lance Armstrong; eight years later, other names would come to light (and not insignificant ones!). In revealing the names during the hearing of the French Senate Commission, the laboratory director said: "*There were so many positive results (for EPO) that I thought that our test should be completely reviewed ...*" The leak and publication by *l'Équipe* however only targeted Armstrong.

This affair attracted a huge amount of publicity – yet it was known, or should have been known, from the very start, that no sanctions could arise (as it lay outside any anti-doping procedure). The affair gave rise to genuine feelings of unease, especially when taking into account the serious conflicts that at that time existed between the UCI on the one hand and WADA (at least at executive level), the French Anti-Doping Agency and ASO (belonging to the same group as *L'Équipe*) on the other. Such indiscretions (not forgetting what happened in the Contador case) certainly do not contribute to the credibility and standing of the anti-doping structures. This is certainly not to defend riders who have doped, but an effective fight against doping cannot be conducted by endorsing targeted leaks in the press, in this way indirectly legitimising the existence of the underlying infringements, rather than strongly condemning such leaks from the outset. If this information had been dealt with while respecting the necessary discretion, it would also have been easier to put in place a more effective surveillance of Lance Armstrong. It must

not be forgotten, as seems to have been the case, that several other riders were retroactively discovered to be positive.

Other examples of a favoured treatment by the UCI leadership towards Lance Armstrong

According to several sources, this policy of "favours" towards Lance Armstrong started in 1999 with UCI's intervention when Lance Armstrong tested positive for corticosteroids during the Tour. After the positive result for Lance Armstrong had been made public in French newspapers, UCI issued a justification in a press release defending the American cyclist. For many, it would have been catastrophic for the 1999 Tour if the yellow jersey had been disqualified. The 1999 Tour had been marketed as the "*Tour of Renewal*" following the host of doping scandals related to the 1998 edition. Lance Armstrong himself considered the UCI's intervention a favour.

Lance Armstrong was of course entitled to the benefit of the fundamental principle of the presumption of innocence, and it is true that he was subject to extensive testing by the various anti-doping agencies. The fact remains however, that there were several serious indications that suggested the use of doping substances and which should have led UCI to be more circumspect in their dealings with him and to actively target-test him.

These doping suspicions included, in particular: the revelations of June 2001 that Lance Armstrong was working with Dr Michele Ferrari; Lance Armstrong's two suspect test results for EPO of June 2001 and June 2002; publication of a journalist's book in 2004 and the assertions of Lance Armstrong's masseuse Emma O'Reilly on his doping practices;[295] *L'Équipe* August 2005 revelations of positive EPO tests for Lance Armstrong in the 1999 Tour; disclosures in September 2006 by Frankie Andreu, Lance Armstrong's teammate, that he was doping while in the USPS team; Floyd Landis's admission of doping in 2010 and his accusations against his former teammate; the testimony of Tyler Hamilton and other former USPS riders and their doping confessions to the Federal Grand Jury; accusations of doping made against Lance Armstrong by Tyler Hamilton in the "60

[295] Pierre Ballester & David Walsh, "L.A. Confidentiel Les Secrets de Lance Armstrong" (in French) (2004).

Minutes" TV programme in May 2011; the opening of a formal investigation into Lance Armstrong by USADA in July 2012.

The suspicions of doping were sufficient to justify a policy of target testing of Lance Armstrong by all competent agencies. UCI should also have maintained a certain distance from, and been circumspect in its relations with the athlete.

However, on the basis of interviews and an analysis of documents in our possession, the CIRC considers that certain former presidents actually initiated a special relationship with Lance Armstrong and failed to establish a more distant relationship, which would have been more prudent given his status as an athlete and because of the suspicions of doping that persisted. Special consideration was allowed for Lance Armstrong and, to return the favour, Lance Armstrong was used in UCI's battles against various third parties on different fronts.

. With regards to the suspect test results for Lance Armstrong in 2001 and 2002, several interviewees reported that Lon Schattenberg's attitude was to say that the results were "*not possible*" and to call the reliability of the EPO test into question. It would seem that he found it impossible to believe that a cancer survivor could resort to doping, as one CIRC source reported. The CIRC has not found any evidence to show that, following Lance Armstrong's two suspect EPO tests of 2001 and 2002, the UCI established a policy of targeting Lance Armstrong in order to determine whether he was in fact doping. On the contrary, the UCI asked the director of the Lausanne laboratory to explain the EPO test method at a meeting, a request which was not made for other athletes.

. Internal communications and testimony show that Lance Armstrong was considered as a veritable icon by the institution: a cancer survivor who had managed to beat his disease, helped the sport to recover and to return some credibility to UCI after the difficult post-Festina years for cycling. One source said that in defending Lance Armstrong, the UCI wanted to defend the icon of cycling and thus the sport itself. This "admiration" is visible in the words of the former UCI President who in a letter to the President of the French Cycling Federation in

2008 said that he was particularly proud of maintaining good relations with a man whom Time Magazine had recently included in its list of the 100 most influential heroes and pioneers of our time. It must be recognised that the vast majority of the sports world and the media, not to mention important political figures, shared this admiration and this enthusiasm for the Texan rider.

. On numerous occasions Lance Armstrong was asked by UCI to send letters of support or gifts or to meet people suffering from cancer whom they knew. Personal favours were also asked such as requests for Nike watches for the family members of a former UCI President. Lance Armstrong's financial assistance was also requested on several occasions, whether directly in April 2008 to finance the ABP with a payment of USD 100,000 or indirectly to assist in securing sponsors to finance cycling events or UCI itself. UCI also accepted two donations from Lance Armstrong for the fight against doping.

. The documents in our possession show that in the dispute between Hein Verbruggen and Dick Pound, the UCI President sought Lance Armstrong's assistance to support him. On 22 July 2002, he attached an email from Lance Armstrong to his letter of resignation from the WADA Foundation Board. In February 2004, together with Lance Armstrong's agent, Hein Verbruggen coordinated the drafting and publication of an open letter from Lance Armstrong to Dick Pound in response to an interview with the WADA President in the newspaper *Le Monde* on 28 January 2004.

. The documents confirm that UCI requested Lance Armstrong's assistance in its struggle with ASO, in particular asking him to sign a letter of support for the UCI *ProTour* in 2007.

. As discussed earlier in the report, UCI made an exception to its ADR to allow Lance Armstrong, then seven-time winner of the Tour, to return to competition at the Tour Down Under in January 2009, before he was legally entitled to participate in an international event.

The CIRC has also gathered information demonstrating that Lance Armstrong sought the assistance of UCI on several occasions and made use of his privileged relationship with the UCI leadership to his own advantage.

. Before the 2003 Tour, as well as in 2009, Lance Armstrong informed UCI of the dangers of drugs prevalent in the peloton such as synthetic haemoglobin (HBOC) and AICAR. According to a source, several riders achieved incredible performances in 2003, in particular during the Critérium du Dauphiné Libéré, and Lance Armstrong felt threatened before the Tour. UCI had already informed riders at the end of January 2003 that synthetic haemoglobin could now be detected and before the start of the Tour sent a letter to all riders reiterating the detection method for synthetic haemoglobin by means of a free plasma haemoglobin test. According to the same source, this warning to the riders had the effect that those who, two weeks previously, had been performing very well at the Critérium du Dauphiné Libéré, produced normal performances at the Tour (although the CIRC has not been able to corroborate this).

. In 2004, Lance Armstrong's lawyers contacted UCI on two occasions to obtain statements and/or affidavits in support of Lance Armstrong in two legal cases: the first involved Lance Armstrong against *The Times* newspaper, David Walsh and Alan English and the second involved Lance Armstrong and the company SCA Promotions. In both cases, UCI worked with the rider's lawyers to respond to accusations of doping and defend the effectiveness of UCI's anti-doping policy.

. On 12 June 2012, as a result of the enquiry conducted by the American judicial authorities, USADA announced the opening of disciplinary proceedings against Lance Armstrong and five of his associates: Johan Bruyneel, Michele Ferrari, Luis del Moral, Pedro Celaya and Pepe Marti. A review of documents in our possession from June 2012 shows that UCI had no intention of contesting USADA's jurisdiction over the Lance Armstrong case, as clearly expressed in an analysis of the situation by Philippe Verbiest sent to Pat McQuaid on 23 June 2012: "*It may be a witch hunt but it may also be a hunt that is based on evidence that the witch is guilty indeed and we have to be careful with this as any criticism of the USADA*

process may be explained as UCI further aiding doping and dopers and further protecting LA. This may be lethal if it is shown indeed that LA doped. In my view UCI should remain neutral. I agree this is a difficult exercise: for the sake of the image UCI has an interest that LA is acquitted as otherwise UCI will be seen as not having done its job properly and as having 'protected' LA. In addition the whole LA period, cycling's pop star and above all cycling's credibility will be in the drains. On the other hand, for the sake of the fight against doping UCI cannot object (or be seen to object) to the truth coming out." This sums up the UCI's attitude to Lance Armstrong during his racing years.

From 27 June 2012, Lance Armstrong's lawyer sent several messages to UCI setting out why UCI had jurisdiction over the alleged breaches of the ADR by his client. On 9 July 2012, he sent UCI the pleadings made before the US District Court for the Western District of Texas on behalf of Lance Armstrong indicating that UCI had jurisdiction over the rider's alleged breaches of the UCI ADR.

In an interview with Cyclingnews on 11 July 2012, Pat McQuaid confirmed the UCI's policy of neutrality in the Lance Armstrong case. At the start of stage 10 of the Tour in Macon, McQuaid told Cyclingnews that the sport's universal governing body had next to nothing to do with a doping case surrounding seven time winner of the Tour, Lance Armstrong. *"I've read what they've said but as they're not licence holders so I don't know how they can ban them or what they can be banned for,"* he told Cyclingnews. *"I don't want to comment. The UCI has already said that we're not involved in this investigation and our last press release we said we would not comment. So don't ask me. If you want to talk about it ask USADA, not me*."

Two days later, on 13 July 2012, UCI informed USADA that UCI had authority over the management of the results in the case against Lance Armstrong and five respondents and as such had the right to receive the entire dossier and to decide after examination if there were grounds to open disciplinary proceedings. The arguments put forward by UCI were, according to USADA, the same as those advanced by Lance Armstrong's lawyers in their pleadings of 9 July.

UCI was in frequent communication with Lance Armstrong and/or his lawyers between June and September 2012.

On 22 October 2012, the UCI President said in a press conference: "*The UCI will not appeal to the Court of Arbitration for Sport and it will recognise the sanctions that USADA has proposed. The UCI will ban Lance Armstrong from cycling and the UCI will strip him of his seven titles. Lance Armstrong has no place in cycling.*"

In light of the above, there are numerous examples that prove that Lance Armstrong benefited from a preferential status afforded by the UCI leadership. These favours were granted to him because he was considered the greatest cyclist and moreover the people's hero as a cancer survivor. As one source summarises, "*the UCI chose business to be the priority for the sport. The primary concern was the commercial and international development of cycling and the arrival of Lance Armstrong was an extraordinary opportunity, a real success story, and the UCI closed its eyes to the rest.*" Another source considered that within UCI, Lance Armstrong was considered "*the illustration of the success of professional cycling and that if he fell, everyone would fall with him*."

There was a tacit exchange of favours between the UCI leadership and Lance Armstrong, and they presented a common front against anyone who dared to attack him. As a former UCI employee summarised, "*to defend the image of the sport, they defended the champions*."

UCI did not try to prevent Lance Armstrong from being tested on numerous occasions. However, UCI did not actively seek to corroborate whether allegations of doping against Lance Armstrong were well founded by looking at the information at its disposal, cooperating with the various anti-doping authorities and listening to those individuals who over the years had provided an insight into the rider's doping practices. In contrast, UCI fell back to a defensive position as if every attack against Lance Armstrong was an attack against cycling and the UCI leadership.

The UCI leadership did not know how to differentiate between Armstrong the hero, seven-time winner of the Tour, cancer survivor, huge financial and media success and a

role model for thousands of fans, from Lance Armstrong the cyclist, a member of the peloton with the same rights and obligations as any other professional cyclist. This policy of offering favours and defending Lance Armstrong seriously harmed the UCI's image and credibility despite all the efforts and dedication of its employees to fight doping. An IF must ensure that all sportspeople are treated equally and subject to the same rules and procedures. “Stars” and “heroes” must also set an example in terms of ethics and the respect of the rules.

2.4.3.2. Allegations regarding UCI’s favourable treatment of Alberto Contador

It has been reported in the press that UCI allegedly tried to cover up Alberto Contador’s positive test in 2010 until German TV ARD found out about it and brought it to the surface.

According to interviews and UCI documents, samples collected during the Tour were sent to the Lausanne laboratory, with the exception of samples on 12 and 21 July 2010 where the top five riders of the Tour had their samples sent to the Cologne laboratory. The Cologne laboratory was able to undertake a more in-depth analysis for AICAR, insulin and clenbuterol.

On 21 July 2010, a rest day following the 16th stage of the 2010 Tour, Alberto Contador underwent a doping test. The analyses of the urine samples revealed the presence of clenbuterol, a prohibited substance classified as an anabolic agent on the 2010 WADA Prohibited List.

On 24 August 2010, UCI telephoned Alberto Contador to set up a meeting with him in Puertollano (Spain) on 26 August to discuss an AAF. Three UCI staff members met with Alberto Contador and a doctor and informed him of the ADRV. Contaminated meat eaten the night prior to the rest day was put forward as a possible source of contamination that could explain the very low level of clenbuterol found on 21 July.[296]

[296] According to available information, during the FIFA World Cup, 11 players from the same team were found positive for a doping substance whose effects are similar to those of clenbuterol. In the country where the team training camp was located, those substances are used to improve the quality of meat. If used correctly, they should not be detectable in the meat. The anti-doping authority considered it was a case of contamination and did not publicise the case.

There are countries where clenbuterol is widely used to bolster muscle growth in cattle. It is also public knowledge that previous cases have arisen in China and Mexico and comparable cases (however not involving clenbuterol) in the USA. There were, thus, good reasons to investigate the matter further before making the case against Alberto Contador public. In his case the CAS finally came to the conclusion that the meat contamination scenario was less likely than the scenario that the AAF resulted from a contaminated nutritional supplement (for which there are also many examples in the past). It goes without saying that even though the meat contamination scenario is a possible scenario and has been accepted in other cases, each case must be decided based on its own specific facts and circumstances.

In view of the explanation given by the rider about potential meat contamination, together with the extremely low concentration of clenbuterol found in Alberto Contador's 21 July 2010 sample and other analytical data, a discussion took place between UCI, WADA, experts and laboratories, and further analysis was undertaken to assess how best to handle the results management process.

A review of UCI data shows that the UCI legal department was not in favour of opening a procedure on the basis of the clenbuterol finding only, given their concern about the high possibility of failure. WADA lawyers on the other hand maintained a procedure had to be opened, as it was an ADRV but agreed that further investigation needed to be undertaken to check if the meat contamination scenario held up.

On 30 September 2010, UCI published a press release announcing that the Spanish rider returned an ADRV for clenbuterol during the 2010 Tour as they had been made aware that journalists had got news of the information.

On 8 November 2010, following an investigation, UCI urged the Spanish Cycling Federation (RFEC) to open disciplinary proceedings against Alberto Contador for the contested ADRV. On 25 January 2011, the RFEC proposed a suspension of one year to Alberto Contador. The rider refused such proposal. On 14 February 2011, the RFEC acquitted Alberto Contador. On 24 March 2011, UCI filed an appeal with the CAS against

the decision in issue. The UCI's appeal was followed by another appeal filed by WADA on 29 March 2011. Both UCI and WADA requested the CAS to annul the decision of the RFEC and to impose on the rider a period of ineligibility of two years. On 6 February 2012, CAS issued its decision to sanction Alberto Contador with a two-year ban for doping and to strip him of the 2010 Tour title.

The CIRC has found no evidence to show that UCI tried to hide the positive test of Alberto Contador. WADA had been informed about the positive test and was involved in the discussion regarding the results management of the case.

Several interviewees have however explained that they found it odd that the rider was notified in person in his country about his ADRV as this was not the usual procedure. The CIRC has not found any other example where this procedure has been followed for other riders.

Notwithstanding the peculiarity of the case due to the very low level of clenbuterol found in the rider's body and the fact that Alberto Contador was the winner of the 2010 Tour, the CIRC is of the opinion that the same rules and procedures should have applied to Alberto Contador as to all riders irrespective of his ranking and status.

The CIRC again expresses concern over the different testing capacities of the laboratories, as this results in unequal treatment. The Cologne laboratory was at that time, the only laboratory capable of detecting the minuscule thresholds of clenbuterol in Alberto Contador's sample.

The Commission regrets again the violation of the duty of professional secrecy when the positive test was leaked to the press. This is yet another example that has been brought to the CIRC's attention and such cases should be seriously investigated in order to respect the athlete's right to privacy as well as his/her rights for due process.

2.5. GOVERNANCE OF UCI

The good governance of sporting institutions is essential if anti-doping policies are to be effective. The reliability and acceptance of anti-doping policies depends on the credibility of the people called on to define and implement them. This means that: institutions must be governed by a set of clear, coherent rules; decision-making processes should be democratic, transparent and impartial; the choice of leaders and managers in the various sectors should be based on objective quality criteria; and qualified, independent bodies should carry out rigorous internal checks with regard to observance of the rules and the appropriate use of financial resources.

It is common knowledge that sporting organisations have serious problems in these domains. The UCI is no exception. The Commission considers that shortcomings, of greater or lesser importance, existed both in terms of the management of the organisation as well as in terms of respect of its own regulations and financial scrutiny.

2.5.1. Management of UCI

The rapid development of UCI has already been set out above. In order to fulfil his vision for the UCI, Hein Verbruggen surrounded himself with trusted individuals. Certain key positions were allocated externally; for example for all major legal matters, medical issues and doping as well as financial affairs. An external management structure, superimposed on the institutional structure was, in fact, used to manage the UCI and to take the most important decisions. The main decisions concerning doping were principally taken by the President, lawyer Philippe Verbiest and Dr Lon Schattenberg, as has been described above. As a former UCI employee reported, Hein Verbruggen "*was the Management Committee*".

The CIRC is also of the view that the UCI Management Committee generally took a passive approach and demonstrated a lack of a critical attitude. This illustrates the weaknesses of the organisation in terms of its governance. Responsibility for these weaknesses and inappropriate decisions cannot be solely attributed to the President, but also to any executives who accepted the situation without speaking out. A management committee

has a crucial role as a counterweight and safeguard against excessive concentration of powers within the administration.

Several people indicated that Hein Verbruggen, described as an "*Executive President*" or "*Enlightened Dictator*", did not accept opposition and any potential opponents were side-lined. They describe how Daniel Baal, President of the French Cycling Federation and UCI Vice-President, who many saw as a designated successor to Hein Verbruggen, was removed by the UCI President, in particular for his demands for the UCI to have a more assertive, committed anti-doping policy.

The evidence available to the Commission gave a clear impression that the UCI management adopted a strategy of aggressive defence, a "*with us or against us*" strategy, to counter anyone who opposed the organisation, its members or favoured third parties, as shown by the legal proceedings initiated against Floyd Landis, Dick Pound and Paul Kimmage as well as disciplinary procedures against Jean Pitallier, Eric Boyer and Sylvia Schenk, or the threat of such procedures.

This "siege mentality" can be explained in part, but not be justified, by the fact that cycling had become the main target of all criticism in respect of doping. These criticism were certainly justified but often failed to recognise what was happening in other sports.

The UCI leadership also did not hesitate to resort to the politicisation of conflicts, involving powerful third parties such as IOC members or other political personalities in their disputes. For example, in his letter to the Malaysian candidate Dato Darsan Singh Gill before the 2005 presidential election, UCI President Hein Verbruggen informed him that he would send copies of their current and past correspondence to Sultan Azlan Shah of Malaysia *"in order to correct the impression you are trying to give on the UCI and me"*.

2.5.2. Elections with little transparency

2.5.2.1. Succession of Hein Verbruggen in 2005: A favoured candidate

At the time of his re-election in 2001, Hein Verbruggen announced that he would not

stand for the office of UCI President again. Well before the end of his mandate in 2005, the President proposed Irishman Pat McQuaid as his successor. In information available to the CIRC, Hein Verbruggen made reference to this being approved by the Management Committee, although there appears to be no record of this in the minutes of meetings around that time. Pat McQuaid was a member of the Management Committee and President of the Road Commission. Hein Verbruggen offered Pat McQuaid paid work at the UCI for a period of approximately six months before the 2005 election, without making the post open to a competitive recruitment procedure and without a specific job description. It is the CIRC's view that conferring this type of benefit is not in keeping with principles of good governance or equality of opportunity for candidates.

In addition, Pat McQuaid had accepted a paid position as a consultant to the organisers of the 2004 Road World Championships in Verona. At that time Pat McQuaid was the President of the UCI Road Commission. This conflict of interest was acknowledged by Hein Verbruggen in a letter from him to Pat McQuaid, as in June 2003 he made a proposal to Pat McQuaid that his fees from Verona (EUR 85,000) should be paid to the UCI. These fees would then be paid back to Pat McQuaid "*on the basis of an internal agreement*". The UCI's accounting documents show that this sum, paid to the UCI in May 2004, served to finance Pat McQuaid's "training" in Aigle before his election to the office of President, for which he received CHF 20,833 per month for seven months, plus a car and an apartment (at a total cost to UCI of about CHF 180,000). In the CIRC's view these types of arrangements are not consistent with principles of transparency and good governance. As will be discussed below, Sylvia Schenk, a member of the Management Committee, challenged these practices and Pat McQuaid's candidature, but the CIRC has found no evidence that others did.

It was then that Hein Verbruggen announced, after leaks to the press, his own candidature "*in case something were to happen to Pat McQuaid…Our intentions have not changed at all with regards to our support for Pat and I will explain all this to you soon in Madrid.*"[297] The fear was clearly that Sylvia Schenk's claims could invalidate Pat McQuaid's candidature. He justified presenting his candidature to the Presidents of cycling's five Continental

[297] Letter of 31 August 2005 sent to six members of the Management Committee. Copy on file with CIRC.

Confederations, telling them that the other two candidates "*are not the best choice for being president of the UCI, be it by their background, their personality or their motivation*". It was a matter of preventing ASO from gaining an influence on cycling's umbrella organisation. One of the other two candidates for the presidency in 2005 was Gregorio Moreno from Spain who the outgoing President considered, rightly or wrongly, an ASO-supported candidate.

It should also be added that Hein Verbruggen was quick to promise to send the UCI's chief accountant to Asia to assist the President of the Asian Cycling Confederation to thwart his colleague Dato Darsan Singh Gill ("*Thank you for your willingness of helping me in fighting against Mr Darshan Singh*") who he suspected of irregularities. The haste displayed by President Verbruggen can be better understood in light of the fact that Dato Darsan Singh Gill was the third candidate to the UCI Presidency. Ultimately the chief accountant did not go to Asia as the accounting documentation could not have been analysed in time for the election.

Pat McQuaid was elected UCI President following a seemingly regular ballot, although accusations were made concerning buying of votes, which have not been proved (discussed in the following section) but which demonstrate the tense atmosphere at the time. The period before the election is however open to severe criticism and illustrates a clear disregard for genuinely democratic, transparent processes.

Funding federations to "facilitate" the election?

Hein Verbruggen, assisted by almost all of the Management Committee, made every effort to ensure the election of "*his*" candidate Pat McQuaid. One of the reasons for such commitment was the conflict with ASO and the fear that this organisation would get control over UCI. But this was not the only reason. Through Pat McQuaid, Hein Verbruggen could retain his predominant influence over the UCI. Furthermore, Hein Verbruggen was elected Vice-President, which allowed him to remain an IOC member until the 2008 Beijing Olympic Games. Several interviewees confirmed that Hein Verbruggen continued, for some years after the election of his successor, to exercise a decisive influence on major resolutions passed by the UCI.

[redacted]

[redacted] The documents in our possession show that Hein Verbruggen organised a meeting with six representatives of South American NFs in Rio at the end of August 2005 with a view to convincing them to vote for Pat McQuaid, as according to Hein Verbruggen the Spanish candidate was "*the ASO and Vuelta candidate which means that they will take control of the UCI if he is elected*". Returning from his journey, Hein Verbruggen expressly requested the finance department to charge the expense accounts for these NFs, amounting to a total of CHF 13,200 (approximately EUR 10,800), to his private current account. However, six months after the elections, he received reimbursement for these expense accounts for a similar amount "deducted in error".

The Sylvia Schenk affair

The conduct before Pat McQuaid's election, in particular his paid employment for several months before the ballot, was severely criticised, including in public, by Sylvia Schenk, a member of the Management Committee. She referred the matter to the UCI Ethics Commission five times between 2004 and 2005, as well as once to the IOC Ethics Commission and once to the UCI Appeals Board. Sylvia Schenk, supported by another candidate to the Presidency, the Malaysian Darshan Singh, contested Pat McQuaid's candidature, asserting in particular that he had benefited from the unauthorised financing of his electoral campaign by receiving a salary from the UCI for six months before the ballot. The majority of the members of the Management Committee reacted by complaining to the Ethics Commission about Sylvia Schenk. The Ethics Committee declared that Sylvia Schenk had made false declarations and breached the duty of confidentiality applicable to all of the organisation's executives. Her appeal was rejected by the Appeals Board which made her liable for the payment of considerable procedural costs. Sylvia Schenk then turned to the Swiss civil courts. The UCI responded by injunctions to prevent her from continuing to make statements that it considered to be untrue. The proceedings concluded in February 2008 with an out-of-court settlement between the parties. The parties undertook not to reveal the content of this settlement.

This confidentiality clause has been maintained including with regards to this Commission.

This affair is revealing of the culture that existed within UCI. The accusations raised by Sylvia Schenk were serious and pertinent and should have been carefully considered by the members of the Management Committee. The Management Committee clearly did not observe a culture of dialogue and dialectical debate. Finally, that this challenge should come from the only woman of this male-dominated assembly certainly did not make things any easier. It can be seen that on this occasion, the great majority of the Management Committee supported the action of the President's office.

The Ethics Commission: independent or a facade?

Documents available to the Commission show that the President of the Ethics Commission sent, before any formal decision, a draft ruling on the Sylvia Schenk affair to the UCI leadership. Such a manner of operating is entirely contrary to due process and severely prejudicial to the independence and credibility of the Ethics Commission. It also seems that, at that time at least, there were close links between certain members of the Commission and the UCI leadership, in particular the President.

2.5.2.2. The 2013 election

Pat McQuaid intended to stand in the presidential election of autumn 2013. According to the Constitution, candidates to the presidency must be nominated by their NF (Art. 51 of the Constitution). However, the Irish Federation declined to nominate Pat McQuaid as a candidate. Pat McQuaid then turned to the Swiss Federation (as a resident of Switzerland) which initially agreed but then withdrew its nomination of him. Finally it was the NFs of Morocco and Thailand that endorsed the candidature of the outgoing President, which was accompanied by a proposal to amend the Constitution to allow this to happen. The voting session at the UCI Congress in Florence in September 2013 thus opened in a climate of confusion and controversy. After long discussions on the admissibility of Pat McQuaid's candidature, the other candidate, Brian Cookson, invited delegates to accept his rival's candidature and finally proceed to a vote.

Igor Makarov, owner of the Katusha team and member of the Management Committee, had publicly called for Pat McQuaid not to be re-elected. Pat McQuaid was accused of corruption during a Management Committee meeting of June 2013. Allegations have also been made against the wealthy Igor Makarov that he offered the Greek federation money to support Brian Cookson's candidature. The matter was referred to the Ethics Commission which presented this information to the Congress in Florence without having undertaken any investigation. Subsequently, the Ethics Commission, in its new composition, established that this accusation was baseless. All of this offers a rather lamentable image of the leadership of the UCI and the Ethics Commission at this time.

2.5.3. The casual use of financial resources

As set out above, the UCI rapidly changed from a small, insignificant organisation into a major IF with qualified staff and a sizeable infrastructure of which few other sporting institutions can boast. The World Cycling Centre in Aigle was an excellent achievement for UCI at that time, both from a technical point of view and with regard to how its funding had been secured. However, there are several factors and incidents that cause the Commission to consider that the use of its financial resources has not always been as transparent as it should have been. UCI structure lacked an internal control mechanism and, above all, a Management Commission that reviews and monitors the engagement of financial resources.

The Commission has noted the extensive use of cash, in particular for the reimbursement of expenses for meetings. It is true that for the delegates of certain countries, bank transfers are laborious and sometimes not even possible. However, the systematic use of cash on these occasions does not contribute to transparency or allow any form of effective monitoring. An example of how this could be used to circumvent rules was the use of cash payments for accommodation expenses of accompanying partners, which appears to have been in disregard of specific rules.

[redacted]

[redacted]

Another example of UCI spending money without adequate financial planning was the significant sum spent on the first independent commission, which was formed after the publication of USADA's Reasoned Decision on the Lance Armstrong affair. Between the commission and the various third parties involved, including legal advisors, UCI spent over CHF 2 million in under 2 months. The financing of this operation was initiated by the UCI President without the involvement of the Management Committee. The fact that so much money was spent in such a short period, and that the commission was established in circumstances where UCI failed to lay the groundwork for a successful investigation by failing to gain the support of other major stakeholders (such as WADA), demonstrates both extremely poor management and the absence of proper financial oversight.

2.5.4. Conflicts of interest

The world of cycling is quite small with only about 1,000 licensed professional riders. The staffs of teams and federations are often made up of former riders. Everyone, or nearly everyone, knows everyone else. This increases the risk of cronyism and conflicts of interest, as depicted by some examples below.

The documents in our possession show that Pat McQuaid sent e-mails to close contacts who were professionally active in the world of cycling, attaching confidential UCI documents, such as the contract between a leading rider with his team and other confidential information.

The CIRC has already noted the consultancy post accepted by Pat McQuaid in respect of the organisation of the World Championships in Verona while he was President of the UCI Road Commission.

There are five Continental Confederations (one per continent) in the UCI, each of which is made up of its respective NF members. The President of each Confederation has the right to be a member of the UCI Management Committee. According to Article 36 of the UCI Constitution, the vote of the NFs to elect the President of the UCI is exercised through voting delegates, appointed in each Continental Confederation. Each delegate must be a

member of a NF of the relevant Continental Confederation. There are 42 voting delegates in total, divided between the Continental Confederations.

Igor Makarov is a member of the UCI Management Committee and at the same time is the owner of a professional cycling team, President of the Russian National Cycling Federation and a sponsor, through his company Itera, of three of the five UCI Continental Confederations: the African Cycling Confederation (CAC), the European Cycling Union (UEC) and the PanAmerican Cycling Confederation (COPACI). The sponsorship of the CAC and the renewal of the sponsorship of the UEC were put in place at the same time as the 2013 presidential election. These three Confederations account for 30 voting delegates in the presidential election.

Donations and contributions to the development of cycling need to be controlled by the governing body of cycling to ensure that the fundamental principles of independence and transparency are respected in the electoral process and to avoid a situation where the financing of development projects is synonymous with political influence and indirect vote buying.

In addition, the CIRC recommends that any financial contribution of a material nature by any individual linked to UCI needs to be properly monitored.

It is disappointing and unexplainable that Igor Makarov did not agree to meet with the CIRC despite repeated invitations. However, he sent four representatives for two separate meetings. Whilst this was of assistance to the CIRC, it finds it unacceptable that Igor Makarov chose not to meet with the Commission.

CHAPTER 3: RECOMMENDATIONS

The recommendations aim to assist UCI to make the changes necessary to avoid repeating mistakes in the future.

As part of its investigation and in the context of making these recommendations, the Commission has taken into account reports and recommendations made by other bodies and interested groups, including the French Senate Report,[300] WADA's 2013 Report,[301] WADA's Independent Observer Reports,[302] and numerous national-level reports from federations and NADOs. The Commission has also considered recommendations for the future made by interviewees who spoke to CIRC. This body of work and information has assisted the Commission in making these recommendations and provided a foundation upon which to build.

What is clear from the findings of this Commission is that there is no straightforward solution to the problem of doping in cycling. One important message that UCI and all stakeholders must keep to the fore is that the fight against doping is a continual process. Those involved in the fight against doping always have to look ahead, anticipate what needs to be done and be proactive. Even if UCI and other stakeholders were to implement these recommendations in their entirety, they must still remain vigilant and adapt as the doping landscape itself morphs and changes. When it comes to anti-doping, there is no such thing as "job done".

The recommendations are based on the CIRC's firmly-held belief that doping should not be legalised since the anti-doping framework protects the very essence of sport. Moreover, the backbone in the fight against doping in sport must be the WADA Code and

[300] N° 782 Sénat session extraordinaire de 2012-2013, rapport fait au nom de la commission d'enquête sur l'efficacité de la lutte contre le dopage. Available: http://www.senat.fr/rap/r12-782-2/r12-782-21.pdf (in French).
[301] Report to WADA Executive Committee on Lack of Effectiveness of Testing Programs, published on 5 Dec. 2013. Available: https://www.wada-ama.org/en/resources/world-anti-doping-program/lack-of-effectiveness-of-testing-programs.
[302] Reports available: https://www.wada-ama.org/en/resources/search?f%5B0%5D=field_resource_collections%3A165.

International Standards. The CIRC considers it inapt to compare the question of legalising doping with the question of legalising recreational drugs.

The recommendations are arranged in the following categories:

3.1. Legislative framework
3.2. Operational
3.3. Governance
3.4. Changes to the sport

3.1. LEGISLATIVE FRAMEWORK

3.1.1. Investigative powers

Primary responsibility for controlling doping in sport lies with the sporting world. Only subsidiary responsibility lies with governments. However, CIRC notes that major doping scandals were uncovered due to the investigative powers of public authorities. This is evidence that governments need to make use of these investigative powers. Furthermore, today's doping techniques (*e.g.*, microdosing) get harder to detect with classical instruments of doping control. Thus, there is a need for these investigative tools and information sharing between the governments and the sports movement. The CIRC recommends that UCI works closely together with governments/national authorities that make their investigative tools available to the fight against doping and that, together with other stakeholders, it urges other governments to have these tools in place and work towards closer cooperation with sports bodies on criminal matters in anti-doping.

3.1.2. Corporate governance

The Commission believes that governments should provide a better legal framework to ensure good governance in sports organisations. There appears to be a need to better monitor the IF's exercising of their autonomy. This is also justified by the fact that sports federations are often exempt from tax and enjoy other privileges. As Switzerland is home to many international sports federations, it should adopt standards for the criminal

liability of private corruption, as envisaged by the Federal Department of Justice and Police in its April 2014 communiqué, "Effectively combating private corruption".[303]

3.1.3. Doctors

In addition to serving any sport sanction, doctors who are found guilty of an ADRV should be investigated to determine whether they are fit to continue their general medical practice. The situation where doctors found guilty of supplying or administering prohibited substances are suspended from acting as sports doctors, but remain free to practice in general medicine, needs to be addressed. Anti-doping bodies should have an obligation to inform the doctor's professional regulatory body that he has been sanctioned for a sport violation so that the regulatory body may open an investigation against the doctor.

3.1.4. WADA Code

Independent commissions are an important and necessary tool in investigating structural deficits in anti-doping. A commission, however, will only be able to investigate a matter successfully, if it has the support of all stakeholders. The CIRC has experienced some resistance by some stakeholders in the beginning of its operations for reasons that, quickly, have proven to be unjustified. The CIRC recommends to amend the WADA Code to provide for commissions as a tool to investigate doping scandals or monitoring compliance with the WADA Code. Any such commission installed by WADA or operating with its consent should have the cooperation of all signatories under the Code, including sharing information with the investigating commission.

The CIRC thinks that it is worth contemplating whether the development that has been experienced in anti-doping on the national sporting level, *i.e.*, to shift anti-doping away from national cycling federations to independent NADOs, could also be a model for cycling at an international level. The CIRC has observed that the development of the CADF goes in that direction. However, the development of the CADF in a fully independent

[303] Available: http://www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2014/2014-04-30.html (in French).

(NADO-like) entity is, at least for the moment, limited by the WADA Code that provides that IFs have ultimate responsibility in matters of anti-doping. CIRC recommends that WADA studies the possibility of fully independent anti-doping bodies, including results management, at international level and that such bodies would become signatories of the WADA Code.

If an IF is not compliant with the WADA Code, the only possible sanction provided for at present is that it may be expelled from the Olympic Movement. The CIRC recommends that instead of one ultimate sanction, whose threshold is very high and which in practice has never been applied, the WADA Code should be amended to include a range of measures and sanctions for non-compliant federations.

The CIRC has observed that "public shaming" is frequently used to put pressure on other stakeholders. In particular, allegations that are not fully investigated or not investigated at all are put into the public domain by ADOs. Such conduct should not be employed. It infringes on fundamental rights, leads to a waste of resources and undermines the credibility of the fight against doping. In the same way that WADA-accredited laboratories are bound by a duty of confidentiality, the same principle should apply to ADOs in respect of allegations.

3.1.5. Other UCI rules

The imposition of financial sanctions can have a deterrent effect both on riders and team personnel. The 2015 UCI ADR set out the financial consequences of an ADRV for riders, other persons exercising a professional activity in cycling, and teams. While the CIRC recognises that financial sanctions have to be proportionate, it recommends that UCI uses its full discretion in the context of financial sanctions.

CIRC notes that Article 21.2.5 of the 2015 UCI ADR (dealing with roles and responsibilities of rider support personnel) provides that failure to cooperate with ADOs investigating ADRVs may form the basis for disciplinary action. In order to make the obligation to cooperate effective, UCI must utilise this rule and apply it to all persons involved in cycling. UCI should also educate participants on their obligation to cooperate, and the potential repercussions of failing to do so.

3.2. OPERATIONAL

3.2.1. Testing and investigations

3.2.1.1. Plan

. **Prevalence study:** the CIRC recommends that prevalence studies of doping in different countries, teams, levels (including amateur) and disciplines, should be undertaken by UCI/CADF to establish the level of doping in those different populations; this would enable UCI to define better how to deploy resources and support an effective anti-doping strategy. All the statistical data from testing should be integrated into these studies.

. **Integrate intelligence/quantitative to qualitative testing:** CADF should move to a qualitative rather than quantitative testing plan and collect and integrate all available information, including from the following sources: prevalence studies, information from whereabouts, ABP, information from other NADOs, laboratories and ADOs, in-the-field intelligence from doping collection, whistleblower information, information from results management, national authorities, testing records, scientific data, medical research information, imagery, open sources information and social media. In order to be able to process this information, CADF needs to recruit personnel with the requisite experience and technical skill.

. CIRC recommends better coordination between ADOs to ensure that there is testing at all levels of competition.

3.2.1.2. Conducting testing

UCI/CADF should be aware that athletes are constantly adapting so that testing should accordingly adapt and be unpredictable at all times. The following issues should be taken into account:

. **Window:** the no testing window from 11pm to 6am helps riders who micro-dose to avoid being caught. The CIRC is conscious of the principle of proportionality but the absence of night time testing is a weakness of the current system and needs to be addressed. CADF should make more use of the exception contained in Article 5.2 of the 2015 UCI ADR ("*serious and specific suspicion that the Rider may be engaged in doping*") to test at night-time.

. **ADAMS notification:** ADAMS should be adapted to process information gathered through the intelligence collection set out above. The CIRC recommends that software be adapted for processing this information. The CIRC has learned that developments to this end are already under way and encourages all stakeholders involved to speed up this process. Furthermore, all stakeholders are encouraged to gear up with resources in order to collect intelligence as per our earlier comment, populate the global database in a timely fashion and keep it current, and ensure quality information is delivered to ADAMS for the benefit of all. This intelligence, of course, would not be available to athletes, but would be made available to other NADOs.

. Athletes should not be given timely information about their ABP results because this could be mis-used by athletes to adapt their behaviour (with an exception if some pathology is detected). For this reason, there should be a time lag between testing and the publishing of information on ADAMS.

. **Re-testing:** re-testing should be an integral part of the testing programme. A coherent re-testing strategy should be developed that is systematic and regularly undertaken, with additional tests when new science is available, and well publicised. Retrospective sample testing is perhaps as great a disincentive to riders as today's testing is, even more so for the more successful riders. A sample given by a rider should have a mandatory re-testing programme attached to it.

. **DCOs and sample collection:** the selection of service providers for DCOs should be quality driven rather than cost driven, and based upon the professionalism, quality of training, and proven independence of their approach at events.

3.2.2. Independent whistleblower mechanism

CIRC recommends that in order to encourage people to come forward with information, UCI should set up an independent whistleblower desk, where the processes and systems are fully outlined to a potential caller. Absolute confidentiality must be guaranteed. The whistleblower mechanism would deal with information related to all forms of corruption and cheating, including doping, outcome fixing, and technical cheating.

UCI should ensure the risk of being ostracised or legal repercussions are minimised by providing structural support and help to people who come forward with material information. The attitude towards whistleblowers should be shifted to highlight the positive role they play in cleaning up cycling.

3.2.3. Results management

3.2.3.1. Non-analytical investigations

At present, CADF concentrates solely on testing. There must also be a focus on non-analytical means of establishing ADRVs. The CIRC recommends that intelligence-led testing and broader, non-analytical investigations should target individual riders and support staff when most likely to be engaged in doping activities, particularly in out-of-competition time periods.

3.2.3.2. Proactive use of substantial assistance

UCI should proactively make full use of substantial assistance provisions (every athlete who is sanctioned should be approached to enquire whether he is interested in providing substantial assistance).

3.2.4. Laboratories

CIRC notes that incidents have arisen in the past where leaks from laboratories became the subject of media reports. Article 14.1.5 of the 2015 International Standard for

Laboratories imposes a duty of confidentiality on persons involved in the results management process, and a disciplinary process for failure to respect that duty. CIRC recommends that this rule be used to protect the integrity of the results management process.

3.2.5. ABP

CADF should review the process by which ABP cases are managed to ensure it is as efficient as possible. At present, the time from apparent violation to imposition of a sanction takes several years.

3.2.6. Two-tier approach

The CIRC considers that below the level of prohibited substances and methods, there are medical problems in the peloton that should be addressed. The use of substances, even if not prohibited, needs to be comprehensively investigated for medical but also anti-doping purposes. For example, one medical expert told the CIRC of wide use of anti-depressants in the peloton. This should be addressed first and foremost as a medical issue, irrespective of whether anti-depressants are prohibited in sport. Furthermore, this phenomenon should also be investigated from an anti-doping perspective, as it could be indicative of other prohibited substances being used to compensate their side-effects. In order to understand the full context of substances being taken, there needs to be this two-tier approach. Medical information gathered in this way could have many uses, including being used to develop the Prohibited List. These two areas should be kept separate but information shared from the medical side to better understand and improve the anti-doping side.

3.2.7. Proportionality and consistency of sanctions

Where there is a range of applicable sanctions, a NADO should apply the just and proportionate sanction, regardless of what the maximum sanction might be. The CIRC has observed that in a one well-known case, some athletes got a 6 months ban and another a lifetime ban for the exact same behaviour. Such disparity in sanction undermines

athletes' confidence in the disciplinary system. To ensure equality, irrespective of an athlete's resources and his ability to defend himself, NADOs should seek consistent and proportionate sanctions within the legal framework.

3.2.8. Science

3.2.8.1. Laboratories

CIRC has noted that laboratories have different testing capacities. The way in which a laboratory is chosen is rarely based on capability but on other factors, including numerous subjective criteria, geography and cost. CIRC recommends that the strategy be enhanced to better take into account the different skills of laboratories and to ensure that *any* test that is sent to *any* laboratory will ultimately have the *best* available science applied to it, in the interests of transparent and best practice outcomes.

3.2.8.2. ABP

In order to address issues with the efficacy of the ABP, and with allegations that the ABP can be manipulated, CIRC recommends that more scientific research be carried out, including the effects of altitude and dehydration.

3.2.8.3. Allocation of funding to research

CIRC recommends that the process for allocating money to medical, scientific and technical research projects be enhanced in order to bring funded projects to fruition earlier.

CIRC recommends that UCI/CADF allocate funds for academic research that benefits the cycling community and helps develop new approaches to anti-doping, for example by undertaking a cross-discipline study with other disciplines in the cycling family, to establish the core factors and drivers that differentiate or overlap regarding doping or non-doping issues; a study into the phenomenon of collective or group denial, to help prevent such issues as omerta taking hold again; a study across similar endurance sports

that identifies the common drivers, indicators, methods, approaches, factors and networks that cause doping in these sports; and a medical research paper on the value of starting ABP profiling earlier in riders' careers, than it is doing at present.

3.2.9. Pharmaceutical

The CIRC recommends that Anti-doping entities and the pharmaceutical industry continue to develop close ties with a view to improving the traceability of medical substances used for illicit reasons in sport, and tightening up down-stream supply-chain systems with end-user providers such as pharmacies, hospitals and other distribution mechanisms.

3.3. GOVERNANCE

3.3.1. Election process

CIRC recommends that UCI carry out a study on the election process to make it more transparent, democratic, representative and straightforward, perhaps to include voting rights for representatives of professional licence holders. CIRC considers that past elections for president were seriously flawed and lessons should be learned from those past mistakes.

3.3.2. Checks and balances

3.3.2.1. Finance/accountability

The Commission considers that there should be better control and accountability for UCI in the form of its overarching management body, which has effective financial control over all actions, commissions and bodies of UCI.

3.3.2.2. Ethics Commission

CIRC recommends that the Ethics Commission should be revamped to ensure it is independently appointed and that people who are cited are obliged to cooperate. The Ethics Commission should be proactive rather than reactive. Furthermore, the Ethics Commission's mandate should not be linked to the president's term in office, so that it cannot be dissolved immediately after an election.

3.3.2.3. Management Committee

CIRC recommends that Management Committee members should take a more active role and be accountable. CIRC also recommends that, unlike in the past, everything that occurs during committee meetings should be recorded in the minutes.

3.3.3. Riders' union

CIRC recommends that UCI facilitate the creation of a strong riders' union. The purpose of the union would be to give riders a collective voice, particularly on issues of ownership, revenue sharing, the racing calendar and anti-doping. The riders' union should also be given a number of votes in Congress, so that riders have a say in how UCI is run. Membership could be linked to voting eligibility in the presidential elections.

3.3.4. Anti-cheating

CIRC recognises there are other forms of cheating that go beyond doping. CIRC recommends the UCI to investigate whether and to what extent lessons from the anti-doping fight can be used to combat these new forms of cheating and how a collaborative approach could be taken for these other forms of cheating too, such as technical violations and outcome fixing.

3.3.5. Education

The CIRC recommends using sanctioned riders as an educational tool. This should include interviews with the rider, appearances, lectures and recorded messages pointing out the impact of doping on their lives. The information should detail the social stigma, financial impact, health effects and self-esteem issues. UCI should be creative and make the education programme relevant to young athletes through the use of social media.

3.4. CHANGES TO THE SPORT

3.4.1. Former doped riders in the sport

The most effective way of cleaning up the sport is to pursue individuals through investigations as soon as a suspicion is raised. UCI should make efforts to investigate those individuals that it believes were involved in doping in the past, observing the principles of due process, and make full use of the extended statute of limitations. The CIRC considers that the sanction system according to the WADA Code, which provides that the person sanctioned is prohibited from participating in sport in any capacity, is sufficient. The CIRC has taken note of Article 1.1.006.2 of the UCI Cycling Regulations, General Organisation of Cycling as a Sport (2014). In view of CAS jurisprudence in relation to the Osaka Rule,[304] the CIRC wonders whether this rule is compatible with the WADA Code. Furthermore, the rule as it stands adds to further inequality in the sport, as it will target individuals in an arbitrary manner. The rule could only achieve its goal, from an equality and proportionality perspective, if every individual suspected of being involved in doping was investigated. Since this rule does not apply retroactively, it fails from the outset to control the participation of former doped riders in the sport.

[304] *See* CAS 2011/O/2422 United States Olympic Committee (USOC) v. International Olympic Committee (IOC); *and* CAS 2011/A/2658 British Olympic Association (BOA) v. World Anti-Doping Agency (WADA).

3.4.2. TUEs

CIRC recommends that more attention be paid to medical issues in the peloton to better understand how and when TUEs should be granted. Anonymous information collected on medical issues should be used as intelligence for anti-doping.

3.4.3. Centralised pharmacy for short stage races

CIRC recommends that UCI study the feasibility of requiring that any substances taken by riders during short stage races, including food supplements, be dispensed by a centralised pharmacy for the whole peloton.

3.4.4. Equality in the field

CIRC recommends that if competitions are devised in which teams of different tour levels are competing, that all teams are subject to the same level of testing, and always to the higher standard.

3.4.5. Financial stability

CIRC recommends that UCI take steps to address the lack of financial stability for teams and riders, which currently fosters an environment that pushes teams and riders to do all they can to achieve results.

ANNEX 1: LIST OF INTERVIEWEES

In the course of its investigation, CIRC spoke to 174 interviewees. Below is a list of those interviewees who agreed to their names being disclosed by the CIRC.

I. UCI affiliated individuals

1. Lucien Bailly
2. Olivier Banuls
3. Martin Bruin
4. Alain Calvez
5. Philippe Chevallier
6. Brian Cookson
7. Enrico Della Casa
8. Arlette Dumas
9. Simon Geinoz
10. Martin Gibbs
11. Anne Gripper
12. Amina Lanaya
13. Richard Leggat
14. Dominique Leroux
15. Anne-Laure Masson
16. Pat McQuaid
17. Roxane Rochat
18. Francesca Rossi
19. Dieter Schellenberg
20. Sylvia Schenk
21. Claude Schnegg
22. Paul Scholten
23. Jean-Pierre Strebel
24. Caroline Thom
25. Jorge Vazquez Monroy
26. Philippe Verbiest
27. Hein Verbruggen
28. Pierre Zappelli
29. Mario Zorzoli

II. Sponsors

1. François Migraine
2. Robert Tansey

III. Team personnel

1. Marc Biver
2. Eric Boyer
3. Pedro Celaya

4. Alain Gallopin
5. Bobby Julich
6. Roger Palfreeman
7. Bjarne Riis
8. Bruno Roussel
9. Iwan Speckenbrink
10. Bob Stapleton
11. Prentice Steffen
12. Antoine Vayer
13. Jonathan Vaughters
14. Alexander Vinokourov
15. Gerard Vroomen

IV. Riders/former riders

1. Lance Armstrong
2. Carlos Barredo
3. Michael Boogerd
4. Nicole Cooke
5. Chris Froome
6. Tyler Hamilton
7. Jörg Jaksche
8. Scott Mercier
9. Joe Papp
10. Leonardo Piepoli
11. Michael Rasmussen
12. Riccardo Riccò
13. Dan Stevens
14. Andrei Tchmil
15. Tammy Thomas
16. Dietrich Thurau

V. International/national federations

1. Susan Ahern (IRB)
2. Daniel Baal (former French Cycling Federation)
3. Sally Clark (ICC)
4. Shawn Farrell (USA Cycling)
5. David Gullberg (Danish Cycling Union)
6. David Lappartient (French Cycling Federation)
7. Victoria Lesnikova (Russian Cycling Federation)
8. Sarah Lewis (FIS)
9. Greg Mathieu (Cycling Canada)
10. Stuart Miller (ITF)
11. Paolo Pavoni (Italian Cycling Federation)
12. Thomas Peter (Swiss Cycling)
13. Markus Pfisterer (Swiss Cycling)
14. Jean Pitallier (former French Cycling Federation)

15. Huw Roberts (IAAF)
16. Renato Di Rocco (Italian Cycling Federation)
17. Gianluca Santilli (Italian Cycling Federation)
18. Malcolm Speed (Australian Cycling Federation)
19. Bob Stapleton (USA Cycling)
20. Kevin Tabotta (Australian Cycling Federation)
21. Melinda Tarant (Australian Cycling Federation)
22. Thorward Veneberg (KNWU)
23. Margo de Vries (KNWU)

VI. Anti-doping organisations

1. Rune Andersen (Anti-Doping Norway)
2. Enrique Bastida Gomez (AEPSAD-Spain)
3. Bill Bock (USADA)
4. Pierre Bordry (former AFLD)
5. Anne Cappelen (Anti-Doping Norway)
6. Christina Friis Johansen (Anti-Doping Denmark)
7. Fahmy Galant (SAIDS)
8. Andrea Gotzmann (NADA Germany)
9. Lone Hansen (Anti-Doping Denmark)
10. David Howman (WADA)
11. Matthias Kamber (Anti-doping Switzerland)
12. Roger Legeay (MPCC)
13. Lars Mortsiefer (NADA Germany)
14. Pat Myhill (UKAD)
15. Oliver Niggli (WADA)
16. Dick Pound (WADA)
17. Olivier Rabin (WADA)
18. Herman Ram (Dopingautoriteit)
19. Regina Reiser (NADA Germany)
20. Jack Robertson (WADA)
21. Anders Solheim (Anti-Doping Norway)
22. Marco Steiner (Anti-doping Switzerland)
23. Gry Støtvig (Anti-Doping Norway)
24. Travis Tygart (USADA)
25. Jean-Pierre Verdy (AFLD)

VII. Third party doctors/scientists/laboratory personnel

1. Michel Audran
2. Christine Ayotte
3. Simon Chadwick
4. David Cowan
5. Rasmus Damsgaard
6. Charles Dauwe
7. Alessandro Donati
8. Hans Geyer

9. Nelson Khoo
10. Christer Malm
11. Patrice Mangin
12. Yannis Pitsiladis
13. Martial Saugy
14. Wilhelm Schänzer
15. Olaf Schumacher
16. Mario Thevis

VIII. Journalists

1. Stéphane Mandard
2. Mark Misérus
3. Damien Ressiot
4. Hans Vandeweghe
5. David Walsh

IX. Event organisers

1. Patrice Clerc
2. Angelo Zomegnan

X. National law enforcement agencies/national governments

1. Rafael Blanco
2. Renzo Ferrante