

## **Vogelzang Committee Report on the Michael Rasmussen Case**

### **Vogelzang Committee**

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## Introduction

The Executive Board (hereinafter referred to as EB) instituted the Vogelzang Committee on 2 August 2007. The immediate reason for forming the committee was the fact that on 25 July 2007, following the completion of the stage of the Tour de France, cyclist Rasmussen was expelled from the Tour de France and suspended from the team by the General Managing Director of Rabo Wielerploegen B.V. The following day he was dismissed with immediate effect due to violation of the internal regulations.

Several days following the completion of the Tour de France on Friday, 3 August 2007, the Chairman of the Board of Directors of Rabo Wielerploegen B.V. decided to step down as Statutory Managing Director of Rabo Wielerploegen B.V.

The EB concluded on the basis of the circumstances surrounding the Rasmussen affair to launch a further independent investigation into the events and facts (fact finding) prior, during and shortly after the 2007 Tour de France. An evaluation committee, with Mr P. Vogelzang in the role of chairperson, was established for this purpose.

Following further substantive and process-based orientation, the committee commenced holding hearings with the involved parties. It was naturally only possible to conduct the investigation with the cooperation of all the involved parties. The investigation involved is, after all, not a criminal investigation that would have allowed certain means of coercion to be applied. Employees are, however, expected to cooperate in the investigation owing to the existing labour law relationships. The report examines the findings of the investigations and ends by providing a number of conclusions and recommendations.

### ***Commission, plan of action, composition of the Vogelzang Committee, context of investigation and working method.***

#### *A. Description of the commission*

The EB commissioned the Vogelzang Committee to conduct an investigation into the following aspects:

- Developments in international professional cycling: The effect that legislation, tests, sanctions and the conduct of the various institutions (UCI, WADA and National Federations) have on the sport of cycling.
- The policy of Rabo Wielerploegen B.V. vis-à-vis training, medical supervision and compliance by the riders.
- The supervision of Rabo Wielerploegen B.V. and a clear division of responsibilities between the sport operations, the bank and remote supervision.
- The process that led to the crisis. What are the underlying facts, what was the decision-making process employed during the various phases and how effective were the communications, both internal and external? How did the Board of Directors and the team management of Rabo Wielerploegen B.V. perform within this context?

#### *B. Plan of action*

The committee has formulated a plan of action containing the central themes of the whereabouts of riders and the out-of-competition testing of riders. It was necessary to limit the scope of the investigation somewhat from the outset in light of the time pressure and in order to prevent the process from becoming an overly broad investigation that would most likely result in an incomprehensive overview of the actual facts and events.

The plan of action was discussed with the Chairman of the Supervisory Board and the Chairman of the Advisory Board of Wielerploegen B.V. (hereinafter referred to as the SB and the AB respectively) and the Executive Board of Rabobank Nederland. It was then adopted with the inclusion of several marginal comments.

The report can be divided into four sections and each of the above four aspects will be addressed in the following brief sections. Each section begins with a general introduction and the individual aspects are then handled in the following sub-sections. Each section ends with conclusions and recommendations.

### *C. Composition of committee*

The members of the Vogelzang Committee are:

Peter Vogelzang	Former Utrecht Regional Police Superintendent and sports director.
Gijs Langevoort	Orthopaedic physician, sports director, IHF doping official at the Olympic Games.
Marjan Olfers	Lawyer, whose areas of specialisation include sports law, member of the Instituut SportRechtspraak (Sports Jurisdiction Institute), member of the sports sponsoring arbitration committee.
Johan Geraets	Senior policy advisor, City of Rotterdam.

The committee deems itself to be fully independent of the commissioning party, i.e. the Executive Board of Rabobank Nederland. This independence is furthermore reflected in the composition of the committee.

### *D. Context of investigation*

The committee confirms that all the involved parties cooperated in the investigation voluntarily and constructively. The atmosphere was as a rule relaxed and, when necessary, businesslike. As the committee moved closer to the core of the investigation, it noticed that a number of the involved parties began to take a more reluctant attitude. The involved parties' councillors also attended a number of meetings. In view of the labour law relationships between Rabo Wielerploegen B.V. and a number of the involved parties, the committee clarified prior to the hearings that it would be permitted for the statements to be used in labour law proceedings.

Inasmuch as the committee can assess this at this time, all the relevant information necessary to launch the investigation properly was provided. Statements entailing one person's word against another were involved with regard to a number of essential facts. While the committee verified the information provided as much as possible, it was not always possible to determine the truth objectively in all instances.

Information on whereabouts is, in accordance with the regulations of the UCI, confidential and was therefore not made available to the committee. This information was consequently derived from the correspondence that was made available and the statements from the involved parties. The emphasis of the investigation into the whereabouts involves the period from 4 June through 29 June 2007.

The investigation conducted by Rabobank Nederland (hereinafter referred to as Rabobank) converges to a certain degree with the investigation conducted by the UCI. Both investigations are focused on whether or not parties violated the regulations.

The committee has, in terms of the commission, concentrated on policy, regulations, application and enforcement of the whereabouts and the related out-of-competition tests.

### *E. Working method*

The Vogelzang Committee has followed a working method that corresponds with the main points of the plan of action. The purpose of the meetings was to gain information and knowledge regarding the regulations, procedures and policy of Rabo Wielerploegen B.V. and (international) cycling on the one hand and very concrete fact finding on the other.

The committee has spoken extensively with a number of involved parties at Rabo Wielerploegen B.V. The committee questioned the board of directors, team management, team physician, trainer and several riders. The committee also spoke with the Chairman of the AB and members of the SB and the EB. Multiple meetings were held with a number of involved parties. The committee spoke with Rasmussen in Copenhagen on 12 September 2007.

Talks were furthermore held with employees of the KNWU, the UCI, the Danish Cycling Federation, the Danish anti-doping authority and the Dutch Doping Authority. Physicians were also consulted to provide their view regarding the usefulness and effect of using doping and the possibilities for using doping without it being detected.

It is the responsibility of the Executive Board of Rabobank Nederland, the Supervisory Board, the Board of Directors, employees and riders of Rabo Wielersploegen B.V. and the various national and international cycling and anti-doping organisations to draw conclusions from the investigation and to implement the recommendations in practice.

***Developments in international professional cycling: The effect that legislation, tests, sanctions and the conduct of the various institutions (UCI, WADA and National Federations) have on the sport of cycling.***

**I. Sport: governance structure and regulations**

**1. The sport of cycling through the years**

The sport of cycling has developed at a whirlwind pace over the years. While cycling once began as primarily a means for people to escape their hard working lives at farms, mines or factories, the sport has gradually evolved into a well-organised and professional sport. The sport now involves huge sums of money and serves as a good source of income for parties associated with the sport as a rider or in another capacity.

What has, however, remained unchanged through the years is the sport's appeal. The drive for freedom and adventure, the unbelievably hard work, the sheer willpower and perseverance and extreme physical exertion are inextricably linked to the sport of cycling. Both the heroism of contemporary cycling and the tragedy of contemporary cycling are still firmly rooted in the image of the lone athlete excruciatingly battling against himself and the elements in order to conquer a nearly unassailable mountain to reach the finish in a state of utter exhaustion, either as a winner or not. Such intense effort and performance lead to the creation of heroes and capture the imagination of the general public. Another key factor is that the sport of cycling is easily accessible to the public. Supporters come out en masse during the major stage races to line mountain ridges to cheer on their heroes who they can either almost touch or in any case see from nearby.

In addition to everlasting fame and heroism, modern cycling also gives cyclists, particularly those who have reached the top echelon of the sport, the chance to gain financial independence.

The globalisation of cycling and the ensuing commercialism have had a tremendous impact on the athletes' ambitions to achieve world-class performances. Performances that demand immense physical exertion and that force the cyclists to go to ultimate extremes, sometimes for days in a row. As a result the sport of cycling embodies all the elements that entice riders to take risks in order to improve their performance. Risks that actually directly contravene the ethics of cycling and principles of fair play in the sport in general and, last but not least, pose a threat to the individual's health. Influencing performance has, as a result, almost inevitably become an issue in the sport of cycling.

Viewed purely from an historical perspective, there has always been a demonstrable connection between manipulated physical performance and major victories in sport in general and the sport of cycling in particular. This has not traditionally led to a great deal of social unrest or indignation. There has, however, in recent years been an ethical revival against the use of doping and the media has blown up the (possible) violations of anti-doping regulations into sensational proportions. This has caused the attention for athletic performances to fade into the background.

Compliance with regulations and sufficient supervision and imposition of appropriate sanctions in the case of violations are vital in order to restore a sense of balance, to distance the sport of cycling from the negative reporting and to give it the attention that it absolutely deserves. It is, however, also important not to lose sight of reality in the process. It is difficult for enforcement and controllability to keep pace with the innovative developments in the field of performance enhancing substances. There is also a risk that the continuous attention paid to doping and the administrative red tape will play a predominant role and will consequently not help the sport of cycling to move forward.

## **2. Anti-doping organisation**

### **2.1 International: World Anti-Doping Agency (WADA)**

The World Anti-Doping Agency promotes, coordinates and harmonises the battle against doping. The anti-doping programme safeguards the intrinsic value of the sport, which is sometimes also called the 'spirit of sport'. *'It is the essence of Olympism; it is how we play true'* (World Anti Doping Code, version 3.0). In order to fulfil this aim, the WADA works in partnership with intergovernmental organisations and national governments and with organisations and individuals in the sports sector, such as the IOC, the international sports federations, the national Olympic Committee and the athletes. The WADA has drafted an anti-doping code. The code encompasses all the aspects of doping regulations at the worldwide level (doping list, tests, sanctions, etc.). This code is applied by the Olympic Movement and public authorities. In 2003, the International Olympic Committee determined that all international federations must adopt and implement the World Anti Doping Code in order to be recognised by the IOC. Both participants and coaches, trainers and officials must respect and act according to the code in order to be allowed to participate in the Olympic Games. The WADA creates as it were the model regulations for the international federations. The UCI incorporated the WADA code into the UCI regulations in July 2004. The UCI has not, however, adopted all the regulations in their entirety.

### **2.2 National anti-doping authority (NADO)**

The method for combating doping varies by country. While in some countries there is a central authority that focuses on doping, in other countries the sports federations are responsible for the doping policy. The national federations do not normally have their 'own' anti-doping regulations if there is a national anti-doping authority in place. In addition to the sport regulations, riders can furthermore be subject to national legislation in the field of anti-doping.

#### **2.2.1 Anti-Doping Authority Netherlands, Anti-Doping Danmark (ADD)**

The Anti-Doping Authority Netherlands Foundation was instituted last year from the merger of the Dutch Centre for Doping Issues (NeCeDo) and Doping Control Netherlands (DoCoNed). The merger has resulted in the merger of the prevention and control branches. Athletes in the Netherlands are tested by the Doping Authority or by another executive organisation. Athletes in other countries are tested by the doping testing organisation or another executive organisation in that country.

Anti-Doping Danmark (hereinafter referred to as: ADD) is the anti-doping authority in Denmark. The ADD is authorised to conduct out-of-competition tests in other countries, providing that the rider falls within the sphere of authority of the national anti-doping regulations. In addition to planning doping tests, the doping authority also focuses on providing information and advice to top athletes and club-level athletes, developing and monitoring anti-doping regulations, collecting and commissioning or conducting scientific research, realising international coordination, etc.

Doping controllers are appointed by an authorised institution: the UCI, IOC, KNWU or another national federation, the NADO or a competition organising body.

## **3. Relationships within monopolistic sports organisation structure**

### **3.1 International Cycling Union (UCI)**

The International Cycling Union is the international cycling federation. The UCI organises, develops, and monitors, etc. the sport of cycling at the international level. The UCI instituted the ProTour in 2005.



This is a series of competitions in which teams can participate and in which the riders are awarded points that are used to develop the overall rankings. The UCI ProTour has replaced the world cup and the world rankings.

UCI regulations are important for international competitions. The UCI is recognised as an international federation by the IOC and is expected to comply with the regulations of the IOC and to act according to the anti-doping code of the WADA.

### **3.2 Amaury Sport Organisation (ASO)**

The Amaury Sport Organisation (ASO) is a French sporting events organiser. The ASO organises events including the Tour de France and major one-day competitions such as Paris-Roubaix.

### **3.3 National federations**

The national federations, including the Royal Dutch Cycling Union (KNWU) and the Danmark Cykle Unions (DCU), are members of the UCI. The national federations in turn pass on the obligations that have been placed on them by the UCI to the members. The national sports organisations are linked to the international doping regulations in this way and are subjected to the sanction mechanism of the international federation. This is in any event the case when international competitions conducted under the auspices of the international federation are involved. When national competitions are involved, national federations are in principle free to use the national doping regulations that must in any case also be in line with the anti-doping regulations of the UCI. According to UCI regulations (article 94), national federations will assist the UCI in gaining the whereabouts information required by the UCI. In addition to the international sport regulations, the national federation is also subject to national law. Certain countries may have national anti-doping regulations. This means that in some instances a national sports federation must deal with both anti-doping regulations developed by the sport and anti-doping regulations developed by the national government. The Netherlands does not have national anti-doping legislation. Denmark does have its own anti-doping legislation.

### **3.4 Riders**

A rider is linked to the UCI via a licence and to the national federation of the country in which he is registered as a resident. Most Dutch professional riders do not live in the Netherlands and consequently have a foreign licence. The KNWU and the Dutch Doping Authority are only authorised to conduct doping tests during competitions, out of competition within the Netherlands and out of competition when the rider is part of the national or Olympic team. The primary responsible party is the national federation that has issued a licence to the rider. A rider can also be subject to national anti-doping legislation. This is due on the one hand to the territorial effect of the law, because the rider resides in a country in which anti-doping legislation is in force, and on the other hand due to the fact that he is subject to the national legislation via his nationality. It is customary in many countries for riders that form part of the national team to be tested out of competition.

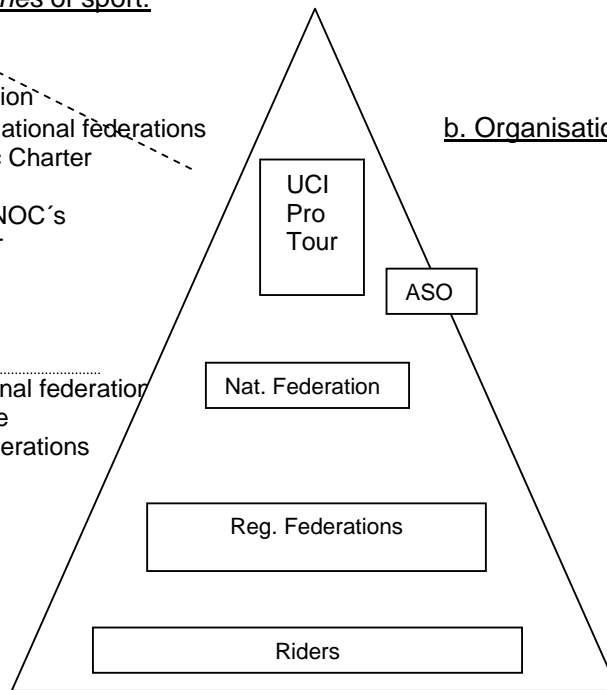
**The structure can be shown as follows:**

a. Organisation of all Olympic branches of sport:

IOC  
recognition of international federations  
Olympic Charter

Recognition of NOC's  
Olympic Charter

NOC  
Members: National federations  
affiliated with the  
international federations



b. Organisation of cycling

#### **4. An overall view of UCI whereabouts regulations**

##### **4.1 Considerations of the committee: Anti-doping regulations**

A number of questions have been raised in the related (legal) literature regarding the current anti-doping regulations. For example, the sports organisations combat doping primarily based on the concept of unfair play, but has sport not always been by definition unfair? One athlete quite simply has more money, better training facilities or a better coach than another athlete. If every contest were to be completely equal, every contest would end in a tie ... It is therefore advisable to place the focus on other reasons for combating doping, such as the athlete's health (which the WADA incidentally also states as a reason) and the social acceptance of the sport as a phenomenon in particular.

Following a study of the doping regulations in general, it can be concluded that the regulations are not equally clear vis-à-vis all points and that there is still not a sufficient level of harmonisation among the regulations. This is already revealed in the large number of authorities that are authorised to carry out doping tests. The system, while disciplinary in nature, is beginning to take on more and more features of a penal system without the safeguards for athletes keeping pace with this development. The basis for sanctions that utilises 'strict liability' (reversed burden of proof) whereby the athlete must prove that he did not use doping, clashes with penal items of proof such as 'intent', 'guilt' and 'conscious recklessness'. In connection with 'strict liability', it is therefore justified to expect that the quality and safeguards of the enforcement system are at a very high level and that the enforcement agency in question performs highly professionally.

It is also noted in this regard that the athlete does not have a choice as to whether or not he wishes to be subject to the system.

This is due to the fact that the monopolistic organisation in the sport means that the athlete is required to adhere to the regulations and his only choice if he does not agree with the regulations is to resign from organised competitive sport.

The committee will not examine the ethical aspects of doping further within the context of this investigation and will limit itself to the system concerning whereabouts. The commission bases this investigation on the premise that the system:

- Must be sufficiently clear and unambiguous
- The enforcement system must provide sufficient safeguards for the rider
- The regulations must not unnecessarily limit privacy in relation to the aim: executing out-of-competition tests.

#### ***4.2 Reasoning behind the whereabouts regulations: out-of-competition tests***

Whereabouts regulations, which are defined as reporting the top athlete's location on the basis of 24 hours a day, 365 days a year, have been instituted in order to enable unannounced out-of-competition testing. The 'models of best practice for international federations' and other documents establish that out-of-competition testing form an effective instrument in the battle against doping. Anti-doping regulations apply to licence holders. The out-of-competition tests are initiated by the UCI or the national federation, for example by the KNWU, or a country or another authorised organisation. The authorised organisations are the WADA, the IOC, and the national anti-doping organisation of the country in which the rider holds his licence, the country in which the rider forms part of the national team or the country in which the rider is residing at that moment. Riders can consequently be faced with out-of-competition tests conducted by various anti-doping organisations and/or, depending on national legislation, by the government. The doping test will occur according to the anti-doping regulations of the related anti-doping organisation.

#### ***4.3 Reach of application: Registered Testing Pool (RTP)***

An Out Of Competition Registered Testing Pool has been established for riders. Only the riders included in this pool during the period specified in this investigation were required to provide whereabouts information.

The UCI Anti-Doping Committee provides criteria that are used as grounds for including a rider in the RTP. The UCI list comprises 350 riders, 75 of whom are classified as ProTour. These are the top riders in the UCI rankings according to the UCI's various ranking systems (road, track, ATB, etc.) and riders that the UCI designates as such based on other criteria. This involves, for example, winners of major competitions or riders that have achieved unexpected and/or unrivalled performance within a specific period, or riders that are considered 'suspicious' because there are indications that they have not observed the principles of fair play. The WADA has access to the list of riders included in the RTP. The UCI can also make the list available to other anti-doping organisations. An RTP can also be created at the national level that is, for example, made up of riders that are eligible to participate in the national team of a country.

The riders have supplied whereabouts information to the UCI and sometimes also to another anti-doping authority since 2005. Since July 2007, riders that are not included in the RTP, but are part of a UCI ProTour team, have also been required to provide whereabouts information via the team. RTP riders are required to continue to provide whereabouts information in the usual manner.

#### ***4.4 Formal whereabouts requirements (UCI)***

Regulations concerning whereabouts can be found in chapter 5 of the anti-doping regulations of the UCI.

#### **4.4.1 Supplying whereabouts**

A rider that is included in the RTP must submit a form designed specifically for this purpose to the Anti-Doping Committee that states where and when he will reside, train or compete on each day. More specifically, the whereabouts information must be provided on:

- 15 December for the first quarter of the following year.
- 15 March, second quarter.
- 15 June, third quarter.
- 15 September, fourth quarter.

The rider is required to inform the Anti-Doping Committee of any changes *immediately* in order to ensure that the information is always up to date. The rider can send the information and the updates by fax (article 81). The information can also be submitted electronically, *providing* that there is a well-functioning electronic system and the rider has received appropriate instructions regarding its use. According to the 'Athlete Location Form', the form can, in addition to fax, be sent by e-mail or regular post. However, the UCI expects that, regardless of the method of sending, all the data will be received before the start of the period for which the information is provided (Note: Because otherwise out-of-competition testing would be impossible).

The UCI is allowed to collect whereabouts information in association with the national federations, the WADA and other anti-doping organisations. The UCI provides the whereabouts information to the WADA and the WADA makes this information available to other anti-doping organisations that have the authority to test the rider.

#### **4.4.2 Written warning and recorded warning**

The rider is issued a written warning if the whereabouts information is not received on time or is provided incompletely, imprecisely or incorrectly. The regulations do not make any distinction between consciously or unconsciously providing incorrect information. Evading a doping test has, however, been made a punishable offence (please refer to below). If the rider does not provide accurate whereabouts information within seven days of this written warning or does not provide well-founded reasons for failing to provide the required information, the written warning will be converted into a recorded warning. If the Anti-Doping Committee accepts the rider's explanation for failing to provide the required information, the written warning will be cancelled.

If the rider cannot be localised for an out-of-competition test, the missed test will be reported to the rider in writing. The rider can respond to this in writing within ten days and provide proof regarding why the test was missed.

If the Anti-Doping Committee following receipt of the statement and the rider's proof is of the opinion that the missed test cannot be justified, then a missed test will be recorded and the rider will be informed of this accordingly. The status of a missed test is comparable to that of a recorded warning.

#### **4.4.3 Confidentiality**

Whereabouts information is confidential information. The UCI uses this information exclusively for the purpose of scheduling, coordinating and commissioning the execution of tests. The UCI destroys the information when it is no longer needed for the aforementioned purpose. The WADA and other anti-doping organisations that have adopted the Code likewise observe the same level of confidentiality. Only the rider and the UCI are aware of written warnings.

The names of the people included in the RTP are also reported exclusively to the involved riders and to the executive organisations.

#### **4.4.4 Sanctions**

- Ban on competing in a major tour: Based on article 220 of the UCI regulations, a rider is not allowed to participate in a major tour if he has received a recorded warning or a missed test in a period of 45 days prior to the start of such a tour.

- Three strikes = out: If the rider receives three recorded warnings within eighteen months or there is a total of three incidents of a combination of not providing (accurate) whereabouts information and missed tests, this is considered to be a violation of the anti-doping regulations and a sanction will be imposed on the rider in accordance with article 15 of the anti-doping regulations of the UCI. A violation of the regulations relating to out-of-competition testing, including the regulations regarding whereabouts and missed tests (three strikes = out), is deemed to be a violation of the anti-doping regulations.

#### **4.4.5 Convergence of violations: Three strikes = out**

If the rider fails to provide accurate whereabouts and/or has missed one or more out-of-competition tests, then one or more missed tests and one or more recorded warnings from other authorised anti-doping organisations may be combined with one or more missed tests and one or more recorded warnings from the UCI, according to article 87. Within the framework of the WADC, national federations and NADOs must report violations of the whereabouts information and missed tests to the International Federation (or UCI). While the UCI regulations are based on three strikes = out, some sports federations may enforce a more stringent system of zero tolerance. For example, a rider that is part of the national team may be prohibited from participating in the World Championship due to the enforcement of extremely strict ethical norms.

#### **4.5 Consequences of violating the above anti-doping regulations**

The UCI is the sanctioning body when violations at international competitions are involved. A case is opened by the UCI. The national federation of the country in which the involved rider is a licence holder is informed of this development. If a rider of a ProTour Team or Continental Team is involved, a copy of the letter will be sent to the team. The rider will be summoned for a hearing. The Anti-Doping Commission then reaches a decision after the hearing. There is the possibility to lodge an appeal against the decision with the CAS in Lausanne.

The national federation is responsible for any sanctions in the case of national competitions. The decision is reported to the UCI. The KNWU has, incidentally, never encountered a violation of this type since the introduction of the WADA and thus the introduction of whereabouts information in 2004.

The Anti-Doping Committee of the UCI is allowed to prohibit the rider from participating in events during the period in which the Anti-Doping Committee is of the opinion that the violation affects the rider's athletic performance.

- Violation of whereabouts regulations: According to article 263, paragraph 3 a violation of whereabouts or missed tests (three strikes = out) is in principle punishable by a suspension from three months to one year. The second (three strikes = out) and subsequent violations are punishable by a suspension of one to two years.

## **5. Other UCI regulations (selection)**

### **5.1 Code de conduite des UCI ProTeams (Code of Conduct for UCI ProTeams)**

In addition to the UCI regulations above, the teams were expected to subject themselves to the Code of Conduct for UCI ProTeams. This Code of Conduct imposes high penalties for violation of the anti-doping regulations. A team was required to suspend itself for a period of one week in the event of 2 missed blood tests within a 12-month period. The teams are themselves responsible for drafting and enforcing the Code of Conduct. According to the Chairman of the Board of Directors of Rabo Wielerploegen B.V., there was often confusion within the professional association regarding the interpretation and application of the Code. The teams themselves are responsible for auditing the Code of Conduct. The Chairman of the Board of Directors of Rabo Wielerploegen B.V. indicated in this context that the teams frequently level criticism at each other.

The Chairman of the Board of Directors of Rabo Wielerploegen B.V. proposed that an independent body be established for this purpose.

According to the Chairman of the Board of Directors of Rabo Wielerploegen B.V., the riders are informed by their own professional association, CPA (*Cyclistes Professionnels Associés*), about any ethical commitments that concern the riders.

### **5.2 DNA identification 100% against doping**

- In early 2007, the AIGCP (*Association Internationale des Groupes Cyclistes Professionnels*), the International Association of Professional Cycling Teams, asked employers to request their riders to sign a document in which they state their willingness to provide DNA samples should they become suspected of using doping. This provision has since been included in the employment contracts of Rabo riders.
- UCI has initiated a project entitled '100% against doping', which imposes a number of requirements on employers. The ASO supported this initiative and demanded that riders competing in the Tour de France sign a 'Riders' commitment to a new cycling' declaration prior to the Tour or be banned from the Tour. As part of this declaration, riders stated that they opposed the use of doping and would be willing to give up a year's salary in the event of a violation of the anti-doping regulations.

## **6. Practice: supervision/control and enforcement of warnings, by the sport itself**

The committee has noted that the UCI itself, particularly in the beginning, gave the impression that it did not take the whereabouts information particularly seriously. Both the team management of Rabo Wielerploegen B.V. and the riders were under the impression that the UCI considered the obligation imposed by the WADA to be an administrative burden. In addition, the committee has observed that riders, partly as a result of the relaxed attitude taken by the UCI, were insufficiently aware of the necessity to provide very specific whereabouts information.

The committee has furthermore noted that the UCI takes a flexible attitude towards *late* submission of whereabouts information and does not impose a deadline, which results in a certain carelessness among riders. Written warnings are evaluated by a single individual, and there appears to be no assessment framework on the basis of which written warnings and the riders' defences, if applicable, can be evaluated. This is the case both at the UCI and at the anti-doping organisations interviewed by the committee. Statements made by riders have revealed that in certain instances making a phone call to the UCI is sufficient to have a written warning cancelled, while at other times it is not, despite the fact that the arguments presented are the same. Two different riders both argue that they are not at the location specified because they travelled to a different – verifiable – location a day early. In the case of Rasmussen, this defence, according to the declarations, was not accepted, while in the case of the other rider it was.

Out-of-competition tests: If riders are not in the location in which they should be according to the whereabouts information, inspectors generally make a return visit. The riders from the RTP state that they have rarely been tested out of competition. Indeed, some riders were not tested out of competition for an entire year. The number of out-of-competition tests began to increase during 2007, and the UCI itself only started performing out-of-competition tests in 2007. The number of tests must increase for the anti-doping policy to be taken seriously. Out-of-competition tests are not announced, and some riders may be tested by several organisations. The committee is aware of examples of riders who were tested by a number of different organisations on the same day.

## **Conclusions**

**General conclusion:** The UCI is insufficiently precise, insufficiently unambiguous, insufficiently coordinated, insufficiently effective and overly random with respect to its formulation and application of its own anti-doping regulations and sanction measures.

### Anti-doping regulations

- The authority to issue regulations in the field of whereabouts information varies from country to country. The Danish anti-doping authority is relatively strict; other doping authorities are less prominently active. The system also comes across as being random because not every national doping authority or national government takes an equally pro-active approach to combating doping. The committee has therefore come to the conclusion that this creates a certain degree of legal inequality. A rider who lives in a country that has a strict anti-doping policy runs a greater chance of being tested than a rider who lives in a country in which the anti-doping policy is less strict.
- While the UCI regulations are based on three strikes = out, some sports federations may enforce a stricter system of zero tolerance. For example, a runner that is part of the national team could, for example, be banned from participating in the World Championship owing to rumours concerning alleged doping.
- The system is insufficiently precise. An example: the sending methods stated on the whereabouts form do not correspond with the related rules in the regulations.
- According to the regulations, recorded warnings from different anti-doping authorities *may* be added together, although this is not mandatory. This system creates legal uncertainty and plays into the hand of legal inequality.
- The *content* of the whereabouts information, i.e. where the rider is residing when, should be protected by confidentiality regulations. This does not, however, take away from the fact that the committee is of the opinion that it should be possible to disclose the *reporting* of the *violation* (written warning, recorded warning) to the public.

### Monitoring and enforcement

- The system concerning whereabouts information, whereby the rider is required to state where he is at every hour of the day, constitutes a very serious infringement on the rider's privacy. A sound system must therefore offer guarantees for the rider.
- The sports organisation imposes additional obligations on riders, alongside the existing regulations, for instance the requirement for a rider to sign statements such as the 'Riders' commitment to a new cycling'. This leads to symbolic politics. The same is also true of additional sanctions imposed via the 'Code de conduite des UCI ProTeams'. Such supplementary regulations enfeeble the effect and compliance of the existing rules at every level and are viewed by the riders to be extremely unreasonable and as an unnecessary extra burden. A clear and sound enforcement system would also make such additional measures unnecessary.

## **Recommendations**

### Anti-doping regulations

- The UCI needs to achieve further professionalisation with regard to the formulation, enforcement and control of doping regulations. A better system for delivering, processing and controlling whereabouts information that better protects the athlete's interests should be put in place.
  - Research should be conducted to find a system of establishing riders' location that does not infringe so severely on the rider's privacy. Rasmussen says that riders 'do not always cycle with a fax machine on their back' and are not always able to provide whereabouts information. The possibilities for a more service-orientated system for the riders that also makes it possible to conduct fast and up-to-date tests should be studied. New communication tools could provide a solution.
  - Research should be conducted into anti-doping regulations that have not been realised exclusively by the federation, but that do embody countervailing power and as a result enable the riders' collective voice to be expressed in the sport regulations.
  - Clarity should be provided regarding whether and, if so, when recorded warnings are added together.
  - The possibilities for achieving a system that features greater legal certainty or legal equality should be investigated. The whereabouts regulations should be scrutinised and, for example, the form for providing whereabouts should be brought in line with the regulations.
  - It should be possible to make recorded warnings public, similar to the yellow cards used in football.

### Monitoring and enforcement

- The UCI must become more professional. Professionalisation is not only needed in the field of formulating regulations, but also in the area of enforcing and monitoring doping regulations, specifically with respect to the group of professionals. After all, this group has other interests than the large group of club-level athletes.
  - Both the number of tests and the quality of the execution and enforcement system should be improved in order to enhance the credibility of the anti-doping policy.
  - (Even) greater harmonisation should be realised in the field of regulating and enforcing the whereabouts system. The UCI/WADA should reduce the number of testing bodies and coordinate the tests more effectively. The WADA has now developed ADAMS, which is a protocol for doping tests. The use of ADAMS is not mandatory. The committee recommends that the UCI implement the ADAMS system in connection with the need for standardisation.
  - A (small) committee should be commissioned with establishing whether whereabouts information is incorrect or delivered too late based on objective criteria.
  - A distinction should be made in the regulations between whereabouts information that has been submitted erroneously (too late) on purpose or not on purpose and the punishment should depend on this distinction.



***Supervision of Rabo Wielerploegen B.V. with a clear division of responsibilities between the sport operations, the bank and remote supervision.***

## **II. Governance structure of Rabobank Nederland and relevant regulations, particularly with respect to the sponsor relationship of Rabo Wielerploegen B.V.**

### **7. Governance and relevant regulations**

#### ***7.1 Executive Board of Rabobank Nederland.***

Rabobank holds a sponsoring licence issued by the KNWU, and in 2006 it became the main sponsor of the sport of cycling in the Netherlands. Rabobank is the sole shareholder of Rabo Wielerploegen B.V. and has, in addition, signed a sponsor agreement with the latter for the purpose of generating a maximum amount of positive publicity and promotion by making the practice of cycling appealing and promoting the brand positioning and marketing power of Rabobank.

#### ***7.2 Supervisory Board of Rabo Wielerploegen B.V.***

The Supervisory Board monitors the policy of the Board of Directors. Conduct with respect to the latter is provided for in the Supervisory Board regulations for Rabo Wielerploegen B.V. The information the Supervisory Board receives from the Board of Directors of Rabo Wielerploegen B.V. includes at least information related to company objectives, strategy, the risks involved in policy and strategy, and the mechanisms used to control risks of a financial nature. The Supervisory Board is authorised to provide the Board of Directors with binding instructions regarding the broad outlines of the strategies to be pursued: the commercial, financial, social and personnel policy, and other relevant policy areas indicated as such. The reports of the Supervisory Board reveal that it, in any event, monitors the financial policy and the general status of the company, particularly with regard to cycling. With respect to the latter, an issue that is discussed on a regular basis is the departure and contracting of riders.

In addition, the Supervisory Board has committed to what is known as the 'chalk line policy'. This means that the Supervisory Board focuses on the main strategic principles of the Rabo Wielerploegen B.V. policy. As part of this policy, Rabobank remains at a distance and does not become actively involved in the cycling policy, which, in addition, is based on a zero option with respect to doping.

#### ***7.3 Advisory Board of Rabo Wielerploegen B.V.***

The Advisory Board advises the Board of Directors at its own discretion regarding issues related to the cycling operations. At the invitation of the Board of Directors, the Supervisory Board meets with the former at least once per year. The Supervisory Board has an independent role and does not act on behalf of the sponsor. The Advisory Board has a diverse membership, with members operating on the basis of their own expertise.

#### ***7.4 Board of Directors of Rabo Wielerploegen B.V.***

Rabo Wielerploegen B.V. holds a UCI ProTour Licence for teams. The Board of Directors manages the company. The organisation, duties, responsibilities and powers of the Board of Directors are set out in the management regulations. Individuals interviewed by the committee stated that the company has a flat organisational and consultation structure. The Board of Directors of Rabo Wielerploegen B.V. is responsible for implementing the policy and for sports-related, medical and organisational business operations. The Board of Directors meets on a monthly basis, or more frequently if necessary. The Board of Directors reports to the Supervisory Board four times per year. In practice, the two boards hold joint meetings four to six times per year. The committee has read the reports of the Board of Directors. According to the position and division of duties, internal and external information provision and reporting and minutes are the responsibility of the Secretary of the Board of Directors, a

position held by the Communications Manager. The Board of Directors carries out its duties to promote professional cycling and to encourage cycling in general.

The Board of Directors advocates optimum advertising opportunities for Rabobank as the main sponsor. Article 1.2 of the management regulations states that the policy of the Board of Directors of Rabo Wielerploegen B.V. must at all times be partly based on the basic principle that the interest of Rabobank also constitutes an essential interest of the Company. No further definition is provided of the interest of Rabobank.

Until the departure of the Chairman of the Board of Directors, the Chairman was responsible for, among other things, completing transfers of the ProTeam and for contracts with riders, as well as for financial reporting and strategic policy. The Chairman of the Board of Directors of Rabo Wielerploegen B.V. was present at meetings of the Supervisory Board. Another member of the Board of Directors is responsible for the supervision and composition of the ProTeam, as well as for logistics and the competition schedule. In addition, there is a physician who, as a member of the Board of Directors, is involved in the supervision of the ProTeam and responsible for the ProTeam and Continental Team's medical affairs. This means he has final responsibility for medical policy in the Board of Directors. The additional secretary is responsible for, among other things, internal and external information provision.

#### ***Rules with respect to decision-making***

Article 1.4 states that the members of the Board of Directors express the same opinion, both internally and externally, with respect to important issues, matters of principle, and issues of public importance. According to Article 2.7, the members of the Board of Directors are required to provide each other with clear information regarding any significant developments with regard to their respective responsibilities. According to Article 4.1 of the management regulations, collegial decision-making takes priority, and the Board of Directors should operate as a team as much as possible. The objective is to achieve unanimity. In principle, decisions are made in a meeting of the Board of Directors (Article 4.4). A decision by the Board of Directors may be made in writing, provided that none of the members of the Board of Directors oppose this. This may be deviated from if the chairman deems this necessary given the *urgent nature* and the other circumstances involved in the case. In such an event, the Chairman of the Board of Directors of Rabo Wielerploegen B.V. makes a decision regarding the procedure to be followed. However, all members of the Board of Directors must be given the opportunity to take part in the decision-making process. The Chairman and the Secretary of the Board of Directors then draft a report of any decision taken in this manner that will be enclosed with the documents for the next meeting of the Board of Directors. A decision by the Board of Directors may be announced externally by means of a statement from the Chairman or his replacement, together with either another member of the Board or the Secretary.

#### ***Rules with respect to communications***

At Rabo Wielerploegen B.V., there is a strong focus on clear channels of communication. The team has engaged a communications manager, and the number of hours dedicated to communication was extended on 1 July 2007. Achieving maximum positive publicity is one of the main points of the Rabo Wielerploegen B.V. sponsor agreement. In addition, this agreement (in Articles 5.14 and 5.15) states that Rabobank considers any questions that may be of significance to the brand and reputation of Rabobank to be the responsibility of Rabobank. 'Rabo Wielerploegen B.V. shall direct any such questions to Rabobank without delay'. In the event of publicity, or the threat of publicity, that may be damaging to Rabobank or Rabo Wielerploegen B.V., communication must be settled under the supervision and responsibility of Rabobank. Communication occurs with the person designated by Rabobank.

In the event a member of the Supervisory Board has been designated as such, this must be provided for more expressly in the regulations. The actual situation, however, was such that the Board of Directors was aware of its obligation to account to the Chairman of the Supervisory Board. The Board of Directors is responsible for the quality and completeness of any information provided to Rabobank (Article 5.2).

The Board of Directors shall at all times, of its own accord, provide information that requires submission pursuant to this Regulation, or of which it can reasonably expect that it is in the interest of Rabobank (Article 5.3). This includes, among other things, factors and events and *circumstances* of importance to risk management *that may damage the reputation of the Company or of Rabobank*. Approval or agreement by Rabobank is only permitted expressly and in writing.

According to policy, riders communicate with the press through Rabo Wielerploegen B.V.'s Communications Department, subject to coordination with the Communications Department of Rabobank. In exceptional cases, the Chairman of the Supervisory Board must be consulted. The communication strategy is as open and transparent as possible.

#### ***Rabo Wielerploegen B.V. company rules***

The company rules of the cycling team cover many different issues, ranging from the requirement to report the use of medication and the transport of medicines to the ban on providing damaging information. The company rules contain no provision for subjection to doping tests or the submission of whereabouts information, nor do they include a general article stating that riders shall act in accordance with the unwritten rules of decency, particularly if the reputation of Rabobank is at stake.

#### ***Disaster scenario***

Rabo Wielerploegen B.V. has a plan of action in place in the event of a disaster. The plan focuses on, among other things, riders who become seriously compromised. The first page specifies, among other things, that in the event of a disaster, the Chairman of the Board of Directors of Rabo Wielerploegen B.V. shall first consult with the team leader and subsequently with Rabobank (the Head of Communications). The latter must then notify Rabobank, while the Chairman of the Board of Directors of Rabo Wielerploegen B.V. must consult with the other members of the Board of Directors and with the Communications Manager of Rabo Wielerploegen B.V. The possible consequences for a rider's contract are not discussed without the express permission of Rabobank. The disaster scenario was drafted in particular based on the risk of a positive doping test. According to the committee, the disaster scenario must cover more than doping alone and should discuss all manner of other possible risks that may damage the reputation of Rabobank.

#### ***7.5 Riders and team management versus the Board of Directors of Rabo Wielerploegen B.V.***

Riders are tied to Rabo Wielerploegen B.V. by means of an employment contract. Riders of the Rabo Team are subjected to UCI and KNWU regulations by means of a referral clause in the employment contract.

#### ***7.6 Rabobank Nederland: reputation characteristics and the striving for maximum positive publicity***

The corporate aspects of Rabobank were approached by the committee as part of the investigation, based on the reputation characteristics of the bank. Trust is a crucial reputation factor for any bank, and integrity is indispensable to this factor! A strong reputation is an important basis for trust. This is where the interests of the sport and the interests of Rabobank find their common ground. From the point of view of Rabobank's reputation characteristics, for example, a catch-all sports value such as 'fair play' or 'it is how we play true' reflects the reputation of Rabobank as the sponsor.

Rabobank has an interest in the strict application and enforcement of the rules applicable to the sport, such as anti-doping regulations.

The interest of Rabobank comes first in the Management Regulations, with no definition being provided of this interest. It is clear that Rabobank wants to prevent the reputation of Rabo Wielerploegen B.V. from being damaged and/or to limit such damage as much as possible.

The Rabo Wielerploegen B.V. sponsorship agreement highlights the importance of ensuring a maximum amount of positive publicity. The agreement provides that Rabobank considers issues that are of importance to its brand and reputation to be the responsibility of Rabobank. This principle is also reflected in the employment contracts of both the Board of Directors and the riders. The contracts reveal that they must not only make every effort possible to achieve athletic success, but also to ensure a maximum amount of positive publicity. While the management regulations do refer to the importance of Rabobank and stress the serious nature of reputation damage, the reputation characteristics are not made explicit anywhere. The employment contract does, however, include other obligations on the part of riders that relate (among other things) to reputation damage. For example, the contract specifies that athletes must act in accordance with the rules; must do all that is necessary to perform well athletically in accordance with the rules; and must refrain from activities or conduct that may damage the name of the employer/the sponsors.

### ***7.7 Zero tolerance in the field of doping***

Rabobank maintains an absolute zero tolerance policy with respect to doping. This policy is an absolute condition, as well as an absolute commitment on the part of Rabobank and Rabo Wielerploegen B.V. to achieving the sport's objective of fostering a responsible and drug-free sports environment. This is also evident from the sponsoring agreement, for example, which provides that riders' employment contracts must include a provision that, if they are found guilty of doping, their employment contracts shall be terminated immediately. In Article 5.3, Rabo Wielerploegen B.V. guarantees that it and its employees comply with the Charters and regulations of the KNWU and the UCI. Riders' employment contracts include provisions related to 'not carrying out work', focusing, among other things, on suspension by the employer or an 'authorised sports body' for reasons for which the employer cannot be held accountable. This article covers in detail the impact, from an employment law perspective, of the use of doping and the dealing of substances classified as doping. If, for example, a rider is suspended by a sports organisation, he will not receive any salary. The employment contract of the Chairman of the Board of Directors of Rabo Wielerploegen B.V. also clearly specifies that involvement in doping, or the trafficking of doping, may constitute grounds for summary dismissal. Rabobank has opted for a zero option for ethical reasons on the one hand, and from the perspective of reputation risk management on the other.

The zero tolerance policy of the Board of Directors with respect to doping is also (particularly) reflected in Rabo Wielerploegen B.V.'s dedicated efforts on the prevention side. Sound medical and training-related education and support, including in the form of individual counselling, should provide alternatives to the possible use of doping agents. Good nutrition, specific training, aerodynamic testing and adequate support and care, particularly with respect to young riders, are all part of the prevention policy. In the recruitment process for new riders, the image of the rider in question is scrutinised, and he is submitted to a background check. If there is any ambiguity at all as to the alleged use of doping agents, the rider is not contracted. For example, new riders must not have nor had any ties to physicians considered to have a dubious reputation. The committee considers this a good starting point from the perspective of a prevention policy, and the policy is in fact implemented effectively, particularly with respect to the category of younger riders. Rabobank has an interest in pursuing a zero tolerance policy with regard to doping, as this will help it avoid any semblance of 'untrustworthiness' and 'unscrupulous behaviour'.

## 8. Whereabouts

### 8.1 Whereabouts and Advisory Board and Supervisory Board

The matter of whereabouts was hardly an issue to the Supervisory Board and the Advisory Board. When the subject *did* come up, it was mostly in relation to the way it interfered with riders' privacy.

In terms of protecting the integrity and reputation of Rabobank, the main focus was on the 'front end' of the process, i.e. the side that is concerned with the education and contracting of riders. The issues of comprehensive risk analysis and supervision and control in these processes were hardly considered at all.

### 8.2 Board of Directors and whereabouts

The committee noted that the team management had no knowledge of the list of riders with respect to the RTP, but assumed that the list would include top-level riders such as Rasmussen. The team management is familiar with the broad outlines of the UCI's whereabouts regulations. They are aware, for example, of the 'three strikes = out' policy, however, this rule is explained by stating that there is no problem whatsoever in the case of two warnings.

Although combating doping is an important aspect of Rabo Wielerploegen B.V.'s culture, the team management was insufficiently aware of the significance of the whereabouts policy. The issue was not approached from the rationale behind the regulations, i.e. that the riders' obligation to report their whereabouts on a day-to-day, hour-to-hour basis is the price professional riders must pay in order to achieve 'fair competition'. Upon its implementation in 2005, the whereabouts issue was raised mainly in relation to riders' lack of privacy. While the committee recognises that the privacy aspects are of paramount importance, it underlines that Rabobank has a substantial interest in protecting its reputation. From this perspective, and as long as the use of doping is socially unacceptable, riders are required to comply with the anti-doping regulations and, by extension, no matter how incriminating this may be, with the whereabouts regulations.

Due to the confidential nature of the whereabouts information, the team management operated on the assumption that the whereabouts issue is between individual riders and the UCI. The team management was only really confronted with the issue in March 2006, when Rasmussen and others received the first recorded warning. Note that at the time, this recorded warning was rightfully considered to be an administrative error. The UCI only started actively monitoring and supervising riders in April 2007.

This means that the team management considered both riders' privacy and their personal responsibility to be a priority. As a result, a rider's whereabouts at a particular time were not registered by the team management. The team management would consult the competition schedule and related logistics in order to find out the whereabouts, or possible whereabouts, of individual riders. And although the coach was in contact with the rider in question, he was not necessarily aware of his whereabouts.

### 8.3 Rabo riders and whereabouts

Riders such as Rasmussen receive information from the UCI notifying them that they have been included in the RTP, and they receive an enclosure listing rules. Riders are aware of the broad outlines of the UCI's whereabouts regulations. They are aware of the 'three strikes = out' rule; however, like the team management, they take this rule to mean that two warnings constitute no problem whatsoever.

Officially, riders have no knowledge of the team Code of Conduct.

The committee has noted that the UCI, upon the implementation of the whereabouts policy, indirectly gave the impression that it did not take the whereabouts information particularly seriously. The committee further noted that the Rabo riders, partly as a result of the UCI's relaxed attitude, were insufficiently aware of the necessity to provide very specific whereabouts information.

## **Conclusions**

### Executive Board, governance

- The committee considers Rabobank's style of management as a sponsor, as set out in the sponsorship agreement, which is based on a certain degree of distance with respect to the policy and implementation by Rabo Wielerploegen B.V., to be correct with regard to sports in general and cycling in particular.
  - On a factual basis, too, the committee has noted that the cooperation between the Executive Board and Rabo Wielerploegen B.V. is based on this principle.
- The Chairman of the Board of Directors of Rabo Wielerploegen B.V. cites the following as reputation characteristics of Rabobank: leading, reliable, solid and transparent. The committee has found little indication of these reputation characteristics of Rabobank in the documents reviewed. The characteristics are largely considered to be self-evident, and as a standard they are insufficiently ingrained in the consciousness of the Board of Directors and the riders. There is a lack of supervision and direction in terms of these characteristics, which are of essential importance to Rabobank.

### Supervisory Board, governance

Rabobank made the conscious decision to have the Supervisory Board maintain some distance in its monitoring of the Board of Directors. The committee considers this to be a good basic approach.

- The Supervisory Board should order the Board of Directors to not only identify the financial risks, but also the reputation risks in general and integrity risks in particular, and to commission an independent report on this issued once per year.
- The Supervisory Board has opted to operate on the basis of broad policy outlines, referred to by the Supervisory Board as the 'chalk line' policy, the premises of which are set out in the 2004 Multi-Year Outlook (*Meerjarenvisie*) of the Board of Directors of Rabo Wielerploegen B.V. The other main outlines are remote supervision, zero tolerance vis-à-vis doping, and budget monitoring.  
The committee believes the basic principle of remote supervision within this professional organisation to be sound, as the Board of Directors has operational responsibility.
- Actual supervision focused mainly on:
  - Competition results.
  - Doping, particularly from the perspective of prevention, e.g. contracting (drug-free) riders, and, to a lesser degree, training and medical support.
- Accountability focuses in particular on general policy and on control and supervision of the financial organisation, since this is apparently considered a priority in the control of business operations. Based on these issues, the Supervisory Board placed a great deal of trust in the Board of Directors.
- Finding a balance between hard competition results and reputation. Control was defined particularly by the 'result side' on the one hand (in a decent manner, without any indecent pressure) and reputation on the other. The committee considers control on the basis of results and the pressure on integrity to be adequately balanced.
- The Supervisory Board, in fact, focused much attention on controlling financial risks, whereas risks related to reputation, particularly with respect to integrity, were not explicitly identified. The committee believes that, given the weight of the issue, supervision and control fell short in this regard.

### Supervisory Board, whereabouts

- Interviews have revealed that the Supervisory Board was insufficiently informed about vital parts of the regulations with respect to whereabouts.

### Advisory Board

- There is sufficient diversity and expertise in the Advisory Board to be able to crystallise the opportunities and threats involved in cycling.
- The committee believes that the Advisory Board plays too insignificant a role, both quantitatively and qualitatively, while they in fact offer knowledge and expertise.
- The Advisory Board could demand a more active role itself, especially in terms of elaborating opportunities and threats for cycling in general and for enforcement in particular.
- Here, as before, the matter of whereabouts was only an issue in relation to the discussion on privacy. The Advisory Board, too, from their perspective, could have placed greater emphasis on a more comprehensive risk analysis with respect to integrity.

### Board of Directors, governance

- The Committee concludes that the Board of Directors shows a great deal of commitment. The Chairman of the Board of Directors of Rabo Wielerploegen B.V., in particular, had a great sense of responsibility with respect to the overall business operations.
- Given the distinctive nature of cycling, the basic attitude of the Board of Directors is one of trust in the riders – a trust that they expressed by giving the riders a great deal of responsibility. The Board of Directors was acutely aware of the risks involved in the use of doping. This awareness was expressed in particular by their strong focus on preventive care. A good example in this regard is the way young riders are supervised and guided, emphasising issues such as training support, fitness support, nutrition and the like, i.e. teaching riders that they can perform well without the need to resort to doping. The emphasis in this regard was not on the negative side of the profession but on encouraging riders by providing them with positive guidance. The committee would like to make clear that this is an excellent starting point. It is self-evident that this should not mean that a naïve attitude is taken with regard to enforcement and supervision.

### Board of Directors, whereabouts

- The team management is insufficiently aware of the whereabouts of the riders out of competition.
- As noted above, the whereabouts issue was only of interest to the Board of Directors as an administrative obligation and from the perspective of privacy and the related issue of confidentiality of information.
- Rabo Wielerploegen B.V. used this as the basis for its actions – it did not have any rules or policy in place on this issue.
- From the viewpoint of Rabobank's reputation characteristics, it is in the interest of the Board of Directors that riders submit whereabouts information correctly. It is the duty of the Board of Directors to remind riders to submit their registration forms accurately and in time. In addition, transparency with respect to whereabouts ensures that riders can be contacted more easily.
- Responsibilities are too readily shifted to another level of the organisation: the Supervisory Board maintains the 'chalk line policy' vis-à-vis the Board of Directors, while the latter underlines the individual responsibility of the riders.

### Riders, whereabouts

- Riders were insufficiently aware of the importance of providing accurate whereabouts information, and did not consider the possible consequences of carelessness in that regard.
- There was a great degree of lassitude and carelessness with regard to whereabouts.

## **Recommendations**

- The balance between solid sporting results on the one hand and reputation on the other must be embedded more effectively into the policy and structure of the organisation.
  - Making explicit the reputation characteristics that are so essential to Rabobank, for example in the sponsorship agreement.
  - In addition, making these reputation characteristics more explicit/better known on a broader level, for example by outlining the company's core values clearly and concisely and communicating them, including to the riders.
  - Operating on the basis of a zero tolerance policy, making explicit that complying with the regulations does not automatically imply that for Rabobank, as a sponsor and shareholder, there is 'no problem'.

### Supervisory Board

- For the Supervisory Board to order the Board of Directors to identify integrity risks in addition to financial risks, and to commission an independent report to be published once a year.

### Advisory Board

- For the Advisory Board to be given a more substantial role or to be encouraged to provide (unrequested) advice, particularly in the field of monitoring the risks related to cycling in general and Rabo Wielerploegen B.V. in particular.

### Board of Directors

- As part of the zero tolerance policy, the collection, processing and verification of whereabouts information should be improved within Rabo Wielerploegen B.V.
  - Changing the flexible policy with respect to whereabouts information, and reminding riders of the importance of submitting the registration forms accurately and in time.
  - The committee recommends that the Board of Directors be privy to the whereabouts information and, from the point of view of privacy, handle such information with the utmost care. The committee recommends that the obligation to submit the whereabouts information and any changes to both the UCI and the Board of Directors be included in riders' employment contracts.
  - Verifying the accuracy of the whereabouts information, without creating an atmosphere of distrust and suspicion. It should be natural to raise the issue of whereabouts in conversation.
- When defining the role of the General Managing Director, greater attention should be given to ensuring a degree of distance vis-à-vis cycling in order to prevent aspirations with regard to the team's performance from taking precedence over ensuring integrity. In addition, it might be considered if direct, substantive involvement with athletes, as in the case with, for example, the first team leader and the physician, should continue to be combined with membership of the Board of Directors.



***Rabo Wielerploegen B.V.'s policy regarding training, medical support and compliance by riders.***

### **III. Rabo Wielerploegen B.V.: Training and Medical**

#### **9. Rabo Wielerploegen B.V.: Training**

##### **9.1 General**

Employees' employment contracts provide that employees are personally responsible for the structure and implementation of their individual training and fitness programmes. As part of this process, employees can draw on their employer's expertise in a number of areas. Individual training schedules are separate from the duties imposed by the employer; however, employees are permitted to consult external specialists. At the request of the employer, employees must provide information immediately with regard to their training and fitness programmes and their supervisors. Pursuant to their employment contracts, riders are required to keep their employer informed of any changes in the training programme.

In October 2005, the Rabo ProTour team implemented more professional training policies and practices. Up to that point, the team physician had been responsible for supervising riders, and the coach had to work hard to earn his place in the team. Supervised training was initially carried out on a voluntary basis, while some riders employed their own coaches. Today, the team management makes an effort to encourage riders to make use of coaching facilities.

The younger riders, in particular, make use of this service, incorporating computers and the SRM system as training aids. Younger riders receive effective guidance and supervision, and are educated about the fact that effective training produces the best results. The more experienced riders on the team are given more scope to determine their own training programmes. Coaches maintain regular contact with riders and accompany them on the tour. The level of supervision provided by coaches is largely determined by the needs and skill levels of individual riders. Some riders employ personal coaches. There are solid commitments in place with the coaches involved with respect to training methods and reporting practices. The 12-month competition calendar serves as the basis for the individual training programmes. In November of each year, riders and their coaches evaluate the past season and set new goals. The training schedules for the following season are adapted to these goals.

Training is usually carried out on an individual level, as talent and specific qualities also require specific training. The training practices of sprinters, for example, differ from those of climbers or time trialists. Basically, individual riders carry out their own training programmes. As riders live in all parts of the country or outside of the Netherlands, it is difficult for them to coordinate joint training sessions. In certain cases, riders train in small groups. Regular group training negatively affects the quality and intensity of the training. Team training camps are typically held early in the year, and occasionally group training stages are organised during the season.

Training practices are supervised by means of heart rate monitors and the SRM system. In addition, the coach has developed a system of biological parameters. It is expected that a website will be available in late 2007 allowing all riders to enter the results of their training sessions. It is then possible to make an analysis of the training sessions and adapt them if necessary. In the case of injury, the coach is notified by either the riders concerned or the team physician.

The professional approach and high quality of the training contribute significantly to Rabo Wielerploegen B.V.'s sports-loving image.

## **9.2 Rasmussen: Training**

Like other riders, Rasmussen, pursuant to his employment contract (Article 9c), was entitled to design his own training and fitness programme, and was personally responsible for this. Rasmussen is a rider who almost always trains alone.

The coach of Rabo Wielerploegen B.V. had little to do with Rasmussen, and had some difficulty maintaining contact with him.

In December 2006, Rasmussen and the team coach evaluated the season together and later, while at training camp in Spain, the two discussed Rasmussen's preparation for the Tour de France. The advice provided was general training advice. During the Tour of the Basque Country, in April 2007, Rasmussen and the coach discussed the Tour de France more specifically. One of the topics they covered was which stages presented opportunities for him to gain time on his competitors.

While recuperating from a broken hip, in autumn 2006, Rasmussen engaged in a substantial amount of weight training. In April 2007, he was better trained and fitter than he had been a year ago, and his strength had increased accordingly. This was evident not only from the wattages measured, but also from his achievements. During the 2006 Tour of Italy (Giro), he lost time every day, while his performance was good during the last week of the 2007 Tour of Italy.

Rasmussen felt he had a good chance of final victory in the Tour de France. In order to leave nothing to chance, he went out to explore the mountain stages every year. This was indeed the purpose of his 2007 visits to the Alps, from 21 to 24 June, and the Pyrenees, from 25 to 29 June. On 6 June, a team leader who also serves on the Board of Directors visited him during a training session in the Dolomites.

## **10. Rabo Wielerploegen B.V.: Medical**

### **10.1 General**

Rabo Wielerploegen B.V. has its own medical staff, which represents a number of disciplines including surgery, cardiology, and sports medicine. The physicians are employed on a part-time basis. The medical staff is entitled to perform blood tests without prior notice. However, these tests are carried out as part of a policy of health testing rather than anti-doping testing. There is a policy in place that focuses on monitoring, but not on unannounced tests.

The physicians are present during races. The shorter rounds and one-day races are supervised by a physician, and during the longer rounds the various physicians take turns. Substitutes present themselves at least 24 hours before they take over. Together they exchange information about the riders, including medical reports. In addition, team physicians are in regular contact with each other by telephone, and take part in joint meetings periodically.

Medical records are maintained in the usual manner. The information recorded includes anamnesis, illnesses and injuries, physical examinations, endurance tests, lung examinations, spirometry, etc. In addition, applications to the UCI for authorisation for the use of medication are included in the medical file, including the permission of the UCI. The medical information is currently being computerised.

Rabo Wielerploegen B.V. is actively involved in prevention in order to discourage the use of doping by riders. Medical and training education and support, in particular to young riders, should provide alternatives to the possible use of doping. Rabo Wielerploegen B.V. also educates riders on the negative health impact of the use of doping. The company maintains a zero tolerance policy with respect to doping. The team culture is characterised by consistent training programmes and minimal use of medication in the event of physical

discomfort and injuries. Advice on nutrition and nutritional supplements is also part of the supervision process.

The team management informs riders proactively and in a constructive manner, and attempts to exercise positive influence on the riders regarding one of the negative aspects of their sport.

Supervision is based on trust in the riders.

At the beginning of the competition year, all riders are submitted to a comprehensive blood test. Although team physicians are prohibited from performing anti-doping tests themselves, they can commission an independent body to do so on their behalf. Samples must be analysed in a WADA-accredited laboratory, and in order to disclose the results, physicians must comply with the guidelines established by the UCI.

The blood tests that are performed are really what is known as 'health checks', and, as such, cannot be considered full-blown anti-doping tests. Riders looking to tamper with blood tests do have the opportunity to do so – particularly if they have received prior information about the time of the test.

Blood tests may also serve to measure the riders' hormone levels, as this indicates whether a particular rider is over-trained.

Urine tests are the real anti-doping tests. They are typically performed at races among the riders with the highest professional rankings or those that were singled out for spot checks. In addition, out-of-competition tests are performed. The WADA, the UCI, the NADO of the rider's country of residence, and, in some cases, the NADO of the rider's country of origin – if the rider in question is a member of the national team – are authorised to perform out-of-competition tests. These tests are all the more effective because they can be performed without prior notice.

The Executive Board of Rabobank Nederland ordered an additional anti-doping test to be performed during the Tour de France, on 26 July. Medical staff not only considered such an initiative to be unnecessary – because the riders were already being tested – but also perceived it as undesirable, given the regulations in this area. This notwithstanding, the additional doping test went ahead, and was performed by an employee of a UCI-accredited laboratory. The test took place after Rasmussen had already been withdrawn from the Tour de France.

### ***10.2 Rasmussen: Medical***

Rasmussen was submitted to a detailed background check when he joined Rabo Wielerploegen B.V. As part of this process, medical staff used all permitted testing instruments, and they keep a record of all his blood results from 1997 to 2007. These tests were always announced, and no deviating blood levels were ever discovered.

## **Conclusions**

### Training

- The supervision of young riders is professional. Cycling is essentially an individual sport, and the specific skills of riders also require specific training, which helps strengthen the nature of the individual sport. This does not alter the fact, however, that particularly during a time when riders' performances are monitored closely, a more express form of supervision would seem very appropriate. Evidently, the committee understands the infringement this constitutes on riders' privacy, but the current status of professional cycling calls for compromises.

### Medical

- The committee subscribes to the basic principle of positive guidance. In the interest of the team and the riders, however, it is desirable to focus more on supervision and control with regard to preventing the use of doping.
- The committee has not been provided with any evidence that would suggest unethical conduct or a lack of integrity on the part of the medical staff of Rabo Wielerploegen B.V.

### Executive Board

- The committee has noted that, with regard to the Rasmussen crisis, the Executive Board staged an intervention in the form of an additional anti-doping test. This intervention was inappropriate from a formal point of view, and was in fact redundant at that time.

## **Recommendations**

### Training

- It is recommended that the coach gain greater insight into all locations where riders perform their training. In addition, it might be considered to require the more experienced riders to make greater use of training facilities.

### Medical

- It is recommended to intensify positive guidance and supervision and control, and, from this perspective, focus more on control and supervision, also in the interest of riders. Medical staff should be able to alert team management, as long as this does not concern personal medical files. More frequent tests are required in order to develop an adequate understanding of riders from the perspectives of supervision and control. In addition to health checks, there should be more frequent anti-doping tests.
- Transforming the medical staff to a permanent medical/paramedical team headed by a Medical Manager merits attention. The Medical Manager is aware of the latest developments with respect to sports medicine, in particular the sub-area of cycling. As part of his duties, he will make use of a range of sub-areas, including endurance physiology, cardiology, training education, nutrition, physiotherapy, etc.
  - The actual supervision of a team during races may be carried out by physicians – as is the case in the current situation – and is coordinated by the Medical Manager.
  - The Medical Manager is additionally responsible for liaising with the UCI and other national and international organisations. In addition, he coordinates whereabouts and requests for the dispensing of medication.

***The process that led to the crisis – what are the background facts, how were decisions made at various stages, and how were these decisions communicated, both internally and externally? How did the Board of Directors and the team management of Rabo Wielerploegen B.V. function in this regard?***

#### **IV. The Rasmussen case**

##### **11. Rasmussen**

###### ***11.1 Introduction***

Rasmussen was approached by Rabo Wielerploegen B.V. in late 2002 for the added value he would be able to provide as a climbing specialist. At the time, Rasmussen had also received offers from other teams, but he made the very conscious decision to join Rabo Wielerploegen B.V. Unlike in the other teams, he could claim a special position within the team, while he also saw opportunities to perform well on an individual level. During his first years in the Rabo Wielerploegen B.V. team, Rasmussen won the mountain ranking in the Dauphiné Liberé and the Tour of Catalonia. In 2003, he won a mountain stage of the Tour of Spain, ranking 7<sup>th</sup> in the general classification. In 2004, he became 14<sup>th</sup> in the general classification of the Tour de France, and third in the mountain ranking. In 2005 and 2006 Rasmussen won the polka dot jersey in the Tour de France. In both of those years he won one stage, and in 2007 he won two stages. Among his peers, Rasmussen was known as a highly driven and goal-oriented professional. Rasmussen was also characterised as an individualist, someone who marches to his own drummer and tends to train alone. He took this professional behaviour to such an extreme that members of the team wondered whether he would be willing enough to commit himself fully to the team.

Rasmussen started the Tour de France in London on 7 July 2007. On Wednesday, 25 July 2007, he was withdrawn from the Tour de France at the end of the stage and suspended by the General Managing Director of Rabo Wielerploegen B.V. The reason for this was that D. Cassani had made a statement saying that he had spoken to Rasmussen during a training session on 13 June 2007 in the Dolomites, Italy, whereas the General Managing Director was under the impression that Rasmussen was in Mexico at that time. He subsequently confronted Rasmussen with this statement. According to the General Managing Director, Rasmussen was unable to convincingly refute Cassani's statement. This resulted in a serious crisis of trust that led to the dismissal of Rasmussen.

###### ***11.2 Was the team management aware of Rasmussen's whereabouts?***

The commission has noted that, during the investigation period, Rasmussen's whereabouts were not registered by the team management. To learn of the (possible) whereabouts of Rasmussen, the team management would consult the competition programme, the related logistics, and statements from and meetings with the rider. Although the team management was in contact with the rider during training periods, including by telephone, they were not necessarily aware of his whereabouts at that time. After all, the team management did not receive a copy of the whereabouts information provided by Rasmussen. Before the letter of 29 June 2007, the team management had never received any information from the UCI regarding written warning(s), as this information was exchanged solely between the rider and the UCI. The team management had, however, been notified of the late submission of whereabouts information of several riders in March 2006. In addition, the team management was aware of (the existence of) the letter of 29 June 2007.

###### ***11.3 Rasmussen required to provide whereabouts information***

Rasmussen received written notification from the UCI in September 2005 of the fact that he had been included in the UCI's RTP during the last quarter of 2005.

In mid-December 2005, Rasmussen received a series of forms from the UCI intended for submitting whereabouts information for the entire year 2006. Rasmussen subsequently submitted whereabouts information for the first quarter.

#### **11.4 Facts preceding the Tour**

1. The team leader and member of the Board of Directors sends an e-mail to Rasmussen on 24 April 2007 in connection with tickets for the training period in the Pyrenees from 25 June through 29 June 2007.  
25 June 2007: Verona – Munich – Toulouse.  
29 June 2007: Bilbao – Munich – Copenhagen.  
1 July 2007: Copenhagen – Milan.  
Rasmussen responds a day later and reports *'I prefer if we can keep the trip quite, as I am supposed to be in Mexico at the time'*.  
The team leader and member of the Board of Directors e-mails Rasmussen's response to the Chairman of the Board of Directors. The Chairman of the Board of Directors of Rabo Wielerploegen B.V. responds as follows: *'I want to let you know that as employer I urge you to provide the controlling bodies with the correct whereabouts information! If you want to go training in Mexico just go ahead, it is out of the question that your employer is going to cooperate in some cover up operation. The responsibility in this matter is completely yours!'*  
In response to this email, Rasmussen called the chairman of the board of directors of Rabo Wielerploegen BV shortly afterwards. Rasmussen stressed that his goal was only to keep his training with Menchov in the Pyrenees secret from the press. This is also apparent from the subsequent communications of the chairman to the director/teamleader.
2. Article in Jylland Posten on 'men in black'. The article is about riders who wear neutral coloured clothing while training so that they will not be recognised. The UCI monitors these riders closely. Rasmussen was linked to this group. The Communications Manager was compiling an overview of reports that had appeared in international and other media and ran across this report on Rasmussen. The subscription list reveals that a large number of parties affiliated with Rabo Wielerploegen B.V. had received this report. These parties include the Board of Directors, team management, cycling team staff members and members of the Advisory Board.  
The committee asks if Rasmussen did indeed wear neutral clothing. Rasmussen answers affirmatively and says that he does so because he is often stopped by fans who want to take a photograph with him or that even often follow him home. Rasmussen wants to train in peace. According to the regulations, the sponsor agreement states (article 5.8) that Rabobank will enter into agreements with its employees regarding dress codes. Riders are in any case required to wear the official Rabo uniform while competing in competitions, including travelling to and staying at the competition location, etc. The company rules further state that all members of Rabo Wielerploegen B.V. shall *exclusively* wear clothing and footwear from the 2007 clothing package.
3. The DCU reaches the decision on 21 June 2007 to expel Rasmussen from the national selection and informs him of this decision on 30 June 2007, the day before the Danish championship. Rasmussen informs the Chairman of the Board of Directors of Rabo Wielerploegen B.V. of this development on 2 July 2007. The Chairman of the Board of Directors of Rabo Wielerploegen B.V. phones the director of the DCU on 2 July 2007 and is told why Rasmussen was expelled from the Danish team. The director of the DCU advises the Chairman of the Board of Directors of Rabo Wielerploegen B.V. not to include Rasmussen in the Tour. The Communications Manager, the team leader and member of the Board of Directors and another team leader of the ProTeam were informed of this during the Tour. The Board of Directors of Rabo Wielerploegen B.V. did not inform the Supervisory Board until later.

4. Letter of UCI dated 29 June 2007. The UCI reports written/recorded warnings to Rasmussen (please refer to the specified list below).  
The Rabo team receives a copy of this letter.  
The committee is aware of the content of the letter.
5. Telephone conversation between the Chairman of the Board of Directors of Rabo Wielerploegen B.V. and the UCI on 29 June 2007. The UCI states during this telephone call that there is no reason to disallow Rasmussen from starting in the Tour. The Chairman of the Board of Directors of Rabo Wielerploegen B.V. decides to impose the highest possible fine of € 10,000.00 on Rasmussen as a sign that this involves serious neglect. The Chairman of the Board of Directors of Rabo Wielerploegen B.V. reports the imposition of the fine on Rasmussen to the UCI.

### **11.5 Facts regarding the whereabouts of Rasmussen (as stated in the letter from the UCI dated 29 June 2007)**

#### **March 2006, failure to submit whereabouts on time**

Defence: Rasmussen responds only *after* he has received a recorded warning. He states that he had expected to be sent a new form in March 2006. He assumed, because he did not receive a new form, that he was no longer included in the RTP. He failed to recall that he had already received forms for the entire year 2006 from the UCI in December 2005. Rasmussen immediately provided the information after he received the recorded warning.

Formal application of whereabouts regulations: Rasmussen receives a recorded warning for failing to submit information on his whereabouts for the second quarter on time.

Committee ruling: The UCI still gave Rasmussen the opportunity after the recorded warning to explain this matter of record. The UCI stated when asked that the recorded warning should have actually been a written warning. The committee rules on the basis of the aforementioned that the UCI incorrectly regarded the first recorded warning as a recorded warning. The UCI neglected to rectify this error. The UCI still regards this matter as a recorded warning in the letter dated 29 June 2007.

#### **6 April 2007, missed test commissioned by ADD in Italy**

Rasmussen was not at home when the Danish anti-doping authority, Anti-Doping Danmark, visited his place of residence.

Defence: Rasmussen has stated that he missed the test because he had travelled to Munich a day earlier to catch a flight from there to the Tour of Basque.

Formal application: The ADD issued Rasmussen a recorded warning on 8 May 2007 due to the missed test.

Committee ruling: The committee is convinced it is an established fact that Rasmussen did not submit information on his changed whereabouts *in time*.

#### **21 June 2007, missed test commissioned by ADD in Italy**

ADD unsuccessfully attempts to test Rasmussen in Italy.

Defence: Rasmussen says he was in Mexico on that date, but that the involved change in whereabouts had not yet been received in the post.

Formal application:

- The Danish Cycling Union (DCU) decides on 21 June 2007 to expel Rasmussen from the national selection because Rasmussen had missed tests commissioned by the ADD on two occasions. Rasmussen is informed of this decision on 30 June 2007, the day before the Danish championship.
- The ADD issues Rasmussen a recorded warning during the Tour de France on 10 July 2007 for missing a test on 21 June 2007.

Committee ruling: With regard to the missed test on 21 June 2007, it is true that the UCI had not yet received the change to Rasmussen's whereabouts (please refer to below) in which he

stated that he was in Mexico. The authorised body consequently assumed that he was in Italy, as stated in his original whereabouts, but was unable to locate him there.

***Submitting change of whereabouts for stay in Mexico from 4 June through 12 June 2007***

The UCI receives a letter stating a change to this whereabouts information on 11 June 2007. Rasmussen states in this letter that he will be in Mexico from 4 June through 12 June 2007. The letter was postmarked in Italy on 8 June.

Defence: Rasmussen informed the committee and the UCI in a letter marked Lazise 26 June 2007 that the letter was written on 4 June and that his housekeeper brought it to the post office. The letter was then brought two days later to the regional post office where it was postmarked and then mailed. Rasmussen also states in this letter to the UCI that he travelled to Mexico the day after the Giro.

Committee ruling: The UCI must be informed of the whereabouts before the related period. Even though Rasmussen knew that he had an appointment in Bergamo with the team leader and member of the Board of Directors on 6 June 2007, he nonetheless stated in his whereabouts that he would be residing in Mexico on this date.

***Submitting change of whereabouts for stay in Mexico from 12 June through 29 June***

The UCI received this change on 28 June 2007. Rasmussen states in this change that he will also be staying in Mexico from 12 June through 29 June 2007. The letter was sent from Mexico on 12 June 2007.

Defence: Rasmussen takes the standpoint that it is permissible to send the whereabouts information by post. He does not believe that he can be held responsible for the long amount of time that the letter was en route from Mexico to the UCI office.

Formal application: The UCI issues a recorded warning by letter on 29 June 2007 for both of the aforementioned incidents of submitting changes to whereabouts too late. The UCI states in passing in the letter that they assume that he is residing in Italy on 26 June 2007.

Committee ruling: The whereabouts information was received too late. Rasmussen cannot hide behind the fact that the letter was en route for a long period to justify the late arrival of the whereabouts. He is obligated to submit any changes to his whereabouts immediately so that he can be tested out of competition.

***11.6 Not included in UCI letter of 29 June 2007: changes to whereabouts from 27 June until 29 June 2007***

The UCI informed the committee when asked that Rasmussen had also sent a change to his whereabouts by fax on 27 June 2007. It involved the announcement that he would be training in the Pyrenees from 27 June through 29 June 2007 and would then be in Denmark until 2 July in order to participate in the Danish championship. Rasmussen states that the change will go into effect on 27 June 2007, while the tickets for the training stage in the Pyrenees for the period from 25 June through 29 June 2007 had already been booked in April 2007. In view of the fact that Rasmussen actually stayed in the Pyrenees from 25 June through 29 June 2007, this once again involved submitting a change too late. Rasmussen also told the committee that he trained in the Alps from 21 June until 24 June 2007. He failed to communicate this change to the UCI.



**Status van WAI en/of kennis van verblijfplaats van Rasmussen bij de verschillende personen/instanties  
Zoals door de personen of organisaties aangegeven**

Juni	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30		
WAI oorspronkelijk	Italie																												
WAI 1	M	M	M	M	M	M	M	M	M	M	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT		
WAI 2	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M		
WAI 3	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	FRp	FRp	FRp		
WAI werkelijk	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	IT	FRa	FRa	IT	FRd	FRd	FRp	FRp	FRp	FRp		

WAI 1 : Brief uit IT	4 - 12 juni Mexico
WAI 2 : Brief uit Mex	12 - 29 juni Mexico
WAI 3 : Fax	27 - 29 juni Frankrijk
Italie	IT
Mexico	M
Frankrijk	FR
Frankrijk Alpen	FRa
Frankrijk Pyrenee	FRp
Denemarken	DEN
Missed Test	MT

## Glossary to diagram

Dutch	English
Status van WAI en/of kennis van verblijfplaats van Rasmussen bij de verschillende personen/instanties	Status of WAI and/or whereabouts of Rasmussen known to various persons/bodies.
Zoals door de personen of organisaties aangegeven	As stated by the persons or organisations
Juni	June
WAI oorspronkelijke	WAI original
WAI werkelijk	WAI actual
WAI 1 : Brief uit IT 4 – 12 juni Mexico	WAI 1 : Letter from IT 4 – 12 June Mexico
WAI 2 : Brief uit Mex 12 -29 juni Mexico	WAI 2 : Letter from Mex 12 -29 June Mexico
WAI 3 : Fax 27 – 29 juni Frankrijk	WAI 3 : Fax 27 – 29 June France
Italie	Italy
Mexico	Mexico
Frankrijk	France
Frankrijk Alpen	French Alps
Frankrijk Pyreneeën	French Pyrenees
Denemarken	Denmark

### **11.7 Number of warnings during the period 4 June through 29 June 2007 according to the committee**

In its letter dated 29 June 2007, the UCI used an inexplicable means of calculating the number of violations of the whereabouts regulations, particularly during the period from 4 June through 29 June 2007. Rasmussen submitted whereabouts information in an incorrect manner on three different occasions during this period and in one instance he failed to submit a change to his whereabouts altogether. While this should render a total of four warnings, the UCI chose to nonetheless combine these incidences into one single recorded warning. The UCI consequently suffices with one recorded warning for all the violations in the period 4 June through 29 June 2007, while it is the committee's opinion that each incident constitutes an independent offence. The fact that Rasmussen now states that he was not in Mexico at all places these considerations in a different light.

## **12. The committee's ruling based on the available data before the Tour**

### **12.1 Ruling regarding the Board of Directors' decision to allow Rasmussen to start in the Tour**

The committee has examined whether the Board of Directors acted correctly in the Rasmussen case. This examination included studying the facts and the Board of Directors' response to these facts. The committee subsequently assessed the Board of Director's conduct.

The Chairman of the Board of Directors of Rabo Wielersploegen B.V. sent an e-mail to Rasmussen concerning his alleged training period in Mexico. He points out to Rasmussen in this e-mail the importance of filling in his whereabouts information correctly and notes the fact that the employer does not wish to cooperate in a 'cover-up' and that it is his own responsibility. Neither this fact, nor the article in Jylland Posten on 'men in black', nor the fact that the DCU expelled Rasmussen from the Danish team on 21 June 2007, nor the letter of 29 June 2007 caused the Board of Director's to decide to launch a further investigation into the incidences.

The UCI raised questions regarding Rasmussen's stay in Mexico during the period from 4 June through 29 June 2007 in its letter dated 29 June 2007. There was contact among the members of the Board of Directors regarding the letter from the UCI. Not every member of the Board of Directors was able to peruse or be aware of the content of the letter. The related communications took place on an ad hoc basis. No consultations were held that would have made it possible to evaluate the content of the letters on the basis of its merits and that would have allowed the members of the Board of Directors to reach a decision regarding the appropriate approach. Even an extremely limited but serious examination of the letter by the Board of Directors should have made them realise that Rasmussen could not in any case have been in Mexico on 6 June 2007 and from 25 June through 29 June 2007. The Board of Directors' response to the letter dated 29 June 2007 was consequently procedural in nature and the Board of Directors failed to examine the substantive content of the letter of 29 June 2007. It is the view of the committee that the fine the Chairman imposed on Rasmussen had more the semblance of a cosmetic act. The Chairman hid too much behind the telephone call with the UCI and its statement that Rasmussen would be permitted to start. While the Board of Directors was planning to issue a statement to the press in connection with the letter of 29 June, the Chairman changed his mind regarding this decision following the contact with the UCI.

The Board of Directors based its actions entirely on the response from the UCI that Rasmussen would be allowed to start and in doing so failed to calculate the reputation of Rabobank as sponsor and the cycling team into its deliberations regarding whether Rasmussen should be allowed to start in the Tour.

The Board of Directors should at all times and on its own initiative provide information that either requires consultation in accordance with the rules and regulations of the Board of Directors or that contains content matter that could reasonably be assumed to be of importance to Rabobank. The Board of Directors, both as individuals and as a collective, failed to inform the Supervisory Board of each of the aforementioned offences. The Chairman did not view the letter as 'a calamity' and did not contact the Head of the Rabobank Press Information Office nor contact the Supervisory Board directly. The Chairman did not inform the Chairman of the Supervisory Board until 18 July 2007 that Rasmussen had received a warning from the UCI a week prior to the Tour.

This is presupposed to have involved an administrative error. The Head of the Rabobank Press Information Office informed parties including the Supervisory Board and a member of the Executive Board.

The committee concludes that the letter was not discussed earnestly enough within the Board of Directors and that the Board of Directors virtually did not conduct an assessment of the facts and content of the letter. The distinctive aspects for Rabobank's reputation were not sufficiently taken into account as a result.

The Board of Directors consequently incorrectly failed to investigate the facts prior to the Tour and neglected its duty to inform the Supervisory Board regarding any of the facts. It is the opinion of the committee that this constitutes negligence both vis-à-vis the Board of Directors' own responsibility and vis-à-vis Rabobank's interests.

After weighing the facts, the committee reaches the conclusion that Rasmussen should not have been allowed to start in the Tour.

**Should Rasmussen start in the Tour?**

<i>Against</i>	<i>For</i>
<ol style="list-style-type: none"> <li>1. E-mail from Rasmussen on 24 April 2007 to team leader and member of the Board of Directors (please refer to Rasmussen, fact 1).</li> <li>2. Late June: 'Men in black' article in Jylland Posten, in which Rasmussen is linked to this group.</li> <li>3. 29 June: there are one written warning and three recorded warnings known: <ul style="list-style-type: none"> <li>• ADD – written warning due to missed test by ADD on 21 June 2007.</li> <li>• ADD – recorded warning due to missed test on 6 April 2007.</li> <li>• UCI – recorded warning from March 2006 due to late delivery of whereabouts information.</li> <li>• UCI – recorded warning of 29 June 2007 due to late delivery of whereabouts information.</li> </ul> </li> <li>4. The information reveals that the UCI was unaware of Rasmussen's whereabouts for a period of 20 days (from 4 June through 10 June and from 13 June through 28 June 2007).</li> <li>5. 30 June 2007: Rasmussen is informed that he has been expelled from the Danish national team and informs the Chairman of the Board of Directors of Rabo Wielerploegen B.V. on 2 July 2007. The DCU reaches this decision because the ADD has issued a second recorded warning.</li> <li>6. The Director of the DCU advises the Chairman of the Board of Directors of Rabo Wielerploegen B.V. to no longer include Rasmussen in the tour due to concerns regarding Rasmussen's integrity.</li> <li>7. The sum total of the above constitutes a threat to the reputation of Rabo Wielerploegen B.V. and consequently also indirectly for Rabobank.</li> </ol>	<p>'Men in black': Rasmussen is not the only rider implicated. Riders want to train incognito so as not to be disturbed by fans and reporters.</p> <p>These involve recorded warnings from two different organisations. According to the UCI regulations, these warnings can, but do not necessarily have to be added together. So there are 'only' two recorded warnings.</p> <p>The UCI does not know itself how to handle this situation effectively because it is the first time that they have been faced with such a case.</p> <p>The UCI ensures the Chairman of the Board of Directors that there is absolutely no reason not to allow Rasmussen to participate in the Tour.</p> <p>The UCI confirmed when asked that Rasmussen was certainly not the only rider with one or more recorded warnings to start in the Tour de France.</p>

**12.2 Ruling regarding the Supervisory Board's conduct**

The Supervisory Board was wrongly not informed of the content of the letter from the UCI dated 29 June 2007 by the Board of Directors of Rabo Wielerploegen B.V. The committee is of the opinion that the Supervisory Board should have asked further questions on 18 July 2007 regarding the content of the letter and could have already requested a copy of the letter at that time. The letter of 29 June was requested at a later date and the Supervisory Board

did not receive it until 23 July 2007. As a result, the Supervisory Board continued to lag behind with regard to this incident. The trick is to keep incidents small. The Supervisory Board has still not formally (also not afterwards) distanced itself from the Board of Director's decision to let Rasmussen start.

### **13. Reassessment of the aforementioned facts combined with statements made to the committee *after* the Tour**

#### **13.1 Was Rasmussen in Mexico?**

- Rasmussen in any case told the committee that he was *never* in Mexico during the period 4 June through 29 June 2007, but that he instead trained in the Dolomites, Alps and Pyrenees.
- Rasmussen told the committee that he was in the Alps on the day that he missed the test on 21 June 2007. He never provided this whereabouts information to the UCI.
  - It is therefore an established fact that Rasmussen deliberately provided incorrect whereabouts information for the period 4 June through 29 June 2007.

Rasmussen told the Danish television broadcasting station TV 2 that he could not have seen Cassini on 13 June 2007 in Italy because he was in Mexico on that day. This means he did not tell the truth *in public*. The Chairman of the Board of Directors of Rabo Wielerploegen B.V. always assumed that Rasmussen would stay in Mexico during part of the month of June. The committee has no reason to doubt this. Rasmussen, however, says that *other* members of the Board of Directors were aware of the fact that he would *not* be in Mexico. The committee confronted the related members of the Board of Directors with this position. However, these members of the Board of Directors told the committee that they assumed that Rasmussen *would* stay in Mexico. This means that conflicting word-against-word statements are involved. The committee has been unable to determine which party is telling the truth.

Rasmussen claims that private circumstances caused him to deliberately provide incorrect whereabouts information. He claims that these private reasons arose in May 2007 and were the reason why he changed his programme and stated that he would be in Mexico. The reasons are only known to the committee members and will not be made public. The committee is of the opinion that the stated private reasons constitute an unsound means for achieving Rasmussen's intended aim and the committee is of the opinion that Rasmussen deliberately provided incorrect whereabouts information on multiple occasions and could therefore deliberately not be tested for a given period. When an athlete is deliberately unlocatable for doping testing organisations during a specific period before the Tour de France, and does not provide a credible explanation, this creates a strong suspicion that he may be using substances from the forbidden doping list. This does not, however, prove that the related athlete has actually used doping!

#### **13.2 Evading a doping test**

Now that the committee has established that Rasmussen deliberately ensured that he could not be tested for a certain period of time, the question arises whether Rasmussen deliberately evaded a doping test. A distinction can be made between the following two situations regarding evading doping tests ('evading sample collection') according to article 15, paragraph 2, sub-paragraph 3 of the UCI regulations:

- It is known ('after notification') that the rider will be tested.
- Other forms of evading doping tests ('evading sample collection').

According to article 263, paragraph 1 in conjunction with article 261, the first violation (evading a doping test) is punishable by a two-year suspension. If the rider commits this violation again, he will be suspended for life.

A distinction is made in the regulations between a situation in which the rider deliberately evades a test while he is aware that he will be tested and other forms of evading doping tests. There is absolutely no indication that Rasmussen was aware of a possible test. Based on the body of facts it seems entirely reasonable to conclude that Rasmussen deliberately evaded a doping test. It has not, however, been directly proven that Rasmussen evaded a drugs test with the intention of using doping. Also because he puts forward reasons of a private nature.

Even though he does put forward reasons that constitute an unsound means for achieving Rasmussen's intended aim.

### **13.3 Application of UCI sanctions**

The committee has noted that the UCI did not combine the ADD's and the UCI's warnings in the Rasmussen case. Pursuant to Article 87, missed test(s) and recorded warning(s) may be combined with missed test(s) and recorded warning(s) from other authorised anti-doping organisations. The UCI maintains a non-committal attitude with respect to adding the violations identified by the ADD to those identified by its own organisation. Rasmussen is confused as to whether the ADD is authorised to perform out-of-competition tests, and, accordingly, Rasmussen considers the status of the identified missed tests on 6 April 2007 and 21 June 2007, as stated in the UCI's letter of 29 June 2007, by the ADD to be a matter of dispute.

The UCI regulations state that international anti-doping regulations apply to licence holders. Although Rasmussen holds a Monegasque licence, the ADD maintains that it was authorised to test Rasmussen out of competition. In an e-mail to the ADD dated 23 November 2006, the UCI concluded that the ADD was authorised based on the fact that Rasmussen would be representing Denmark in the world championships, and the fact that Rasmussen was included in the Danish RTP.

The ADD concluded that it was authorised based on the Danish national anti-doping regulations (subsections 2 and 7). In an agreement signed by Rasmussen on 22 December 2004, he stated that he would submit himself to out-of-competition tests performed by the ADD. This is confirmed by an e-mail in which the Danish Cycling Union (DCU) lists a number of commitments made with Rasmussen. One of the conditions imposed on riders for being included in the Danish national team is to submit to out-of-competition tests from the ADD. The committee noted that the ADD was authorised to test Rasmussen out of competition. As such, in addition to the UCI tests, Rasmussen could be submitted to tests performed by the ADD and, possibly, other anti-doping organisations.

When asked, the UCI confirmed that the Rasmussen case is atypical, as it marked the first time the UCI received information from a national anti-doping organisation regarding recorded warnings and missed out-of-competition tests. It is for this latter reason that the UCI objects to the weighting of the number of warnings and missed tests, and, by extension, to the application of sanctions. Given that the ADD is the only organisation to have provided the UCI with this type of information, it cannot be maintained that there was equal enforcement vis-à-vis other riders. However, it is odd at best that, during a time when enforcement of anti-doping regulation is a hot issue, the first authorised body that actually maintains these regulations is told that this leads to inequality of justice.

Pursuant to Article 220 of the UCI regulations, a rider is not permitted to compete in a major tour if he has received a recorded warning or has missed a test during a period of 45 days prior to the start of such a tour. In the case of Rasmussen, the UCI has not applied Article 220. The UCI states that: "Article 220 is overly harsh if it is used to deny a rider the right to participate in a race because of an administrative oversight (as was, in June 2007, apparently the case with Rasmussen)." The UCI considers this article to be disproportional to other anti-doping regulations and the '3 warnings' system, whereby riders are given the opportunity to respond.

The committee believes that the non-application of a sanction by an authorised body that is part of that authorised body's own regulations sends the wrong message to the individuals for whom those regulations are intended.

#### **14. Facts on Rasmussen during the Tour**

##### ***14.1 Fallout effects during the Tour due to incidents prior to the Tour:***

The facts concerning each incident that took place prior to the Tour primarily became public during the Tour itself, one incident at a time. Statements made by different people during the Tour created the impression that the Chairman of the Board of Directors of Rabo Wielerploegen B.V. had completely lost control of the entire situation and was no longer in control of his actions.

- On 10 July 2007 the ADD converts the written warning of 21 June 2007 into a recorded warning.
- A press conference is held on the first rest day on Monday, 16 July 2007. The article on 'men in black' published in the Danish newspaper Jylland Posten begins to attract attention. Rasmussen says in response: 'I sometimes train in non-Rabo clothing' and said that he was completely trustworthy.
- This gives rise to a report in *Vélo-nieuws* in which Mr Richards said that Rasmussen had asked him to bring a box of shoes with him and when Richards opened the box he found bags of Hemopur (blood specimens) inside.
- On 19 July 2007, the Danish federation announces the ADD's recorded warning and missed test to the public.
- Rasmussen issues a statement in front of the Rabo bus on 20 July 2007. The situation around the bus is described as chaotic and unprofessional. Rasmussen says he had received a recorded warning from the UCI due to an 'administrative error'.
- Rumours begin to abound. There are increasing communications with Rabobank and the scenario that Rasmussen would be forced to leave the Tour is taken into account.
- Rabobank sends a lawyer to the location to provide counsel to the Chairman of the Board of Directors.
- A press conference is held on 24 July 2007. There is a consultative meeting that evening attended by the Chairman of the Board of Directors, the Communications Manager of Rabo Wielerploegen B.V., a lawyer, the Head of the Rabobank Press Information Office and Rasmussen. The meeting is organised to discuss the content of the statement that Rasmussen will make at the press conference the next day. The press conference is held on 24 July at which Rasmussen makes a statement regarding his situation in relation to the warning that he has received. The ASO allows Rasmussen to go ahead and start as usual on 25 July 2007.

##### ***14.2 The decision to remove Rasmussen from the Tour on 25 July 2007***

Cassani states on Italian television on 15 July 2007 that he saw Rasmussen training in the Dolomites on 13 June 2007. Danish TV asks Rasmussen to respond to this report. Rasmussen states that he was in Mexico in June 2007. A journalist tells the Chairman of the Board of Directors of Rabo Wielerploegen B.V. on 25 July 2007 that Cassani saw Rasmussen in the Dolomites on 13 June 2007. The Chairman contacts Cassani and he confirms this statement. The Chairman of the Board of Directors then confronts Rasmussen with Cassani's statement. Rasmussen initially confirms Cassani's story, but later retracts his confirmation.

The Chairman of the Board of Directors of Rabo Wielerploegen B.V. decides to remove Rasmussen from the Tour because it has become his impression that Rasmussen was in Mexico on 13 June 2007 and that he had lied about his whereabouts.

The team leader and member of the Board of Directors recalls having spoken with Rasmussen in Bergamo on 6 June 2007.

The press releases issued by Rabobank and Rabo Wielerploegen B.V. regarding Rasmussen's expulsion are not identical. The cycling team refers to a 'suspension' in the press release, while the Rabobank press release calls it a 'dismissal'. The Chairman's action gives rise to a great deal of ambiguity among the riders, team management and the general public. The impression is created that it is a case of Cassani's word against Rasmussen's word and it was not clear whether Rasmussen had lied or whether there were sufficient grounds for his dismissal.

### ***14.3 Rasmussen leaves the Tour***

Rasmussen is expelled from the Tour just after the completion of the stage. Rasmussen is driven in a neutral car to a hotel outside Pau. He is left to fend for himself in the hotel. He is brought to the airport the next day.

## **15. The committee's ruling based on the data available before 25 July 2007**

### ***15.1 Ruling regarding the conduct of the Board of Directors***

#### ***Fallout effects***

The Board of Directors was slowly but surely confronted with facts of which it was already aware before the Tour. The fact that the Board of Directors did not operate proactively before the Tour caused incidents that could have potentially been kept 'small' to become increasingly 'bigger'. The Board of Directors was consequently lagging behind the facts during the Tour. The communications were incident-driven rather than proactive, open, clear, transparent and comprehensive.

The press conferences are well prepared. Rasmussen does, however, say that he had expected to receive more direction from the Rabo Wielerploegen B.V. Communications Manager. It is impossible for the committee to assess whether Rasmussen's viewpoint in this regard is correct or not. The committee is, however, of the opinion that Rasmussen experienced the press conference at the bus as chaotic and threatening. The choice of location was unfortunate, unprofessional and ill-considered.

#### ***Rasmussen expelled from the Tour***

There is a discrepancy between Rasmussen's statement that he was in Mexico and statements made by the team leader and member of the Board of Directors and Cassani that he was seen in Bergamo and the Dolomites on 6 June 2007 and 13 June 2007 respectively. Rasmussen lied to the public (on TV), the UCI (in the whereabouts information) and the Chairman of the Board of Directors of Rabo Wielerploegen B.V. (e-mail from April 2007) regarding his whereabouts in June. He was in Italy and not in Mexico.

The decision to expel Rasmussen from the Tour was not made as a decision by the entire Board of Directors. The Chairman could and should have taken the time to consult with the other members of the Board of Directors and to subsequently present the Board of Directors' decisions to the Supervisory Board (regardless of whether this body would have influenced the decision or not). This gave rise to a situation whereby a member of the Board of Directors congratulated Rasmussen on his victory and Rasmussen confronted him with the fact that the Chairman of the Board of Directors had just expelled him from the Tour. It is also plausible that the Chairman had already suspended Rasmussen before contacting the Supervisory Board.

The Rabo Wielerploegen B.V. Communications Manager makes the announcement that Rasmussen has been suspended. This announcement is not first coordinated with the Supervisory Board.

Rabobank then announces that Rasmussen has been dismissed. Rasmussen is ultimately actually dismissed.



The riders were not satisfied with the statement made by the Chairman of the Board of Directors of Rabo Wielerploegen B.V. The riders had rallied behind Rasmussen at that time and wondered why the Chairman could not have waited until after the Tour. The view held by Rasmussen and the view held by the Chairman of Rabo Wielerploegen B.V. did not agree and this created unrest among the riders.

Both the internal and external communications did not run smoothly and were not consistent and clear. The Board of Directors and the team management were not in control of the situation, in part because other members of the Board of Directors were not or virtually not informed of developments. The press came out in force and tried to speak with riders. The riders received insufficient guidance from the Board of Directors.

### ***15.2 Ruling regarding the conduct of the Supervisory Board***

The decision to expel Rasmussen from the Tour has been approved by the Supervisory Board. The Chairman of the Supervisory Board did inform the other members of the Supervisory Board and a member of the Executive Board. It is the opinion of the committee that the Supervisory Board generally exercised sufficient care in terms of the communications regarding the Rasmussen affair. The committee considers it correct that the Chairman of the Board of Directors of Rabo Wielerploegen B.V. was offered the counsel of an experienced lawyer for the Rasmussen case.

The committee does, however, wish to note that, in terms of crisis management, it is no longer advisable to manage only with regard to main points, such as implied by the 'chalk line policy' of the Supervisory Board. From the moment that it became clear that there was a crisis, it would have been extremely useful for the Supervisory Board to have taken a proactive approach in order to gain access to the information that would have been necessary in order to manage the process and control the risks. The Supervisory Board could have also taken a more active approach vis-à-vis the communications regarding Rasmussen's departure.

The committee finds it striking that most of the activities carried out after Rasmussen was confronted with the fact that he had been expelled from the Tour occurred ad hoc. While he was escorted to a hotel, he was left to fend for himself once he arrived at the hotel. The committee is of the opinion that Rabobank has a due care requirement to attend to a rider in an effective and humane manner, also after a violation has been established. The committee consequently recommends that Rabo Wielerploegen B.V. widens the disaster scenario and devotes attention to 'follow-up care' for the rider.

## **16. Incidents briefly after the Tour**

The committee has gained the impression that the Board of Directors of Rabo Wielerploegen B.V. carried a large responsibility on its shoulders. And this burden of responsibility became increasingly heavier during the Tour. The Chairman of the Board of Directors was requested to travel to Paris on Friday, 27 July 2007 for a meeting with the Chairman of the Supervisory Board. The Chairman concurs with this request and there are meetings between the Chairman of the Board of Directors of Rabo Wielerploegen B.V. and the Chairman of the Supervisory Board in Paris on 27 July and 28 July 2007. The minutes of the meetings were not recorded in writing. The statements are conflicting. The announcement is made on Friday, 3 August 2007 that the Chairman of the Board of Directors has decided to resign.

### ***16.1 Ruling regarding the conduct of the Supervisory Board***

The communications of both the Chairman of the Board of Directors of Rabo Wielerploegen B.V. and the Supervisory Board fell short vis-à-vis the other members of the Board of Directors of Rabo Wielerploegen B.V., the team management and the riders. This resulted in considerable unrest among all the aforementioned persons.

## **Conclusions**

The committee certainly does not wish to and will not trivialise the Rasmussen case; however, the discussion must be placed in the perspective of the hectic atmosphere in the run-up to the Tour de France and the fact that no one actually considered the whereabouts to be an issue.

### **General conclusions:**

- Rasmussen lied about his whereabouts and could not be located for 20 days. He was consequently not available for doping tests. Rasmussen says that the reason that he incorrectly stated his whereabouts lies in the private atmosphere. The committee does not believe this is credible.
- The Board of Directors of Rabo Wielerploegen B.V. in general and the Chairman in particular did not give enough credence to a number of indications regarding Rasmussen that they received prior to the Tour and failed to fully and promptly inform the Supervisory Board. They consequently endangered the reputation of both Rabo Wielerploegen B.V. and Rabobank. The committee is of the opinion that, based on the facts prior to the Tour, Rasmussen should not have been allowed to start in the Tour. The committee has not seen any evidence of unethical conduct or a lack of integrity on the part of the Board of Directors of Rabo Wielerploegen B.V.

### Rasmussen

Rasmussen is a top athlete through and through who focuses on achieving results and rises to the occasion when necessary. He is an intelligent, considerably driven and extremely professional athlete who prepares painstakingly for competitions.

Stay in Mexico? The facts before and during the Tour:

- Rasmussen sent an e-mail on 24 April 2007 to the team leader and member of the Board of Directors responsible for the ProTeam regarding the tickets for his training stage in the Pyrenees from 25 June through 29 June 2007: 'I prefer if we can keep the trip quite, as I am supposed to be in Mexico at the time'.
- Rasmussen publicly claimed that he was in Mexico.
- Rasmussen provided incorrect and tardy whereabouts information to the UCI and Anti-Doping Danmark on a number of occasions.
- Rasmussen confirmed that he spoke with Cassani on 13 June 2007 in the Dolomites.
- Rasmussen was forced to leave the Tour on 25 July 2007 because the Chairman of the Board of Directors of Rabo Wielerploegen B.V. had gained the impression that Rasmussen was in Mexico on 13 June 2007.
- The committee is of the opinion, based on the information made available to it, that the Chairman was right in concluding that Rasmussen had lied about his whereabouts.

Stay in Mexico based on the facts after the Tour:

- Rasmussen confirmed to the committee in June 2007 that he had not been in Mexico, but had trained in Italy. He also scouted stages in late June in the Alps and in the Pyrenees.
- Rasmussen did not inform the UCI of his stay in the Alps from 21 June to 24 June 2007.
- Rasmussen says that the other members of the Board of Directors of Rabo Wielerploegen B.V. were aware of the fact that he was not in Mexico and that he had informed the UCI that he had been in Mexico. These members of the Board of Directors provide conflicting statements regarding this matter.

- The committee has not been able to establish whether the other members of the Board of Directors were indeed aware of this. The committee was faced with conflicting statements regarding this point.
- Rasmussen purposely provided incorrect whereabouts on repeated occasions and was virtually impossible to locate for twenty days during the period from 4 June through 29 June 2007 and could consequently not be tested. This at the very least creates the impression that he purposely evaded doping tests.
  - Rasmussen says that he did not provide correct information on his whereabouts for the period 4 June through 29 June 2007 due to private reasons.
  - The committee does not find that these reasons constitute a sound means for achieving the intended aim and does not believe that the reasons are credible.

#### Conduct of the UCI: up to the period 4 June through 29 June 2007

- The UCI mentions multiple incidents, either directly or in passing, in the letter dated 29 June 2007.
- The incident on 6 March 2006 should not have been mentioned in the letter.
- The UCI combines the last two changes to his whereabouts during the period from 4 June through 29 June 2007 into one violation, while there was actually every reason to cite each incident individually as a violation warranting a warning or recorded warning.
- The UCI does not take the change to his whereabouts from 27 June through 29 June 2007 that was submitted too late into account.
- The incorrect provision of information (late submission, late arrival, and not providing information) in combination with missing a test on 6 April 2007, i.e. the total overview of the period, should have given rise to suspicions at the UCI.
- The committee has reached the conclusion that there were actually a total of four incidents during the period from 4 June through 29 June 2007 and each of these four incidents should have warranted a recorded warning and the related imposition of a sanction measure.
- In the opinion of the committee, the UCI calculated that there were not yet three recorded warnings on the basis of a disputable calculation method.
- The above leads to the conclusion that the enforcement system operates largely randomly, also in the specific case of Rasmussen.
- This does not, however, in any way diminish the riders' responsibility to submit correct information regarding their whereabouts and also does not diminish the responsibility of the team leadership or sponsor to independently ensure that its own standards are properly adhered to.

#### Conduct of UCI: enforcement

- Considering that Anti-Doping Denmark was the only organisation to provide information to the UCI regarding recorded warnings, it is impossible to claim that there is equal enforcement vis-à-vis the other riders.
- In the view of the committee, this does not diminish the fact that this type of reasoning afterwards does not correspond with serious enforcement of the own regulations for combating doping.
- It appears as if the UCI are saying that they are pleased with the fact that Denmark enforces the regulations, but will only take this seriously if every country does the same.
- The UCI does not apply its own sanction measures and as a result it loses its credibility.

Conduct of Board of Directors with regard to taking Rasmussen to the Tour based on the information available at that time

The committee understands that the Rasmussen case can not be viewed in isolation from the fact that the whereabouts were not an issue and that the case must be placed in the perspective of the hectic atmosphere in the run-up to the Tour de France.

- The committee established previously that there was insufficient knowledge of the regulations on whereabouts, also among the members of the Board of Directors, and concludes on the basis of the actions taken in the Rasmussen case that the theme is approached solely formally.
  - Example: Three strikes = out was approached from the viewpoint that there was no problem whatsoever if there were only two warnings.
- It is extremely important for Rabo Wielerploegen B.V. to maintain the reputation and status of a team that demonstrates unblemished conduct, particularly regarding the use of doping. In terms of the actual facts, the committee reaches the conclusion in light of the letter from the UCI dated 29 June 2007 that a total of five incidents can be attributed to Rasmussen.
- The committee concludes that the letter was not discussed earnestly enough within the Board of Directors and that the Board of Directors virtually did not conduct an assessment of the facts and content of the letter. The distinctive aspects for Rabobank's reputation were not sufficiently taken into account as a result. The Board of Directors consequently incorrectly failed to investigate the facts prior to the Tour and neglected its duty to inform the Supervisory Board regarding any of the facts. It is the opinion of the committee that this constitutes negligence both vis-à-vis the Board of Directors' own responsibility and vis-à-vis Rabobank's interests.
- The facts should have been a more urgent topic of discussion between the members of the Board of Directors themselves and between the Board of Directors and the Supervisory Board. The Board of Directors of Rabo Wielerploegen B.V. in general and the Chairman in particular did not give enough credence to a number of indications regarding Rasmussen that they received prior to the Tour and failed to fully and promptly inform the Supervisory Board.
- The committee reaches the conclusion that the Board of Directors should have understood that:
  - Research should have been conducted into the content of the whereabouts, the actual location and any deviations. The Board of Directors did not assess the warnings, as stated in the letter from the UCI on 29 June, either in terms of content or interrelationship. This is even more striking because the Board of Directors could have been aware of discrepancies on the basis of a brief discussion of the period concerned or even an extremely limited examination of the content.
  - Apart from formal discussions regarding the issue of how many incidents regarding whereabouts were actually involved, the Board of Directors should not have deliberated based on the formal perspective that only an administrative error was involved.
- The committee is of the opinion that, based on the facts prior to the Tour, Rasmussen should not have been allowed to start in the Tour.
- The sole fact that the UCI recommended that Rasmussen be allowed to start does not diminish the independent responsibility of the Board of Directors of Rabo Wielerploegen B.V.
- The Board of Directors of Rabo Wielerploegen B.V. did not give enough credence to the information and failed to fully and promptly inform the Supervisory Board. They consequently endangered the reputation of both Rabo Wielerploegen B.V. and Rabobank.
- By not acting effectively prior to the Tour, the Board of Directors of Rabo Wielerploegen B.V. was forced to lag behind the facts during the Tour.

- The committee has not seen any evidence of unethical conduct or a lack of integrity on the part of the Board of Directors of Rabo Wielerploegen B.V.

#### Board of Directors: communications

##### Internal:

- With respect to the communications between the members of the Board of Directors, the committee has established that, while there was sufficient frequency of communications, the communications took place on an overly ad hoc basis, there was a lack of structured consultations and meetings took place more often in one-to-one meetings rather than in plenary meetings with all the members of the Board of Directors present. This was certainly the case in relationship to the Rasmussen case. The Board of Directors insufficiently profiled itself as a team.
- The Board of Directors provided only fragmented information regarding the facts before the Tour. As a result of this choice, the Board of Directors was faced with only segments of incidents and facts that the Board of Directors was already aware of, but that had not been announced to the outside world.
- The ultimate decision-making regarding the expulsion of Rasmussen from the Tour was not communicated between the members of the Board of Directors in advance, while there was a possibility to do so and this possibility should have been utilised. This does not, however, detract from the authority to make the decision or the validity of the decision. The committee is convinced that the decision to expel Rasmussen from the Tour was the correct one.
- There was insufficient exchange of information and flow of communications during the Tour relating to the Rasmussen case.
- The committee has the impression that the Chairman of the Board of Directors of Rabo Wielerploegen B.V. first suspended Rasmussen and only spoke with the Chairman of the Supervisory Board afterwards, after which Rasmussen was dismissed.
- Rabo Wielerploegen B.V. announced that Rasmussen had been suspended, after which Rabobank communicated that he had been dismissed. This announcement should have been made under the direction of Rabobank.

##### External:

- The Board of Directors provided only fragmented information on the facts before the Tour. The Board of Directors was consequently faced with only small parts of incidents and facts that were already known to the Board of Directors, but that had not been announced to the outside world.
- There was insufficient exchange of information and flow of communications during the Tour regarding the Rasmussen case. This gave rise to a considerable lack of clarity among riders and the team management regarding the decision to expel Rasmussen from the Tour. This also negatively influenced the impression and image of Rabobank because riders did speak with the media.
- The press conference around the bus was poorly organised.

### Supervisory Board: communications

In the opinion of the committee, the Supervisory Board exercised, in general, sufficient care with regard to its communications regarding the Rasmussen case. The Executive Board was sufficiently involved and the communications between the Supervisory Board and the Board of Directors were generally also conducted with due care.

The committee does, however, wish to make two comments.

1. The information that the Chairman of the Board of Directors of Rabo Wielerploegen B.V. provided to the Supervisory Board and the information ensuing from the letter from the UCI on 29 June 2007 as provided during the Tour and the information that had been provided earlier regarding the 'men in black' press release and the information during the Tour regarding Rasmussen's expulsion from the Danish team should have led to a greater degree of alertness on the part of the Supervisory Board. In the opinion of the committee, the Supervisory Board's attitude was too passive and not alert enough in view of the impact these types of cases have on reputation. The facts from the first reported incident should have resulted in more pointed questioning, both before the Tour and certainly during the Tour. In terms of crisis management, the committee is convinced that it is no longer advisable to manage on the basis of main points. From the moment that a crisis situation arose (during the Tour), the Supervisory Board should have very explicitly demanded that all information be gathered and presented.
2. In view of the reasons for the dismissal of Rasmussen and with regard to the resignation of the Chairman, the Supervisory Board ultimately provided insufficient information to the other members of the Board of Directors, the team management and the riders.

## **Recommendations**

- The crucial trick is to keep small incidents small. The committee makes the recommendation that, when reputation is at risk, the Supervisory Board should always request the underlying information and do everything in its power to ensure that this information does indeed become available. It must then reach a well-considered decision on the basis of this information and communicate the decision pro-actively.
- Clear information should always be given in a proactive manner regarding the case in its totality.
- External communications must always be coordinated in a timely fashion.
- In the event of a disaster, ensure that the parties with direct responsibility and the parties that are directly involved are informed within 24 hours.
- Assess the substance of a disaster as well: what happened, where, how did it happen, who was involved, what were the circumstances?
- Always involve the potential risk of damage to the reputation of the team and sponsor in the event of a disaster .
- After a disaster, commission an objective study to be conducted into the facts, decisions and consequences.
- Relate the outcome of this study to the organisations and glean lessons from the occurrence.
- Be transparent regarding the results of the study.
- Broaden the scope of the disaster scenario by devoting more attention to forms of reputation damage other than just the theme of doping.
- Devote attention to 'follow-up care' for the rider in the disaster scenario.
- Consider providing part of the follow-up care/treatment/counselling for the riders that have been suspended or dismissed in connection with an investigation. This could be a company care team for riders that have been confronted with emotionally dramatic experiences.

## List of abbreviations

ADD	Anti-Doping Danmark
AIGCP	Association Internationale des Groupes Cyclistes Professionnels
ASO	Amaury Sport Organisation
CPA	Cyclistes Professionnels Associés
DCU	Danmark Cykle Unions
DoCoNed	Doping Controle Nederland
IOC	International Olympic Committee
KNWU	Koninklijke Nederlandsche Wielren Unie
NADO	National Anti-Doping Authority
NeCeDo	Nederlands Centrum voor Dopingvraagstukken
NOC	Nationaal Olympisch Comité
Rabobank	Rabobank Nederland
RTP	Registered Testing Pool
UCI	International Cycling Union
WADA	World Anti-Doping Agency
WADC	World Anti-Doping Code
WAI	Whereabouts Information