CAS 2024/A/10748 World Anti-Doping Agency (WADA) v. Fédération Internationale d'Escrime (FIE) & Ysaora Thibus

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr Jacques Radoux, Référendaire, Court of Justice of the European Union, Luxembourg
Arbitrators:	Prof. Luigi Fumagalli, Professor and Attorney-at-law in Milan, Italy
	Ms Janie Soublière, Attorney-at-law in Beaconsfield, Québec, Canada

in the arbitration between

World Anti-Doping Agency (WADA), Lausanne, Switzerland

Represented by Mr Nicolas Zbinden and Mr Michael Kottmann, Attorney-at-law, Kellerhals Carrard, Lausanne, Switzerland; and Mr Ross Wenzel, WADA General Counsel

Appellant

and

Fédération Internationale d'Escrime (FIE), Lausanne, Switzerland

Represented by Mr Yvan Hentzer, Attorney-at-law, Libra Law SA, Lausanne, Switzerland

First Respondent

&

Ysaora Thibus, Paris, France

Represented by Ms Joëlle Monlouis, Attorney-at-law, Paris, France, Mr Thierry Chiron, Attorney-at-law, Dijon, France and Mr Jean -Samuel Leuba, Attorney-at-law, HCML Avocats, Lausanne, Switzerland

Second Respondent

I. PARTIES

1. The World Anti-Doping Agency ("WADA" or the "Appellant") is a Swiss private-law foundation. Its legal seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms in conformity with the World Anti-Doping Code ("WADC") and all applicable International Standards.

2. The Fédération Internationale d'Escrime ("FIE" or the "First Respondent") is the international Olympic federation governing the sport of fencing worldwide. It has its registered seat in Lausanne, Switzerland. As a signatory to the WADC, the FIE has adopted the International Fencing Federation Anti-Doping Rules (the "FIE ADR") and complies with the WADC and all International Standards.

3. Ms Ysaora Thibus (the "Athlete" or the "Second Respondent"), born on 22 August 1991, is an international level fencing athlete who practices foil. She participated in major international competitions and won, *inter alia*, the gold medal in individual foil at the 2022 World Championships and a silver medal in team foil at the 2020 Olympic Games.

4. The First Respondent and the Second Respond are together referred to as the "Respondents". WADA and the Respondents are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced in this procedure. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. On 14 January 2024, the Athlete participated in the women's team foil competition at the 2024 Challenge International de Paris and was subject to an in-competition doping control (urine test) conducted by the International Testing Agency ("ITA").

7. The Athlete's sample coded 7217033 (the "Sample"), collected at 21:42 p.m. (time that the Sample was sealed), was analysed by the Anti-Doping Laboratory of the Paris-Saclay University, France (the "Laboratory"). The analysis of the Athlete's A Sample revealed the presence of ostarine (enobosarm). Ostarine is listed as a Prohibited Substance under Section S1.2 "*Other Anabolic Agents/SARMS*" ("SARMS" are "selective androgen receptor modulators") of the WADA Prohibited List. Ostarine is classified as a non-Specified Substance for the purposes of the FIE ADR.

8. The Laboratory test report dated 6 February 2024 did not indicate the concentration of ostarine detected in the urine sample. In a letter to the ITA dated 8 February 2024, the Laboratory recalled that there is no requirement to quantify the concentration of a substance such as Ostarine when reporting an AAF and that a qualitative analysis method had been used. In the same letter, the Laboratory provided an "*indicative estimation*" of the concentration of "*approximately 13 ng/mL*".

9. On the same day, the ITA, on behalf of the FIE, notified the Athlete of the adverse analytical finding ("AAF"). Because the substance involved is classified as non-Specified, she was also advised that she was subject to a mandatory provisional suspension pursuant to Article 7.4.1 of the FIE ADR. The AAF notice set out the Athlete's various procedural rights, including the opportunity to request the laboratory document package ("LDP") for the A sample and the right to exercise her right to the analysis of her B sample.

10. On 9 February 2024, the Athlete requested her A sample LDP.

11. On 12 February 2024, the Athlete, *inter alia*, contested the results of the analysis and exercised her right to the analysis of her B-sample, requesting that it be conducted as soon as possible given that the 2024 Olympic Games were imminent.

12. On 16 February 2024, the ITA sent the Athlete her A sample LDP as well as a form to complete to analyze her B-sample.

13. On 20 February 2024, the Athlete provided the ITA with her explanations regarding the AAF, *i.e.* that she had identified as the source of the prohibited substance an inadvertent contamination by her then partner, Mr Race Imboden, with whom she was living in a registered relationship. Having identified the source of the AAF, to expedite her case being decided before the selection of the French fencers for the 2024 Olympic Games, the Athlete also waived her right to the analysis of her B-sample and requested a hearing.

14. On 22 February 2024, the ITA sent the Athlete a notice of charge formally charging with an antidoping rule violation ("ADRV"), confirming that the case would be referred to the FIE for adjudication by its Doping Disciplinary Tribunal ("DDT").

15. On 27 February 2024, the case was referred to the DDT and, on 13 May 2024, a virtual hearing took place before the DDT. During that hearing, the DDT heard witness and expert evidence, by the Athlete, Mr Race Imboden, Prof. Jean-Claude Alvarez and Prof. Pascal Kintz (all for Ms Thibus), as well as by Prof. Martial Saugy (for the FIE).

16. On 4 June 2024, the DDT notified its decision (the "Appealed Decision"). The operative part, which was rendered on 21 May 2024, of said Decision reads as follows:

> "*1. Ms Thibus has committed an anti-doping rule violation pursuant to Article 2.1 of the [FIE ADR].*
>
> *2. Ms Thibus is found to bear no fault or negligence. Hence the otherwise applicable period of Ineligibility is eliminated.*

3. *Ms Thibus is Disqualified from the 14 January 2024 Women's Team Foil Competition at the 2024 'Challenge International de Paris' with all the resulting Consequences including forfeiture of any medals, points and prizes for herself and for her team.*
4. *All results earned by Ms Thibus from the date of her positive Sample, i.e. 14 January 2024, through the commencement of her Provisional Suspension, i.e. 8 February 2024, are Disqualified.*
5. *Ms Thibus shall pay the amount of CHF 16.245,00 to the FIE and the FIE shall bear the remainder of the costs of the procedure.*
6. *All other motions or prayers for relief are dismissed."*

17. A reading of the Appealed Decision demonstrates that the DDT considered factual elements, an expert report of Prof. Alvarez dated 26 February 2024 (the "First Alvarez Report"), evidence provided by Prof. Kintz, an expert report of Prof. Saugy dated 7 April 2024 (the "Saugy Report") and the evidence of Ms Thibus and Mr Imboden.

18. With respect to the factual elements, the Appealed Decision reads as follows:

"*Both Ms Thibus and Mr Imboden confirmed that they are a couple for seven years.*

They lived as a couple in the same apartment. This is confirmed by the 'convention de pacte civil de solidarité' (cohabitation agreement) they entered into and that was registered on 12 April 2023 with the local authority (exhibit 10 of Ms Thibus), as well as by their statements at the hearing.

On 9 December 2023 Mr Imboden ordered MK-2866 or ostarine with Receptor Chem via the internet (exhibit 18 of Ms Thibus).

Payment was made on 11 December 2024 from Mr Race Imboden's personal bank account with his bank in the USA (exhibit 4 of Ms Thibus).

The order was delivered to Mr Race Imboden personally at the couple's address on 3 January 2024 at 2.03 pm (exhibit 19 of Ms Thibus).

At that time Ms Thibus was at a photo shoot with her main sponsor Lacoste (exhibit 20 Ms Thibus).

Mr Imboden stated at the hearing that he ingested a 1 ml dose of MK-2866 on a daily basis as from 5 January 2024.

This corresponds with the finding of Professor Alvarez that on 9 February 2024 16 ml of ostarine was left in the vial, which is consistent with a daily use of 1 ml during 34 days [First Alvarez Report] *(page 9). Professor Alvarez also found that the testosterone levels of Mr Imboden on 4 January and 20 February show that he didn't use ostarine before 5 January 2024 (page 14).*

The label on the vial indicates that a 1 ml dose corresponds with 25 mg of ostarine.

Mr Imboden stated at the hearing that on 14 January 2024 he ingested his daily dose of ostarine around noon and then left for the competition site where he arrived about 1.00 pm.

Both Ms Thibus and Mr Imboden, that were heard separately by the DDT, declared at the hearing that they kissed each other several times that afternoon.

Ms Thibus stated that they kissed each other frequently on the lips and sometimes with tongue, for example, when both of them were in the locker room.

Mr Imboden stated that kissing with tongue was very common in their couple. On 14 July they kissed on the lips but also with tongue, as at moments the couple was alone that afternoon.

The presence of Mr Imboden and the kissing is confirmed in five written witness statements that were submitted by Ms Thibus (exhibit 17).

As confirmed at the hearing by Ms Thibus, Mr Imboden, Ms Monlouis and Professor Alvarez, after being notified of her adverse analytical finding in the evening of 8 February 2024, Ms Thibus immediately contacted her lawyer and her lawyer contacted Professor Alvarez. Afterwards, there was a direct contact between Ms Thibus and Professor Alvarez, who invited her to come to his laboratory the other day.

Ms Thibus and Mr Imboden confirmed at the hearing that Ms Thibus also called Mr Imboden immediately after she had called her lawyer. Upon learning that Ms Thibus had an adverse analytical finding for ostarine, Mr Imboden confessed to her that he had been using MK-2866 or ostarine".

19. The DDT also recalled parts of the First Alvarez Report and found further to his answers to questions from all counsels and the members of the DDT that Prof. Alvarez had substantiated his Report and its conclusions.

20. Further, the DDT noted that, at the hearing, Prof. Kintz supported Prof. Alvarez' conclusions. With respect to the Prof Saugy's Report and evidence, the DDT held, *inter alia* that:

- Prof Saugy had stated that "*the source of the AAF could also be due to a voluntary intake of one or several doses of ostarine in the days or weeks before the test of 14 January 2024*" and that a concentration of 13 ng/ml of ostarine in the Athlete's Sample would require a considerable quantity of contaminated saliva to have been passed by Mr Imboden to the Athlete.

- Prof Saugy had noted that no data is available on the quantity of saliva that actually has been passed in the afternoon of 14 January 2024 in the contamination study conducted by Prof. Alvarez.

- Prof. Saugy had accepted that the pharmacokinetics of excretion for both Ms Thibus and Mr Imboden, as found by Prof. Alvarez in his contamination study, are not significantly different of what has been shown in the study published by Walpurgis et al. (Elimination profiles of microdosed ostarine mimicking contaminated products ingestion, from 2020, the "Walpurgis Study").

21. Considering the above, the DDT held that Prof. Saugy's conclusion that a voluntary ingestion of ostarine by the Athlete could not by excluded "*does not tilt the balance of probability towards a voluntary ingestion*".

22. As for the Athlete's evidence, the DDT found that she answered all questions spontaneously and that there were no signs of her acting or being evasive or insincere in her answers.

23. With respect to Mr Imboden's evidence, after being interrogated at the hearing by the DDT and Counsel for both parties, the DDT noted the following:

    i. Mr Imboden is a former elite fencer.

    ii. Mr Imboden confirmed that he purchased and used MK-2866 (as well as MK-677 or ibutamoren, see below) without the knowledge of Ms Thibus.

    iii. He used these substances while Ms Thibus was out to regain shape after a longer period of inactivity in sports.

    iv. He kept the substances away from Ms Thibus and hid them in their apartment, in a bag hidden behind his clothes that were in a separate wall cabinet that served as his personal wardrobe and was accessed by him only.

    v. Mr Imboden stated that he knew that ostarine and ibutamoren were prohibited. He wanted to ensure that Ms Thibus remained unaware he was using them as he knew that she was radically opposed to doping.

    vi. Mr lmboden also stated that he was not aware of the risk that he could contaminate Ms Thibus or cause her to test her positive in a doping control, in particular through the exchange of bodily fluids such as saliva.

24. Other particular elements and facts that were considered by the DDT include that:

    i. Ms Thibus made efforts to find out how the ostarine entered her body by asking Prof. Alvarez to do the necessary tests, seemingly willing to accept any result that might came out of such tests;

    ii. The 14 June 2024 competition was a team competition. It is unlikely that Ms Thibus, whom the DDT assessed as being an intelligent woman, would have knowingly ingested ostarine for the purpose of enhancing her own performance at the expense of the team and the teammates whose efforts and awards would be annulled and whose reputation could be tainted if she tested positive;

    iii. It is unlikely that Ms Thibus would have put her chances at risk to qualify both individually and as a member of her team for the 2024 Olympic Games by knowingly ingesting a prohibited substance which could result in a long period of ineligibility;

    iv. Because of her current results as an elite fencer, the Athlete was already eligible for selection to the Olympic Games. Doping was of no use to her;

v. According to the Athlete's physical trainer, it would have been counterproductive for her to seek to gain muscle mass as that would have been an obstacle to her speed; and

vi. It is unlikely that Ms Thibus would knowingly take the risk of losing her sponsorship with Lacoste should she be found to have committed an ADRV.

25. As regards the question of whether the Athlete had successfully established the requisite legal standard that she had acted with No Fault or Negligence (as required by Article 10.2.2 of the FEI Anti-Doping Rules), the DDT's reasoning reads as follows:

"*The DDT has accepted, by a balance of probability that Ms Thibus was unaware of the presence of the substance in her apartment, of its use by Mr Imboden and of her contamination.*

The DDT also accepts that in these circumstances Ms Thibus had not to suspect, even with the exercise of utmost caution, that she could be contaminated with a Prohibited Substance by her life partner through the exchange of bodily fluids.

In particular Ms Thibus had not to suspect such risk being created by her partner who is a former high level athlete and who she could trust not to be involved in prohibited substances, at least not without informing her in advance of his intentions in that respect.

Neither had Ms Thibus an obligation to search the appartement [sic] *from time to time in order to check whether her life partner might have hidden prohibited substances or to abstain from intimate contacts with her life partner without making sure that they would pose no risk.*

Therefore the DDT finds Ms Thibus without Fault or Negligence".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 17 July 2024, the Appellant filed its Statement of Appeal in accordance with Article 13.2.1 of the FIE ADR and Article R47 of the Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision. In its Statement of Appeal, the Appellant nominated Prof. Luigi Fumagalli, Professor and Attorney-at-law in Milan, Italy, as arbitrator.

27. On 22 July 2024, the CAS Court Office initiated the present appeals arbitration procedure, and, *inter alia*, invited the Respondents to jointly nominate an arbitrator and to state whether they objected to English being the language of the present procedure.

28. On 22 July 2024, the First Respondent informed the CAS Court Office that it had no objection for the proceedings to be conducted in English.

29. On 25 July 2024, the Second Respondent requested that the present proceedings be conducted in French.

30. On 29 July 2024, the First Respondent informed the CAS Court Office that it agreed with the Second Respondent's request to have these proceedings conducted in French.

31. On 2 August 2024, the Appellant objected to the Second Respondent's request to have French as language of the procedure, but accepted that exhibits could be filed in French without the need for translation into English.

32. On 12 September 2024, the President of the Appeals Arbitration Division rendered an Order on Language and decided that the language of this procedure was English and that, unless requested by the Panel, once constituted, the Parties did not have to file an English translation of the exhibits in French.

33. On 2 October 2024, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

34. On 3 October 2024, the CAS Court Office invited the Respondents to submit their Answers within the deadline set out in Article R55 of the CAS Code, highlighting that if they failed to do so, the Panel could nevertheless proceed with the arbitration and deliver an award. It further invited the Respondents to jointly nominate an arbitrator on or before 10 October 2024.

35. On 10 October 2024, the Respondents nominated Ms Janie Soublière, Attorney-at-law in Beaconsfield, Québec, Canada, as arbitrator in the present proceedings.

36. On 25 November 2024, the CAS informed the Parties that the Panel appointed to resolve this dispute was constituted as follows: Mr Jacques Radoux, Legal Secretary in Luxembourg (President), Prof. Luigi Fumagalli, Professor and Attorney-at-law in Milan, Italy and Ms Janie Soublière, Attorney-at-law in Québec, Canada (arbitrators).

37. On the same day, the First Respondent filed its Answer.

38. On 5 December 2024, the Second Respondent filed her Answer.

39. On 9 December 2024, the CAS Court Office informed the Parties that unless they agree or the President of the Panel orders otherwise on the basis of exceptional circumstances, Article R56 of the CAS Code, provides that the Parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the Appeal Brief and of the Answer. The Parties were also invited to state, by 16 December 2024, whether they preferred a hearing to be held in the present matter and whether they requested a case management conference (CMC) with the Panel.

40. On 19 December 2024, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present matter.

41. On 23 January 2025, the CAS Court Office informed the Parties that a hearing would take place on 6 March 2025.

42. On 29 January 2025, the CAS Court Office, the CAS Court Office notified the Order of Procedure to the Parties. On 4 February 2025, the First Respondent returned a signed copy of said Order of Procedure. The Appellant and the Second Respondent both returned a signed copy of the Order of Procedure on 5 February 2025.

43. On 6 March 2025, a hearing took place at the CAS headquarters in Lausanne. The Panel was assisted by Ms Delphine Deschenaux-Rochat, counsel to the CAS, and joined by the following participants:

For the Appellant:

- Mr Nicolas Zbinden, Mr Michael Kottmann and Mr Robert Kerslake, counsels
- Mr Ross Wenzel, WADA General Counsel;
- Mr Cyril Troussard, WADA Associate Director;
- Ms Frédérique Lacroix-Dion, WADA Legal Counsel, Results Management;
- Prof. Christiane Ayotte, expert;
- Prof. Martial Saugy, expert.

For the First Respondent:

- Mr Yvan Henzer, counsel.

For the Second Respondent:

- Ms Ysaora Thibus, party;
- Ms Joëlle Monlouis and Mr Thierry Chiron, counsels;
- Prof. Jean-Claude Alvarez, expert;
- Prof. Pascal Kintz, expert.

44. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution of the Panel.

45. During the hearing, the Panel heard evidence from the following experts:

For the Appellant:

- Prof. Christiane Ayotte;
- Prof. Martial Saugy.

For the Respondents:

- Prof. Jean-Claude Alvarez;
- Prof. Pascal Kintz

46. Before taking their evidence the President of the Panel informed all the experts of their duty to tell the truth subject to sanctions of perjury under Swiss law. Each of them

confirmed their written expert reports and the Parties and the Panel had the opportunity to examine and cross-examine them.

47. The Parties were given full opportunity to present their case, submit their arguments and answer the questions from the Panel. The Athlete was also given the opportunity to make a statement. At the end of the hearing, the Parties confirmed that their right to be heard and their right to a fair trial had been fully respected during the hearing and that they had no objections as to the manner in which the proceedings had been conducted.

IV. THE PARTIES' SUBMISSIONS

48. This section of the Award aims to provide a summary of the Parties' main arguments rather than a comprehensive list thereof. However, the Panel confirms that in making its decision it has carefully considered all the Parties submissions and evidence, even if not expressly mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Submissions and Requests for Relief

49. The Appellant submits that, according to Article 2.1.1 of the FIE ADR, it is each athlete's personal duty to ensure that no Prohibited Substance enters their bodies. Further, pursuant to Article 2.1.2 of the FIE ADR, an ADRV is established, *inter alia*, if an athlete waives the analysis of the B-sample and the B-sample is not analysed. In the present case, the Athlete's A-sample revealed the presence of ostarine and the Athlete waived her right to the analysis of her B sample. The ADRV is thus established, as conceded by the Athlete.

50. The Appellant observes that pursuant to Article 10.2.1.1 of FIE ADR, in case of "Presence" of a Prohibited Substance, the period of Ineligibility "*subject to Article 10.2.4, shall be four (4) years where: The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Fencer or other Person can establish that the anti-doping rule violation was not intentional*". The present case relates to a non-Specified Substance and the applicable period of Ineligibility would thus be four years, unless the Athlete proves a lack of intent when committing the ADRV. CAS jurisprudence has consistently held that for an athlete to discharge the burden of proving that an ADRV was not intentional, that athlete must first establish how the substance entered his or her body, *i.e.* establish the source of the Prohibited Substance. In this regard, the Appellant submits that CAS panels have also consistently held that an athlete must provide actual evidence, not just mere unsubstantiated assertions (CAS 2014/A/3820; CAS 2010/A/2230, CAS 2014/A/3615 and CAS 2006/A/1067), and must also demonstrate that the source identified could effectively have caused the AAF (CAS 2010/A/2277).

51. As regards the present matter, the Appellant considers (i) that the Athlete's explanations as to how the ADRV occurred are not convincing, and (ii) that the Appealed Decision is wrong, insofar as the DDT held that the Athlete had acted with No Fault or Negligence thereby resulting in no sanction being imposed.

52. The Appellant disputes and rejects the Athlete's explanations before the DDT, *i.e.* that the most probable cause for the ADRV was a contamination through her then partner, Mr Race Imboden, who, without the Athlete's knowledge, had been using the ostarine product MK-2866 for a period of 5 weeks until 9 February 2024 and that this contamination was the result of the Athlete and her partner repeatedly kissing in the afternoon of the day of the doping control (the "Kissing Scenario"). Further, to the Appellant, both the "First Alvarez Report" and the evidence of Prof. Pascal Kintz, exhibit manifest deficiencies and should have been rejected by the DDT.

53. In support of its position that the Kissing Scenario is "*totally implausible*", the Appellant maintains, *inter alia*, that:

- This scenario does not work in terms of pharmacokinetics. In a recent study published by Prof. Kintz, the latter investigated the concentration of ostarine contained in saliva following an oral administration of 17,3 mg in 20 mL of tap water. According to the values found by Prof. Kintz and assuming prolonged kissing, Prof. Christiane Ayotte considers in her expert report that the total amount of ostarine which could have been transferred to the Athlete in the present case would have been of 1,3 µg, which would be "*far from the dose needed to cause the AAF*". According to Prof. Ayotte, and by reference to the Walpurgis Study, the dose of ostarine required to produce the urinary concentration found in the Athlete's Sample would have had to be many times higher than it could have been from kissing her partner.

- The total dose of 1.3 µg of ostarine calculated by Prof. Ayotte is based on favourable assumptions for the Athlete (repeated and prolonged kissing throughout the day) whereas there is no evidence supporting such kissing, and it is rather implausible that the Athlete and Mr Imboden did so, given that the Athlete competed in four matches the day of the doping control. Further, the calculations would be based on the premise that the first kiss occurred after 30 minutes, which seems implausible given the timeline provided by Mr Imboden before the DDT for the events on 14 January 2024.

- According to Prof. Ayotte, Prof. Alvarez's estimation that the dose ingested by the Athlete was 15 µg is many times higher than a reasonable kissing scenario could have produced. In any event, even this dose would still be highly unlikely to have caused the AAF as shown by other precedents referred to by Prof. Ayotte.

- The contamination study conducted by Prof. Alvarez is "*such bad science that it is worthless*":

    - first, as pointed out by Prof. Ayotte, only the first two out of ten samples provided by the Athlete and Mr Imboden were provided under the supervision of Prof. Alvarez, making the study entirely unreliable.

    - second, the study was based on wholly inaccurate assumptions as the Athlete and Mr Imboden started kissing "*about 30 minutes*" after the intake of the dose of MK-2866 by Mr Imboden. However, the 30-minute delay is be without basis

and contradicted by Mr Imboden's own evidence at first instance, where he stated that he arrived at the competition site about one hour after ingesting Ostarine.

- third, according to Prof. Kintz's study ("Human hair testing for selective androgen receptor modulators (SARMs): Current knowledge and limitations", 2021), there is a significant drop in the concentration of ostarine in the mouth between 15 and 30 minutes post administration and, as a result, the timing of the first kiss would be a significant matter, and a fundamental flaw in the study.

- fourth, there was no basis for Prof. Alvarez to assume that, during the study, the Athlete and Mr Imboden kissed "*as they had done on January 14*". In any event, given the complete lack of information regarding the frequency and duration of the Athlete's and Mr Imboden's physical contacts during either the contamination study or on the day of the sample collection, the Athlete certainly failed to provide any relevant proof to show that the two situations were comparable.

- The other elements relied upon by Prof. Alvarez in his First Report do not support the Kissing Scenario put forward by the Athlete:

  - the fact that the testosterone blood analysis of Mr Imboden suggests that he was using ostarine does not exclude the possibility that the Athlete was also using it.

  - as noted by Prof. Ayotte, it is very odd that ostarine is detected in so many different items of the couple's day-to-day life, which makes the possibility of systemic contamination during the uncontrolled experiment a serious concern.

  - it would be difficult to understand how the high concentration of ostarine detected in the Athlete's toes and fingernails could be explained through "*environmental contamination*" such as pillowcases and a hairbrush.

54. In view of the above, the Appellant considers that there is no basis upon which the Athlete can claim that the Kissing Scenario is compatible with the concentration of ostarine detected in her urine. Thus, the Athlete's ADRV remains unexplained and should be deemed intentional. Consequently, the standard four-year period of Ineligibility should be applied.

55. In its requests for relief, the Appellant asks the CAS to rule that:

"*1. The appeal of WADA is admissible.*

2. The decision rendered by the Doping Disciplinary Tribunal under the rules of the Fédération Internationale d'Escrime dated 4 June 2024 (with the operative part of the decision communicated on 21 May 2024) in the matter of Ms Ysaora Thibus is set aside.

3. *Ms Ysaora Thibus is found to have committed an anti-doping rule violation under art. 2.1 and/or 2.2 of the FIE Anti-Doping Rules.*
4. *Ms Ysaora Thibus is sanctioned with a period of Ineligibility of four years, starting on the date on which the CAS award enters into force. Any period of provisional suspension effectively served by Ms Ysaora Thibus before the entry into force of the CAS award shall be credited against the total period of Ineligibility to be served.*
5. *All competitive results obtained by Ms Ysaora Thibus from and including 14 January 2024 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
6. *The arbitration costs (if any) shall be borne by the FEI or, in the alternative, by the Respondents jointly and severally.*
7. *WADA is granted a significant contribution to its legal and other costs.*"

56. At the hearing, the Appellant reiterated its position adopted in its written submissions and added, *inter alia* that:

- this is not one of the exceptional cases in which an athlete could be absolved from establishing the source of the prohibited substance found in his or her body;

- while there is evidence that Mr Imboden ordered the product (MK-2866), who he purchased it for has not been established. As such that both he and the Athlete were taking the substance cannot be excluded;

- CAS hears this case *de novo.* It is up to the Athlete to adduce specific evidence before the Panel to establish the reality of the facts underlying the Kissing Scenario she brings forward to explain the AAF. She failed to do so at first instance, and still fails to do so on Appeal;

- as repeatedly stated in its written submissions, the Kissing Scenario is not plausible. The Athlete has failed to provide relevant proof that the 14 January 2024 events are comparable to the scenario analysed by Prof. Alvarez in his study;

- the Athlete should have called Mr. Imboden as a witness. It was not up to the Appellant to do so as the burden to establish the source of the ostarine found in the Athlete's system rests on the Athlete. Article 13.2.1 of the FIE ADR clearly provides that no weight should be given to the DDT's findings;

- even if the Panel were willing to accept the facts taken as established by the DDT, the Kissing Scenario remains scientifically unsound. Neither Prof. Alvarez's reports nor Prof. Kintz's published article explain the AAF as they are based themselves on premises that would not match the timeline of the events described by the Athlete and her partner at first instance;

- the concentration of ostarine found in the Athlete's Sample does not exclude her intentional use of the substance;

- Prof's Alcarez's hair and nail analysis are irrelevant to the Kissing Scenario;

- the Kissing Scenario, although possible is not plausible and consequently the Athlete cannot be said to have established the source of the ostarine found in her Sample to the required legal standard;

- the presumption of intent has not been rebutted and therefore that the four-year period of ineligibility requested by the Appellant is the only possible sanction for this Panel to impose.

B. The First Respondent's Submissions

57. The First Respondent clarifies that its participation in the hearing is not to defend the Athlete, but the DDT's Appealed Decision, which it considers to be well-reasoned as rendered by three qualified and prominent experts.

58. It further observes that the DDT considered numerous evidence (expert reports and studies, as well as witness testimonies) before concluding that, on the balance of probability, it was more likely than not that the Athlete's AAF of ostarine was due to contamination through the Kissing Scenario rather than through intentional ingestion in view of enhancing her sport performances.

59. The First Respondent rejects the Appellant's argument that the fact that Mr Imboden's blood analysis suggests that he was using ostarine in "*no way excludes the possibility that the Athlete was using it too*". The First Respondent argues that this submission is flawed as the issue at stake is not to exclude a doping scenario – which in a doping matter can almost never be fully excluded – but to assess whether contamination is more likely than an intentional intake of ostarine. In the present matter, the DDT carefully reviewed all the evidence and concluded that the balance leaned in favour of the Athlete.

60. The First Respondent also underlines that the DDT explicitly considered that a doping scenario was not likely because:

i. the Athlete made considerable efforts to find out how the ostarine had entered her body;

ii. the14 January 2024 competition was not an individual competition but a team competition;

iii. it was unlikely that the Athlete would have put her chances to qualify, individually and as a member of her team for the 2024 Olympic Games at risk by knowingly ingesting a Prohibited Substance which could result in a long period of ineligibility;

iv. the Athlete, given her level, could expect to be selected for the 2024 Olympic Games and doping could only be seen as an enormous risk to be excluded from these Olympic Games, and

v. it would have been counterproductive for the Athlete – as a fencer – to seek to gain muscle mass.

61. The First Respondent further argues that Prof Ayotte's conclusions (the "Ayotte Report") are contradicted by the contamination study performed by Prof. Alvarez and are not consistent with the case file, to which she did not have full access. Indeed, her report states that she merely got access to "*the documentation package from the Paris laboratory, and the expert-report of Prof. J.-C. Alvarez produced for the athlete*". Consequently, Prof. Ayotte issued an opinion without assessing all the evidence supporting contamination.

62. Regarding the question as to the quantity of saliva liquid required to render such contamination plausible, the First Respondent notes that a debate between experts took place before the DDT further to which it was uncontested that, in a situation like the case at hand, contamination was possible.

63. Keeping in mind all the evidence, the DDT found that the Kissing Scenario was plausible and supported the science because the ostarine concentration detected in the Athlete's system was considerably lower than that found in Mr Imboden's system, showing that the latter directly ingested ostarine, while the Athlete was merely contaminated.

64. Finally, should CAS uphold the appeal, the First Respondent argues that no blame should be placed on the DDT and on the FIE "*in particular with regard to the imposition of costs*".

65. In view of all the above considerations, the First Respondent submits the following prayers for relief:

"*I. The Appeal filed by WADA is dismissed.*

II. The Decision issued by the Doping Disciplinary Tribunal of the FIE in the matter of Ms Ysaora Thibus is confirmed.

III. The Fédération Internationale d'Escrime shall not bear any costs of arbitration and shall be granted a contribution towards its legal costs in these proceedings."

66. At the hearing, the First Respondent reiterated its position and added, *inter alia,* that:

- the Appellant was not acting in good faith as in its written submissions it had neither openly challenged the general facts, nor the Kissing Scenario in particular, yet now chose to do so at the hearing;

- if the Appellant wished to examine and question Mr Imboden, it could have done so by calling him as a witness, as it did for Prof. Saugy;

- the Appellant had not challenged the factual findings of the DDT in its written submissions prior to the CAS hearing, the Panel should thus defer to the DDT's findings;

- there is no scientific evidence in the case file suggesting that the Athlete, unlike Mr Imboden, used the ostarine intentionally;

- the Appellant did not challenge the experts' statements that ostarine is very sticky when packaged in an oily solution like the MK-2866 product Mr. Imogen was using;

- the contamination scenario put forward by the Athlete does not limit itself to one kiss or several kisses during one sole afternoon, but stretches over 9 days;

- Prof. Alvarez's findings and calculations are consistent with those of the Walpurgis Study, which is a study accepted by the Appellant. Prof. Saugy also acknowledged that the calculations and findings of Prof Alvarez's study and those in Walpurgis are aligned;

- it would be improbable that an athlete and his or her partner could manage to influence or manipulate a study in such a way as to reproduce the same findings than scientists found in another study;

- the Alvarez study and its findings are correct, and it must be considered the most reliable piece of evidence in support of the Kissing Scenario. There is no other more reliable evidence on file. Given the expertise and reputation of Prof. Alvarez, the Panel must find that the Athlete has proven her innocence in the present matter.

C. The Second Respondent's Submissions

67. The Second Respondent considers the Appellant's claims and allegations are unfounded and that the present Appeal should be dismissed.

68. The Second Respondent argues both that the Ayotte Report is flawed as Prof. Ayotte did not have access to the full case file and that the Appellant's allegations are neither documented nor based on factual evidence or elements. Conversely, Prof. Alvarez's (the "Second Alvarez report") and Prof. Kintz's experts reports, both filed with her Answer, clearly establish that the Kissing Scenario presented before the DDT is supported by objective and proven factual elements.

69. Regarding the Kissing Scenario and the Appellant's statement according to which "*the dose of ostarine required to produce the Athlete's urinary concentration would have to have been many times higher than it could have been from kissing*", the Second Respondent submits that the Appellant seems to "*have a massive misunderstanding on some pharmacology concepts*". As described in the Second Alvarez Report, the "*quantity of a product eliminated in the urine or present in the blood is obtained in pharmacology by calculating the area under the concentration-time curve*" and not, as Prof. Ayotte calculates, "*by adding up the concentration*". The Second Respondent thus rejects Prof. Ayotte's calculations, according to which, even based on favorable assumptions for the Athlete, the total dose of Ostarine should have been "*1,3 µg*". According to Dr. Alvarez, who relies on accurate pharmacology concepts and the Walpurgis study also referred to and relied upon by the Appellant, the more accurate estimated concentration of ostarine detected would be 19,7 µg, which is even higher than the 15 µg assessed in the contamination study. Thus, the Appellant's claim that the

Kissing Scenario "*does not work in terms of pharmacokinetics*" is both unsupported by any evidence and contradicted by science.

70. Concerning Prof. Alvarez's contamination study which has been discarded as uncontrolled by the Appellant, the Second Respondent notes, first, that that study has been peer reviewed, published and accepted by the scientific community as a "*controlled study*". There is no evidence that Mr Imboden might have taken a second dose of Ostarine to alter the results. The analysis findings, based on the time and maximum concentration in both subjects, *i.e.* Mr Imboden and the Athlete, are in line with the results of a contamination survey done by Prof. Marion Thevis, head of the WADA laboratory in Cologne, Germany. Before the DDT, even Prof. Saugy acknowledged this fact. Hence, the Appellant's claim that the contamination study was "*uncontrolled*" is baseless.

71. Second, everyone involved in Prof Alvarez's study understood the importance of re-enacting the time preceding the doping control exactly as it has occurred. The doubts the Appellant has raised as to whether, Mr. Imboden and the Athlete kissed "*as they had done on January 14*" or whether the 30-minute delay from the ingestion of ostarine until the Athlete and Mr Imboden started kissing was not established, lead to a false debate.

72. Third, the Appellant's statement according to which "*the testosterone blood analysis of Mr Imboden, suggests that he was also using ostarine, which in no way excludes the possibility that the Athlete was using it too*" is a purely unsubstantiated and unsupported allegation.

73. Fourth, the Appellant's remark regarding Prof. Ayotte's concern about the "*possibility of a systemic contamination during the contamination experiment*", is without merit as Prof. Alvarez not only clearly stated that a "*systemic contamination has been investigated and can be totally ruled out*" but also explained why that would be so.

74. Based on the above, the Second Respondent considers that the Appellant's arguments are irrelevant and that Appellant's requests for relief must be dismissed.

75. The Second Respondent adds that the filing of the present Appeal on the last day of the deadline and just a few days before the opening of the 2024 Olympic Games and the beginning of her fencing competition at those Olympic Games "*seriously damaged her mental health*" and caused her "*moral damage*". By reference to "*Article R64.5*" of the CAS Code, the Second Respondent, therefore requests compensation for the "*moral harm that the proceedings before the CAS have caused her at the amount of CHF 10.000*".

76. Finally, relying on the same provision, the Athlete requests compensation for her legal fees and the expenses of her legal team for a total amount of CHF 30'000.

77. In view of all the above elements, the Second Respondent submits the following prayers for relief:

"*Prayer 1:* *The Appeals* [sic] *shall be dismissed.*

Prayer 2: *In any event, the Appellant shall be ordered to bear the costs of the arbitration and It* [sic] *shall be ordered to contribute to the legal fees incurred by the Second Respondent at an amount of CHF 30.000.*

Prayer 3: *The Appellant shall be ordered to contribute for the moral harm of the Athlete at an amount of CHF 10.000.*"

78. During the hearing, the Second Respondent reiterated the general line of argumentation set out in her Answer and added, *inter alia,* that:

- only at the hearing did the Appellant challenge the chain of events and the facts considered by the DDT in relation to the Kissing Scenario and raised the argument that it wanted to hear or examine Mr Imboden. It was incumbent on the Appellant to call Mr Imboden as witness, as it did for Prof. Saugy, The Appellant decided not to do so.

- the Appellant is acting in bad faith and the Panel should dismiss its argument according to which the Athlete failed to establish the facts underlying the Kissing Scenario;

- the Athlete has provided a coherent and scientifically sound chain of events establishing both the source of the ostarine found in her system and that the ADRV was unintentional;

- the Appellant has not been able to present a more plausible scenario than the one put forward by the Athlete;

- the scientific hypothesis raised by the Appellant to show that the Kissing Scenario is implausible is flawed and unreliable ;

- the Appellant's experts do not share the same expertise as the Athlete's experts when it comes to ostarine. In particular, Prof. Ayotte and Prof. Saugy are not pharmacologists; they have not published any articles or studies on ostarine and they are not experts in hair analysis;

- the Prof. Alvarez's study has been peer reviewed and published ("Body fluid contamination in the context of an adverse analytical finding in doping: About a case involving ostarine", 2024). It has not been challenged.

V. THE HEARING

79. At the hearing, the Panel heard the evidence of the following experts: Prof. Jean-Claude Alvarez and Prof. Pascal Kintz (retained by the Athlete) as well as Prof. Christiane Ayotte and Prof. Martial Saugy (retained by the Appellant). Their expertise can be summarized respectively as follows:

- Prof. Jean-Claude Alvarez is a Professor of Pharmacology-Toxicology at the Faculty of Medicine of the University Paris-Saclay, the Head of department of

Pharmacology-Toxicology at the University Hospital Centre (CHU) of Garches, the Medical Director of the University and Medical Biology and Genetics Department of the Paris-Saclay Hospital Group (since July 2023) and has acted as an expert to the Cour d'Appel (Court of Appeal) of Versailles for 23 years and for the French Cour de Cassation (Supreme Court) for 9 years.

- Prof. Pascal Kintz is a Professor of Legal Medicine at the University of Strasbourg and is an expert for Justice appointed by the French Cour de Cassation for Chemistry, Toxicology and blood alcohol determination.

- Prof. Christiane Ayotte has a PhD in Organic Chemistry and a post-doc. in mass-spectrometry. She was the Director of the WADA-accredited Montreal Laboratory from 1991 to 2024. She has not published any articles on ostarine but has given lectures on the substance. She co-authored a paper on clenbuterol on hair of calves in the 1990's. Over the years, she has been a member of various WADA committees and working groups.

- Prof. Martial Saugy holds a Master Degree in Biology and a PhD in Plant Biology and Phytochemistry (180 reviewed publications in the anti-doping field but no publication on hair analysis), he was the Director of the WADA-accredited Lausanne Laboratory from 2002 until 2016, and was the Director of the Center of research & expertise in Anti-Doping sciences (RED's) of the University of Lausanne from 2016 until 2020.

80. Each expert was heard, examined and cross-examined singularly. They were then given the opportunity to provide concurrent evidence in the form of a "hot-tub".

81. Prof. Alvarez explained that during the contamination study he conducted on the Athlete and her partner, he mimicked the timeline of the events of 14 January 2024. The urine concentrations of ostarine detected in the Athlete further to his study were more or less similar to the ones found in the Athlete's A Sample. The AAF is thus compatible with contamination. The analysis of the Athlete's hair and her partner's hair confirm the above as the concentrations found in the Athlete hair, *i.e.* 2,5 pg/mg were way below the concentrations found in the hair of person using ostarine for doping purposes, *i.e.* between 50 and 200 pg/mg. The analysis of the Athlete's partner's hair in comparison revealed however that he had been using ostarine repetitively (65 pg/mg) as he explained that he was at the time of the doping control which caused the AAF and as he still was at the time of the controlled study. All of these findings are compatible with an intentional use of ostarine on the part of the partner and incompatible with an intentional doping scenario and use of ostarine by the Athlete.

82. Prof. Kintz explained that he was not involved in the initial study by Prof. Alvarez but that he was asked by the Athlete's legal team to review that study. He explained the strategy according to which, in his view, contamination can be successfully established. In the present matter, the results found by Prof. Alvarez indicate that the AAF was consistent with contamination of the Athlete by her partner. Further, the Athlete had no knowledge of the fact that her partner was taking ostarine or that contamination via body fluids was possible. He underlined that, in a case like this, it is important to take into

account the fact that the contamination did not just occur on the date of the Sample collection, *i.e.* 14 January 2024, but already the days before, as the Athlete had been exposed to ostarine from 5 January 2024 onwards and it takes days or sometimes weeks to eliminate ostarine from the system.

83. In response to a question from the Appellant, Prof. Alvarez explained that the "Second Alvarez Report" has been written by himself and by Prof. Kintz. Prof. Kintz acknowledged that in the Gil Roberts case, to which the parties referred in their submissions, no hair analysis was done.

84. As regards the dose of ostarine that could be transferred in a situation like the Kissing Scenario and the question to what this dose might amount and whether this dose amounts to the sums of the trapeze below the concentration-time curve and between two concentrations (as argued by Prof. Alvarez in the Second Alvarez Report) or to the concentrations found at the moment of each kiss (as Prof. Ayotte argues), Prof. Alvarez reiterated his position that the dose that has reached the systemic circulation (blood or urine) has to be calculated according to the trapezoidal method. He further added that the fact that the ostarine taken by Mr Imboden was diluted in an oily liquid (PEG), and not in an aqueous solution, has its importance because when ostarine is diluted in PEG it will stay longer in the mouth.

85. Regarding the same question and the results that can be drawn from his own study, Prof. Kintz, first, underlined that the ostarine used in his study was contained in an aqueous solution and not in an oily solution like the one used by the Athlete's partner. Second, he stated that he's not a specialist of pharmacology and that he relies on the expertise of Prof. Alvarez regarding the explanation of the trapezoidal method.

86. Prof. Saugy agreed that there is a difference between oily and water-soluble preparations when it comes to ostarine, but considers that in the case at hand, "*we're not speaking about an oily preparation for the partner of the Athlete*". According to Prof. Ayotte, the product used by Mr Imboden is not to be considered an oily preparation in the strict sense as it was a Polyethylene glycol (PEG) preparation. This might be "oily" in appearance, but it is highly soluble in water. However, such a solution will leave a less high concentration of ostarine in the mouth than the solution used by Prof. Kintz in his study, in which he crushed an ostarine pill and put it into water. Prof. Kintz underlined that in the Walpurgis Study, to which all Parties refer, ostarine was dissolved in a solution of ethanol and water.

87. With respect to the hair analysis, Prof. Alvarez acknowledged that he did not analyse the hair samples after every bath and did not include pictures of all samples in the First Alvarez Report. However, he stated, and was supported by Prof. Kintz on this, that the findings could clearly rule out that the Athlete's hair (and/or her partner's) had been manipulated through cosmetic treatment (discoloration). Prof. Alvarez then stated that regarding the hair analysis, he only took the results of the third washing bath because it is the most important, whereas for the nails, he took the results after the first and the third washing bath. When asked to explain why he only analysed the hair after the third washing bath he stated that that's how it is usually done giving that these analyses are very time consuming (+/-1 hour per segment). The analysis of the hair after the third

washing would give the best image on how important external contamination really was in a specific case. Prof. Kintz then underlined that hair testing is regulated by the scientific society of hair testing and that there is a consensus that hair can be kept for reanalysis. He submitted that there is no rule saying that hair must be analysed after every washing bath. Neither expert was contradicted on these points.

88. In response to the question on how he could explain that there was a gradient of contamination in the different segments of hair when all of the segments were, in the scenario at stake in the present matter, exposed to a contamination for more or less the same period of time, Prof. Alvarez stated that the maximum concentration is always found on the tips of the hair.

89. When asked if there were studies showing whether substances that are ingested can produce "external contamination", Prof. Kintz stated that, indeed, there were such studies, notably involving Quetiapine, Propranolol, Promazine. According to Prof. Kintz, there are dozens of studies showing that external contamination can occur through a pillowcase. Moreover, if the hair of a person is slightly damaged or porous due to the hair products that the person is taking, that hair would be more prone to contamination. As regards the Athlete's hair, it would be obvious that she is using hair products to prevent the hair from curling and these products would render her hair more porous.

90. In response to a question from the Panel, Prof. Alvarez explained, *inter alia*, that the higher concentrations at the end of the hair could be explained not only by the fact that that segment of hair had been exposed longer to the contamination source but also by the fact that when people brush their hair, they "brush" the substance to the outside, *i.e.* to the end of the hair. He further stated that the concentrations found in the hair of the Athlete must be due to external contamination. Indeed, the length of the analysed hair would represent several years of her life (33 months) and if she had taken ostarine for that amount of time there would be a chance that she would be dead. Prof. Alvarez was not contradicted on this last point.

91. As regards the first segment and the finding of 2,5 pg/mg, Prof. Alvarez excluded that such a finding could be compatible with an intake of ostarine for doping purposes. He further stated that he believes that he could detect a one-off intake of ostarine in a hair analysis as he has a limit of quantification of 0,05 pg/mg. When confronted with a study of Prof. Kintz in which the latter had found concentrations of 3 to 21 pg/mg of ostarine in the hair of a person that had used ostarine, Prof. Alvarez argued that that person had probably not used ostarine for doping purposes.

92. In response to the question how he could explain that an amount as high as 250 µg of ostarine was found on the Athlete's hair brush, Prof. Alvarez, although having specified in his First Report that the analysed hair brush was "*exclusively used by Mrs. Ysaora Thibus*", stated that the Athlete's partner had used that hairbrush as well and that ostarine is a very sticky substance that, when used in a household, would be found everywhere.

93. In relation to an article he co-authored and which reads *inter alia*, that:

it was difficult to determine the toxicological significance of the measured concentration of SARMs in the hair because there was no controlled study about SARMs incorporation into hair and because single dose detection tests have produced controversial results and that it was accepted that some parameters that must be evaluated during the validation process have not yet been assessed (like the dose necessary to give a positive finding, influence of gender, variable incorporation into hair according to hair colour, external factors that may have an impact, cosmetic treatment(s) etc.),

Prof. Kintz acknowledged that these elements have an incidence on the concentration and underlined that it's important to publish studies in order to get a better understanding of these elements. He then explained that his reading of the results found by Prof. Alvarez was that the whole strand of the Athlete's hair was contaminated by ostarine. As regards the results found in relation to the Athlete's partner's hair, he recalled that the concentrations found were far higher and that, in light of the literature on ostarine findings in doped athletes and ostarine testing from non-exposed athletes, it would be clear that the concentrations found in the Athlete's hair were caused solely by external contamination. Prof. Kintz expressed that he had no doubt about this because the concentrations of Ostarine found in the Athlete's hair "*are very low and absolutely linear*". He says such a finding would be accepted by French courts based on big number of cases published around the world. This last point has not been contested by the other experts. He further stated that there is no literature on doping with ostarine by micro-dosing and that, accordingly, such a scenario should be excluded.

94. Prof. Alvarez, in response to a question from the Appellant about his study, underlined that notwithstanding the fact that the Athlete and her partner were only mimicking the way they kissed on 14 January 2024, the ostarine concentrations found in the urine of the Athlete were very similar to the ones found in the Sample collected on that day. Further, he stressed that the concentration curve he found in his study is very similar to the one found in the Walpurgis Study.

95. Prof. Alvarez, in his answer to a question from the Panel, stated that the concentrations found in the Athlete's Sample were the result of the contamination she suffered over nine (9) days with a kind of cumulative effect, because ostarine is not excreted within one day but over 6 to 9 days. What he examined in his study was the effect of only one day of contamination, as both the Athlete and her partner had no ostarine in their system when starting the study. In this regard, Prof. Kintz added that it has been established that ostarine can be transferred via sweat and that it is likely that it could be transferred via seminal liquid, as is the case for cardarine.

96. Prof. Saugy stated, in relation to his report, that he was not asked to assess whether a Kissing Scenario as the one described by the Athlete was plausible during a competition, but to look at the results found by Prof. Alvarez in his study, which he considers to be "uncontrolled", and assess whether they could be compatible with the AAF. He acknowledged that he had no indication that the study was "wrong or biased" but that he was skeptical because the study was not conducted under "full control". In this regard, Prof. Alvarez argued that he had left the Athlete and her Partner after they had provided the second sample, that he took the bottle of ostarine with him, that if the Athlete and/or her partner had ingested more ostarine after his departure, it would have

shown as a second peek in the following samples, that one of his assistants remained with the Athlete and her partner until the end of the study, *i.e.* collecting of the last sample. Prof. Saugy, confronted with the fact that he had stated that "*the findings did not exclude a voluntary intake of ostarine by the Athlete*" and asked whether he had ever seen an ostarine case in which a "voluntary ingestion" could be 100% excluded, stated that he was not aware of any such case. He further stated that, in his view, a concentration in pg/mL in more likely to be due to a contamination than a concentration of ng/mL and that a concentration of 13ng/mL is not a "low" concentration that could be attached to a contamination.

97. In response to a question from the First Respondent, Prof. Saugy confirmed, in relation to the ostarine found in the Athlete's Sample, the concentration of 13ng/mL is a rough estimate. As regards the uncertainty of that concentration, he stated that there could be a variation of around 20 to 30% up or down.

98. When asked, Prof. Ayotte reconfirmed that, in her view, 13ng/mL is not a low concentration. In many ostarine cases, the concentrations found were a lot lower, for example 0,03 ng/mL. Out of the 50 ostarine cases she has seen in connection with in-competition testing at the Montreal Laboratory, only 4 had a higher concentration than 1 ng/mL. She also stated that, if one was to rely on Prof. Kintz's study, the maximum amount of ostarine that could have been transferred solely by kissing in a scenario like the one described by the Athlete would have been 1,3 µg. She opines therefore that kissing alone would certainly not be enough to explain the finding of 13 ng/mL in the Athlete's Sample. This finding would have required a transfer of 50 µg of ostarine via kissing which she says is implausible. Prof. Ayotte emphasized, however, that her calculation only considered a possible contamination by kissing.

99. As regards the trapezoidal calculation method referred to by Prof. Alvarez, Prof. Ayotte explained that this method could only work if the Athlete and her partner had been kissing without interruption for several hours in a row, *quod non*. Also, in her opinion, Prof. Alvarez's study could not be considered "controlled". First, in the lead up to the examination of the external contamination, the Athlete and her partner were alone in their apartment. Second, during the study, Prof. Alvarez left the Athlete and her partner alone after he had collected the second sample. Thus, interference by the Athlete or her partner could not be excluded. Prof. Ayotte then explained how a possible interference by the Athlete and/or her partner during the study or the days preceding the hair and nail collection could have occurred. According to Prof. Ayotte, in any event, external contamination leading to a concentration of 13 ng/mL in the urine of an athlete has never been seen or, at least, been published before. Prof. Saugy agreed with Prof. Ayotte that the study led by Prof. Alvarez could not be considered as being a "controlled study" as, for example, the Athlete and her partner were left alone after the second hour of the study. He also agreed with Prof. Ayotte on the point that based on the findings in Prof. Kintz's study, the kissing that could have reasonably occurred between the Athlete and her partner on 14 January 2024 could not have caused the concentration of 13 ng/mL found in the Athlete's Sample.

100. To Prof Ayotte, there is no reason to rule out the Athlete's intentional use of ostarine because even very low doses (1 mg to 3 mg) could have a performance enhancing effect.

Female athletes could use ostarine in low doses of 3 to 5 mg, which would not amount to micro-dosing. Given that most AAF's found showed concentrations of ostarine below 1 ng/mL, she has been given no reason to believe that the Athlete's AAF was due to an unintentional use of ostarine.

101. Prof. Ayotte further reiterated that a concentration of 13 ng/mL does not seem likely to be the result of contamination even if, *per se*, this concentration does not exclude the possibility of ostarine contamination. She explained that not all SARMs have the same impact on each individual. Different SARMs have different precise actions. However, even though other SARMs than ostarine may have other physiological impacts, the global action of SAMRs would be about the same. For some, for example ligandrol, the dosage and excretion time would be about the same as for ostarine. Hence one could compare the two. Other SARMS, like probenecid, could not be compared with ostarine or ligandrol. Prof. Ayotte disagreed with Prof. Kintz's statement that "*ostarine and ligandrol do not share the same pharmacokinetic parameters*" because the "*catching time would be similar*" (the doses would be proposed in the same preparation, *i.e.* PEG, the excretion time is about the same as they are taken orally). Prof. Ayotte stated that she was not aware of an ostarine "contamination case" in which the alleged contamination occurred through intimate kissing. With reference to existing literature and comparing this case to all the other ostarine cases she has seen, Prof. Ayotte submitted that she could safely deduct that the Athlete's AAF was not likely to be due to an involuntary ingestion. Regarding the explanations brought forward by Prof. Alvarez that the findings of his study point to the AAF being the result of systemic contamination, Prof. Ayotte stated that there is no proof in the case file that the hair or the exhibits were not contaminated by Prof. Alvarez himself. As to the fact that the reagent blank and the G0 have shown no signs of ostarine, this fact would not rule out that the hair had been contaminated during the study. Prof. Ayotte reiterated that she considered the study to be "uncontrolled", but did not suggest that Prof. Alvarez intentionally interfered with his results. To her, the extent of contamination raises suspicions as to the context under which the study was done.

102. In response to a question from the Panel on the possible variation of the estimated level of concentration detected in the Sample, Prof. Alvarez, who had stated in his Second Report that the urinary concentrations found for the Athlete were "*of 5 to 15 ng/mL*" (page 4 and 5/9 of the Second Report; and points 7 to 10 page 13/55 of the first report), argued that when taking into account the Internal Standard (IS), the result obtained for the Athlete has to be divided by 2,5 [*i.e.*, 707018 – which corresponds to the average of the three IS values – divided by 275252] leading to an actual concentration of ostarine of 5 to 6 ng/mL and not 13 ng/mL. According to him, the quantification of estimated concentration of Ostarine in the Athlete's Sample was incorrect and should have been much lower. Prof. Ayotte, for her part, referred to Prof. Alvarez's published study in which he mentioned only a concentration of 13 ng/mL (and not one of 5 or 6 ng/mL) and noted that even a concentration of 5 or 6 ng/mL would very unlikely be caused by contamination. Prof. Saugy also disagreed with Prof. Alvarez and explained that the role of the Internal Standard is to moderate the concentration laboratories detect in the samples they analyse and which, most commonly, are collected in competition, meaning that the samples are thicker. To Dr. Saugy, the actual concentration of the Sample at

hand would be 13 ng/mL, with a possible variation of 30% up or down to account for different calibration corrections. When the question was put to him a second time, he revised his answer to a calibration of 20% up or down.

103. Relying on the Walpurgis Study, Prof. Alvarez noted that in Walpurgis, the ingestion of 10 µg of ostarine led to a urinary concentration of almost 6 ng/mL. He opined that such a finding would be akin to contamination because 10 µg would be 100 times less than the minimum effective dose of ostarine. Prof. Ayotte agreed with him on this point.

104. Prof. Alvarez then asked Prof. Ayotte, in relation to the possible systemic contamination, whether she believed he could have contaminated everything except for the first curve point, which did not contain ostarine, and the two first samples of the Athlete and Mr Imboden. She did not want to answer that question.

105. Prof Alvarez disagreed with Prof. Ayotte that ligandrol and ostarine could be compared considering the doses they are supposed to be taken at. According to him, to be beneficial, ostarine products should be taken in doses of 30 to 50 mg/day, whereas ligandrol could be taken at a dose of between 8 and 22 mg/day. He thus considers that one cannot compare the findings of these substances in urine samples. Moreover, much unlike ostarine, a laboratory would detect only ligandrol metabolites in urine and not ligandrol itself. Prof. Ayotte retorted that her reference to the ligandrol cases was solely due to the fact that in his published study, Prof. Alvarez had made a reference to two cases involving ligandrol contamination (Madilyn Nickels and Laurence Vincent-Lapointe). Her point was that the concentrations of ligandrol found in those contamination cases were much lower than the concentrations of ostarine detected in the Athlete's sample here.

106. At the end of the hearing, the Athlete offered a sincere and compelling statement in which she highlighted that she has always trained and competed with integrity and that winning at any cost has never been an option for her. She explained that the months following the AAF were particularly challenging for her, and that the Appellant's appeal filed three days before the opening ceremony of the 2024 Olympic Games and shortly before the start of her competitions at these Games, has had a devastating effect on her. She emphasized that her teammates stood by her throughout the ordeal and believed in her innocence. She stressed how difficult it is for innocent athletes to go through a procedure like the ordeal she has lived. She frankly stated that she did not cheat and will do everything in her power to qualify for the 2028 Olympic Games.

VI. JURISDICTION

107. Article R47 of the CAS Code provides as follows:

"*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*"

108. Pursuant to Article 13.2 of the FIE ADR:

"*A decision that an anti-doping rule violation was committed, a decision imposing Consequences or not imposing Consequences for an anti-doping rule violation, or a decision that no anti-doping rule violation was committed [...] may be appealed exclusively as provided in this Article 13.2*."

109. Article 13.2.1 of the FIE ADR provides as follows:

"*In cases arising from participation in an International Event or in cases involving International-Level Fencers, the decision may be appealed exclusively to CAS.*"

110. According to Article 13.2.3 of the FIE ADR, in cases stipulated in Article 13.2.1 parties entitled to appeal to the CAS are, *inter alia*, "(*c) the FIE; (d) the National Anti-Doping Organisation of the Person's country of residence or countries where the Persson is a national or license holder; (e) the International Olympic Committee [...]; and (f) WADA*".

111. It is uncontested that the Athlete is an International-Level Fencer within the meaning of the FIE ADR. None of the Parties objected to the CAS jurisdiction and all Parties confirmed such jurisdiction by signing the Order of Procedure.

112. In view of the above, the Panel confirms that the CAS has jurisdiction to decide on the present appeal.

VII. ADMISSIBILITY

113. Article R49 of the CAS Code provides as follows:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.*"

114. Pursuant to Article 13.6.1 of the FIE ADR, the "*time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed:*

(a) Within fifteen (15) days from the notice of the decision, such party/ies shall have the right to request a copy of the full case file pertaining to the decision from the Anti-Doping Organisation that had Results Management authority;

(b) If such a request is made within the fifteen (15) day period, then the party making such request shall have twenty-one (21) days from receipt of the file to file an appeal to CAS.

The above notwithstanding, the filing deadline for an appeal filed by WADA shall be the later of:

(a) Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed, or

(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision."

115. In the present matter, it is uncontested that the Appealed Decision has been notified to the Athlete's National Anti-Doping Organisation, the *Agence Française de Lutte contre le Dopage* (AFLD), on 5 June 2024. The AFLD's time limit to file an appeal against the Appealed Decision thus expired on 26 June 2024 and, in accordance with Article 13.6.1 of the FIE ADR, the Appellant had another twenty-one (21) days after that day to file its appeal with the CAS, bringing that time limit to 17 July 2024. By filing its Statement of Appeal exactly on the 17 July 2024, the Appellant respected the twenty-one (21) day deadline set out in the FIE ADR. Thus, the present appeal was filed within the prescribed deadline and is admissible.

VIII. APPLICABLE LAW

116. Article R58 of the CAS Code provides as follows:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

117. The Appealed Decision was rendered under the FIE ADR and there is no dispute as to the applicability of the FIE ADR in the present matter. According to Article 24.4 of the FIE ADR, the latter have been adopted pursuant to the applicable provisions, *inter alia*, of the WADC and shall be interpreted in a manner that is consistent with applicable provisions of the WADC, knowing that in case of conflict between the FIE ADR and the WADC, the WADC shall prevail. Further, pursuant to Article 24.6 of the FIE ADR the comments annotating various provisions of the WADC shall be used to interpret the FIE ADR.

118. As to procedural issues, the procedural rules of the CAS Code, supplemented by Swiss procedural law and principles enshrined in chapter 12 of the Swiss Private International Law Act ("PILA") are applicable as the CAS has its seat in Switzerland, pursuant to Article R28 of the CAS Code, and at least one of the Parties has its domicile outside Switzerland.

IX. MERITS

119. In the present matter, the Athlete does not dispute that she committed an ADRV in breach of Article 2.1 of the FIE ADR for the presence of a prohibited substance. The Parties are also in agreement that because ostarine is a non-Specified Substance, pursuant to Article 10.2.1.1 of the FIE ADR, the presumptive period of ineligibility applicable as a result of this ADRV is four (4) years, unless the Athlete can establish that the ADRV was "not intentional".

120. According to the comment to Article 10.2.1.1 of the FIE ADR, "[w]*hile it is theoretically possible for a Fencer or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 a Fencer will be successful in proving that the Fencer acted unintentionally without establishing the source of the Prohibited Substance*".

121. Article 3.1 of the FIE ADR, entitled "*Burdens and Standards of Proof*", provides, in its relevant parts, that "[w]*here these Anti-Doping Rules place the burden of proof upon the Fencer or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability*".

122. In the present matter, the mandate of the Panel is, in principle, limited to the questions of whether the Athlete has discharged her burden of establishing on a balance of probability that the ADRV was not intentional. In the affirmative, pursuant to Article 10.2.2 of the FIE ADR, the Panel must then determine if the period of ineligibility may be eliminated under Article 10.5 of the FIE ADR (No Fault or Negligence) or reduced pursuant to Article 10.6 of the FIE ADR (No Significant Fault or Negligence).

123. As a preliminary point, the Panel notes however that, in response to a question from the Panel, the Appellant clarified that if the Panel were to accept that the Kissing Scenario put forward by the Athlete is more likely than not to have caused the ADRV, the Appellant would concede that this case would result in a finding of No Fault or Negligence. Accordingly, if the Panel finds that the Athlete establishes to the required legal standard that the Kissing Scenario explains the source of the ostarine found in her system, the Athlete will benefit from the lenience of Article 10.5 of the FIE ADR and see the otherwise applicable period of ineligibility eliminated.

124. The Panel emphasizes that in order for it to be satisfied on the balance of probability that the Kissing Scenario did cause the Athlete's ARDV, the Athlete must, according to constant CAS jurisprudence, establish that said Scenario constitutes a plausible

explanation for the ostarine detected in her system or, in other words, that the Kissing Scenario – and the concentration of ostarine that could result therefrom – is not fatally undermined by scientific, *i.e.* pharmacokinetic, evidence (CAS 2017/A/5296 WADA v. Roberts, para. 53 and 54; CAS 2023/A/10025 Halep v. ITIA and CAS 2023/A/10227 ITIA v. Halep, para. 166 and 167).

125. In this regard, the Panel observes that in its Appeal Brief, the Appellant argued that (i) the Kissing Scenario "*put forward by the Athlete simply cannot be the explanation of the* [AAF]", the Athlete's explanation, and Prof. Alvarez's report upon which the Athlete relies are "*scientifically unsound*" (para. 4); (ii) the "*scenario put forward and supported by Prof. Alvarez and Dr. Kintz is plainly implausible*" (para. 40); (iii) the Kissing Scenario "*simply does not work in terms of pharmacokinetics*" [para. 40 sub i)]; (iv) the calculations done by the Athlete's experts are based on a premise which "*seems wholly implausible on the facts*" in light of "*Mr Imboden's own evidence at first instance*" [para. 40 sub iii) and v)ii)]. Further, in one of its footnotes to para. 40 sub v) ii) of its Appeal brief, the Appellant made a reference to the statement of Mr Imboden regarding the time of ingestion of his dose of ostarine and his time of arrival at the competition site on 14 January 2024 as mentioned in the Appealed Decision (page 11, para. 2). Finally, in the second last paragraph of its written submissions on the merits of the case, the Appellant stated that "*there is no basis for the Athlete to claim that her explanation is compatible with the concentration of ostarine detected in her urine. She relies almost exclusively on Prof. Alvarez's 'contamination study, which is deeply flawed from a scientific perspective. [...] Further, the study conducted by Dr. Kintz measuring the amount of ostarine in the saliva after ingestion of the drug shows that the dose that could have been transferred by Mr. Imboden was simply not in the right ballpark to cause the* [AAF] *(even taking favorable, and rather implausible, assumptions). In WADA's submission, the Athlete's explanation must therefore fail*".

126. While it is true that the Appellant also claimed (i) that "*general experience of life would suggest that one does not kiss as one usually does whilst competing at an international fencing competition*"; (ii) that "*given the complete lack of information regarding the frequency and duration of the Athlete's and Mr Imboden's physical contacts during either the contamination study or the 14 January 2024 competition, the Athlete certainly failed to provide any relevant proof to show that the two situations were comparable*" [para. 40. sub v) ii)], and (iii) that "*other elements relied upon by Prof. Alvarez in his report do not provide any support to the scenario put forward by the Athlete*" [para. 40 sub vi)], the fact remains that, in the Panel's view, the Appellant did not, through these claims, actually question the factual evidence provided by the Athlete and the witnesses before the DDT and relied on by the latter in the Appealed Decision as regards the general course of the events leading up to 14 January 2024 and on this date. Indeed, read together with the Appellant's arguments recalled in the previous paragraph of the present award, the Panel understood these claims to be solely aimed at undermining the scientific, in particular the pharmacokinetic plausibility of the Kissing Scenario put forward by the Athlete and accepted by the DDT.

127. In such a situation, and notwithstanding the fact that, according to Article 13.1.2 of the FIE ADR, the Panel shall, in making its decision, not defer to the discretion exercised by the DDT, in the particular circumstances described above, the Panel considers that it

would be contrary to the legal principles of procedural fairness and good faith for the Appellant to demand that the Second Respondent establish before the CAS the course the events underlying the Kissing Scenario when she has already successfully done so before the DDT without being challenged. Indeed, on the basis of the Appeal Brief, the Second Respondent was entitled to reasonably assume that the Appellant had accepted these underlying facts and that she did not have to establish anything else but the scientific soundness of this Scenario to satisfy her burden of establishing the source of the AAF. Further, given that the Appellant had filed along with its Appeal Brief both the Athlete's written submissions before the DDT and the exhibits accompanying these written submissions, it is understandable that the Second Respondent limited herself, in her Answer Brief before this Panel, to state that said Brief "*incorporates by reference the facts and the arguments developed in the Athlete's previous submissions*".

128. Finally, as argued by the First Respondent, if the Appellant had, from the beginning of the procedure, actually intended to question the reality of the factual events underlying the Kissing Scenario and to examine (or rather cross-examine) Mr Imboden, who appeared as witness in the first instance hearing, the Appellant could easily have done so by proceedings as it did for Prof. Martial Saugy, *i.e.* by reserving its right to call Mr Imboden to provide evidence and answer questions in the event that the Second Respondent would not call him as a witness.

129. In view of the above-mentioned elements, the Panel finds here that it may validly consider that the Athlete has established the factual elements underlying the Kissing Scenario, *i.e.* the events leading up to the 14 January 2024 and during that day, as brought forward by the Athlete during the first instance proceedings and as accepted by the DDT. In particular, the Panel considers that the invoices and email exchange on file prove that Mr Imboden ordered ostarine (MK-2866), and that his blood and urine samples prove that he had ingested ostarine. Further, the Panel accepts that Mr Imboden admitted to ordering and ingesting ostarine without the Athlete's knowledge.

130. However, given that the Appellant argues that the intake of ostarine by Mr Imboden does not exclude that the Athlete was also intentionally taking ostarine, the Panel will not only examine whether the concentration of ostarine found in the Athlete's Sample can, on the balance of probability, be explained by a contamination through the Kissing Scenario alone but also whether there are elements on file that indicate that she might have intentionally ingested ostarine.

131. Firstly, the Panel notes that according to Prof. Kintz's published and peer reviewed article ("Evidence of ostarine excretion in oral fluid after a single controlled oral administration", 2024), it appears to be scientifically established that the intake of a dose of ostarine similar to the dose ingested by the Athlete's partner (*i.e.* 1 ml) would have left sufficient amounts of ostarine in the saliva of the partner to contaminate a person, here the Athlete, through kissing. In the present matter, there are several witness statements in the case file confirming that on the day of the Sample collection, *i.e.* 14 January 2024, the Athlete and her partner exchanged intimate kisses (French kisses). Some of these witness statements also highlight that the Athlete and her partner had the habit of frequently exchanging French kisses. Accordingly, it is reasonable to assume that, in the days prior to the 14 January 2024, the couple also engaged in intimate kissing

which could have led to a transfer of that substance to the Athlete given that Mr Imboden started taking ostarine from the 5th of January 2024 onwards.

132. Secondly, the Panel notes that the ostarine concentration levels found in the urines in the study led by Prof. Alvarez submitted as the "Alvarez Report" before the DDT, and published in an article entitled "Body fluid contamination in the context of an adverse analytical finding in doping: About a case involving ostarine" (2024), appear to corroborate the concentrations found in the Athlete's Sample. This leads the Panel to the conclusion that it is unlikely that there was a second source of ostarine in addition to the ostarine transferred to the Athlete by her partner via, *inter alia*, the kissing. Indeed, on basis of the evidence before the Panel, it appears likely that in such a case the concentrations of ostarine found in the Athlete's Sample could even have been higher than the 13 ng/mL detected. Moreover, the curve found by Prof. Alvarez in his study is, as all experts agreed during the hearing, very similar to the one found in the Walpurgis Study, which all the Parties considered to be controlled and reliable.

133. Regarding the study led by Prof. Alvarez, while agreeing with the Appellant that the conditions under which this study was conducted could have been stricter and that the reporting of the different steps undertaken could have been better documented, the Panel finds that said study can be considered as sufficiently controlled to be attributed, in the present matter, some decisive scientific weight. Indeed, on the one hand, the results of the study have been published in an article that has been peer reviewed and, so far, these results have not been scientifically contested. On the other hand, as became clear in the discussion during the hearing, before starting the study, Prof. Alvarez had tested the Athlete and her partner several times to make sure that there was no ostarine remaining in their system. Further, even if it is stated in the published article that, after the second urine sample was taken, Prof. Alvarez "*left, leaving [the Athlete and her partner] both with the first two vials of urine and taking back the vial of MK-2866*", it is clear from the "First Alvarez Report", in which it is stated that Prof. Alvarez "*left [the Athlete and her partner] until the following day, leaving with the first two vials of urine and taking back the vial of MK-2866*", that, after the Athlete and her partner had each provided their second sample, Prof. Alvarez left with all the vials of urine he had collected so far and also took the vial of MK-2866 with him. The Panel considers that the misleading wording of the sentence in Prof. Alvarez's published article is due to an unfortunate but understandable translation error. More importantly, Prof. Alvarez convincingly testified before the Panel that when he left the Athlete and her partner, he took the vials of urine that he had collected and the bottle of ostarine with him. An interference of the Athlete or her partner with the first two urine samples collected by Prof. Alvarez in his study can thus be excluded. In this regard, it must also be mentioned that there is no element pointing into the direction of the existence of a second bottle of ostarine in the household of the Athlete and her partner. In any event, if the partner had ingested another dose of ostarine, that ingestion would have resulted in a second spike of ostarine in his urine samples. Finally, as regards the allegation that the results found by Prof Alvarez, in particular, the hair and nails analysis could possibly be due to systemic contamination, the Panel finds this allegation not to be substantiated by any concrete elements and does not consider the contradictory evidence given in relation to the Athlete's hairbrush to be determinative or relevant. In any event, the Panel considers that the most relevant

part of the Alvarez study is the analysis of the Athlete's and her partner's urine and Prof. Alvarez has, in the Panel's view, convincingly contested the allegation of a possible systemic contamination of those urine samples.

134. Further, still in connection with the question whether a second source of ostarine might have caused the AAF, although being well aware of the CAS jurisprudence according to which a hair analysis is not sufficient to rebut the presumption that an ADRV was intentional (CAS 2021/O/7977) and adopting a cautious approach to the conclusions that might be drawn from such analysis when it comes to the use of Prohibited Substances, the Panel notes that while all experts but Prof. Alvarez agreed that, for the reasons exposed by Prof. Kintz in his article entitled "Human hair testing for selective androgen receptor modulators (SARMs): Current knowledge and limitations" (2021), the intake of ostarine in very small doses might not be detectable in hair analysis, it is uncontested that the concentrations of ostarine found in the Athlete's hair are linear, which constitutes a strong indication that they are the result of an external contamination and not of an intentional ingestion. Indeed, according to Prof. Kintz and Prof. Alvarez, who are specialists in the field, first, the concentrations found are not indicative of an intake of pharmacological doses of ostarine for performance enhancing purposes and, second, it can be excluded that the Athlete could have been consuming ostarine over the whole length of the period represented by the analysed strand of hair (*i.e.* 33 months).

135. Finally, as already mentioned above, with reference to the findings of Prof. Alvarez and Prof. Kintz in their respective studies, the Panel considers that if there had been a second source of ostarine, *i.e.* direct intentional intake by the Athlete, the concentrations found in the Athlete's Sample ought very likely to have been higher than what they were (13 ng/mL) as these concentrations were, more or less, reproduced in the study of Prof. Alvarez on the basis of just one indirect source by way of contamination. Moreover, the Panel takes into consideration that both experts called by the Appellant acknowledged that a concentration of ostarine of 13 ng/mL does not, *per se*, exclude the possibility of contamination.

136. Thus, on the balance of probability, the Panel excludes that besides the Athlete's partner, there was a second direct source of Ostarine. In other words, the Panel excludes that, here, the Athlete intentionally ingested the ostarine in addition to being contaminated by her partner's saliva.

137. It must be added that although most of the Appellant's arguments aiming at undermining the plausibility of the Kissing Scenario brought forward by the Athlete focus on the fact that it is unlikely that, on the 14 January 2024, the Athlete and her partner could have been kissing in such a way as to transfer enough ostarine to cause the AAF (13 ng/mL), the Panel notes that it accepts that Mr Imboden was taking ostarine from 5 January 2024 onwards. Therefore, there has been contamination over 9 days with a cumulative effect because it has also been established that the excretion time for ostarine is 6 to 9 days. The Panel does not view it of critical importance whether, on 14 January 2024, the Athlete and her partner started kissing half an hour, one hour or one and a half hours after the ingestion of 1 ml of ostarine by Mr Imboden. In this regard, it may be added that, in relation to the Appellant's argument according to which, on the 14 January 2024, the Athlete and her partner could not have started kissing immediately after the partner's

arrival at the competition site due to the fact the Athlete's team had a match against China at 13h00, the First Respondent clarified at the hearing, without being contradicted, that the planned schedule of that match had been delayed and that the match started later.

138. In view of the above, and having taken all the available evidence into account, the Panel finds that the Athlete has provided a plausible explanation as to how the ostarine found in her Sample had entered her system and that this explanation has not been "fatally undermined" by the scientific evidence and arguments raised by the Appellant.

139. Hence, the Panel finds that the Athlete has discharged her burden of establishing on the balance of probability that her AAF came from contamination by intimate kissing (contact) with her partner on the day of the Sample collection and the (9) days prior to that. It follows that the Athlete's ADRV for the presence of ostarine was not intentional. Further, in the light of these findings, it is manifest and uncontested that the Athlete bears No Fault or Negligence for her ADRV. As Article 10.5 of the FIE ADR provides that "*if a Fencer or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated*", no period of suspension shall be imposed on the Athlete. Furthermore, WADA's request to amend the duration of the Athlete's retroactive disqualification is rejected and the DDT decision is confirmed also on this point.

140. The DDT decision is upheld and the Appeal dismissed.

141. Any other and further claims or requests for relief on the merits are dismissed.

X. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by the World Anti-Doping Agency (WADA) against the Fédération Internationale d'Escrime (FIE) and Ms Ysaora Thibus with respect to the decision rendered by the Doping Disciplinary Tribunal of the Fédération Internationale d'Escrime on 4 June 2024 is dismissed.

2. The decision rendered by the Doping Disciplinary Tribunal of the Fédération Internationale d'Escrime is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.

Seat of the arbitration: Lausanne, Switzerland
Dated: 7 July 2025

COURT OF ARBITRATION FOR SPORT

Jacques Radoux
President of the Panel

Luigi Fumagalli
Arbitrator

Janie Soublière
Arbitrator