

The investigation of doping culture in Dutch cycling

On 17 June, a Dutch Anti-Doping Approach Research and Advisory Commission presented its recommendations, after investigating whether a 'doping culture' existed in Dutch cycling. The Commission had been created in December 2012 by the Royal Dutch Cycling Federation (KNWU) and the Dutch Olympic Committee* Dutch Sports Federation (NOC*NSF) in response to the United States Anti-Doping Agency's (USADA) report on the Armstrong case and the withdrawal of Rabobank from team sponsorship in men's professional cycling in Autumn 2012. Michiel I. van Dijk, a Partner with CMS Law Tax, examines the report's findings.

Background

In recent years, professional cycling has been confronted with a large number of doping cases and admissions from former doping users. The admissions have related primarily to doping in the years prior to 2008. With effect from 1 January 2008, the anti-doping regulations became stricter, the biological¹ passport was introduced, checks on 'whereabouts' became stricter and the 'No needle policy' was introduced. The admissions have resulted in widespread commotion and the public condemnation of the cyclists and others concerned. In this context, the admissions that doping was prevalent in the Deutsche Telekom/T-Mobile team constituted the deathblow for German professional teams and led to a structural boycott by the German media. In the Netherlands, the USADA report on doping in the American US Postal team resulted in Rabobank's withdrawal from sponsorship. The NOS Dutch public broadcasting organisation also decided to be more restrained in its coverage of cycling from 2013 onwards. In response to these developments, the KNWU and the NOC*NSF appointed the Commission.

Doping covenant teams/KNWU

In parallel with the activities of the Commission, the three Dutch professional teams drafted a covenant² in collaboration with the KNWU and the Dutch Doping Authority. The covenant included a questionnaire for the cyclists and others working for the professional teams and the KNWU, and gave them the opportunity to 'confess' their experiences with doping in the past in exchange for reduced penalties. The legal basis for this was the 'substantial assistance' provision (Article 10.5.3 of the

WADA Code³) which allows for a reduction of 75% in the period of ineligibility if the person in question cooperates in full with a doping investigation. This doping covenant will not be discussed further here.

Commission's remit and approach

The Commission's remit comprised two areas. The Commission was asked:

- to investigate the facts and findings relating to the 'doping culture' and the anti-doping approach in the world of Dutch cycling in the past and in the present⁴; and
- to state concrete recommendations or proposals for improvements to the present anti-doping approach in the context of the policies of the National Olympic Committee* Dutch Sports Confederation and the national government, and worldwide developments in cycling.

The Commission interviewed - in full confidentiality - a large number of cyclists, former cyclists and other people concerned, including team directors, team managers, medical staff, journalists and sponsors. Investigations were also organised, during the course of which the Commission obtained information about doping, the supposed doping culture and the fight against doping. The investigations took more than six months; the final report was presented, as stated above, on 17 June 2013.

Doping in a historical and international perspective

In the report, the Commission provides an extensive description of the historical development of international cycling, doping and the fight against doping. Against this backdrop, it looks at the acceptance of performance-

enhancing substances (during the period 1869-1959), the emergence of the anti-doping policy (1960-1989) - specifically focusing on the commercialisation of cycling - and the emergence and impact of EPO⁵ in the international peloton (1990-2007). The Commission's report then takes a close look at the decline in the acceptance of doping and the intensification of the fight against doping (from 2008 onwards).

During its hearings and investigations, the Commission encountered the '*omerta*': the code of silence surrounding doping. Given the fact that the interviews with the cyclists and others were conducted in confidence, the Commission was able to establish a picture of the doping culture in Dutch cycling, despite the *omerta*. The Commission also found that, for a long time, the pattern of doping in the Netherlands was different from other cycling nations, such as Italy and Spain. The Commission found that doping was more accepted as a 'means' of winning in, for example, southern and eastern European countries. In this respect, it is typical that the 'cultural difference' between the Netherlands and southern European countries meant that cyclists who were caught could expect to be treated differently in southern European countries than in the Netherlands. The Commission believes that, in other countries, doping was generally accepted as an integral part of cycling. At the same time, it found that Dutch cycling teams ultimately resorted to doping in general (and EPO in particular) because they were constantly losing ground and were no longer playing any significant role in major races or tours. The Commission concluded that the vast majority of Dutch professional cyclists were involved in doping in the late

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1990s and in the early years of this century.

Efficacy of anti-doping policy

The inevitable question - now it has emerged that doping was widespread internationally and in the Netherlands and that there was a doping culture in the peloton that rationalised, institutionalised and encouraged doping - is to what extent anti-doping policies (domestic and global) were (and are) effective enough. Doping is a global problem and so the Commission believes that an international approach transcending boundaries between sports is required. The fact that this implies the involvement of several international and national bodies means that the approach is complex, fragile and cumbersome. In addition, budgets are under pressure and so the probability of offenders being caught is falling anyway. Furthermore, the Commission noted that the UCI⁶ is involved in a possible conflict of interests. On the one hand, it is responsible for promoting cycling but, on the other, this cannot always be reconciled with a strict and energetic anti-doping policy. Although the Commission has found that there would appear to have been a decline in doping since 2008 (in the Netherlands and internationally), it does question the efficacy of anti-doping policies at the national and international levels.

Conclusions

Although no 'names and numbers' are mentioned - this is one of the core objections to the report - the crystal-clear conclusion is that doping in Dutch men's professional cycling was, after EPO made its way into the peloton, a structural part of the operations of the Dutch teams.

Doping would appear to have

undergone a structural decline since 2008 - in any case in the Netherlands but also internationally - in part because of the introduction of anti-doping measures. The admissions and revealing investigations of recent years have, at least in the Netherlands, undermined trust in cycling and eroded its credibility. The public reaction in the Netherlands (following on from that in Germany) has been more extreme than in other countries, in part because of a lack of acceptance of doping. The credibility crisis in cycling resulted in a change in the Netherlands in attitudes to doping. The Dutch teams are currently emphasising this in their strict, doping-free ('zero tolerance') approach. A number of international teams have joined them, and this constitutes the start of a cultural change that merits all the support it can obtain. The committee concludes that a genuine and enduring cultural transformation is required and that it can only come about if the complete international peloton lends its support.

Recommendations

The Commission concludes with powerful recommendations designed to support and encourage the cultural change in Dutch cycling with respect to doping. The Commission proposes three avenues for future action: changes in behaviour, improvements to organisational structures⁷ and improvements in the anti-doping policy.

In conclusion

As stated above, the report does not include any 'names and numbers' because of assurances given to the interviewees about confidentiality. On the one hand, this made it possible to get around

the *omerta* so that the Commission could establish a clear picture and draw firm conclusions. On the other hand, the question is whether the report ‘tells the whole story’. Furthermore, the discussions were not conducted under oath and were entirely voluntary and so it is not clear who talked to the Commission and whether the ‘whole truth’ has been told. On the other hand, it must be noted that the Commission has made a thorough analysis and, in any case, it was able to arrive at the clear conclusion that doping was, in short, a component of the cycling culture - and that includes the Dutch cycling culture - until at least 2008. Insiders knew this already of course, but it has now been confirmed in writing and that will help to bring about the required cultural transformation. Although the media have stated that the contents of the report failed to strike fear into the hearts of Dutch cyclists⁸, it will allow for the desired cultural transformation in the longer term. The impact will be magnified only if other cycling nations are willing to cooperate in bringing about an international transformation of the cycling culture. However, there is still some way to go.

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1. Also known as the blood passport. The biological passport lists the haemocratic levels of individual cyclists over a longer period of time so that anomalies, for example in the numbers and type of red blood cells, can be monitored.
2. Blanco Pro Cycling Team (now the Belkin Pro Cycling Team), Vacansoleil-DCM and Team Argos-Shimano.
3. This article corresponds to articles 298 ff. of the UCI Cycling Regulations (Part 14 Anti-Doping), article 43 of the Dutch National Doping Regulations and article 43 of the Doping Regulations of the Sports Judicial Institute.
4. These investigations are intended to establish a picture in so far as is possible



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of the usual practices and systems, expose shortcomings and show which steps have been taken in the interim, and which steps still need to be taken.

5. Erythropoetin, or EPO, is a protein hormone that is produced in the kidneys and acts on bone marrow. It stimulates the production of red blood cells, which play an important role in oxygen transportation. The external administration of EPO raises the haematocrit, the number of red blood cells in the total volume of blood.
6. Union Cycliste Internationale.
7. The Commission has found that the structure of the present Pro Tour throws up a number of obstacles on the road to doping-free cycling. At present, the Commission's assessment is that the emphasis placed on the performance of the cyclists is too strong. The points collected by the cyclists are added up to produce a total for the team as a whole and this makes individual cyclists both vulnerable and ‘expensive’. The Commission believes that other competition and business models are conceivable that would be more favourable to a change in the culture.
8. Volkskrant, 17 June 2013, pages 5-6: ‘Vijf vragen Dopingcommissie wielrennen. Commissie Sorgdrager zal peloton niet doen beven’.