

**OFFICE OF THE CONTRACTOR-GENERAL OF JAMAICA**

**Special Report of Investigation**

**Conducted into the Allegations of Irregularity Surrounding an Alleged Proposal by SportsMax Limited to Supply Satellite Services for Simulcast Racing from South Africa and the United Kingdom to Caymanas Track Limited**

**Ministry of Finance & the Public Service**

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**EXECUTIVE SUMMARY**

The Investigation into the allegations of irregularity surrounding an alleged proposal by SportsMax Limited (SportsMax), a subscription cable station, to supply satellite services for simulcast racing from South Africa and the United Kingdom (UK) to Caymanas Track Limited (CTL), was initiated by the Office of the Contractor-General (OCG), on 2008 July 18.

On 2008 July 6, an article which was entitled “*Rousseau in powwow: SportsMax deal shrouds CTL Chairman in ‘conflict of interest’ rap*” was published in the *Sunday Herald* newspaper. The article alleged that SportsMax had submitted a proposal to CTL for the provision of satellite services for simulcast racing from South Africa and the UK.

The article further indicated that Mr. Patrick Rousseau, who was a founding director of the subscription cable station as well as the Chairman of the CTL Board, had become embroiled in what “*is being labelled by some in the industry as a blatant case of conflict of interest.*”<sup>1</sup>

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<sup>1</sup> Sunday Herald. “*Rousseau in powwow.*” 2008 July 6

Having regard to the information that was contained in the article which, if true, would potentially constitute a breach, *inter alia*, of Section 4 of the Contractor-General Act and certain provisions of the Public Bodies Management & Accountability Act and the Companies Act, the OCG initiated an enquiry into the award of contracts for the acquisition of simulcast satellite signals by CTL.

Consequently, the OCG, by way of letter, which was dated 2008 July 9, informed CTL that it would be monitoring the award of the alleged contract for the provision of satellite services for simulcast racing from South Africa and the UK.

The OCG's monitoring of the referenced contract was initiated pursuant to Section 4 (1) (a) of the Contractor-General Act. The OCG, in its letter of enquiry, which was dated 2008 July 9, stated that "*While we are not sure about the veracity of the media reports, the OCG nonetheless requires the Caymanas Track Limited to provide copies of the following regarding the contract for the provision of the referenced satellite service:*

1. *Public notice of Pre-qualification and/or invitation to tender;*
2. *Pre-qualification document;*
3. *Pre-qualification Evaluation Report;*
4. *Tender document or Request for Proposal;*
5. *Tender Evaluation Report;*
6. *Board submission and Board decision.*
7. *Particulars of any contract, including values, which may have been awarded to SportsMax for the provision of satellite services; and*
8. *If any such contract(s) were or are to be awarded, please also provide an account of the procurement methodology which was utilized and the extent to which the methods used were awarded in compliance with government Procurement Guidelines.*"<sup>2</sup>

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<sup>2</sup> OCG. Letter to CTL. 2008 July 9

By way of a letter, which was dated 2008 July 17, CTL responded to the OCG's letter of enquiry and informed, *inter alia*, that:

1. There is no documentation in relation to your queries numbering 1 to 6;
2. There is no signed contract with SportsMax with regard to the supply of satellite services for UK and South African racing;
3. Phumelela Gold International (PGI) has assigned International Media Content (IMC), parent company of SportsMax, agents to distribute those signals in Jamaica;
4. PGI has informed CTL that IMC should be paid for satellite services from 2008 June 1;
5. Although there is no contract, CTL intends to pay IMC, pending a formal contract.

The foregoing assertions by CTL and the allegations which were contained in the 2008 July 6 *Herald Article* raised a number of concerns for the OCG, particularly having regard to the provisions that are contained in Section 4 (1) of the Contractor-General Act (1983).

Pursuant to Section 4 (1) of the Contractor-General Act, Government contracts must be awarded "*impartially and on merit*" and in circumstances which "*do not involve impropriety or irregularity*".

Some of the referenced allegations and assertions alluded to (a) impropriety, (b) lack of fairness, transparency and cronyism in CTL's award of contracts, (c) a breach of the procurement guidelines and mismanagement, and (d) a breach of applicable Government administrative and accounting procedures.

The OCG's Special Investigation was initiated pursuant to the discretionary powers which are reserved to the Contractor-General under Sections 15 (1) and 16 of the Contractor-General Act.

The OCG's Investigation sought to determine, *inter alia*, the following:

- (a) whether the satellite services which were to be supplied by IMC were procured in compliance with the Government's Procurement Procedures and Guidelines;
- (b) whether they were procured impartially and on merit and in circumstances which did not involve irregularity or impropriety;
- (c) whether all requisite approvals to proceed with the procurement were obtained from CTL's Procurement Committee, CTL's Board, CTL's Accounting Officer, the National Contracts Commission (NCC) and/or the Cabinet; and
- (d) by whom and in what circumstances was authorization granted for CTL to proceed with payments to IMC in the absence of a formal contract.

It is also instructive to note that a major local horseracing stakeholder body, the Jamaica Racehorse Trainers' Association (JRTA), by way of letter, which was dated 2008 July 10 and directed to the Contractor-General, expressed its concern regarding the implications of the 2008 July 6, *Herald Article* and formally requested that the OCG conduct an Investigation into the matter.

The referenced letter stated, *inter alia*, that "...there is the allegation that there could be some degree of conflict of interest, which, according to the article, Mr. Rousseau is at pains to deny, stating that he has removed himself from the negotiations....We the JRTA are asking that your office investigate this situation as clarification of this issue would go a long way in removing any suggestion of "collusion, cronyism" and perhaps any "conflict of interest" from the CTL Board."<sup>3</sup>

The preliminary review of (a) the allegations which were contained in the 2008 July 6 article and (b) the assertions by CTL which were contained in its letter, that was dated 2008 July 17, were informed, *inter alia*, by the Contractor-General Act, the Government Procurement Procedures Handbook (GPPH), the Financial Administration and Audit Act,

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<sup>3</sup> JRTA letter to the OCG. 2008 July 10

the Public Bodies Management and Accountability Act , the Companies Act and the Corruption Prevention Act.

In general, these references guided the context within which the Investigation was conducted, the methodology which was utilized and the Findings and Conclusions which have been reached herein.

It is instructive to note that Section 18 (3) of the Contractor General Act stipulates that “For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents”. (OCG Emphasis)

Further, Section 17 (1) of the Contractor-General Act empowers a Contractor-General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit”. (OCG Emphasis)

The primary method of data collection and evidence gathering which was utilized throughout the Investigation was the issue, by the OCG, of written Requisitions/Questionnaires pursuant to the provisions of the Contractor-General Act, the Voluntary Declarations Act and the Perjury Act.

**All Respondents, in turn, were required, under the pain of criminal prosecution, under the Contractor General Act and the Perjury Act, to provide sworn written answers, statements and declarations to all of the OCG’s Requisitions and to formally declare, before a Justice of the Peace, that the said answers, statements and declarations were “complete, accurate and truthful” . (See Specimen of OCG Form of Requisition in Appendix).**

The Requisitions/Questions which were utilised by the OCG included specific questions that were designed to elucidate critical information from Respondents on the matter which was being investigated.

However, in an effort to not limit and/or exclude the disclosure of information which was germane to its Investigation but which might not have been specifically requisitioned by the OCG, the OCG asked **all** Respondents the following question:

*“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”* (**See Specimen of OCG Form of Requisition in Appendix**).

Further, in addition to the sworn written answers which the Respondents were required to provide, the OCG also requested that in respect of the assertions and/or information which were to be provided, Respondents were required to submit documentary evidence, wherever possible, to substantiate the statements and/or sworn declarations that were made. (**See Specimen of OCG Form of Requisition in Appendix**).

Requisitions were issued to key representatives of the CTL, inclusive of the Members of its Board of Directors as well as its most senior executive management officers. The OCG also directed a formal Requisition to Mr. Oliver McIntosh, the senior representative of SportsMax and International Media Content (IMC), the companies which were the subject of the referenced allegations.

The OCG also went to great lengths to ensure that Respondents were adequately and clearly warned and cautioned that should they mislead, resist, obstruct and/or hinder a Contractor-General in the execution of his functions or fail to provide a complete, accurate and/or truthful response to any of the Requisitions or questions which were set out in the OCG’s Requisitions, they would become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor-General Act. (**See Specimen of OCG**

**Form of Requisition in Appendix).**

Additionally, the OCG's Requisitions/Questionnaires clearly outlined to the Respondents the provisions of Section 18 (5) of the Contractor General Act.

Section 18 (5) provides that "*No person shall, for the purpose of an Investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.*" (**See Specimen of OCG Form of Requisition in Appendix).**)

Responses to the said Requisitions/Questionnaires were returned by all Respondents, inclusive of the Chairman of CTL, SportsMax and IMC, the Honourable Mr. Patrick Rousseau, OJ.

However, the OCG wishes to record that Mr. Peter Lawson, the Deputy Chairman of CTL, failed to comply with the lawful Requisitions of the OCG within the stipulated original and extended deadlines. Mr. Lawson's failure to comply with the OCG's lawful Requisitions occurred despite the OCG having extended, on more than one occasion, the deadline for the submission of his responses to the OCG.

Mr. Lawson's failure to comply with the OCG's Requisition was formally referred by the Contractor-General to the Director of Public Prosecutions (DPP) under cover of letter which was dated 2008 October 3. The Referral, which was made pursuant to Section 29 of the Contractor-General Act, currently resides with the DPP.

Subsequent to the OCG's referral of the matter on 2008 October 3 to the DPP, Mr. Lawson, by way of his Attorneys-at-law, Hart, Muirhead, Fatta (HMF), submitted his response to the OCG's Requisition on 2008 October 10. Pursuant to a OCG letter which was dated 2008 September 30 and which was written in response to HMF's letter of the same date, Mr. Lawson's deadline had been, in the last instance, extended to Wednesday, 2008 October 1.



In addition, the OCG, after dispatching its Requisitions to several of the Respondents, met upon some resistance to its line of questioning from three (3) Respondents and/or their legal representatives. The subject individuals sought in one way or another to direct and/or to dictate, *inter alia*, (a) the methods which should be utilised by the OCG for evidence gathering and/or (b) the scope of the OCG's Investigation.

Two of the subject individuals were Mr. Oliver McIntosh, the President and Chief Executive Officer (CEO) of SportsMax and Mr. Gordon Robinson, Esq., the Attorney-At-Law of record in the instant matter for CTL's Management and, in particular, for CTL Executives, Mr. Donald Tankoy, the former Executive-Manager of Off-Track Betting and Mr. Walford Brown, the then CEO.

Both Mr. Oliver McIntosh and Mr. Robinson made respective requests for a meeting to be held with the OCG to clarify issues which were deemed by them to be pertinent to the matter which was being investigated, following their respective receipts of the OCG's Requisitions which was dated 2008 July 30.

Mr. Robinson, by way of letter, which was dated 2008 August 7, sought to explain the details of CTL's acquisition of the broadcast signals for horse racing from U.K. and South African tracks.

Mr. Robinson stated that "*...the contract to which your letter refers is not one which falls within the scope of the jurisdiction of the Contractor General and the questions asked by your office are, in the overwhelming majority, irrelevant to that contract.*"<sup>4</sup>

Mr. Robinson further stated that "*Finally, also in the name of transparency, my client would appreciate receipt of the details of the 'allegations' which have been made to you and the source(s) of these allegations so that it may respond to each allegation specifically.*"<sup>5</sup>

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<sup>4</sup> Gordon Robinson. Letter to the OCG. 2008 August 7

<sup>5</sup> Gordon Robinson. Letter to the OCG. 2008 August 7

In response to Mr. Robinson's letter, the OCG, by way of letter, which was dated 2008 August 7, explained that pursuant to Section 2 of the Contractor-General Act, the Contractor General has jurisdiction over all Government contracts. Section 2 defines a 'Government contract' as including "... any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services." (OCG Emphasis)

The OCG's letter also informed Mr. Robinson that, by way of a letter, which was dated 2008 July 18, and which was addressed to Mr. Walford Brown of CTL, it had explained in detail the primary reasons for, and the subsequent decision of, the OCG to conduct its formal Investigation into the subject matter.

The OCG's letter, which was dated 2008 July 18, had stated that "*The decision to commence the subject Investigation follows, inter alia, our receipt of your letter, dated 2008 July 17, which was written in response to the OCG's letter to you of 2008 July 9. In your letter, you have stated that, "currently there is no signed contract with SportsMax with regards to the supply of satellite services for South Africa and the United Kingdom horseracing". However, you have also stated that an entity which is named Phumelela Gold International has assigned a St. Lucian based company, International Media Content Limited (IMC), "as agents to distribute those satellite signals in Jamaica".*"<sup>6</sup>

The OCG's letter further stated that "*The Office of the Registrar of Companies lists IMC as a 50% shareholder of SportsMax Limited as at March 4, 2008....Further, we have taken notice of the fact that the Hon. Patrick Rousseau, the Chairman of CTL, is listed as a Director of SportsMax Limited in the records of the Office of the Registrar of Companies of Jamaica....However, we have also noted that despite not having a contract in place, you have advised that CTL has signalled its intent to commence payments to IMC....No documentation or further particulars have been provided by you regarding the foregoing arrangements, inclusive of the manner in which the services of Phumelela Gold*

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<sup>6</sup> OCG letter to CTL. 2008 July 18

*International and/or IMC were procured by CTL and the extent to which these arrangements were (or are being) settled in compliance with the provisions of the Contractor General Act and/or the Government Procurement Procedures and Guidelines.”<sup>7</sup>*

In addition, the OCG’s letter articulated that *“The foregoing would suggest, inter alia, that the commercial arrangements which are currently in place between CTL and Phumelela Gold International and/or IMC (as well as the arrangements that are currently being contemplated) are such that they may have been settled in circumstances which are irregular, improper or lacking in transparency, merit and fairness and/or lacking in accord with the requirements of the Contractor General Act and/or the Government Procurement Procedures and Guidelines.”<sup>8</sup>*

In respect of Mr. Oliver McIntosh, following upon his receipt of the OCG’s Requisition, which was dated 2008 July 30, he expressed a desire to meet with the OCG to clarify issues in regard to the matter which was being investigated.

Mr. Oliver McIntosh, by way of a letter, which was dated 2008 August 12, stated that *“We believe however that the Notice emanates from a misunderstanding in relation to certain matters and that it may be helpful ahead of SportsMax responding to the Notice (or any further or amended Notice as your office may issue) were [sic] a meeting held between representative of SportsMax and your office to clarify certain issues.”<sup>9</sup>*

By way of letter, which was dated 2008 August 12, the OCG responded to Mr. Oliver McIntosh as follows:

*(1) “The Requisition which has been directed to you is a Statutory Requisition which has been made in pursuance of a formal Investigation.*

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<sup>7</sup> OCG letter to CTL. 2008 July 18

<sup>8</sup> OCG letter to CTL. 2008 July 18

<sup>9</sup> Oliver McIntosh. Letter to the OCG. 2008 August 12

- (2) *The subject Investigation is being conducted by the Office of the Contractor General (OCG) under the powers that are reserved to a Contractor-General by the Contractor-General Act.*
- (3) *The subject Investigation is not being conducted by SportsMax Limited.*
- (4) *The Requisition which has been directed to you, and all of the questions that are embodied therein, must be answered, documented and submitted by you in the manner and in the time which has been prescribed.*
- (5) **Should you believe that the subject questions have not provided you with an opportunity to provide certain information which you have deemed appropriate to be placed upon the record, you should note that the last question of the Requisition, viz. Question #23, provides you with such an opportunity.** (OCG Emphasis).
- (6) *Should you fail to comply with the referenced Requisition, without lawful justification or excuse, you will become liable to face criminal prosecution proceedings under the provisions of Section 29 of the Contractor General Act.”*

It is also instructive to note that Myers, Fletcher and Gordon (MFG), the Attorneys-At-Law of record for the Hon. Patrick Rousseau, also questioned, *inter alia*, the propriety and the scope of the OCG’s Investigation.

By way of a letter, which was dated 2008 September 17, MFG wrote to the OCG following its receipt of the OCG’s second written Requisition to Mr. Rousseau, which was dated 2008 September 8.

In its letter, MFG stated that “*We are concerned that despite our client having provided fulsome and unambiguous responses to your previous requests under cover of letter dated August 12, 2008 that your subsequent letter, filled with innuendo and accusations, seeks to continue to impute impropriety on the part of the Hon. Pat Rousseau in his dealings with the said entities without stating the basis for such assertions.*”<sup>10</sup>

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<sup>10</sup> MFG letter to the OCG. 2008 September 17

The MFG letter further stated that *“In light of the content and tone of that letter we hereby indicate that before responding to your further request for information, our client has a right to know the nature of any complaint being made against him regarding his involvement in the above mentioned entities, the irregularities that are being complained of, and the source of such complaint. Specifically we wish to be informed of any contract between the parties that is the subject of you [sic] enquiries. This is consistent with the principles of Natural Justice.”*<sup>11</sup>

In addition, MFG, in its letter, stated that *“As it regards the provision of section 29 of the Contractor General Act, we would wish to indicate that our client does not seek to obstruct, hinder or resist the Contractor General in the execution of his functions, but has a right to know the nature of any allegations being levied against him and to know his accuser...”*<sup>12</sup>

By way of letter, which was dated 2008 September 18, the OCG responded to MFG in the following verbatim terms:

***“Re: Notice of Formal Requisition for Information and Documentation to be Supplied under the Contractor General Act – Conduct of Investigation – Concerning Allegations of irregularity in the proposal of SportsMax to provide satellite service for simulcast racing from South Africa and the United Kingdom for Caymanas Track Limited.*”**

*We are in receipt of your letter of the 17<sup>th</sup> instant which was received in our Offices, today. We have noted that you act on behalf of the Hon. Mr. Patrick Rousseau, OJ.*

*Your letter, quite surprisingly, has raised certain unfounded questions regarding the propriety, appropriateness and legality of the additional Requisition, dated*

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<sup>11</sup> MFG letter to the OCG. 2008 September 17

<sup>12</sup> MFG letter to the OCG. 2008 September 17

*September 8, 2008, which the Office of the Contractor General (OCG) has directed to your Client.*

*The Requisition contains six (6) questions.*

*Three (3) of the six (6) questions which have been directed to your Client for answer, viz. Questions #1, #4 and #6, are questions which are intended to have certain written representations which have been made, inter alia, to Minister Don Wehby, clarified by Mr. Rousseau.*

*Two (2) of the referenced representations were made by Mr. Rousseau himself. The other was made by the Deputy Chair of the Caymanas Track Limited (CTL), Mr. Peter Lawson. Full particulars of the referenced three (3) representations are provided in the Requisition itself.*

*The other three (3) questions, viz. Questions #2, #3 and #5, are questions which seek to elicit specific information as regards the operations and/or administration of CTL. You will no doubt recall that your Client is the Chairman of CTL.*

*The additional OCG Requisition of September 8, 2008, which has been directed to your Client, is entirely lawful and proper. You are also fully aware that it has been issued in accordance with the provisions of the Contractor General Act and pursuant to the expressed powers which are reserved to a Contractor General thereunder.*

*Your Client is compelled by law to provide fulsome answers to all of the referenced questions or face criminal prosecution.*

*As it now stands, your Client has failed, without lawful justification or excuse, to comply with the terms of a lawful Requisition of the OCG, dated September 8,*

2008. His failure to so comply constitutes a criminal offence under the provisions which are contained in Section 29 (b) of the Contractor General Act.

*Be that as it may, and without prejudice to the aforementioned, the Office of the Contractor General, having taken into account all relevant factors, hereby grants an extension to the September 17, 2008 deadline which was previously stated in our letter of September 8, 2008, to Wednesday, September 24, 2008 by 3.00 PM.*

*We would strongly urge your Client's full cooperation with the subject Requisition and Investigation of the OCG."*<sup>13</sup>

The OCG, as a creature of Statute, is bound by Statute – namely the provisions of the 1983 Contractor General Act. In the conduct of its affairs and its Investigations, and in the discharge of its statutory mandates, the OCG has always and will always scrupulously and fairly, but fearlessly and forthrightly, abide by the clear and unambiguous provisions that are stipulated in the Contractor-General Act.

### **Summary of Primary Findings**

The OCG's Investigation in the instant matter which is under consideration, regarding the affairs of CTL, has revealed *prima facie* evidence of breaches of the GPPH, the Contractor-General Act, the Financial Administration and Audit Act, the Companies Act, the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

These breaches were due primarily to (a) an apparent failure on the part of CTL to apply adequate planning and accounting controls to the development, implementation and execution of procurement for (i) its overseas simulcast satellite signals and, (ii) the distribution of its local content, and (b) a failure on the part of the Hon. Mr. Patrick

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<sup>13</sup> OCG's letter to MFG. 2008 September 18

Rousseau to disclose, to the Board and Management of CTL, in a timely fashion and/or at all, (i) his interest in IMC and (ii) the association between IMC and SportsMax.

The OCG found that a conflict of interest situation is present in the fact that Mr. Rousseau is the Chairman of IMC, SportsMax and CTL, the three entities which are the focus of the OCG's Investigation.

The OCG's Investigation revealed that IMC and CTL are parties to a Government contract which was not duly authorised by the relevant authorities, namely the NCC, the CTL Procurement Committee, the CTL Board of Directors and/or the Cabinet as the case may be.

The CTL/IMC contract for provision of simulcast signals from the UK and South Africa (SA) came into effect on 2008 June 1, when IMC purchased the referenced rights from Phumelela Gold International (PGI). PGI had instructed that, as at 2008 June 1, all payments in respect of its signals were to be directed to IMC, to which it had sold its rights.

Based upon the assertions of Mr. Oliver McIntosh, the President and Chief Executive Officer (CEO) of IMC and SportsMax, which is contained in a letter that was dated 2008 September 23 to CTL, CTL and IMC initiated a 'verbal agreement' pending the signing of a formal contract.

Further, on 2008 July 17, Mr. Walford Brown, the then CEO of CTL stated that *"Although there is no contract in place we intend to make payment to IMC pending a formal contract."*<sup>14</sup>

The OCG found that while there was no **formal** written contract in place between the CTL and IMC, on 2008 September 23 Mr. Oliver McIntosh of SportsMax, by way of letter to CTL, requested that information with regard to CTL's betting revenues be

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<sup>14</sup> CTL's letter to the OCG. 2008 July 17



submitted to IMC for the processing of invoices. CTL was obligated to remit, to IMC, four percent (4%) of the monthly wagers for the months of June, July and August 2008.

In light of the referenced IMC/CTL contract, and the appearance of a conflict of interest on the part of the Hon. Mr. Rousseau - who holds the Chairmanship of all three entities, viz. CTL, IMC and SportsMax, it is instructive to note that the OCG has seen no documentary evidence to indicate that Mr. Rousseau had disclosed his interest in IMC to the CTL Board.

Whilst the documentary evidence confirms that Mr. Rousseau had disclosed his interest in SportsMax to the CTL Board of Directors, as well as his interest in other commercial entities, the same has not been proven in respect of IMC.

In fact, it was not until 2008 July, approximately one (1) month after IMC took over responsibility for the PGI signal, that the CTL Management and Board became aware of Mr. Rousseau's interest in IMC and the fact that IMC and SportsMax were associated companies.

In support of the foregoing, the OCG notes the assertions of one of the Directors of CTL, Mr. Lee Clarke, who informed the OCG that he was unaware of the relationship of both entities until after reading the OCG's Media Release, which announced the commencement of the OCG's Investigation on 2008 July 21.

The other CTL Directors, in sworn statements, informed the OCG that, on 2008 July 31, it was disclosed to them that IMC is a 50% shareholder in SportsMax. However, none was aware of a disclosure of interest by the CTL Chairman in IMC.

Further, in respect of Mr. Rousseau's declaration of interest in IMC, the OCG has concluded that Mr. Rousseau, on 2008 September 23, provided the OCG with what appears to be false sworn statements in that he asserted that he had in point of fact made a

declaration of his interest in IMC, during a CTL Board Meeting which was held on 2008 January 3.

The documentary evidence, which includes the Minutes of CTL's 2008 January 3 Board Meeting, and the sworn written statements which were provided to the OCG by the CTL Board Members, have, however, comprehensively contradicted Mr. Rousseau's assertions and, as such, the OCG feels that there is sufficient *prima facie* evidence to suggest that Mr. Rousseau has acted in contravention of Section 29 (a) of the Contractor General Act by attempting, *inter alia*, to mislead a Contractor General and, by so doing, may have committed a criminal offence.

It is also instructive to note that by way of letter, which was dated 2008 July 18, Minister Don Wehby, the Minister with portfolio responsibility for CTL in the Ministry of Finance and Public Service (MOFPS), wrote to Mr. Rousseau enquiring about the veracity of certain allegations which were contained in a letter that was written by one Mr. Andrew Azar.

Mr. Azar's letter was published on 2008 July 19 in the *Track and Pools* magazine. (NB. Minister Wehby's letter was dated 2008 July 18, while the *Track and Pools*' publication, which contained Mr. Andrew Azar's letter, was dated Saturday, 2008 July 19).

Mr. Andrew Azar's letter had commented on an alleged granting of a contract by CTL to SportsMax and inferred that there was a conflict of interest, or cronyism, in the award and/or settlement of the said contract.

Minister Wehby, in his letter, had requested a detailed explanation of the transaction between CTL and SportsMax which had been alluded to by Mr. Andrew Azar in his letter. Further, Minister Wehby, in his letter, stated that "*Additionally, please advise if the contents of the letter are accurate and what actions were taken by the Board to ensure good Corporate Governance.*"<sup>15</sup>

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<sup>15</sup> Minister Wehby's letter to Mr. Rousseau. 2008 July 18

In an email response, which was dated 2008 July 18, to Minister Wehby's letter of enquiry of even date, the Hon. Patrick Rousseau stated that "*...the statements are libellous.*"<sup>16</sup>

In an attached email, which was dated 2008 July 18, that was sent to the Minister, the CTL Board and CTL's Management, Mr Rousseau also stated that "*PR had discussions in prior years with SportsMax about selling the rights to the signal to SportsMax and to have SportsMax distribute the signal on their behalf. A deal was struck between SportsMax and PR and SportsMax now owns the rights for Jamaica. SportsMax has sold those rights to the local bookmaker and to CTL.*"<sup>17</sup>

In contrast to the foregoing assertions of Mr. Rousseau, it is instructive to note that two (2) days prior to Mr. Rousseau's email declaration on 2008 July 16, Mr. Simon Nicholls, the Vice President of International Operations for PGI, wrote to Mr. Donald Tankoy, CTL's Executive Manager for Off-Track Betting and stated thus: "*Thanks for your letter. We did sell our rights to IMC and not SportsMax. Sorry I thought you know [sic] they were linked.*"<sup>18</sup>

The referenced email from Mr. Nicholls was written in response to Mr. Tankoy's letter of enquiry, which was dated 2008 July 14.

In his letter, Mr. Tankoy had enquired as follows: "*Thank you for your letter dated July 10, 2008. Your letter indicated that Phumelela assigned agency rights to SportsMax for the promotion of horse racing picture from South Africa and Racing UK effective June 1, 2008. We have been having preliminary discussions with SportsMax and now have in our possession a draft contract which indicates that a company known as International Media Content (IMC) is acting on behalf of SportsMax in executing this contract. We*

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<sup>16</sup> The Honourable Patrick Rousseau. Email to Minister Wehby. 2008 July 18

<sup>17</sup> The Honourable Patrick Rousseau. Email to CTL Board. 2008 July 18

<sup>18</sup> Simon Nicholls. Email to Donald Tankoy. 2008 July 16

seek clarification from you as to whether IMC has been duly authorized by you to act on behalf of SportsMax.”<sup>19</sup> (OCG Emphasis)

Based upon the foregoing, the OCG found that CTL’s Management and Board were (a) unaware that IMC was the parent company of SportsMax and, (b) that Mr. Rousseau was also the Chairman of IMC.

The OCG’s Investigation also found that Mr. Rousseau, in his disclosure of information which was contained in the emails to the Minister, the CTL Board and the CTL Management, failed to disclose that (a) IMC, and not SportsMax, had purchased the PGI rights, (b) he was the Chairman of IMC, (c) IMC was the parent company for SportsMax, and (d) whether SportsMax was acting in the capacity of an agent for IMC in Jamaica.

It is also instructive to note that Mr. Rousseau, in his email which was dated 2008 July 18, stated that SportsMax, and not IMC, held the rights to the PGI tracks. However, in a letter to Minister Wehby, which was dated 2008 July 29, CTL’s Deputy Chairman, Mr. Lawson, writing on behalf of the CTL Board, stated that IMC was the PGI agent.

When questioned by the OCG regarding the discrepancy in the information that was supplied to the Minister by the CTL Board in its letter which was dated 2008 July 29, and the information which was contained in Mr. Rousseau’s email which was dated 2008 July 18, Mr. Lawson, in a sworn statement to the OCG, advised that *“As a Director of CTL, I rely primarily on the management of CTL to provide the details of contracts. While I cannot definitively explain the discrepancy, it was probably inadvertent and due to the fact that two separate statements were made by two different persons.”*<sup>20</sup>

Further, in response to the Minister’s enquiry, by way of letter, which was dated 2008 July 29, the Deputy Chairman of CTL, Mr. Peter Lawson, writing on behalf of the CTL Board, stated that *“...Mr. Rousseau had declared ‘interest’ in this subject and instructed the CTL Board of Directors and Management that he was not to be sent or copied on any*

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<sup>19</sup> Donald Tankoy. Letter to PGI. 2008 July 14

<sup>20</sup> Peter Lawson. Response to the OCG Requisition. 2008 October 8

*information, documentation or material relating to this subject. Additionally, Mr. Rousseau has not attended any meetings or been party to discussions or negotiations on this subject.”*<sup>21</sup>

To the contrary, however, all CTL Directors, in sworn statements, informed the OCG that they were unaware of a disclosure of interest by the CTL Chairman in IMC.

Notwithstanding the inconsistencies in the representations that were made by the CTL Board Members to the Minister and to the OCG, what is clear is that as at 2008 July 31, all CTL Board Members were in fact aware of the questions regarding a conflict of interest on the part of the Chairman with respect to the IMC/CTL contract and/or commercial arrangement.

However, having gained knowledge of Mr. Rousseau’s interest in IMC subsequent to presenting the Minister with inaccurate information about Mr. Rousseau’s declaration of interest on 2008 July 29, the OCG has concluded that the CTL Board of Directors failed to correct their prior assertions to the Minister by notifying him of what they had discovered. The Board also failed to advise the Minister of what remedial or corrective actions, if any, they had taken or would be taking in the circumstances to directly address the matter. In so doing, it is the Finding of the OCG that the CTL Board Members failed to fully discharge their fiduciary duties to CTL and, arguably, those of their duties which are mandated, *inter alia*, by Section 6 of the Public Bodies Management and Accountability Act and, in particular, sub-section (d) thereof.

**Section 6 (d) of the Public Bodies Management and Accountability Act** provides that:

*Every board shall-...*

*(d) advise the responsible Minister on matters of general policy relating to the management of the body.*

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<sup>21</sup> Pater Lawson. Letter to Minister Don Wehby. 2008 July 29

The OCG's Finding, as above, is made within the context of the fact that Minister Wehby had specifically requested that he be advised by the CTL Board as to "*what actions were taken by the Board to ensure good Corporate Governance*" at CTL in light of the very allegations of a conflict of interest which had been made against Mr. Rousseau.

It should be noted that in the Board's letter to the Minister, it had advised him that "*The CTL Board of Directors instructed Management that no payments are to be made on the signal being received from Phumelela controlled racetracks until an agreement has been properly executed*".

However, this action by the CTL Board appears to have been made to address the fact that CTL had previously expressed its intent to "... *make payment to IMC pending the formal contract*". Notably, the Board's actions did not in any way speak to Mr. Rousseau's interest in IMC.

The OCG's Finding also rests on the fact that in its Requisition, dated 2008 September 8, to all of the Directors of the CTL Board, it had asked the following question:

*"Was the information about a possible relationship between IMC and SportsMax declared to the Minister in subsequent correspondence? If yes, please provide a copy of the relevant documents and state the circumstances relating to the same and the date(s) on which this was done"*.

Three (3) of the CTL Directors stated that they did not know whether subsequent correspondence was sent to the Minister, while two directors, Mr. Peter Lawson and Mr. Ian Parsard, stated as follows:

*"I am not certain, but I do not think that there has been further formal communication with the Minister since the letter dated July 29, 2008."*<sup>22</sup>

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<sup>22</sup> Response by CTL Board of Directors.

Director Lee Clarke, in his response to the OCG's Requisition, which was dated 2008 September 16, stated that *"I am not aware if any declaration of a possible relationship between IMC and SportsMax has been made to the Minister in subsequent correspondence."*<sup>23</sup>

Further, with regard to the PGI rights and IMC's acquisition of the said rights, it is instructive to note that both Mr. Rousseau and Mr. Oliver McIntosh have attested to the fact that IMC had been in negotiations with PGI for the acquisition of its rights prior to Mr. Rousseau's ascension to the Chairmanship at CTL on 2007 October 29. These negotiations, according to Mr. Oliver McIntosh, took place over the *"last four years..."*

Mr. Rousseau, in his sworn declaration to the OCG, which was dated 2008 August 12, stated that *"IMC/SportsMax has had on-going discussions with PGI regarding betting and broadcast rights for its racing for over three years and I was involved in those discussions. When I became Chairman of CTL, I withdrew from those negotiations and they were continued by Mr. Oliver McIntosh and his team and I took no further part..."*<sup>24</sup>

The OCG has, however, found that within the time in which IMC was allegedly negotiating with PGI to acquire the rights, PGI had presented CTL with an opportunity, on 2005 August 3, to control and distribute the related signal in Jamaica.

In addition, based upon a series of email correspondence between Mr. Rousseau and Mr. Simon Nicholls of PGI, which was dated 2008 January 7, and which was copied to SportsMax's President and CEO, Mr. Oliver McIntosh, the OCG questions the veracity of the assertions of both Mr. Oliver McIntosh and Mr. Rousseau regarding the acquisition of the PGI signal rights by IMC.

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<sup>23</sup> Director Lee Clarke. Response to the OCG's Requisition. 2008 September 16

<sup>24</sup> Patrick Rousseau. Response to the OCG's Requisition. 2008 August 12

Prior to Mr. Rousseau's declaration of interest in SportsMax, to the CTL Board on 2008 January 14, Mr. Rousseau had engaged, on 2008 January 7, in extensive email negotiations with Mr. Nicholls of PGI, for and on behalf of not only CTL, but also SportsMax – all while he was the Chairman of CTL, SportsMax and IMC.

It must also be noted that the referenced emails were sent by Mr. Rousseau to the CTL Board of directors on the same date, 2008 January 7.

It is also instructive to note that Mr. Rousseau's participation in the referenced deliberations directly conflicts with the sworn assertions which he has made to the OCG that "*When I became Chairman of CTL (on 2007 October 29), I withdrew from those negotiations...*"<sup>25</sup>

In respect of the referenced 2008 January 7 email deliberations, the OCG has noted, *inter alia*, the following:

- (a) PGI was of the opinion that SportsMax, CTL and the United Bookmakers Association (UBA), were in a three way deal to acquire the PGI signal for Jamaica;
- (b) In the referenced negotiations, Mr. Rousseau was apparently representing both CTL and SportsMax, in consequence of which he had a conflicting interest;
- (c) The proposed terms of the deal which were being discussed with PGI in the emails were not deemed by Mr. Rousseau to be beneficial to SportsMax;
- (d) Mr. Oliver McIntosh apparently presented a separate proposal to PGI;

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<sup>25</sup> Patrick Rousseau. Response to the OCG's Requisition. 2008 August 12



- (e) Six months after the email discussions, IMC, the parent company of SportsMax, became the rights holder for the said PGI signal.

In the circumstances, the OCG has concluded that Mr. Rousseau acted in breach of his fiduciary and/or statutory duties of trust to CTL. Mr. Rousseau's actions, as more particularly described herein, have resulted in a direct benefit accruing to IMC, an entity in which he is the Chairman.

In light of the foregoing, the OCG has concluded that, through his position as the Chairman of the CTL Board, Mr. Rousseau has carried on negotiations with representatives of PGI and has passed information which he has acquired in that capacity to Mr. Oliver McIntosh, the CEO and President of SportsMax and IMC, with a view to a benefit accruing to SportsMax and/or IMC.

The OCG has also found that the referenced email discussions preceded IMC's acquisition of the rights to the PGI signal and the sale of the said rights to CTL. Interestingly, it was these very signals which had been offered to CTL by PGI in 2005 August and which would have given CTL, "*...an opportunity to control the distribution to Jamaica bookmakers and for Caymanas to be in charge of that and earn some income for the service*".<sup>26</sup>

The said email discussions of 2008 January 7, also preceded Mr. Rousseau's disclosure, of 2008 January 14, of his interest in SportsMax to the CTL Board.

It is difficult not to find that the said matters, inclusive of the settlement of the referenced agreement between CTL and IMC, constitute compelling *prima facie* evidence of the commission of an act of corruption on the part of Mr. Patrick Rousseau in contravention of the provisions of Section 14 (1) (b) of the Corruption Prevention Act,

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<sup>26</sup> PGI email to CTL. 2005 August 3

Section 14 (1) (b) of the Corruption Prevention Act stipulates that “A *public servant commits an act of corruption if he - in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*”. (OCG Emphasis).

### **Summary Overview of Specific Findings**

The OCG’s Investigation in this matter has made the following determinations and/or uncovered the information which is summarised below:

1. The Hon. Patrick Rousseau was appointed Chairman of CTL, effective 2007 October 29.
2. SportsMax submitted a revised proposal to CTL, on 2006 July 12, for the broadcast of local racing and expressed a desire to acquire exclusive live broadcast rights for the Caymanas races on its cable station. This proposal was presented to CTL when Mr. Rousseau, in 2006 July, invited the Executive Manager - Marketing of CTL, Mrs. Lynch, to a meeting in which she was introduced to Mr. Oliver McIntosh, the CEO of SportsMax.

The revised SportsMax proposal included, *inter alia*, the non-exclusive broadcast of sponsored races on SportsMax and the exclusive (cable only) live broadcast of all other races.

3. The 2006 July 12 revised proposal from SportsMax is also apparently the second proposal which was being submitted to CTL in respect of the live broadcast of CTL racing content. According to Mr. Oliver McIntosh, SportsMax had submitted a proposal in 2006 April. However, the OCG has seen no documentary evidence of such a proposal. Nevertheless, the OCG found that based upon the 2006 July meeting with Mr. Rousseau and Mr. Oliver McIntosh, SportsMax presented CTL with the 2006 July 12 revised proposal.

4. The then CTL Board, under the stewardship of Mr. William Chin-See, rejected the 2006 July 12 proposal from SportsMax on the grounds that CTL was not interested in granting exclusivity for the live broadcast of its local races on a cable channel. This conclusion was reached after CTL had consulted with the Off Track Betting (OTB) Operators, who stated that this would have had a direct negative impact on their bottom line.

However, in 2008 March, under a new Board which was chaired by Mr. Rousseau, the issue of the live broadcast of the CTL content was raised and the CTL Executive Manager - Marketing was instructed to invite media houses to submit proposals relating to same.

5. On 2008 March 14, letters of invitation to tender were directed to (a) CVM Communications Group, (b) Television Jamaica Ltd, (c) SportsMax Ltd., and (d) Cable News & Sports (CNS), requesting that they submit bids in regard to the live broadcast of CTL races.

A Sub-Committee of the CTL Board was established on 2008 May 1 to review the proposals which were to be submitted as a result of the 2008 March 14 letter to the four (4) targeted media houses.

Based upon a review of the notes of the meeting of the Sub-Committee, which was dated 2008 May 29, the bids which were received from (a) TVJ, (b) SportsMax and (c) CNS were considered. CVM did not submit a bid as it was more interested in a delayed broadcast.

According to Mr. Parsard, a CTL Director, the bids which were assessed “... *did not lend themselves to objective assessment.*” Based upon the assertions of Mr. Parsard and the documents which were presented to the OCG, the OCG found that the 2008 March 14 letters of invitation to tender did not have an attached comprehensive

tender document which outlined, *inter alia*, (a) the deliverables, (b) the eligibility criteria, and (c) the evaluation and award criteria.

6. Mr. Rousseau declared his interest in SportsMax on 2008 January 14 to the Board and Management of CTL in an email, while also requesting that information with regard to satellite services for CTL should not be discussed with him.

Having declared his interest, and having regard to the fact that he was involved in the initial proposal from SportsMax to CTL for the broadcast of local races, the OCG found that Mr. Rousseau complied with the requirements of Section 17 (2) (a) of the Public Bodies Management & Accountability Act in respect of SportsMax's bid to broadcast the CTL content.

7. CTL requires satellite uplink services to facilitate the broadcast of its local racing signals to the OTBs. Currently, Roberts Communication Network Inc. (RCN), a US based company, provides CTL with this service. The RCN contract was signed on 2001 August 23 and was expressed to first expire on 2002 August 31.

However, upon expiry, the contract was not put to competitive tender as a result of the inclusion in the contract of a Right of First Refusal (RFR) Clause which, from all indications, was fully utilized by RCN. Indeed, the OCG's Investigation revealed that RCN, pursuant to the RFR clause, wrote to CTL on 2006 August 30 and extended the tenure of the contract to 2008 August 31.

8. As at 2008 November 25, the OCG's Investigation revealed that the contract between RCN and CTL was still in effect. CTL pays RCN an annual fee of US\$480,000. However, it must be noted that on 2008 June 3, CTL wrote to RCN informing them of its intent to put to tender the contract for uplink services, and invited RCN to participate in the tender process when this was being undertaken. This, CTL stated, was in line with the requirements of the Government procurement guidelines.

9. SportsMax submitted a proposal to CTL on 2008 April 24 for end-to end content distribution of both CTL's local and international content from Caymanas Park to all requisite locations via SportsMax's uplink service. The OCG found that this proposal was deliberated upon by a committee, which did not include Mr. Rousseau, on 2008 May 29.
10. Mr. Walford Brown, the former CEO of CTL, has asserted that he and Mr. Donald Tankoy, CTL's former Executive Manager for Off-Track Betting, approved CTL's contracts for the acquisition of simulcast signals. A review of several of the CTL contracts for overseas simulcast signals, however, revealed that these contracts were primarily signed by Mr. Donald Tankoy.
11. Pursuant to Section 2 (1) of the Financial Administration and Audit Act (FAA), and having regard to certain correspondence, dated 2008 October 31, which was received by the OCG from the Financial Secretary, the Accountable Officer for CTL was Mr. Walford Brown, its Chief Executive Officer.

Accounting and Accountable Officers of Public Bodies, in accordance, *inter alia*, with Sections 16 (2), 19 and 24F of the FAA Act, are vested with the authority and responsibility, *inter alia*, to make commitments and payments and are authorised and are held responsible to certify and approve the payment of vouchers and to enter into contracts and agreements on behalf of the Public Body or Bodies for which they are accountable.

Having regard to the foregoing, the OCG found that Mr. Tankoy was neither the Accounting and/or Accountable Officer for CTL. As such, Mr. Tankoy was not authorised to sign and/or approve contracts. Neither did he have the requisite authority to make contractual commitments on behalf of CTL.

12. The OCG's review of CTL's simulcast contracts also revealed that CTL, in selecting the tracks for simulcast racing, is obligated to acquire satellite signals either directly from the tracks, or from the assigned agents or rights holders. In this regard, the OCG found that the method of contracting is that of sole source or direct contracting.
13. The overseas race tracks which are selected for simulcast racing by CTL are chosen based upon their perceived profitability and CTL's ability to pay.
14. A review of the payments which have been made by CTL to simulcast providers for the period 2006 January to 2008 July, revealed that CTL made a range of payments to several contractors between J\$153,308.08 to J\$32,589,961.29. For the referenced period, CTL paid a total of US\$2,431,888.07 or J\$166,305,306.95, all in violation of applicable Government procurement procedures and regulations.
15. A review of the NCC's database, for contracts which have been endorsed for CTL by the NCC, for the period 2006 January to 2008 July, revealed that there were no approvals granted for any contract for the acquisition by CTL of simulcast signals.
16. The OCG has seen no documentary evidence to indicate that CTL has ever approached the NCC to request permission to utilise the Sole Source and/or Direct Contracting Methodology to acquire simulcast satellite signals, in accordance with Section 2.1.3.4 of the GPPH and/or the Ministry of Finance Circular No. 17, which is dated 2002 May 15 and which is entitled Public Sector Procurement Policy & Procedural Guidelines for Sole Sourcing. These provisions require that prior approval should be sought from the NCC for the use of the Sole Source Methodology for all Government contracts that are \$1 Million and above in value.
17. The CTL Board, by way of letter, which was dated 2008 July 29, informed Minister Don Wehby that it was of the opinion that the acquisition of signal rights on overseas racing does not and should not fall under the Government's procurement guidelines.

18. The OCG's Investigation revealed that there appeared to be no formal approval process in place at CTL for contracts and/or agreements which are entered into by CTL for the acquisition of simulcast racing signals. Further, contracts of this nature were primarily signed and negotiated by a single individual, Mr. Donald Tankoy, who had no authority under law to do so.
19. Contracts for the acquisition of simulcast signals by CTL were not subject to the review and approval of CTL's Procurement Committee. In this regard, the OCG found that CTL was in breach of Section 1.5.2.3 of the GPPH. In fact, it was not until 2008 June 26, that the Board of Directors instructed CTL's Management to channel all new simulcast contracts through it which, in itself, would not have cured the breach of Section 1.5.2.3.
20. The OCG has seen no documentary evidence to indicate that the CTL Accounting or Accountable Officer either (a) gave prior written approval for the use of the sole source methodology or (b) approved the contracts for the acquisition of simulcast signals.
21. PGI approached CTL in 2004 for the provision of simulcast satellite signals from the UK and South Africa. However, as at 2005 July 1, CTL received simulcast signals for the UK and South Africa from the SIS/PGE on the SIS Racing International unified channel.
22. By way of letter, which was dated 2008 May 1, SIS informed CTL that the joint SIS/PGI service was terminated effective 2008 March 31. The referenced letter also informed CTL that Tote Investments Ltd. was the agent for SIS in the Caribbean. Based upon the foregoing, the OCG found that CTL has a commercial arrangement in place with Tote Investment Ltd. for the acquisition of the SIS signal, in respect of which, as at 2008 July, CTL had paid a total of J\$1,712,891.10.

23. The OCG has seen no documentary evidence that CTL sought the approval of the Accounting Officer and/or the NCC for the use of the sole source methodology for the acquisition of signals from Tote Investment Ltd. In this regard, the OCG found that there was a breach of Section 2.1.3.4 of the GPPH.
24. IMC purchased the rights to the PGI signal in Jamaica and, as at 2008 June 1, CTL was obligated to direct payments to IMC in order to maintain access to the PGI signal.
25. Mr. Donald Tankoy informed the OCG that, on 2008 May 9, Mr. Simon Nicholls of PGI met with CTL representatives and informed them that SportsMax had been appointed agents to represent PGI in the Caribbean and that, as at 2008 June 1, payments with respect to the PGI signal were to be directed to SportsMax.
26. Mr. Tankoy further advised that, on 2008 June 4, Mr. Oliver McIntosh and other SportsMax representatives met with CTL's management and informed CTL that SportsMax and PGI had finalized the agreement. At this referenced meeting, it was asserted that Mr. Oliver McIntosh offered CTL signals for English races at a rate of 4% of the gross sales.
27. IMC presented CTL with a draft contract for the acquisition of the PGI signal. However, according to Mr. Tankoy, at that date, CTL was unaware of a company named IMC. On 2008 July 14, CTL wrote to PGI for clarification and questioned PGI on whether IMC was authorised by them to act on behalf of SportsMax.
28. Mr. Simon Nicholls of PGI responded, on 2008 July 16, to CTL's query by informing it that PGI had sold the rights to its signal to IMC and not to SportsMax. He also indicated that he thought CTL had known about the connection between SportsMax and IMC.



29. CTL has refused to sign the IMC/CTL contract as it has deemed the conditions of the contract to be unsatisfactory given that the IMC draft contract reportedly prohibits the re-broadcast of the signal.
30. The OCG's Investigation has revealed that CTL has a contract in place with IMC in respect of which, according to Mr. Oliver McIntosh, CTL and IMC initiated a verbal agreement for CTL to maintain access to the PGI signal pending the signing of a formal contract. However, no approval has been received by CTL from the NCC for the PGI/CTL contract and/or for the IMC/CTL contract.
31. Based upon this 'verbal agreement', IMC wrote to CTL on 2008 September 23 requesting that the betting revenues for the months of June, July and August 2008 are reported so as to facilitate the preparation of an invoice.
32. The 2008 September 23 letter from IMC to SportsMax is the only documentation which has definitively suggested that SportsMax is an agent for IMC with regard to the PGI signal. However, a review of the statements which have been issued by SportsMax, regarding the allegations of a SportsMax proposal to CTL, revealed that (a) there was a clear indication as to the entity which bought the rights, i.e. IMC; (b) SportsMax's proposal to CTL was unrelated to the PGI signal, and (c) there was no mention that SportsMax was an agent for IMC in respect of the PGI signals.
33. Mr. Rousseau is the Chairman of, CTL, SportsMax and IMC. However, he has failed to comply, *inter alia*, with the requirements of Section 17 (2) (a) of the Public Bodies Management & Accountability Act and Section 193 (1) (b) of the Companies Act by failing, *inter alia*, to disclose his interest in IMC to the Board and management of CTL.
34. The Management of CTL was unaware of the relationship between IMC and SportsMax, until 2008 July, approximately one month after the CTL/IMC contract came into effect on 2008 June 1.

35. The OCG found that neither Mr. Patrick Rousseau nor Mr. Oliver McIntosh provided information about the shareholders of IMC, despite being expressly asked to provide the said information by the OCG in its lawful Requisition Questionnaire which was dated 2008 July 30.
36. All Members of the CTL Board have in sworn declarations to the OCG stated that they were unaware of a declaration of interest in IMC by the Chairman, the Honourable Mr. Rousseau. Further, none of the members of the Board was aware of the relationship and/or association between IMC and SportsMax until 2008 July, approximately one month after IMC took over full responsibility for the PGI signal.
37. On 2008 January 7, seven days prior to Mr. Rousseau's declaration of interest in SportsMax on 2008 January 14, Mr. Rousseau, in email correspondence to PGI, which was copied to Mr. Oliver McIntosh and to Mr. Xavier Chin of United Bookmakers Association (UBA), made several representations for and on behalf of CTL and SportsMax in regard to the PGI signal. Of note, is that these discussions occurred prior to IMC's purchase of the PGI rights and in which PGI asserted that it was of the opinion that there was a three (3) way deal between SportsMax, CTL and the UBA for the commercialisation of racing.

It was also posited that SportsMax would broadcast the races on cable television and revenue would be made via telephone betting. This would all be facilitated by sponsorship from the UBA. However, contrary to this perceived cooperation between CTL, SportsMax and the UBA, the parent company of SportsMax, IMC, purchased the rights from PGI.

38. Mr. Rousseau's involvement in the foregoing discussions is also contrary to his assertions to the OCG that he ceased participation in the PGI/IMC negotiations when he became Chairman of CTL.

39. The OCG's Investigation has revealed that Mr. Rousseau's non-disclosure of his interest in IMC has brought into question the propriety of the CTL/IMC agreement as well as the deliberations of the CTL Board, particularly as they relate to IMC's competitor, Tote Investments Ltd.

40. The fee of 4% which is being charged by IMC is within the going range of fees charged for simulcast signals. In this regard, the OCG's Investigation revealed that simulcast providers charge between 3% and 6% of all wagers.

### **Referrals**

The OCG, in the conduct of its Investigations, is required to be guided by **Section 21 of the Contractor-General Act**.

**This provision unequivocally mandates a Contractor-General to consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, any evidence of a breach of duty, misconduct or criminal offence on the part of an Officer or member of a Public Body, and to formally refer the matter to the appropriate person or authority which is competent to initiate such proceedings in the matter as may be deemed appropriate.**

**The Contractor General is expressly and unequivocally empowered by the Statute to make a determination as to whether "there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body",**

**It is critically important that this proviso of Section 21 of the Contractor General Act is publicly emphasized as many commentators are either wholly ignorant about it or have publicly displayed a lack of understanding about its plain meaning and its unequivocal import and intent.**

The verbatim provisions of **Section 21** are reproduced hereunder in their entirety as follows:

*“If a Contractor General finds, during the course of his investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament”.*

The OCG finds that there is sufficient *prima facie* evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest that the Board and/or some Board Members of CTL were negligent in the exercise of those duties that are prescribed, in particular, by Section 17(1) (a) and (b) and Section 6 (d) of the Public Bodies Management and Accountability Act.

The Deputy Chairman of the CTL Board, Mr. Peter Lawson, and those members of the Board of the CTL:

- (a) who assisted in the preparation of the 2008 July 29 letter to Minister Don Wehby and posited that contracts for the acquisition of overseas simulcast signals were outside of the scope of the Government Procurement Guidelines; and
- (b) who failed to exercise due care, skill and diligence, in researching and acting upon:
  - (i) the information on IMC and SportsMax, in light of the allegations and the disclosures which were previously made to the Minister on 2008 July 29 and by the OCG’s Media Release, which was dated 2008 July 21, and
  - (ii) the commercial arrangement which was being proposed between IMC and CTL, and

(c) who were in receipt of the 2008 January 7 emails which particularised Mr. Rousseau's discussions with PGI and which indicated that Mr. Rousseau was apparently not only representing CTL, but also SportsMax, a company in which Mr. Rousseau subsequently declared his interest on 2008 January 14, ...

... have (a) acted negligently in the discharge of their responsibilities as CTL Directors and/or (b) abused their authorities and offices as Directors of CTL and/or (c) breached their respective duties of trust to the company and/or (d) breached their respective fiduciary or statutory duties to the company.

The Members of the CTL Board also failed to take any action to properly ensure that (a) the circumstances which led to the award of a contract to IMC were fair, transparent and impartial, (b) the GPPH was complied with in the award and/or settlement of the said contract, and/or (c) that there was strict compliance, *inter alia*, with the provisions of the Financial Administration and Audit Act by the management of the CTL.

In respect of Mr. Rousseau, his failure, *inter alia*, to disclose his interest in IMC is a **direct** contravention of the provisions of **Section 17 (2) of the Public Bodies Management and Accountability Act** and **Section 193 (1) (b) of the Companies Act** and a breach of his fiduciary and statutory duties to CTL.

**Section 17 (2) of the Public Bodies Management and Accountability Act** provides that, "A director who is directly or indirectly interested in any matter which is being dealt with by the board- (a) **shall disclose the nature of his interest at a board meeting**; (b) **shall not take part in any deliberation of the board with respect to that matter.**" (OCG Emphasis).

**Section 193 (1) (b) of the Companies Act** provides, *inter alia*, as follows:

193.-(1) A director or officer of a company who is: -

(b) a director or an officer of any body or has an interest in any body that is a party to a contract or proposed contract with the company.....

*shall disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of his interest.* (OCG Emphasis).

Further, it is instructive to record that **Sections 6 and 17 of the Public Bodies Management and Accountability Act** impose certain specific responsibilities upon the Board of Directors of Public Bodies as well as Board Members themselves.

Had these and other responsibilities been fully discharged in the instant matter, the affairs of CTL would not have been shrouded by the appearance of unethical and/or improper practices.

It is particularly important to record that Boards of Directors of Public Bodies are appointed, *inter alia*, to efficiently and effectively manage Public Bodies and to ensure the accountability of all individuals who manage the resources of the said Public Bodies.

**Section 6 of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*“6. Every board shall-*

*(a) take such steps as are necessary-*

*(i) for the efficient and effective management of the Public Body;*

*(ii) to ensure the accountability of all persons who manage the resources of the Public Body;*

*(b) develop adequate information, control, evaluation and reporting systems within the body;*

*(c) develop specific and measurable objectives and performance targets for that body;*

*(d) advise the responsible Minister on matters of general policy relating to the management of the body”.*

**Section 17 (1) of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*17- (1) “Every director and officer of a Public Body shall, in the exercise of his powers and the performance of his duties-*

- (a) act honestly and in good faith in the best interests of the Public Body; and*
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.*

Having regard, *inter alia*, to the foregoing, the OCG now makes the following considered Referrals:

- (1) In the premises, and pursuant to the mandatory statutory obligations which are imposed upon a Contractor-General by Section 21 of the Contractor-General Act, the OCG is hereby formally referring a copy of this Report to the Attorney General on the basis that there is *prima facie* evidence which is recorded herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that there was, *inter alia*, a breach of duty specifically on the part of (a) Mr. Patrick Rousseau, the Chairman of CTL, and (b) the Board of Directors of CTL and/or one or more of their members, all in contravention, *inter alia*, of Sections 6 and 17 of the provisions of the Public Bodies Management and Accountability Act.

The matter is being referred to the Attorney General for such action as the Attorney General may deem appropriate particularly in light of the provisions that are contained in Sections 6, 17 and 25 of the Public Bodies Management and Accountability Act.

Additionally, the matter is being referred to the Attorney General for consideration as to what actions, if any, may be pursued against any of the offending CTL Board Directors, having regard to all of the circumstances of the case.

- (2) Further, pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Corruption Prevention Commission,

the Commissioner of Police and the Director of Public Prosecutions for such further action as any or all of them may deem appropriate.

The referral is being made on the basis that there is *prima facie* evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that Mr. Rousseau, while actively holding the position of Chairman of the CTL, SportsMax and IMC Boards, has improperly carried on negotiations with representatives of PGI and has passed information in his capacity as the Chairman of CTL to Mr. Oliver McIntosh, the CEO and President of SportsMax and IMC, with a view to a benefit accruing to SportsMax and/or IMC, contrary to Section 14 (1) (b) of the Corruption Prevention Act.

**Section 14 (1) (b) of the Corruption Prevention Act** provides that “*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*”.

The referral is also being made to the Corruption Prevention Commission, the Commissioner of Police and/or the Director of Public Prosecutions to investigate the circumstances which surround the settlement of the above-referenced agreement between CTL and IMC to determine if there was a conspiracy or agreement between Mr. Rousseau and Mr. Oliver McIntosh or any other person to facilitate, *inter alia*, what could be the possible commission, on the part of the Mr. Rousseau or any other person, of an act or acts of corruption contrary to Section 14 (1) (b) of the Corruption Prevention Act.

- (3) Further, pursuant to the mandatory statutory obligations which are imposed upon a Contractor-General by Section 21 of Contractor General Act, the OCG is hereby formally referring a copy of this Investigation Report to the Director of Public Prosecutions and the Commissioner of Police, for such further action that one or



both of them may deem appropriate, on the basis that there is *prima facie* evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that Mr. Patrick Rousseau and Mr. Oliver McIntosh both failed, without lawful justification or excuse, to comply with a lawful requirement of a Contractor-General, in contravention of Section 29 (b) (ii) of the Contractor General Act. Mr. Rousseau, in his 2008 August 12 response to the OCG's Requisition, and Mr. McIntosh in his 2008 August 14 response to the OCG's Requisition, both failed to provide responses to **all** of the questions which were contained in the OCG's Statutory Requisitions that were dated 2008 July 30, and which were respectively directed to them and, in particular, failed to disclose the particulars of the shareholders of IMC.

- (4) Further, pursuant to the mandatory statutory obligations which are imposed upon a Contractor-General by Section 21 of Contractor General Act, the OCG is hereby formally referring a copy of this Investigation Report to the Director of Public Prosecutions and the Commissioner of Police, for such further action as one or both of them may deem appropriate, on the basis that there is *prima facie* evidence that is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that Mr. Patrick Rousseau wilfully attempted to mislead a Contractor General, in contravention of Section 29 (a) of the Contractor General Act and/or knowingly and wilfully made a false statement to a Contractor General in a material particular, contrary to Section 8 of the Perjury Act. In his 2008 September 23 response to the OCG's Requisition, Mr. Rousseau stated that he had disclosed his interest in IMC to the CTL Board of Directors in a Board meeting which was convened on 2008 January 3.

The documentary evidence and the sworn witness statements which have been provided to the OCG by the CTL Board Members have, however, comprehensively contradicted Mr. Rousseau's assertions. Accordingly, the OCG feels that there is

sufficient *prima facie* evidence which is stated herein, and more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would warrant that the matter be referred to the referenced authorities for such action as one or both of them may deem appropriate.

**Section 29 of the Contractor General Act** provides, *inter alia*, as follows:

*“Every person who –*

*(a) wilfully makes any false statement to mislead or misleads or attempts to mislead a Contractor- General or any other person in the execution of his functions under this Act; or*

*(b) without lawful justification or excuse –*

*(i) obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or\*

*(i) fails to comply with any lawful requirement of a Contractor- General or any other person under this Act, ....*

*shall be guilty of an offence ...”.*

**Section 8 of the Perjury Act** provides, *inter alia*, as follows: *“Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-*

*(a) in a voluntary declaration; or ....*

*(b) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,*

*shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.*

- (5) Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Auditor General on the basis that there is *prima facie* evidence which is recorded herein and, more particularly and

importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that there was a breach of duty on the part of the Accounting Officer and/or on the part of the Accountable Officers of CTL and that one or more of the said Officers may have contravened, *inter alia*, the provisions of the Financial Administration and Audit Act. The matter is being referred to the Auditor General for such action as the Auditor General may deem to be appropriate, particularly in light of the provisions which are contained, *inter alia*, in Sections 16, 19, 20 and 24F of the Financial Administration and Audit Act.

**Section 20 (1) Financial Administration and Audit Act** provides as follows:

*“20. (1) If it appears to the Financial Secretary upon a report by the Auditor General that any person who is or was an officer-*

*(a) has failed to collect any moneys owing to the Government for the collection of which such person is or was at the time of such employment responsible;*

*(b) is or was responsible for any improper payment of public moneys or for any payment of such moneys which is not duly vouched; or*

*(c) is or was responsible for any deficiency in, or for the loss or destruction of, any public moneys, stamps, securities, stores, or other Government property, and if, within a period specified by the Financial Secretary, an explanation satisfactory to him is not furnished with regard to such failure to collect, improper payment, payment not duly vouched, deficiency, loss or destruction, as the case may be, the Financial Secretary may surcharge against the said person the amount not collected or such improper payment, payment not duly vouched, deficiency, loss or the value of the property destroyed, as the case may be, or such lesser amount as the Financial Secretary may determine.”*

### **Recommendations**

**Section 20 (1) of the Contractor-General Act** mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that Investigation and make such Recommendations as he considers necessary in respect of the matter which was investigated.*” (OCG’s Emphasis).

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following Recommendations:

1. CTL should prepare a detailed Request for Proposal (RFP) and/or tender document, when any form of procurement is being undertaken. The RFP and/or tender document must, at a minimum, make provision for:
  - (a) Details of the scope of work for the project;
  - (b) Standard format for technical and financial proposals;
  - (c) Details of the selection procedure to be followed;
  - (d) Deadline for submission;
  - (e) The method by which the proposal shall be submitted;
  - (f) If not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by CTL;
  - (g) Any conditions for subcontracting a part of the assignment;
  - (h) The procedure for handling clarifications;
  - (i) Location for the deliverables;
  - (j) Tender security (if required);
  - (k) Evaluation methodology;
  - (l) Selection criteria.

2. It is recommended that an immediate review of the accounting, procurement and public administration management practices at CTL be undertaken by the Public Administration and Appropriations Committee of the House of Representatives, the Auditor General and the Ministry of Finance and the Public Service.

The review should be conducted to ensure that adequate procedures, systems, checks and balances are not only implemented, but are aggressively enforced to secure a radically improved level of compliance on the part of CTL and its officials and officers with relevant Government approved procedures, regulations and laws.

Particular attention must be paid to the requirements of the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act, the Contractor-General Act and the GPPH.

3. The OCG also recommends that the Auditor General conducts an exhaustive Investigation and/or audit into the expenditure approval processes of CTL. The Investigation should be carried out particularly in light of the fact that there are several contracts and/or commercial arrangements for simulcast satellite services to which CTL is a party and in respect of which significant amounts of public funds are being disbursed without the requisite approvals being sought and/or granted.

The Investigation should seek to determine if any of the said circumstances warrant the initiation of disciplinary or other adverse proceedings against any employee or officer of CTL.

4. The OCG recommends that the portfolio Permanent Secretary and the CTL Board, take a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, checks and balances and other appropriate management systems at CTL, in an effort to mitigate against any possibility of deviations from the GPPH by the institution's management and procurement staff.

5. The OCG further respectfully recommends that Parliament should implement legislation to ensure that Directors of Public Body Boards who flagrantly abuse their office and/or authority and/or who fail substantially in the discharge of their fiduciary and statutory responsibilities to their Boards, the Public Body and, by extension, to the Taxpayers of Jamaica, are effectively barred from serving in any like capacity in the future.
6. The OCG also respectfully recommends that all Appointees to the Board of Directors of any Public Body are duly and fully made aware of their responsibilities and obligations under the provisions that are contained, *inter alia*, in the Public Bodies Management and Accountability Act.
7. The OCG feels compelled to strongly recommend, again, as it has in previous Investigation Reports, that the Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.

If this recommendation is not wholeheartedly accepted and implemented, at the very least, the OCG recommends that the Public Bodies Management and Accountability Act be reviewed in respect of the Board of Directors' disclosure of interests. In this respect, the OCG recommends that Directors be mandated to disclose their interests to the Portfolio Minister, and the relevant Accounting Officer and Accountable Officers, when being appointed, so as to ensure full disclosure and transparency in the affairs of the public sector.

8. In light, *inter alia*, of (a) the CTL's Chairman's non-disclosure of his interest in IMC, (b) IMC's 2008 September 23 letter regarding the payments to be made in respect of the 'verbal' agreement which was reached between CTL and IMC, and (c) the

provisions of Section 193 of the Companies Act, the OCG respectfully recommends that CTL should make an application to the Courts to set aside the CTL/IMC agreement on such terms as the Court may deem fit. In this respect, CTL should seek appropriate legal advice from the Attorney General's Department.

9. The OCG also recommends that *immediate* steps should be taken by the Cabinet to amend the Government Procurement Rules to require that any private corporate entity that is desirous of tendering on any Government of Jamaica contract must, as a mandatory pre-requisite, submit to the relevant contracting Public Body, certified and sworn particulars of its incorporation documents, certified particulars of its shareholders and certified particulars of all of its beneficial shareholders.

The OCG feels compelled to make this recommendation in light, *inter alia*, of Mr. McIntosh's and Mr. Rousseau's failure to disclose the particulars of the shareholders of IMC, a company which is incorporated and registered off-shore in the jurisdiction of St. Lucia. The OCG has observed that there is a growing trend of on-shore and off-shore incorporated private companies that are receiving Government of Jamaica contracts, but whose shareholders and/or beneficial shareholders are substantially unknown. These practices have posed significant concerns for the OCG, particularly regarding the issue of transparency in the expenditure of the *taxpayers'* money.

10. Finally, the OCG believes that it is timely to remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain and/or for the benefit of others, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption. The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that "*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*".

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

#### **SPECIAL OCG COMMENT**

The OCG wishes to formally record that it regrets the passing, on September 10, 2008, of Mr. Donald Tankoy, CTL's former Executive Manager for Off-Track Betting. The OCG takes this opportunity to express to his family, and to his colleagues at CTL, its most sincere condolences.



## INTRODUCTION

On 2008 July 18, the OCG, acting on behalf of the Contractor-General and pursuant to Sections 15 (1) and 16 of the 1983 Contractor-General Act, initiated an Investigation into certain allegations of irregularity surrounding an alleged proposal by SportsMax to supply satellite services for simulcast racing from South Africa and the UK to CTL.

The OCG's decision to commence the Investigation was taken, *inter alia*, after it had received a letter, which was dated 2008 July 17, from the then CEO of CTL, Mr. Walford Brown. The CTL letter was written in direct response to a formal OCG letter of enquiry, which was dated 2008 July 9, that followed a 2008 July 6 media report in which certain allegations concerning the SportsMax proposal were made.

The media report, which was entitled, "*Rousseau in powwow: SportsMax deal shrouds CTL Chairman in 'conflict of interest' rap*" was published in the *Sunday Herald* newspaper on 2008 July 6.

The allegations which were contained in the article raised a number of concerns in relation to the procurement of satellite services at CTL, with specific regard to the appearance of a conflict of interest and possible cronyism on the part of the Hon. Patrick Mr. Rousseau, who is not only the Chairman of CTL, but also a founding director of SportsMax. Below is a synopsis of the allegations which were outlined in the article:<sup>27</sup>

1. "*A proposal from SportsMax to provide satellite service for simulcast racing from South Africa and the United Kingdom to Caymanas Track Limited (CTL), is being labelled by some in the industry as a blatant case of conflict of interest, considering the fact that CTL's Chairman Pat Rousseau is also a founding director of the subscription cable station.*"

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<sup>27</sup> Sunday Herald. Rousseau in powwow. 2006 July 6. [www.sunheraldja.com](http://www.sunheraldja.com)

2. *“CTL currently receives its satellite signal from two companies, one which is known to be the London based company, Satellite Information Services (SIS).”*
3. *“The contract with SIS is reportedly close to being dissolved and CTL has been on the lookout for a new partner. This opportunity led to SportsMax, which also operates an auxiliary satellite service company, joining forces with the United Bookmakers Association and a South African satellite company, to provide feed for races originating in the United Kingdom and South Africa.”*
4. *Rousseau however argues that he has been careful not to compromise the deal’s transparency or integrity and have gone to great lengths to detach himself from the negotiations and to ensure that there is no conflict.”*
5. *“According to Rousseau, a Sub-Committee has been established at CTL with the charge to peruse SportsMax’s proposal and determine whether or not it’s in the company’s best interest to solicit their services.”*
6. *“One popular racing pundit....labelled the proposal as “cronyism and fraudulent”. He dismissed Rousseau’s argument of detachment from the negotiations, arguing that his position as a director of SportsMax would privy him to the finer details of the proposal in any event. He argued that such a deal would jeopardise the credibility of the CTL board.”*
7. *“SportsMax’s CEO and President Oliver McIntosh confirmed the proposal and gave some additional details into the arrangements. “We went into an agreement with the United Bookmakers Association as well as we are looking to enter into an agreement with CTL to deliver simulcast racing....it is really a two-way partnership with a group out of South Africa”...”*
8. *“McIntosh also defended his company’s right to bid to provide the services citing that the deal has been pursued long before Rousseau took up his present position with CTL.”*
9. *“He argued, “this is a project that we have been working on for the last four years prior to Mr. Rousseau’s ascension to the Chairmanship of CTL so I don’t see anything wrong with it and I don’t share the views (of the critics).”<sup>28</sup>*

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<sup>28</sup> Sunday Herald. Rousseau in powwow. 2006 July 6. [www.sunheraldja.com](http://www.sunheraldja.com)

The concerns and allegations which were contained in the article inferred, *inter alia*, (a) impropriety, (b) a lack of transparency, (c) a breach of the Government's procurement guidelines, (d) mismanagement, (e) a conflict of interest and, (6) cronyism.

These allegations and inferences, amongst others, raised several concerns for the OCG, especially in light of the perceived absence of the adherence to the GPPH, the Public Bodies Management and Accountability Act, and the Government contract award principles which are enshrined in Section 4 (1) of the Contractor-General Act.

The OCG's letter of enquiry, which was dated 2008 July 9, was written pursuant to Section 4 (1) of the Contractor-General Act. The letter requested that the following information in regard to the provision of simulcast racing signals from South Africa and the UK, be supplied to the OCG for review:

1. *“Public notice of Pre-qualification and/or invitation to tender;*
2. *Pre-qualification document;*
3. *Pre-qualification evaluation report;*
4. *Tender document or request for Proposal;*
5. *Tender Evaluation report;*
6. *Board submission and Board decision;*
7. *Particulars of any contract, including values, which may have been awarded to SportsMax for the provision of satellite services; and*
8. *If any such contract(s) were or are to be awarded, provide an account of the procurement methodology which was utilised and the extent to which the methods used were in compliance with the Government Procurement Guideline”.*

In its letter of response to the OCG, which was dated 2008 July 17, CTL advised that *“There is no documentation in relation to your queries numbering 1 to 6 as there is no other source from which the satellite signal could be obtained for the racetracks which falls under this contract.”*<sup>29</sup>

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<sup>29</sup> CTL Letter to the OCG. 2008 July 17

The letter further stated that *“Currently there is no signed contract with SportsMax with regards to the supply of satellite services for South Africa and the United Kingdom horseracing. However, a company known as Phumelela Gold International has assigned International Media Content (IMC), a company with offices in St. Lucia and the parent company of SportsMax as the agent to distribute those satellite signals in Jamaica.”*<sup>30</sup>

In addition, CTL, in its letter, informed the OCG that *“We have received a draft contract from IMC which we have sent to our lawyers for their perusal. In the meantime, we have been informed by Phumelela that IMC should be paid for satellite services from June 1, 2008 onwards. Although there is no contract in place we intend to make payment to IMC pending a formal contract. These payments will be made to IMC as a rights fee at a rate of four percent (4%) of gross sales on a monthly basis.”*<sup>31</sup>

It is also instructive to note that a major local horseracing stakeholder body, the Jamaica Racehorse Trainers’ Association (JRTA), by way of letter, which was dated 2008 July 10, wrote to the Contractor-General to express its concerns regarding the implications of the 2008 July 6 media report and to formally request that the OCG conduct an Investigation into the matter.

The referenced letter stated, *inter alia*, that *“....there is the allegation that there could be some degree of conflict of interest, which, according to the article, Mr. Rousseau is at pains to deny, stating that he has removed himself from the negotiations....We the JRTA are asking that your office investigate this situation as clarification of this issue would go a long way in removing any suggestion of “collusion, cronyism” and perhaps any “conflict of interest” from the CTL Board.”*<sup>32</sup>

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<sup>30</sup> CTL. Letter to the OCG. 2008 July 17

<sup>31</sup> CTL. Letter to the OCG. 2008 July 17

<sup>32</sup> JRTA letter to the OCG. 2008 July 10

At the commencement of the Investigation on 2008 July 18, the OCG undertook a review of the allegations which were contained in the media and the responses which were given to the OCG by CTL in its letter, which was dated 2008 July 17. This was done in an effort to determine the direction of the Investigation, as well as the most efficacious method by which to proceed.

The Terms of Reference of the OCG's Investigation, into the allegations of irregularity surrounding an alleged proposal by SportsMax to supply satellite services for simulcast racing from South Africa and the UK to CTL, were primarily developed in accordance with the provisions which are contained in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor-General Act, 1983.

Additionally, the OCG was guided by recognition of the very important responsibilities that are imposed upon Public Officials and Officers by the GPPH, the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

The OCG was also guided by Section 21 of the Contractor-General Act, which mandates that a Contractor-General shall consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, evidence of a breach of duty, misconduct or criminal offence on the part of an officer or member of a Public Body and, if so, to refer same to the appropriate authority.

The Findings of the OCG's Investigation into the allegations of irregularity surrounding an alleged proposal by SportsMax to supply satellite services for simulcast racing from South Africa and the UK to CTL are premised primarily upon an analysis of the sworn statements and the documents which were provided by the Respondents who were requisitioned by the OCG during the course of the Investigation.

## **TERMS OF REFERENCE**

The primary aim of the Investigation was to ascertain whether there was compliance with the provisions of the GPPH, the Contractor-General Act (1983), the Public Bodies Management and Accountability Act, the Financial Administration and Audit Act, the Companies Act, and the Corruption Prevention Act, by CTL, in the award of contracts for the simulcast satellite services.

### ***Specific Objectives***

1. Identify the procurement process which was employed by CTL and/or anyone acting on its behalf in the procurement of satellite services for simulcast racing from the UK and South Africa from IMC, SportsMax and/or any other entity;
  - (a) Determine whether all requisite approvals to proceed with the procurement were obtained from CTL's Procurement Committee, CTL's Board, CTL's Accounting Officer, the NCC and/or the Cabinet;
2. Determine whether there were any breaches of the Government's procurement procedures on the part of CTL and/or anyone acting on its behalf, in the execution of any aspect of the transaction with IMC and/or SportsMax, for the provision of satellite services for simulcast racing;
3. Determine whether the contract(s) that was/were entered into and/or the pending contract(s) with IMC and/or SportsMax was/were awarded fairly and on merit;
4. Determine whether the process which led to the award of the contract(s) that was/were entered into and/or pending contract(s) with IMC and/or SportsMax was/were fair, impartial and transparent;

5. Determine whether there is any evidence that would indicate impropriety on the part of any individual and/or entity which contributed to the award of the contract(s) to IMC and/or SportsMax;
6. Determine by whom and in what circumstances authorization was granted for CTL to proceed with payments to IMC in the absence of a formal contract.

## **BACKGROUND**

On 2008 July 6, the *Sunday Herald* published an article which was entitled “*Rousseau in powwow...SportsMax deal shrouds CTL Chairman in ‘conflict of interest’ rap.*”<sup>33</sup>

The article raised several concerns with regard to an alleged proposal by SportsMax, to provide CTL with satellite services. Further, it alluded, *inter alia*, to (a) impropriety, (b) a lack of transparency, (c) a breach of the Government’s procurement guidelines, (d) mismanagement, (e) a conflict of interest and, (f) cronyism.

A synopsis of the allegations is as follows:

1. “A proposal from SportsMax to provide satellite service for simulcast racing from South Africa and the United Kingdom to Caymanas Track Limited (CTL), is being labelled by some in the industry as a blatant case of conflict of interest, considering the fact that CTL’s Chairman Pat Rousseau is also a founding director of the subscription cable station.”
2. “CTL currently receives its satellite signal from two companies, one which is known to be the London based company, Satellite Information Services (SIS).”
3. “The contract with SIS is reportedly close to being dissolved and CTL has been on the lookout for a new partner. This opportunity led to SportsMax, which also operates an auxiliary satellite service company, joining forces with the United Bookmakers Association and a South African satellite company, to provide feed for races originating in the United Kingdom and South Africa.”
4. Rousseau however argues that he has been careful not to compromise the deal’s transparency or integrity and have gone to great lengths to detach himself from the negotiations and to ensure that there is no conflict.”
5. “According to Rousseau, a Sub-Committee has been established at CTL with the charge to peruse SportsMax’s proposal and determine whether or not it’s in the company’s best interest to solicit their services.”

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<sup>33</sup> Sunday Herald. Rousseau in powwow. 2006 July 6. [www.sunheraldja.com](http://www.sunheraldja.com)



6. *“One popular racing pundit....labelled the proposal as “cronyism and fraudulent”. He dismissed Rousseau’s argument of detachment from the negotiations, arguing that his position as a director of SportsMax would privy him to the finer details of the proposal in any event. He argued that such a deal would jeopardise the credibility of the CTL board.”*
7. *“SportsMax’s CEO and President Oliver McIntosh confirmed the proposal and gave some additional details into the arrangements. “We went into an agreement with the United Bookmakers Association as well as we are looking to enter into an agreement with CTL to deliver simulcast racing...it is really a two-way partnership with a group out of South Africa”...”*
8. *“McIntosh also defended his company’s right to bid to provide the services citing that the deal has been pursued long before Rousseau took up his present position with CTL.”*
9. *“He argued, “this is a project that we have been working on for the last four years prior to Mr. Rousseau’s ascension to the Chairmanship of CTL so I don’t see anything wrong with it and I don’t share the views (of the critics).”<sup>34</sup>*

Based upon the foregoing, the OCG on 2008 July 9, wrote to CTL, *inter alia*, to (a) ascertain the procurement procedures which were utilised in the procurement of the satellite services and (b) determine whether the procedures which were utilised were in compliance with the provisions of the GPPH and Section 4 (1) of the Contractor-General Act.

In response to the OCG’s enquiry, CTL, by way of a letter, which was dated 2008 July 17, advised, *inter alia*, that IMC had been designated by Phumelela as its agent to distribute the subject satellite signals in Jamaica.

The letter further stated that Phumelela had informed CTL *“... that IMC should be paid for satellite services from June 1, 2008 onwards”*.<sup>35</sup>

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<sup>34</sup> Sunday Herald. Rousseau in powwow. 2006 July 6. [www.sunheraldja.com](http://www.sunheraldja.com)

<sup>35</sup> CTL. Letter to the OCG. 2008 July 17

In addition, CTL, in its letter, which was dated 2008 July 17, advised that it had received a draft contract from IMC which it had sent to its lawyers for perusal. However, CTL stated that *“Although there is no contract in place we intend to make payment to IMC pending a formal contract. These payments will be made to IMC as a rights fee at a rate of four percent (4%) of gross sales on a monthly basis”*.<sup>36</sup>

Given the allegations which were contained in the media report, the less than fulsome response which was provided by CTL and the other representations that were made to the OCG by the Jamaica Racehorse Trainers’ Association (JRTA), the OCG, on 2008 July 18, formally convened an Investigation into the allegations of irregularity surrounding an alleged proposal by SportsMax to supply satellite services for simulcast racing from South Africa and the UK to CTL.

Letters were directed that same day, by the Contractor-General, to the Minister of Finance and the Public Service, the Hon. Audley Shaw, CTL’s Accounting Officer, the then Acting Financial Secretary in the Ministry of Finance and Public Service (MOFPS), Ms. Darlene Morrison, CTL’s Chairman, the Hon. Patrick Rousseau, and the Cabinet Secretary, Ambassador Douglas Saunders, to formally advise them of the commencement of the OCG’s Investigation into the allegations, *inter alia*, of irregularity surrounding an alleged proposal by SportsMax to supply satellite services for simulcast racing from South Africa and the UK to CTL.

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<sup>36</sup> CTL. Letter to the OCG. 2008 July 17

## **METHODOLOGY**

The OCG in the conduct of its Investigation has developed standard procedures for evidence gathering. These procedures are developed pursuant to the powers which are conferred upon a Contractor-General by the 1983 Contractor-General Act.

It is instructive to note that Section 17 (1) of the Contractor-General Act empowers a Contractor-General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit.” (OCG Emphasis)

The OCG’s Investigation into the allegations of irregularity surrounding an alleged proposal by SportsMax, was initiated after a review of the 2008 July 6 *Herald Article* and the subsequent information which was (a) provided by CTL with regard to the commercial arrangements between IMC and CTL and, (b) discovered regarding Mr. Rousseau’s interest in SportsMax and IMC – all of which inherently presented the appearance of a conflict of interest.

The Terms of Reference of the OCG’s Investigation into the allegations of irregularity surrounding an alleged proposal by SportsMax to supply satellite services for simulcast racing from South Africa and the UK to CTL, were primarily developed in accordance with those of the mandates of the Contractor-General which are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor-General Act, 1983.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilized throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed upon Public Officials and Public Officers by the GPPH, the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act, the Contractor General Act and the Corruption Prevention Act.

In addition, the OCG was guided by Section 21 of the Contractor-General Act which provides that **“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”** (OCG Emphasis)

A preliminary set of Requisitions/Questionnaires, which was dated 2008 July 30, was sent by the OCG to key representatives of the CTL. **(See Appendix 1 for a Specimen of the Standard Form of Statutory Requisition which is utilized by the OCG).**

Further, Requisitions/Questionnaires were subsequently directed to other Public Officials, and representatives of SportsMax and/or IMC, who were considered material to the Investigation.

Where it was deemed necessary, follow-up Requisitions were directed to a number of Respondents in an effort to clarify several issues which were identified in their initial declarations and responses. These follow-up Requisitions were also designed, *inter alia*, to clarify any discrepancy in the information which was supplied by the Respondents.

The Requisitions/Questions which were utilised by the OCG included specific questions that were designed to elucidate critical information from Respondents on the matters which were being investigated. In this respect, the OCG’s Investigation sought to determine, *inter alia*, the following:

- (a) whether the satellite services which were to be supplied by IMC were procured in compliance with the Government’s Procurement Procedures and Guidelines;
- (b) whether they were procured impartially and on merit and in circumstances which did not involve irregularity or impropriety;

- (c) whether all requisite approvals to proceed with the procurement were obtained from CTL's Procurement Committee, CTL's Board, CTL's Accounting Officer, the NCC and/or the Cabinet; and
- (d) by whom and in what circumstances were authorization granted for CTL to proceed with payments to IMC in the absence of a formal contract.

However, in an effort to not limit and/or exclude the disclosure of information which was germane to the Investigation but which might not have been specifically requisitioned by the OCG, the OCG asked all Respondents the following question:

*“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”* (**See Appendix 1 for a Specimen of the Standard Form of Statutory Requisition which is utilized by the OCG.**)

**Very importantly, the form of written Requisition, which was utilised by the OCG, also required each Respondent to provide, under the pain of criminal prosecution, complete, accurate and truthful written answers to a specified list of written questions and to make a formal declaration attesting to the veracity of same before a Justice of the Peace.**

The Requisitions were issued pursuant to the powers that are reserved to the Contractor-General under the Contractor-General Act and, in particular, Sections 4, 15, 17, 18 and 29 thereof. The Requisitions were also issued pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

It is instructive to note that **Section 18 (2) of the Contractor-General Act** provides that, *“Subject as aforesaid, a Contractor-General **may summon before him and examine on oath** -*

- a. *any person who has made representations to him; or*
- b. *any officer, member or employee of a public body or any other person who, in the opinion of the, Contractor-General is able to furnish information relating to the Investigation,*

**and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.**” (OCG Emphasis)

Further, **Section 18 (3) of the Contractor-General Act** provides that, “**For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents**”. (OCG Emphasis)

**Section 2 (1) of the Voluntary Declarations Act** provides that, “*In any case when by any statute made or to be made, any oath or affidavit might, but for the passing of this Act, be required to be taken or made by any person or persons on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful to substitute a declaration in lieu thereof before any Justice; and every such Justice is hereby empowered to take and subscribe the same.*” (OCG Emphasis)

**Section 7 of the Voluntary Declarations Act** provides that, “*In all cases when a declaration in lieu of an oath or affidavit shall have been substituted by this Act, or by virtue of any power or authority hereby given, or when a declaration is directed or authorized to be made and subscribed under the authority of this Act, or of any power hereby given, although the same be not substituted in lieu of an oath, heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the Schedule.*”

**Section 8 of the Perjury Act** provides, *inter alia*, that, “Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-

(a) in a voluntary declaration; or ....

(c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,

shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.

The material import of the foregoing is that the sworn and written evidence that is provided to a Contractor General, in response to his Statutory Requisitions, during the course of his Investigations, is that the said evidence is (a) provided in accordance with certain specified provisions of the Statutory Laws of Jamaica, and (b) provided in such a manner that if any part thereof is materially false, the person who has provided same would have, *prima facie*, committed the offence of Perjury under Section 8 of the Perjury Act and, as will be seen, would have also, *prima facie*, committed a criminal offence under Section 29 (a) of the Contractor General Act.

The OCG considers the above-referenced evidence-gathering procedures to be necessary in order to secure, *inter alia*, the integrity and evidentiary cogency of the information which is to be elicited from Respondents. The implications of the subject requirements also serve to place significant gravity upon the responses as well as upon the supporting documents which are required to be provided by Respondents.

**It is instructive to note that the OCG, in the conduct of its Investigation, prefers to secure sworn written statements and declarations from Respondents, under the pain of criminal prosecution. This ensures, *inter alia*, that there is no question as to what has been represented to the OCG. Nor will there be any doubt as to the integrity or credibility of the information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be**

**necessarily based.**

The OCG also went to great lengths to ensure that Respondents were adequately and clearly warned or cautioned that should they mislead, resist, obstruct or hinder a Contractor-General in the execution of his functions or fail to provide a complete, accurate and truthful response to any of the Requisitions or questions which were set out in its Requisition, they would become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor-General Act. (**See Appendix 1 for a Specimen of the Standard Form of Statutory Requisition which is utilized by the OCG.**)

**Section 29 of the Contractor-General Act** provides as follows:

*“Every person who -*

*(a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or*

*(b) without lawful justification or excuse -*

*i. obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*

*ii. fails to comply with any lawful requirement of a Contractor General or any other person under this Act; or*

*(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,*

*shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”*

Further, in addition to the **sworn** written answers which the Respondents were required to provide, the OCG also requested that in respect of the assertions and/or information which were to be provided, Respondents should submit documentary evidence to substantiate the statements that were made. (**See Appendix 1 for a Specimen of the Standard Form of Statutory Requisition which is utilized by the OCG.**)



Requisitions/Questionnaires were directed by the OCG to the Public Officers/Officials who are listed below. In addition, comprehensive reviews of the relevant information were undertaken by the OCG to assist it in its Investigation. Details of these are also summarized below.

1. The following Public Officials were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:

- a. Mr. Walford Brown, the former CEO, CTL;
- b. Mr. Donald Tankoy, the former Executive Manager, Off-Track Betting (OTB);
- c. The Honourable Patrick Rousseau, OJ., Chairman, CTL;
- d. Mr. Orville Christie, Financial Controller, CTL;
- e. Mrs. Millicent Lynch, Marketing Executive, CTL;
- f. Mr. Lee Clarke, JLP, Director, CTL;
- g. Mr. Ian Parsard, Director, CTL;
- h. Mr. Kelvin Roberts, Director, CTL;
- i. Mr. Peter Lawson, Director, CTL;
- j. Mrs. Veronica Bennett-Warmington, Director, CTL;
- k. Mr. Geoffrey Campbell, Director, CTL.

2. Detailed Requisitions were also directed to the below-named representative of SportsMax and/or IMC who was deemed sufficiently knowledgeable to assist the OCG in its Investigations:

- a. Mr. Oliver McIntosh, President & CEO, SportsMax & IMC.

3. A detailed review of the **sworn** certified statements, supporting documents and the records which were provided by the Respondents to the OCG's Requisitions, was undertaken.

4. Follow up Requisitions/Questionnaires, requesting clarification on certain issues, were directed by the OCG to the following Public Officials:
  - a. Mr. Walford Brown, the former CEO, CTL;
  - b. Mr. Donald Tankoy, the former Executive Manager, OTB, CTL;
  - c. The Honourable Patrick Rousseau, OJ., Chairman, CTL.
  - d. Mr. Orville Christie, Financial Controller, CTL.
  
5. A historical and comparative analysis of the procurement practices of the CTL, in regard to satellite services, was also undertaken. The process was aided by a review of (a) the information which was submitted to the OCG by CTL in fulfilment of the OCG's Requisitions, dated 2008 July 30, and (b) all contract award Recommendations which were submitted by CTL between 2006 January to 2007 October, to the National Contracts Commission (NCC) for its endorsement.

Mr. Peter Lawson, the Deputy Chairman of CTL, failed to comply with the lawful Requisitions of the OCG within the stipulated original and extended deadlines. Mr. Lawson's failure to comply with the OCG's lawful Requisitions occurred despite the OCG having extended, on more than one occasion, the deadline for his submission of his responses to the OCG.

Mr. Lawson's failure to comply with the OCG's Requisition was formally referred by the Contractor-General to the Director of Public Prosecutions (DPP) under cover of letter which was dated 2008 October 3. The Referral, which was made pursuant to Section 29 of the Contractor-General Act, currently resides with the DPP.

Subsequent to the OCG's referral of the matter on 2008 October 3 to the DPP, Mr. Lawson, by way of his Attorneys-at-law, Hart, Muirhead, Fatta (HMF), submitted his response to the OCG's Requisition on 2008 October 10. Pursuant to a OCG letter which was dated 2008 September 30 and which was written in response to HMF's letter of the same date, Mr. Lawson's deadline had been, in the last instance, extended to Wednesday, 2008 October 1.

In addition, the OCG, after dispatching its Requisitions to several of the Respondents, met upon some resistance to its line of questioning from three (3) Respondents and/or their legal representatives. The subject individuals sought in one way or another to direct and/or to dictate, *inter alia*, (a) the methods which should be utilised by the OCG for evidence gathering and/or (b) the scope of the OCG's Investigation.

Two of the subject individuals were Mr. Oliver McIntosh, the President and Chief Executive Officer (CEO) of SportsMax and Mr. Gordon Robinson, the Attorney-At-Law of record in the instant matter, representing CTL's Management and, in particular, CTL Executives, Mr. Donald Tankoy, Executive-Manager, Off-Track Betting and Mr. Walford Brown, CEO.

Both Mr. Oliver McIntosh and Mr. Robinson made respective requests for a meeting to be held with the OCG to clarify issues which were deemed by them to be pertinent to the matter which was being investigated, following their respective receipts of the OCG's Requisitions which was dated 2008 July 30.

Mr. Robinson, by way of letter, which was dated 2008 August 7, sought to explain the details of CTL's acquisition of the broadcast signals for horse racing from U.K. and South African tracks.

Mr. Robinson stated that "*...the contract to which your letter refers is not one which falls within the scope of the jurisdiction of the Contractor General and the questions asked by your office are, in the overwhelming majority, irrelevant to that contract.*"<sup>37</sup>

Mr. Robinson further stated that "*Finally, also in the name of transparency, my client would appreciate receipt of the details of the 'allegations' which have been made to you and the source(s) of these allegations so that it may respond to each allegation specifically.*"<sup>38</sup>

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<sup>37</sup> Gordon Robinson. Letter to the OCG. 2008 August 7

<sup>38</sup> Gordon Robinson. Letter to the OCG. 2008 August 7

In response to Mr. Robinson's letter, the OCG, by way of letter, which was dated 2008 August 7, explained that pursuant to Section 2 of the Contractor-General Act, the Contractor-General has jurisdiction over all Government contracts. Section 2 defines a "Government contract" as including "... any licence, permit or other concession or authority issued by a public body or **agreement entered into by a public body** for the carrying out of building or other works or **for the supply of any goods or services.**" (OCG Emphasis)

The OCG's letter also informed Mr. Robinson that, by way of a letter, which was dated 2008 July 18, and which was addressed to Mr. Walford Brown of CTL, it had explained in detail the primary reasons for, and the subsequent decision of, the OCG to conduct its formal Investigation into the subject matter.

The OCG's letter, which was dated 2008 July 18 stated that "*The decision to commence the subject Investigation follows, inter alia, our receipt of your letter, dated 2008 July 17, which was written in response to the OCG's letter to you of 2008 July 9. In your letter, you have stated that, "currently there is no signed contract with SportsMax with regards to the supply of satellite services for South Africa and the United Kingdom horseracing". However, you have also stated that an entity which is named Phumelela Gold International has assigned a St. Lucian based company, International Media Content Limited (IMC), "as agents to distribute those satellite signals in Jamaica".*"<sup>39</sup>

The OCG's letter further stated that "*The Office of the Registrar of Companies lists IMC as a 50% shareholder of SportsMax Limited as at March 4, 2008....Further, we have taken notice of the fact that the Hon. Patrick Rousseau, the Chairman of CTL, is listed as a Director of SportsMax Limited in the records of the Office of the Registrar of Companies of Jamaica....However, we have also noted that despite not having a contract in place, you have advised that CTL has signalled its intent to commence payments to IMC....No documentation or further particulars have been provided by you regarding the foregoing arrangements, inclusive of the manner in which the services of Phumelela Gold*

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<sup>39</sup> OCG letter to CTL. 2008 July 18

*International and/or IMC were procured by CTL and the extent to which these arrangements were (or are being) settled in compliance with the provisions of the Contractor-General Act and/or the Government Procurement Procedures and Guidelines.”<sup>40</sup>*

In addition, the OCG’s letter articulated that *“The foregoing would suggest, inter alia, that the commercial arrangements which are currently in place between CTL and Phumelela Gold International and/or IMC (as well as the arrangements that are currently being contemplated) are such that they may have been settled in circumstances which are irregular, improper or lacking in transparency, merit and fairness and/or lacking in accord with the requirements of the Contractor-General Act and/or the Government Procurement Procedures and Guidelines.”<sup>41</sup>*

In respect of Mr. Oliver McIntosh, following his receipt of the OCG’s Requisition, which was dated 2008 July 30, he expressed a desire to meet with the OCG to clarify issues in regard to the matter which was being investigated.

Mr. Oliver McIntosh, by way of letter, which was dated 2008 August 12, stated that *“We believe however that the Notice emanates from a misunderstanding in relation to certain matters and that it may be helpful ahead of SportsMax responding to the Notice (or any further or amended Notice as your office may issue) were [sic] a meeting held between representative of SportsMax and your office to clarify certain issues.”<sup>42</sup>*

By way of letter, which was dated 2008 August 12, the OCG responded to Mr. Oliver McIntosh as follows:

*(1) “The Requisition which has been directed to you is a Statutory Requisition which has been made in pursuance of a formal Investigation.*

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<sup>40</sup> OCG letter to CTL. 2008 July 18

<sup>41</sup> OCG letter to CTL. 2008 July 18

<sup>42</sup> Oliver McIntosh. Letter to the OCG. 2008 August 12

- (2) *The subject Investigation is being conducted by the Office of the Contractor-General (OCG) under the powers that are reserved to a Contractor-General by the Contractor-General Act.*
- (3) *The subject Investigation is not being conducted by SportsMax Limited.*
- (4) *The Requisition which has been directed to you, and all of the questions that are embodied therein, must be answered, documented and submitted by you in the manner and in the time which has been prescribed.*
- (5) **Should you believe that the subject questions have not provided you with an opportunity to provide certain information which you have deemed appropriate to be placed upon the record, you should note that the last question of the Requisition, viz. Question #23, provides you with such an opportunity.** (OCG Emphasis)
- (6) *Should you fail to comply with the referenced Requisition, without lawful justification or excuse, you will become liable to face criminal prosecution proceedings under the provisions of Section 29 of the Contractor General Act.”*

It is also instructive to note that Myers, Fletcher and Gordon (MFG), the Attorneys-At-Law of record for the Hon. Patrick Rousseau, also questioned, *inter alia*, the propriety and the scope of the OCG’s Investigation.

By way of a letter, which was dated 2008 September 17, MFG wrote to the OCG following its receipt of the OCG’s second Requisition to Mr. Rousseau, which was dated 2008 September 8.

In its letter, MFG stated that “*We are concerned that despite our client having provided fulsome and unambiguous responses to your previous requests under cover of letter dated August 12, 2008 that your subsequent letter, filled with innuendo and accusations, seeks to continue to impute impropriety on the part of the Hon. Pat Rousseau in his dealings with the said entities without stating the basis for such assertions.*”<sup>43</sup>

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<sup>43</sup> MFG letter to the OCG. 2008 September 17

The MFG letter further stated that *“In light of the content and tone of that letter we hereby indicate that before responding to your further request for information, our client has a right to know the nature of any complaint being made against him regarding his involvement in the above mentioned entities, the irregularities that are being complained of, and the source of such complaint. Specifically we wish to be informed of any contract between the parties that is the subject of you [sic] enquiries. This is consistent with the principles of Natural Justice.”*<sup>44</sup>

In addition, MFG, in its letter, stated that, *“As it regards the provision of section 29 of the Contractor General Act, we would wish to indicate that our client does not seek to obstruct, hinder or resist the Contractor General in the execution of his functions, but has a right to know the nature of any allegations being levied against him and to know his accuser...”*<sup>45</sup>

By way of letter, which was dated 2008 September 18, the OCG responded to MFG in the following verbatim terms

***“Re: Notice of Formal Requisition for Information and Documentation to be Supplied under the Contractor General Act – Conduct of Investigation – Concerning Allegations of irregularity in the proposal of SportsMax to provide satellite service for simulcast racing from South Africa and the United Kingdom for Caymanas Track Limited.*”**

*We are in receipt of your letter of the 17<sup>th</sup> instant which was received in our Offices, today. We have noted that you act on behalf of the Hon. Mr. Patrick Rousseau, OJ.*

*Your letter, quite surprisingly, has raised certain unfounded questions regarding the propriety, appropriateness and legality of the additional Requisition, dated*

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<sup>44</sup> MFG letter to the OCG. 2008 September 17

<sup>45</sup> MFG letter to the OCG. 2008 September 17

*September 8, 2008, which the Office of the Contractor General (OCG) has directed to your Client.*

*The Requisition contains six (6) questions.*

*Three (3) of the six (6) questions which have been directed to your Client for answer, viz. Questions #1, #4 and #6, are questions which are intended to have certain written representations which have been made, inter alia, to Minister Don Wehby, clarified by Mr. Rousseau.*

*Two (2) of the referenced representations were made by Mr. Rousseau himself. The other was made by the Deputy Chair of the Caymanas Track Limited (CTL), Mr. Peter Lawson. Full particulars of the referenced three (3) representations are provided in the Requisition itself.*

*The other three (3) questions, viz. Questions #2, #3 and #5, are questions which seek to elicit specific information as regards the operations and/or administration of CTL. You will no doubt recall that your Client is the Chairman of CTL.*

*The additional OCG Requisition of September 8, 2008, which has been directed to your Client, is entirely lawful and proper. You are also fully aware that it has been issued in accordance with the provisions of the Contractor General Act and pursuant to the expressed powers which are reserved to a Contractor General thereunder.*

*Your Client is compelled by law to provide fulsome answers to all of the referenced questions or face criminal prosecution.*

*As it now stands, your Client has failed, without lawful justification or excuse, to comply with the terms of a lawful Requisition of the OCG, dated September 8, 2008. His failure to so comply constitutes a criminal offence under the provisions which are contained in Section 29 (b) of the Contractor General Act.*



*Be that as it may, and without prejudice to the aforementioned, the Office of the Contractor General, having taken into account all relevant factors, hereby grants an extension to the September 17, 2008 deadline which was previously stated in our letter of September 8, 2008, to Wednesday, September 24, 2008 by 3.00 PM.*

*We would strongly urge your Client's full cooperation with the subject Requisition and Investigation of the OCG.*"<sup>46</sup>

Finally, the OCG's Requisitions/Questionnaires clearly outlined to the Respondents the provisions of Section 18 (5) of the Contractor General Act.

Section 18 (5) provides that *"No person shall, for the purpose of an Investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law."* (**See Appendix 1 for a Specimen of the Standard Form of Statutory Requisition which is utilized by the OCG**).

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<sup>46</sup> OCG's letter to MFG. 2008 September 18

## **FINDINGS**

### ***Overview of the CTL Operations***

Based upon the information that CTL has published about its operations, it has sole responsibility in Jamaica for the promotion of horse racing and the running of pari-mutuel pools thereon (both track and off-track).<sup>47</sup>

On an annual basis, the company promotes approximately nine hundred (900) 'On Track' races. However, in a bid to diversify its income stream and horse racing in Jamaica, CTL also offers overseas races through its simulcast system.<sup>48</sup>

CTL commenced simulcast racing from the United States (US) in 1990 March, and expanded this product line to include British races in 1994. Subsequently, in 2000, simulcast racing was further expanded with the introduction of races from Australia and many other overseas tracks.<sup>49</sup>

In the Minutes of the Meeting of the CTL Board of Directors, which was dated 2008 January 3, a Director of CTL, Mr. Ian Parsard, formally noted that CTL's simulcast system is its major revenue earner.<sup>50</sup>

In addition, CTL's commercial business is enhanced by the operation of Off Track Betting Parlours (OTBs), which are established based upon the signing of Franchise Agreements. OTB Franchise Agreements have a two year tenure. The Agreements are subject to renewal at the discretion of CTL.

These Betting Parlours offer race-by-race wagering on local races as well as simulcast races live from racetracks in the United States, Australia and Britain.

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<sup>47</sup> CTL website. <http://www.caymanasracetrack.com>. 2008 July 29

<sup>48</sup> CTL website. <http://www.caymanasracetrack.com>. 2008 July 29

<sup>49</sup> CTL website. <http://www.caymanasracetrack.com>. 2008 July 29

<sup>50</sup> Minutes of the Board of Directors. *Simulcast*. 2008 January 3

By way of an email, which was dated 2009 January 16, CTL's Financial Controller, Mr. Orville Christie, informed the OCG that approximately seventy five percent (75%) of CTL's earnings are generated from the OTBs.

Mr. Orville Christie, in his email, stated that CTL, in return, pays the OTB Franchisers five and a half percent (5.5%) of the betting revenues as a commission.

The OCG found that CTL's revenue is primarily derived from betting on (a) the local races and (b) the simulcast overseas racing.

Further, and according to the Financial Controller, Mr. Orville Christie, the Bookmakers pay CTL a one percent (1%) rights fee for using the CTL product.

### ***The SportsMax Proposal***

On 2008 July 6, the *Sunday Herald* published an article which was entitled "*Rousseau in powwow: SportsMax deal shrouds CTL Chairman in 'conflict of interest' rap.*"

The article alluded to the occurrence of a conflict of interest on the part of the Hon. Mr. Patrick Rousseau, who is not only the Chairman of CTL but is also the Chairman of SportsMax, which reportedly had submitted a proposal to provide services to CTL.

In reviewing (a) the documents which were supplied to the OCG during the course of its Investigation and (b) the allegations which were made in the media, the OCG found that there were three (3) distinct areas of interest with regard to SportsMax and CTL, which it felt warranted examination, particularly having regard to the allegations which had been made of a conflict of interest on the part of Mr. Rousseau.

These three (3) areas of interest were as follows:

1. The live broadcast of local racing content from Caymanas Park;
2. The proposal for the Satellite Distribution of CTL content to Off-Track Betting parlours;
3. CTL's acquisition of simulcast signals from the UK and South Africa.

In examining the foregoing areas of interest, the OCG was interested in determining, *inter alia*, (a) whether a conflict of interest existed, (b) whether CTL was adhering to the Government Procurement Guidelines, and (c) whether there was a disclosure of interest by Mr. Rousseau to the CTL Board in accordance with Section 17 (2) of the Public Bodies Management and Accountability Act and Section 193 (1) (b) of the Companies Act, 2004.

➤ ***The Live Broadcast of Local Racing Content from Caymanas Park***

With regard to the live broadcast of the local racing content from Caymanas Park, the OCG found that on 2008 August 3, CTL placed a tender advertisement in the local press for the sale of the rights to broadcast live racing from Caymanas Park.

The OCG's review of the tender documents which were provided by CTL found that there were several deficiencies in the document.

Consequently, the OCG, by way of a letter, which was dated 2008 August 12, advised CTL that "... *the weaknesses identified in the documents, are such, that they may require comprehensive amendments. Given the constraints between the time, to allow for the amendments and your proposed tender opening date of August 18, 2008, we recommend that the current process be aborted.*"<sup>51</sup>

As such, CTL withdrew the advertisement from the local media.

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<sup>51</sup> OCG letter to CTL. 2008 August 12

Subsequently, in a letter to the OCG, which was dated 2008 August 13, CTL's Executive Manager - Marketing, Mrs. Millicent Lynch, informed the OCG that CTL had been in partnership with TVJ for many years for the broadcast of its racing content. This, she explained, was a relationship which existed prior to the emergence of other television stations and that CTL had no contract in place with TVJ.

Mrs. Lynch, in her letter, stated that *"The arrangement was for TVJ to carry the races live annually in exchange for entitlements. When Caymanas Track began to increase the number of sponsorship and CVM began to show an interest in the live racing, Caymanas Track Limited then included CVM in a similar arrangement. CVM later informed us that they would be interested in carrying the races as a package and therefore carried the races on a three (3) minutes delayed basis."*<sup>52</sup>

She further stated that *"Caymanas Track Limited is now interested in collecting rights fee and will not object to attractive entitlements as part of the package; however, Caymanas Track Limited would like the public to be able to view the racing live **free to air** and therefore is not interested in exclusivity."*<sup>53</sup>

It is instructive to note, however, that prior to the tender advertisement for the sale of the rights to broadcast live racing from Caymanas Park being published on 2008 August 3, CTL had attempted to tender for the said services via the limited tender methodology on 2008 March 14.

In this regard, the OCG found that on 2008 March 14, letters of invitation to tender were directed to four (4) television stations, requesting that they submit proposals for the live broadcast of local races from Caymanas Track. The letters of invitation to tender were directed to the following stations: (a) CVM Communications Group (CVM); (b) Television Jamaica Ltd (TVJ); (c) SportsMax Ltd; and (d) Cable News & Sports (CNS).

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<sup>52</sup> Millicent Lynch. Letter to the OCG. 2008 August 13

<sup>53</sup> Millicent Lynch. Letter to the OCG. 2008 August 13

The OCG found that the letters of invitation were dispatched as a result of a Board of Directors directive to the Executive Manager – Marketing, Mrs. Millicent Lynch.

The Minutes of the CTL Board of Directors Meeting, which was dated 2008 March 27, stated that *“The Executive Manager-Marketing was asked to invite all the media houses to submit bids for live horse racing every race day starting from Derby Day. They should be given two weeks to submit their tender. The Chairman said a sub-committee would be created by the Board to evaluate the tenders.”*<sup>54</sup>

The letters of invitation indicated that *“Caymanas Track Limited wants to ensure that persons who are unable to visit the Race Track or the OTB can view racing live on their Cable or Television Network. To this end, Caymanas Track is inviting you to submit a proposal for the live broadcast of local races from Caymanas Park.”*<sup>55</sup>

The Minutes of the CTL Board Meeting, which was dated 2008 May 1, disclosed that *“It was agreed that the bids will be evaluated by a committee chaired by the Vice Chairman. Directors Parsard and Campbell will sit on the committee.”*<sup>56</sup>

In the foregoing regard, the OCG found that a Sub-Committee of the Board was appointed on 2008 May 1 to evaluate the tenders which were received as a result of the 2008 March 14 invitation letter.

In his response to the OCG’s Requisition, which was dated 2008 October 1, Mr. Ian Parsard, a member of the Sub-Committee stated that *“The sub-committee was requested to develop a comprehensive set of criteria with weighting, and to work with the management during the bidding and selection process and recommend a preferred bidder to the Board.”*<sup>57</sup>

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<sup>54</sup> Minutes of the Board of Directors. *“CEO’s Report- Section (9)- Live racing”*. 2008 March 27

<sup>55</sup> Letter of Invitation to Tender. 2008 March 14

<sup>56</sup> Minutes of the Board of Directors. *“Section (7) - Media Bid-Live Racing”*. 2008 May 1

<sup>57</sup> Ian Parsard. Response to the OCG Requisition. 2008 October 1

The OCG found that, based upon the notes of the meeting of the Sub-Committee, which was dated 2008 May 29, the bids which were received from (a) TVJ, (b) SportsMax, and (c) CNS, were deliberated upon.

However, the notes stated that “*CVM did not make a submission because they are more interested in delayed broadcast. The Committee discussed the bids after which it was agreed that the bid from Cable News and Sports did not meet CTL’s basic requirements....*”<sup>58</sup>

The notes further stated that “*It was decided that CTL will request submission of bids from the two pre-qualified bidders (SportsMax and TVJ) based on certain criteria that Mrs. Lynch was asked to develop.*”<sup>59</sup>

In his response to the OCG’s Requisition, which was dated 2008 October 1, Mr. Ian Parsard stated that “*At the meeting of May 29, 2008 it was identified that the responses did not lend themselves to an objective assessment. The management was requested to lead the development of a comprehensive set of criteria, with input from the sub-committee, which would be clearly communicated to the potential bidders and which would form the basis of subsequent evaluation by the sub-committee.*”<sup>60</sup>

Based upon the foregoing assertions that were made by Mr. Parsard and the information which was presented, the OCG found that the letters of invitation did not have an attached comprehensive tender document which outlined, *inter alia*, (a) the deliverables, (b) the eligibility criteria, and (c) the evaluation and award criteria, by which the bids would be assessed.

Hence, it would appear that as a result of the failure of the 2008 March 14 tender process, CTL made another attempt to tender for the said services on 2008 August 3. It must be noted that for the 2008 August 3 tender process, CTL chose to utilise the

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<sup>58</sup> Notes of Meeting. Sub-Committee. *Media Bids for Live Horse Racing*. 2008 May 29.

<sup>59</sup> Notes of Meeting. Sub-Committee. *Media Bids for Live Horse Racing*. 2008 May 29.

<sup>60</sup> Ian Parsard. Response to the OCG Requisition. 2008 October 1

selective tender methodology and, accordingly, advertised the tender invitation in the local print media.

With regard to the proposal from SportsMax for the live broadcast of CTL racing content, it is instructive to note that in the Minutes of the Meeting of the CTL Board, which was dated 2007 June 28, discussions ensued on the matter of *'Delayed Racing-TVJ'*.

In the referenced discussions, as evidenced by the said Minutes, Mrs. Lynch stated that, *"...she has had a lot of discussions with TVJ on the matter. She said SportsMax would have given a better quality on delivery but they wanted exclusivity and were not interested in delayed broadcast."*

When questioned by the OCG about her statement which was contained in the Minutes of the 2007 June 28 Board Meeting, Mrs. Lynch, on 2008 September 15, informed the OCG that *"I was invited to a meeting by Honorable Patrick Rousseau to discuss broadcasting of Live Racing on his cable channel. Hon. Patrick Rousseau also invited Mr. Oliver McIntosh CEO of SportsMax to join the meeting. CTL has other cable companies carrying racing delayed and thought the more the product is shown the better it would be for Caymanas Track Limited. CTL wanted to ensure that the delivery of the programme is done in a consistent and timely manner. Special attention was given to the quality of the presentation and how the product was packaged for broadcast."*<sup>61</sup>

This meeting with the Hon. Patrick Rousseau, Mrs. Lynch said, occurred sometime in 2006 July and was convened as a result of an invitation that was extended to her by Mr. Rousseau. Mrs. Lynch stated that *"I am not aware of any CTL official who initiated contact with SportsMax."*<sup>62</sup>

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<sup>61</sup> Millicent Lynch. Response to the OCG Requisition. 2008 September 15

<sup>62</sup> Millicent Lynch. Response to the OCG Requisition. 2008 September 15



The OCG notes that the referenced meeting was convened prior to Mr. Rousseau's appointment as Chairman of the CTL Board on 2007 October 29.

Subsequent to the referenced meeting with Mr. Oliver McIntosh and Mr. Patrick Rousseau, Mr. McIntosh sent an email, which was dated 2006 July 12, to Mrs. Lynch and copied to Mr. Rousseau, recapping the SportsMax proposal to CTL.

In the email, Mr. Oliver McIntosh advised that "As stated to you by Pat Rousseau and myself, ***SportsMax submitted a proposal to Caymanas track in April 2006*** for the exclusive cable television broadcast rights for racing at Caymanas track. Based on our meeting Tuesday, our understanding is that while you have not signed an agreement with TV-J, Caymanas has agreed with TV-J Sports Network for one year the following: (1) The non-exclusive live television broadcast of sponsored races (approximately 5); and (2) The non-exclusive delayed television broadcast of all "other" races (delayed by approximately 5 to 10 minutes)."<sup>63</sup> (OCG Emphasis)

The email further stated that "While this would change the proposal we have made to Caymanas, as we discussed, there is an alternative proposal that would benefit both SportsMax and Caymanas .. A revised proposal from SportsMax would be as follows:

- a. *Non-exclusive live television broadcast of sponsored races on SportsMax;*
- b. *Exclusive (for cable only) live television broadcast of all other races;*
- c. *Minimum of 5 minutes for the time that TV-J Sports Network can delay broadcast the "other" races. (i.e. The 1.00pm race at Caymanas can be delay broadcast by TV-J Sports Network at the earliest 1.05pm);and*
- d. *We would also propose a Right of First Refusal for the exclusive cable television broadcast rights for when the rights come up for re-negotiation*

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<sup>63</sup> Oliver McIntosh. Email to Millicent Lynch. "SportsMax Broadcast of Caymanas Racing". 2006 July 12

*after this year has expired. We believe that our commitment to Caymanas racing will be seen through our production to support the races and this option is in return for that commitment.”<sup>64</sup>*

Based upon the assertions of Mr. Oliver McIntosh, SportsMax submitted a proposal to CTL in 2006 April. However, the OCG has not seen evidence of such a proposal. Nevertheless, the OCG found that based upon the 2006 July meeting, SportsMax presented CTL with a revised proposal which was embodied in the email of 2006 July 12.

The SportsMax revised proposal included, *inter alia*, the rights to the non-exclusive broadcast of CTL sponsored races on SportsMax and the exclusive rights to (cable only) live broadcast of all other CTL races.

The OCG, in a Requisition, which was dated 2008 September 8, questioned Mrs. Lynch about the terms and conditions which were discussed with SportsMax.

In her response to the OCG’s Requisition, which was dated 2008 September 15, Mrs. Lynch indicated that *“SportsMax was showing what they had to offer to CTL in terms of programme delivery and also expressed their interest in exclusive rights for airing live racing. Mr. McIntosh said he would send me a letter outlining what they were proposing. The information was carried to the CTL Board under William Chin-See along with the letter. It was not in CTL’s interest to grant exclusivity and we were not very comfortable with SportsMax terms and conditions as stated in the letter. The Board instructed me to respond as stated in the letter.”<sup>65</sup>*

Mrs. Lynch, in a letter, which was dated 2006 August 2, to Mr. Rousseau, the Chairman of SportsMax, stated that *“In a meeting held by the Board of Directors a decision was taken that they would not provide the feed for live racing on Cable*

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<sup>64</sup> Oliver McIntosh. Email to Millicent Lynch. *“SportsMax Broadcast of Caymanas Racing”*. 2006 July 12

<sup>65</sup> Millicent Lynch. Response to the OCG Requisition. 2008 September 15

*Network at this time. This was due to the response for the Off Track Betting Parlour Operators who claimed that live racing has a direct negative effect to their bottom line and therefore, would prefer delayed racing. If this is of interest to you we would be happy to renegotiate.”<sup>66</sup>*

The OCG found that the proposal from SportsMax, which was submitted in 2006, was rejected by the CTL Board on the basis that (a) SportsMax wanted exclusivity for the live broadcast of the CTL races, an option the Board was not willing to consider at the time, and (b) the response from the OTBs which posited that their bottom line would be adversely affected by such a venture.

In addition, based upon a review of the Minutes of the CTL Board of Directors for the period 2007 January to 2008 June, the OCG found that the issue of media broadcast of the CTL local content was not discussed until 2008 March, subsequent to Mr. Rousseau’s appointment as Chairman of the Board of CTL on 2007 October 29. The first CTL Board Meeting which was held under the Chairmanship of Mr. Rousseau was on 2007 November 27.

It is, however, critically instructive to note that Mr. Rousseau did not declare his interest in SportsMax, to the Board and Management of CTL, until 2008 January 14.

The declaration by Mr. Rousseau, took the form of an email and stated, *inter alia*, that, *“I thank you for bringing to my attention the fact that you have commenced discussions about satellite service being provided by SportsMax to CTL. As I explained to you both this creates a conflict for me as I am the Chairman of both companies.....I am directing both organisations to not send me any information on the discussions or the process at any time and not to discuss the matter with me.”<sup>67</sup>*

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<sup>66</sup> Millicent Lynch. Letter to Pat Rousseau. 2006 August 2

<sup>67</sup> Patrick Rousseau. Email to CTL Board and management. 2008 January 14

Having declared his interest, and having regard to the fact that Mr. Rousseau was involved in the initial proposal from SportsMax to CTL for the broadcast of local races, the OCG found that Mr. Rousseau complied, *inter alia*, with Section 17 (2) (a) and (b) of the Public Bodies Management & Accountability Act, in respect of SportsMax's bid to broadcast the CTL content.

**Section 17 (2) (a) of the Public Bodies Management & Accountability Act**, states that:

*“A director who is directly or indirectly interested in any matter which is being dealt with by the board-*

*(a) shall disclose the nature of his interest at a board meeting;*

➤ ***The Proposal for the Satellite Distribution of CTL Content to the OTBs***

A core part of CTL's operations involves the simulcast of overseas horse races. This operation is made possible when CTL purchases the broadcast rights for horseracing from selected overseas horseracing tracks, from the tracks themselves or from the rights holders and/or their agents.

In purchasing these rights from the tracks, the rights holders and/or their agents, CTL receives a decoder box which is used along with a satellite dish antenna to access the signal from the satellite of the host track.

CTL then transmits this signal to its OTBs, where customers place bets on the races. As such, CTL requires satellite uplink services to facilitate the broadcast of the signals to the OTBs. This service is currently being provided to CTL by Roberts Communication Network Inc (RCN), a US based company.

In his response to the OCG's Requisition, which was dated 2008 November 6, Mr. Orville Christie, the Financial Controller of CTL, stated that "...*Caymanas Track Ltd. (CTL) has had a commercial arrangement with Roberts Communications Network, Inc (RCN), for several years for the provision of satellite uplink services.*"<sup>68</sup>

The OCG's Investigation found that the contract between CTL and RCN was signed on 2001 August 23, by Ms. Rose Campbell, the then President and CEO of CTL and was expressed to expire on 2002 August 31.

The OCG notes that when this contract was signed, the Government Procurement Procedures Handbook (GPPH) had been recently introduced for use within the Public Sector and, consequently, the contract should have been subjected to the procurement procedures that were stipulated in the GPPH. No Finding was made by the OCG regarding this specific issue.

Notwithstanding, the OCG found that despite the fact that the RCN/CTL had an expiration date of 2002 August 31, the contract was never put to competitive tender when it expired because of the parties' reliance upon Section 13 of the contract which makes provision for the exercise of a 'Right of First Refusal' by RCN.

Section 13 of the CTL/RCN contract provides:

**"RIGHT OF FIRST REFUSAL:** *Customer hereby grants to RCN the right of first refusal to obtain from Customer all further service contracts for the Transmission referred to herein or a substantially similar Transmission, via satellite or any other technology, for a period of one (1) year from the termination date of this contract or any other extension of this contract or until the date of the first Transmission after the termination date of this contract or any extension thereof. Customer shall not grant a contract for the same or a substantially similar Transmission or any portion thereof to any person, firm, partnership or*

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<sup>68</sup> Orville Christie. Response to the OCG's Requisition. 2008 November 6

*other business entity without giving RCN written notice within ten (10) days of Customer's receipt and conditional agreement to any such proposed contract. Such notice shall contain a copy of the proposed agreement to any such proposed contract. Such notice shall contain a copy of the proposed contract, express notice of the Customer's acceptance of the proposed contract condition on RCN's right to match, and an offer to enter into such a contract with RCN for the same consideration and upon the same terms and conditions contained in the proposed contract. If the offer is to be accepted, RCN shall accept such offer within thirty (30) days after RCN's receipt of such notice by giving written notice thereof to Customer, and Customer shall then enter into an agreement with RCN for such services or any portion thereof within fifteen (15) days after RCN's acceptance of such offer. If no agreement with RCN or an offer to exercise RCN's right of first refusal is made by Customer at least ninety (90) days before the first scheduled Transmission immediately following the expiration of the Agreement, RCN shall then have the right, at its sole discretion, to extend this Agreement upon the same terms and conditions set forth herein for a term equal to the original stated term in Section 12 of this Agreement."*<sup>69</sup>

Having regard to the foregoing, it is instructive to note that on 2006 August 30, RCN wrote to CTL stating that *"Pursuant to the provisions of Section 13 of the Roberts Communications Network Service Contract For Caymanas Track Limited made as of August 13, 2002 by and between Roberts Communications Network, Inc. ("RCN") and Caymanas Track Limited ("Customer"), the term of which was extended through August 31, 2006 pursuant to a letter amendment dated December 5, 2004, (hereinafter collectively the "Agreement"), RCN shall exercise its right to extend the term of the Agreement upon the same terms and conditions set forth in the Agreement for a term equal to the original stated term indicated in Section 12 of the Agreement."*<sup>70</sup>

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<sup>69</sup> RCN/CTL Contract. 2001 August 23

<sup>70</sup> RCN letter to CTL. 2006 August 30

The letter further stated that “*Consequently, the term of the Agreement shall be extended from September 1, 2006 through and including August 31, 2008.*”<sup>71</sup>

A **Right of First Refusal** (ROFR) is a contractual right that gives its holder the option to enter into a specified business transaction with a second contracting party before the second contracting party becomes entitled to enter into the same transaction with a third party in place of the contractual right holder.

The OCG found that CTL maintained the contract with RCN for the period which was stipulated in the 2006 August 30 letter from RCN. It is also instructive to note that CTL sought legal advice in respect of the termination of the RCN contract in 2008 May.

Mr. Orville Christie, in his response to the OCG’s Requisition, which was dated 2008 November 6, stated that “*The termination of the RCN contract was being considered as the cost to CTL was considered to be excessive.*”<sup>72</sup>

Attorney-At-Law, Ms. Winsome Marsh, acting on behalf of CTL, on 2008 May 26, recommended that CTL follow the specific steps which were detailed in Clause 13 of the CTL/RCN contract.

Ms. Marsh recommended that:

- “(i) *At least ninety (90) days prior to August 31, 2008 CTL must serve RCN with written Notice of its intention to enter into a contract with a new service provider.*
- “(ii) *This notice of intention must be accompanied by: - (a) a copy of the proposed contract to be entered into with the new service provider; (b) express notice of CTL’s acceptance of the proposed contract conditional upon RCN’s right to*

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<sup>71</sup> RCN letter to CTL. 2006 August 30

<sup>72</sup> Orville Christie. Resposne to OCG Requisition. 2008 November 6

*match, and an offer to enter into such a contract with RCN for the same consideration and upon the same terms and conditions contained in the proposed contract.*

*(iii) RCN's requirements as detailed in (a) and (b) above must be all carried out by CTL within ten (10) days of CTL's receipt of the provisional contract and CTL's conditional acceptance of same."*<sup>73</sup>

Ms. Marsh further recommended that *"Once CTL meets these requirements, RCN may, within the time periods set out in Clause 13, opt to accept the new terms as set out in the proposed new contract or refuse to accept same, thereby bringing the contract of 2001 and the "extensions thereof" to an end in August 2008. If RCN agrees to accept on the same terms as proposed by the new service provider, then the new contract would be for one (1) year only. To remove all doubt about the lifeline of this new contract, I would advise that the proposed new contract be fixed for one (1) year **WITHOUT** an option to renew and **WITHOUT** the right of first refusal therein contained."*<sup>74</sup>

Subsequent to the foregoing legal opinion, CTL, on 2008 June 3, wrote to RCN informing them of its intent to put to tender the contract for uplink services and invited RCN to participate when this was undertaken. This, CTL stated, was in line with the requirements of the procurement guidelines.

It is instructive to note that on 2008 April 24, one month before CTL requested a legal opinion on the termination of the RCN contract, SportsMax had submitted a proposal to CTL for end-to-end content distribution of both its local and international content directly from Caymanas Park, to all requisite locations, via SportsMax's uplink service offering.

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<sup>73</sup> Winsome March. Letter to CTL. 2008 May 26

<sup>74</sup> Winsome March. Letter to CTL. 2008 May 26



The OCG found that on 2008 May 29, a meeting was held with some members of the CTL Board and Management to discuss satellite services. A review of the minutes of the meeting revealed that Mr. Rousseau was not present.

In this meeting, the Board discussed the proposal which was submitted by SportsMax and, according to the Draft Minutes of the Meeting *“The CEO advised that while there would not be an issue with the National Contracts Committee for the automatic renewal of the contract with Roberts Communication, a change in provider could come under the NCC’s scrutiny.”*<sup>75</sup>

It would appear that during the deliberations of the SportsMax proposal, consideration was given for the change from the current provider RCN. However, the Minutes stated that *“....the only condition for the termination of the contract with RCN is if Caymanas Track Limited goes bankrupt. Mrs. Winsome Marsh provided a legal opinion on the termination of the contract with RCN.”*<sup>76</sup>

The Termination Clause stated that:

*“**TERMINATION:** Notwithstanding anything to the contrary contained herein, either party shall have the right to terminate this contract if the other party files a voluntary petition for relief under the appropriate bankruptcy or insolvency law, or is adjudicated bankrupt or insolvent under the laws applicable thereto in which case charges arising out of said termination will be limited to those that have occurred as of the date of filing said petition and written notice of same.”*<sup>77</sup>

It is also instructive to note that the Minutes of the Meeting, which was dated 2008 May 29, stated that *“The following was agreed:*

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<sup>75</sup> Draft Minutes of Meeting. Satellite Service. 2008 May 29

<sup>76</sup> Draft Minutes of Meeting. Satellite Service. 2008 May 29

<sup>77</sup> RCN/CTL Contract. 2001 August 23

1. *Mr. Tankoy should find out from SportsMax if they would agree for details of their proposal and pricing to be shared with a competitor.*
2. *To negotiate a lower price with both RCN and SportsMax and better terms... ”<sup>78</sup>*

With regard to the RCN contract, the OCG’s Investigation revealed that, as at 2008 November 25, the contract between CTL and RCN was still in effect. Mr. Orville Christie, in his response to the OCG’s Requisition, which was dated 2008 November 6, stated that “*We continue to receive satellite uplink services from RCN on a month-by-month basis.*”<sup>79</sup>

The management of CTL also advised the OCG that it pays RCN an annual fee of US\$480,000.

The OCG, however, has seen no documentary evidence that the current extension of the RCN contract was submitted to the NCC for approval. In this respect, Mr. Orville Christie, by way of an email, which was dated 2008 November 7, stated that “*NCC approval is yet to be sought as with the resignation of the former CEO and the passing of Donald Tankoy,[sic] these areas have been reassigned to new managers. Our Chief Engineer, Mr. Derek Been is now in the process of obtaining the NCC approval.*”<sup>80</sup>

➤ ***Simulcast Signals from the United Kingdom and South Africa***

With regard to CTL’s acquisition of simulcast signals from the UK and South Africa, the allegations which were contained in the 2008 July 6 Herald Article, which was entitled “*Rousseau in powwow....*,” raised several concerns with respect to (a) the procurement process that was utilised by CTL in the acquisition of the said satellite services, (b) the appearance of a conflict of interest, and (c) the occurrence of possible cronyism in the award of a contract.

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<sup>78</sup> Draft Minutes of Meeting. Satellite Service. 2008 May 29

<sup>79</sup> Orville Christie. Response to OCG Requisition. 2008 November 6

<sup>80</sup> Orville Christie. Email to OCG. 2008 November 7

The OCG, in its Requisition, which was dated 2008 July 30, to Mr. Donald Tankoy, CTL's Executive Manager for Off-Track Betting, sought to ascertain the methodology which was utilised by CTL to invite proposals for the provision of satellite services for simulcast racing from South Africa and the UK.

*Phumelela's approach to provide CTL with satellite services*

Mr. Tankoy, in his written response to the OCG's Requisition, which was dated 2008 August 21, informed the OCG that "*Phumelela approached CTL approximately three (3) years ago to provide satellite services for simulcast racing from South Africa and the United Kingdom.*"<sup>81</sup>

Mr. Tankoy, in support of his assertions, provided the OCG with copies of emails in which he discussed British racing with the Phumelela Gold (PGI/PGE) representatives.

A review of an email from Wyvern N.A.R. Ltd. (i.e. PGI's representative), which was dated 2004 June 11, indicated that Wyvern informed CTL, *inter alia*, that "*...I am writing to confirm on a slightly more formal basis the exact nature and scope of our betting product offering. It is our intention to work closely Caymanas Track Ltd. [sic] for co-operation with bookmakers in Jamaica.*"<sup>82</sup>

The email further stated that "*...on Friday 22 May 2004, Phumelela Gold of South Africa entered into an agreement with the Horse Racing Channel (THRC) now known as "Racing UK" whereby Phumelela Gold acquired worldwide EXCLUSIVE rights (outside of the UK and Ireland) for the marketing and distribution of all media (TV and data) relating to the race tracks listed below. The agreement extends for a firm 8 years and is not subject to rolling race clubs contract for unspecified periods as some contracts are structured.....Phumelela reached agreement [sic] with the UK Tote to*

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<sup>81</sup> Donald Tankoy. Response to OCG Requisition. 2008 August 21

<sup>82</sup> Wyvern N.A.R Ltd. Email to CTL. 2004 June 11

*jointly provide commingling arrangements with any betting operator contracting with Phumelela for a commingled Tote product.”<sup>83</sup>*

The email also stated that *“Phumelela will be transmitting world wide a TV channel containing the best of British racing as well as fixtures from South African race tracks. This channel is a transitional service designed to ensure continuous delivery of racing product to existing costumers....”<sup>84</sup>*

The OCG’s Investigation revealed that on 2004 July 13, Wyvern N.A.R Ltd. submitted to CTL a proposal for what it termed *“International Racing.”* Below is an extract of some key points which were contained in the proposal:

- i. “UK racing tracks have split into two groups. One group comprising 30 tracks have formed an entity known as Racing UK and the remaining tracks have either aligned with ATR/SIS (some temporarily) or remain uncommitted.*
- ii. On 2004 May 22, Racing UK, which holds all media and data rights for 30 of the UK tracks, granted international broadcasting and distribution rights, outside of the UK and Ireland exclusively to Phumelela Gold Enterprises.*
- iii. Further, Phumelela is the sole rights holder of South African racing.*
- iv. The EXCLUSIVE UK rights agreement extends for two terms of three (3) and five (5) years respectively, currently terminating 2012 May 31.*
- v. The agreement includes the UK Tote as a commingling partner. Phumelela is working with the UK Tote to facilitate international commingling and merged tote pools on all races broadcast.*

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<sup>83</sup> Wyvern N.A.R Ltd. Email to CTL. 2004 June 11

<sup>84</sup> Wyvern N.A.R Ltd. Email to CTL. 2004 June 11

- vi. *Since, 2004 May 31, Phumelela commenced transmission of its international racing service. A video service for the combined races from Great Britain and South Africa is currently available for viewing in Jamaica.*<sup>85</sup>

Further, in another email, that was submitted by Mr. Tankoy to the OCG, which was dated 2005 June 9, another representative of PGE contacted Mr. Tankoy with regard to the SIS/PGI relationship.

The email stated that “...I am writing on behalf of Derrick Wiid and Phumelela Gold Enterprises (PGE) to advise you of the commercial terms attaching to UK & SA racing service, which will be jointly provided on the SIS Racing International unified channel from 1 July 2005.....PGE will not alter the current commercial arrangements as they relate to the supply of the unified UK and SA racing service for the first 3 months, when we take over the responsibility of making the supply.”<sup>86</sup>

The email further stated that “Accordingly, for the period 1 July 30 September 2005 [sic] Caymanas Park will be required to pay 4% of turnover as the fee for receiving the service.”<sup>87</sup>

Given the foregoing, the OCG found that PGI approached CTL in 2004 for the provision of simulcast satellite signals from the UK and South Africa. Further, as at 2005 July 1, CTL received simulcast signals from the UK and South Africa from the SIS Racing International unified channel as a result of a commercial arrangement between PGI and SIS.

It is important to note that, on 2005 August 3, a PGI representative, by way of an email to Mr. Tankoy stated that “I have made enquiries with Roberts and can assure you that Caymanas satellite time can be used in Jamaica for distribution of UK racing to bookmakers and this service will not be available to those bookmakers

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<sup>85</sup> Wyvern N.A.R Ltd.. Proposal to CTL. “British and South African-Simulcast”. 2004 July 13

<sup>86</sup> Brian Rogers. Email to CTL. 2005 June 9

<sup>87</sup> Wyvern N.A.R Ltd. Email to CTL. 2004 June 11

*during racing meetings taking place in Jamaica. There is an opportunity to control the distribution to Jamaica bookmakers and for Caymanas to be in charge of that and earn some income for the service.”<sup>88</sup>*

The referenced email had the caption: “*UK Racing Simulcast.*” Based upon the foregoing, the OCG found that PGI presented CTL with an opportunity on 2005 August 3, for it to control and distribute the PGI signal.

*Approval of CTL’s simulcast contracts*

With regard to the approval of CTL’s simulcast contracts, the OCG, during the course of its Investigation, asked the then CTL CEO, Mr. Walford Brown, and the CTL Financial Controller, Mr. Orville Christie, the following question:

*“Please provide the name(s) and title(s) of the individual(s) who approved the contract(s) for the acquisition of simulcast racing signal;”<sup>89</sup>*

In his response to the OCG, which was dated 2008 August 26, Mr. Brown stated “*Mr. Donald Tankoy and Walford Brown.*”<sup>90</sup>

In his response to the OCG, which was dated 2008 September 17, Mr. Christie stated that “*To the best of my knowledge simulcast agreements were normally approved by Mr. Donald Tankoy...*”<sup>91</sup>

A review of several of the CTL contracts for overseas simulcast signals, which were submitted by Mr. Tankoy and Mr. Brown to the OCG, revealed that CTL’s contracts with the simulcast providers were primarily signed and negotiated by Mr. Donald Tankoy.

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<sup>88</sup> PGI email to CTL. 2005 August 3

<sup>89</sup> OCG Requisition 2008 August 26 and 2008 September 4

<sup>90</sup> Walford Brown. Response to the OCG’s Requisition. 2008 August 26

<sup>91</sup> Orville Christie. Response to the OCG’s Requisition. 2008 September 17

The OCG's review of CTL's simulcast contracts also revealed that CTL, in selecting the tracks for simulcast racing, is obligated to acquire satellite signals either directly from the tracks, or from their assigned agents or rights holder. In this regard, the OCG found that the method of contracting is that of sole source or direct contracting.

Mr. Tankoy, in his response to the OCG's Requisition, which was dated 2008 August 21, declared that the tracks which are selected by CTL are chosen based upon the perceived profitability of the tracks, and CTL's ability to pay.

The OCG's review of a simulcast payment schedule for the period 2006 January to 2008 July, revealed that CTL made a range of payments to several contractors between J\$153,308.08 to J\$32,589,961.29. The table below includes a random sample of six (6) of the contractors and the respective payments which have been made to them by CTL.

<b>NAMES</b>	<b>Jan 2006 - Dec 2006 (J\$)</b>	<b>Jan 2007 – Dec 2007 (J\$)</b>	<b>Jan 2008 – July 2008 (J\$)</b>	<b>TOTALS (J\$)</b>
Del Mar Thoroughbred Club	*2,001,044.97	*2,213,800.64	-	4,214,845.61
FairPlex Park	153,308.08	701,940.44	-	855,248.52
The Sports Wire	+*24,666,707.17	+*32,589,961.29	+*20,334,101.30	77,590,769.76
Wyvern International	*11,424,163.86	*10,884,862.94	*5,473,286.98	27,782,313.78
New York Racing Association	*5,150,794.62	*5,765,731.80	*5,354,337.53	16,270,863.95
Turf Paradise Inc.	*3,519,485.56	*4,021,085.59	*3,817,977.98	11,358,549.13

\*Pursuant to Section 2.1.3.4 of the GPPH, the prior approval of the NCC for the use of the sole source methodology was required given that these contracts were above the J\$1M threshold.

+Pursuant to Section 2.3 of the GPPH, Cabinet approval was required for these contracts as they were above the J\$15M threshold.

A review of the NCC's database, for contracts which have been endorsed for CTL, by the NCC, for the period 2006 January to 2008 July, revealed that there were no approvals granted by the NCC for any contract for the acquisition of simulcast signals.

Furthermore, the OCG has seen no documentary evidence to indicate that CTL has ever approached the NCC to request permission to utilise the sole source and/or direct contracting methodology to acquire simulcast satellite signals in accordance with Section 2.1.3.4 of the GPPH.



Section 2.1.3.4 of the GPPH states that all sole source or direct contracting, which is \$1 Million or greater in value, must receive the prior written approval of the NCC, through the Accounting Officer of the Procuring Entity.

In light of the aforementioned breaches, it is instructive to note the stated view of the CTL Board in respect of the parameters of the Government of Jamaica (GOJ) Procurement Guidelines, which it outlined in a letter to the Minister with portfolio responsibility for CTL, Mr. Don Wehby, the Minister without portfolio in the Ministry of Finance and the Public Service (MOFPS).

In the letter to Minister Wehby, which was dated 2008 July 29, CTL's Deputy Chairman, Mr. Peter Lawson, writing on behalf of the CTL Board, indicated that *"The Board and Management of CTL are of the view that purchasing signal rights on overseas racing in order to sell bets on this racing does not and should not fall under the Government's procurement guidelines."*<sup>92</sup>

Based upon the position of the Board, the OCG, in its Requisition, which was dated 2008 September 4, to CTL's Financial Controller, Mr. Orville Christie, asked the following question:

*Please provide an Executive Summary detailing the approval process which is in place for approval of contracts and/or agreements entered in by CTL for simulcast racing. In preparing the summary, kindly answer the following questions:*

- i. Was/were the General Counsel and/or Legal Department of CTL involved in the negotiations for the acquisition of simulcast racing signal? If yes, detail the role of the General Counsel and/or Legal Department in the negotiations and the date(s) on which the General Counsel and/or Legal Department became involved in the negotiations.*

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<sup>92</sup> Peter Lawson. Letter to Minister Don Wehby. 2008 July 29

- ii. *Was/were the contract(s) entered into by CTL for acquisition of simulcast racing signal vetted by the General Counsel, or Legal Department of CTL and/or any external Attorney?*
  - a. *If yes, please state the name(s) of the individual;*
  - b. *If no, is it customary for CTL to enter into negotiations and/or sign contracts without the involvement of the General Counsel and/or Legal Department?*
- iii. *Please provide the name(s) and title(s) of the individual(s) who approved the contract(s) for the acquisition of simulcast racing signal;*
- iv. *Was/were these contract(s) approved by the Procurement Committee and/or Board of CTL?*

In his response to the OCG's Requisitions, which was dated 2008 September 17, Mr. Christie stated that *"Typically legal counsel is not sought for standard simulcast contracts/agreements but legal advice is sought for non-standard simulcast contracts/agreements.....yes, it is customary for Caymanas Track Limited (CTL) to enter into negotiations and/or sign standard simulcast contracts/agreements without the involvement of general counsel."*<sup>93</sup>

On the question as to whether the contracts were approved by the Procurement Committee and/or Board of CTL, Mr. Christie stated *"No."*<sup>94</sup>

Given the foregoing, the OCG found the position of the Board alarming especially having regard to the fact that (a) there appeared to be no formal approval process in place for contracts and/or agreements which were entered into by CTL for the acquisition of simulcast racing signals, and (b) contracts of this nature were primarily signed and negotiated by a single individual.

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<sup>93</sup> Orville Christie. Response to the OCG's Requisition. 2008 September 17. #8

<sup>94</sup> Orville Christie. Response to the OCG's Requisition. 2008 September 17. #8

Section 1.5.2.3 of the GPPH stipulates that the Procurement Committee of a Public Body is mandated to<sup>95</sup>:

- *“ensure compliance with relevant policies, guidelines and procedures*
- *effect objective evaluation processes with respect to quotations, tenders and requests for proposals;*
- *facilitate response to contractor inquiries;*
- *maintain proper record of Committee meetings, including records of the procurement; and*
- *ensure compliance with reporting obligations.”*

In consequence of the foregoing, the OCG found that CTL is in breach of Section 1.5.2.3 of GPPH as the simulcast contracts were never approved, *inter alia*, by the Company’s Procurement Committee.

Further, it is important to note that it was not until 2008 June 26, in a meeting of the CTL Board of Directors, that the Board instructed that all new CTL simulcast contracts were to be submitted to it for approval and signing.<sup>96</sup> Accordingly, prior to 2008 July 26, the approval of CTL’s contracts for the acquisition of simulcast signals, primarily rested in the hands of a single party, Mr. Donald Tankoy.

The OCG’s Investigation revealed that CTL has paid in excess of J\$166 Million of public funds to the suppliers of simulcast satellite signals for the period 2006 January to 2008 July, all in violation of applicable Government procurement procedures.

The table below highlights the total payments which have been made by CTL to its simulcast providers for the period 2006 January to 2008 July. Included are the US dollar amounts and the equivalent Jamaican dollar amounts.

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<sup>95</sup> GPPH- Section I Introduction. Page 6

<sup>96</sup> Minutes of the Board of Directors. 2008 June 26

<b>YEAR</b>	<b>US\$</b>	<b>J\$</b>
2006 January- December	892,033.70	58,723,990.74
2007 January- December	992,106.72	68,446,962.86
2008 January- July	547,747.65	39,134,353.35
<b>TOTAL</b>	<b>2,431,888.07</b>	<b>166,305,306.95</b>

Following a review of the individual payments which have been made by CTL to the contractors for simulcast satellite services, the OCG found that, in several instances, the annual payments exceeded the J\$4 million threshold, which would have required the approval of the NCC, pursuant to Section 2.3 of the GPPH.

In addition, the OCG has found no evidence to indicate that either the requirements of the Ministry of Finance & Planning Circular No.17, which is dated 2002 May 15 and entitled Public Sector Procurement Policy & Procedural Guidelines for Sole Sourcing, or Section 2.1.3.4 of the GPPH, was adhered to by CTL in the contracting of simulcast satellite services.

The OCG has found no documentary evidence to indicate that the CTL Accounting Officer either (a) gave prior written approval for the use of the sole source methodology or, (b) approved the contracts with the suppliers of simulcast satellite services.

In light of the foregoing, the OCG believed it prudent to examine the issues of CTL's accountability and responsibility within the context of the requirements which are imposed in relation thereto by the Financial Administration and Audit Act (FAA Act) and the Public Bodies Management and Accountability Act.

In a letter to the Financial Secretary, Ms. Sharon Crooks, which was dated 2008 October 27, the OCG sought to ascertain (a) the name of the Accounting Officer of CTL, (b) the names of the Accountable Officers of CTL, and (c) whether the late Mr.

Donald Tankoy, CTL's Executive Manager, Off-Track Betting, was an Accountable Officer for CTL.

By way of letter, which was dated 2008 October 31, Ms. Crooks informed the OCG that *"In the case of the CTL, the Financial Secretary is the Accounting Officer."*<sup>97</sup>

The 2008 October 31 correspondence from the Financial Secretary also stated that, *"Based on our records, Mr. Walford Brown, Chief Executive Officer is the only Officer appointed Accountable Officer at CTL. Our Investigations have revealed that the late Mr. Donald Tankoy was an Executive Director at CTL with responsibilities for Off Track Betting. Mr. Tankoy would therefore not be appointed an Accountable Officer."*<sup>98</sup>

In a letter, which was dated 2007 December 6, Mr. Robert Martin, the Deputy Financial Secretary advised the OCG that *"Pursuant to the FAA Act, Accounting Officers are responsible for the propriety of procurement expenditure affected by their portfolio entities. Accordingly, all Accounting Officers are required to adhere to the procedures contained in the Handbook of Public Sector Procurement Procedures."*<sup>99</sup>

Section 16 (2) of the FAA Act puts the matter beyond doubt. It states, *inter alia*, that *"An accounting officer shall be responsible for the financial administration of the department specified in a designation under subsection (1) and shall be accountable to the Minister for- (a) the assessment and collection of, and accounting for, all the moneys lawfully receivable by his department; ...(and) (c) making any payment required to be made in relation to such appropriation."*

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<sup>97</sup> Letter from Mrs. Sharon Crooks. Financial Secretary, Ministry of Finance and the Public Service. 2008 October 31

<sup>98</sup> Letter from Mrs. Sharon Crooks. Financial Secretary, Ministry of Finance and the Public Service. 2008 October 31

<sup>99</sup> Letter from Mr. Robert Martin, Deputy Financial Secretary, Ministry of Finance and the Public Service

Pursuant to Section 2 (1) of the FAA Act, and having regard to the correspondence which was received from the Financial Secretary, on 2008 October 31, the Accountable Officer for CTL was Mr. Walford Brown, its Chief Executive Officer.

Accounting and Accountable Officers, in accordance, *inter alia*, with Sections 16 (2), 19 and 24F of the FAA Act, are vested with the authority and responsibility, *inter alia*, to make commitments and payments and are authorised and are held responsible to certify and approve the payment of vouchers and to enter into contracts and agreements on behalf of the Public Body or Bodies for which they are accountable.

Having regard to the foregoing, the OCG found that Mr. Tankoy was neither the Accounting and/or Accountable Officer for CTL. As such, Mr. Tankoy was not authorised to sign and/or approve contracts. Neither did he have the requisite authority to make commitments on behalf of CTL.

Section 20 (1) of the FAA Act is instructive on the sanctions which may be imposed upon Accounting Officers, Accountable Officers and Officers who are found to have failed in their duties. An “*Officer*” is defined in Section 2.1 of the Act as “*any person in the employ of Government*”.

**Section 20 (1) Financial Administration and Audit Act** provides, *inter alia*, as follows:

“20. (1) *If it appears to the Financial Secretary upon a report by the Auditor General that any person who is or was an officer-*

*(a) has failed to collect any moneys owing to the Government for the collection of which such person is or was at the time of such employment responsible;*

*(b) is or was responsible for any improper payment of public moneys or for any payment of such moneys which is not duly vouched; or*

*(c) is or was responsible for any deficiency in, or for the loss or destruction of, any public moneys, stamps, securities, stores, or other Government property, and if, within a period specified by the Financial Secretary, an explanation satisfactory to*

*him is not furnished with regard to such failure to collect, improper payment, payment not duly vouched, deficiency, loss or destruction, as the case may be, the Financial Secretary may surcharge against the said person the amount not collected or such improper payment, payment not duly vouched, deficiency, loss or the value of the property destroyed, as the case may be, or such lesser amount as the Financial Secretary may determine.”*

*Source of CTL’s UK and South African Simulcast Signals*

With respect to the specific allegations which surround CTL’s acquisition of simulcast signals from the UK and South Africa, that were contained in the 2008 July 6 *Herald* newspaper article, “*Rousseau in powwow...*”, the OCG’s Investigation revealed that CTL receives the said signal from two entities, Satellite Information Systems Ltd. (SIS) and PGI.

Detailed below are the circumstances with regard to the referenced companies:

*(a) Satellite Information Systems Limited (SIS)*

The OCG found that, as at 2005 July 1, SIS and PGI provided CTL with simulcast satellite services from the UK & South Africa on the SIS Racing International unified channel. However, on 2008 May 1, SIS informed CTL that this joint service with PGI was terminated effective 2008 March 31.<sup>100</sup>

By way of letter, which was dated 2008 May 1, SIS informed CTL to “*Please note that with immediate effect SIS has appointed Tote Investments Limited as the exclusive licence holder in the Caribbean and they will be responsible for managing all SIS matters in the region.*”<sup>101</sup>

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<sup>100</sup> SIS. Letter to CTL. 2008 May 1

<sup>101</sup> SIS. Letter to CTL. 2008 May 1

The letter further stated that *“The service comprising pictures from the 30 UK courses for which SIS has the overseas rights and all Irish courses, a full programme of BAGS greyhound racing and a virtual racing service comprising horses and greyhounds together with live overseas content when available. The service will also feature the unofficial off-tube commentaries from all UK courses that we are not allowed to televise.”*<sup>102</sup>

*(b) Phumelela Gold Enterprises (PGE)/Phumelela Gold International (PGI)*

Mr. Tankoy, in his written response to the OCG’s Requisition, which was dated 2008 August 21, stated that *“Phumelela approached CTL approximately three (3) years ago to provide satellite services for simulcast racing from South Africa and the United Kingdom.”*<sup>103</sup> This service was, up until 2008 March 31, provided to CTL, jointly with SIS. However, SIS/PGE severed their business relationship, and the rights to approximately sixty UK tracks were evenly distributed between SIS/PGE.

Mr. Peter Lawson, the Deputy Chairman of CTL, in his response to the OCG’s Requisition, which was dated 2008 October 8, stated that *“CTL is party to a contract with a British company, Satellite Information Systems Limited (“SIS”) for the supply of simulcast racing from the British and South African tracks. In or about April 2008 SIS had a dispute with one of its simulcast suppliers, Phumelela, and the two parted company.”*<sup>104</sup>

Mr. Lawson further stated that *“From that date CTL became obliged to send split payments to SIS and Phumelela in order to receive all it was entitled to under the simulcast contract. The arrangement for payment direct to Phumelela was not negotiated or in any way arranged by the Board. This was, so far as I am aware, dealt with exclusively by management, as a purely operational matter.”*<sup>105</sup>

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<sup>102</sup> SIS. Letter to CTL. 2008 May 1

<sup>103</sup> Donald Tankoy. Response to the OCG Requisition. 2008 August 21.

<sup>104</sup> Peter Lawson. Response to the OCG Requisition. 2008 October 8

<sup>105</sup> Peter Lawson. Response to the OCG Requisition. 2008 October 8



In this regard, the OCG found that subsequent to the split between PGE/SIS on 2008 March 31, CTL maintained a commercial arrangement with both parties. According to CTL, this arrangement was in an effort to prevent a disruption in its simulcast services.

It is instructive to note that SIS appointed Tote Investments Limited as its exclusive licence holder in the Caribbean. Based upon the foregoing, the OCG found that CTL has a commercial arrangement with Tote Investments Limited for the acquisition of the SIS signal in respect of which, as at 2008 July, CTL had paid a total of J\$1,712,891.10.

However, the OCG has seen no documentary evidence to indicate that CTL sought approval from either the Accounting Officer and/or the NCC for the use of the Sole Source Methodology for the referenced contract with Tote Investments Ltd.

In respect of the PGI tracks, Mr. Tankoy, in his response to the OCG's Requisition, which was dated, 2008 August 21, stated that *"On Friday, May 9, 2008 Mr. Simon Nicholls of Phumelela met with CTL officers Messer's [sic] Been Brown, Christie and Tankoy and advised us that SportsMax had been appointed the agent to represent Phumelela in the Caribbean and that SportsMax would be contacting us to discuss the terms and conditions of supplying us with the signal.....Mr. Nicholls also mentioned that we would not need to pay Phumelela for the signal for April and May 2008. However we would need to negotiate with SportsMax to begin paying them June 1, 2008[sic]."*<sup>106</sup>

Mr. Tankoy further stated that *"At this date (i.e 2008 May 9) we were unaware of the existence of this company know [sic] as International Media Content (IMC) and its relationship to (if any) SportsMax. On June 4, 2008 Mr. Oliver McIntosh, Mr. Newton Robertson and Mr. Christopher Telfer of SportsMax met with Mr. Christie and myself and they advised that the agreement between SportsMax and Phumelela*

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<sup>106</sup> Donald Tankoy. Response to the OCG Requisition. 2008 August 21.

*had been finalised and that SportsMax is now the official agent for the Caribbean. We were informed by him that SportsMax had concluded arrangements to supply the signal to United [sic] Bookmakers Association (UBA. Mr. McIntosh offered CTL the signal for the English races at the rate of 4% of gross sales....Mr. McIntosh advised that he would be sending us a contract to finalize the agreement which would take effect on June 1, 2008.*"<sup>107</sup>

In his response to the OCG's Requisition, which was dated 2008 August 14, Mr. Oliver McIntosh stated that *"IMC is not an agent for PGI. The only relationship that IMC has with PGI is that IMC acquired the rights to simulcast racing for horse racing tracks in South Africa and the United Kingdom."*<sup>108</sup>

Mr. Oliver McIntosh further stated that *"Neither of IMC [sic] or SportsMax initiated contact to provide satellite services for simulcast racing from South Africa and the United Kingdom. Subsequent to IMC purchasing the betting and broadcast rights from Phumelela Gold International (PGI) for racing content from South Africa and the UK and PGI informing CTL that IMC had acquired the rights, IMC presented a draft agreement to CTL for CTL to continue using the racing content previously provided by PGI."*<sup>109</sup>

Given the foregoing, the OCG found that IMC purchased the broadcast rights from PGI for the racing content from the UK and South Africa. Consequently, as at 2008 June 1, CTL was obligated to direct payments for the signal to IMC in order to maintain access to the PGI signal.

As such, IMC sent a draft contract to CTL for signing. However, the OCG found that this contract was not signed by CTL's management as the contract was not considered a 'standard simulcast contract' and included clauses which CTL found to be unsatisfactory.

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<sup>107</sup> Donald Tankoy. Response to the OCG Requisition. 2008 August 21.

<sup>108</sup> Oliver McIntosh. Response to the OCG Requisition. 2008 August 14

<sup>109</sup> Oliver McIntosh. Response to the OCG Requisition. 2008 August 14

Further, Mr. Tankoy, in his declaration to the OCG, which was dated 2008 August 21, stated that, at a meeting on 2008 June 4, Mr. Oliver McIntosh, Mr. Newton Robertson and Mr. Christopher Telfer of SportsMax, informed Mr. Christie and himself that the agreement between SportsMax and PGI had been finalised and that SportsMax, was the official agent for the Caribbean.

However, according to the management of CTL, the draft contract which was received for the PGI signal stated that IMC was the rights holder. If this was the case, then it would have meant that CTL was entering into a contract with IMC and not with SportsMax, as the CTL representatives had been informed at the 2008 June 4 meeting.

It is instructive to note that Mr. Oliver McIntosh, in his response to the OCG's Requisition, which was dated 2008 August 14, stated that "*The meeting was held with both parties to inform them that SportsMax's parent company, IMC, had agreed in principle with PGI for the acquisition of the rights for certain racing content for Jamaica and to begin to discuss terms of agreement [sic] for the continued provision of such content that was previously coming from PGI.*"<sup>110</sup> (OCG Emphasis). The referenced meeting, according to Mr. Oliver McIntosh, was a breakfast meeting which was convened on 2008 April 18.

However, to the contrary, the OCG found that at the time of receiving the IMC contract, CTL's management was (a) unaware of the company named IMC and (b) the connection between IMC and SportsMax.

In this regard, it is also instructive to note that in a letter, which was dated 2008 July 14, from CTL to Mr. Simon Nicholls, Vice President International Operations, PGI, CTL stated that "*Thank you for your letter dated July 10, 2008. Your letter indicated that Phumelela assigned agency rights to SportsMax for the promotion of horse racing picture from South Africa and Racing UK effective June 1, 2008. We have*

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<sup>110</sup> Oliver McIntosh. Response to the OCG Requisition. 2008 August 14

*been having preliminary discussions with SportsMax and now have in our possession a draft contract which indicates that a company known as International Media Content (IMC) is acting on behalf of SportsMax in executing this contract. We seek clarification from you as to whether IMC has been duly authorized by you to act on behalf of SportsMax.*"<sup>111</sup> (OCG Emphasis)

In an email response from Mr. Simon Nicholls, which was dated 2008 July 16, he advised CTL that "We did sell our rights to IMC and not SportsMax. **Sorry I thought you know they were linked.** [sic] Any payments prior to June 1<sup>st</sup> are for Phumelela, anything after June 1<sup>st</sup> is IMC/SportsMax. The contract has been signed and is fully operational, **I no longer have the ability to deal with you direct.**"<sup>112</sup> (OCG Emphasis)

It is also instructive to note that representatives of CTL, SportsMax and IMC have all maintained that there is no contract in place between IMC, SportsMax and CTL for the provision of simulcast satellite services from the UK and South Africa.

However, on 2008 September 23, IMC wrote to CTL, requesting that the betting revenue sales for the months of June, July and August 2008, be provided to IMC to facilitate the preparation of the requisite invoices.

The letter stated that "Per notice given in the letter dated July 10, 2008 and email dated August 12, 2008 from Mr. Simon Nicholls, Vice President of International Operations for Phumelela Gold International ("PGI") to Caymanas Track Limited ("CTL"), International Media Content ("IMC") is the owner of the PGI racing content rights (the "Content") **and SportsMax Limited are IMC's local agent in Jamaica**....As per previous discussions with CTL regarding the above, we came to a **verbal agreement** that, until a signed contract was in place, CTL would, on a monthly basis, report to IMC the betting revenues on the Content and pay four percent (4%) of

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<sup>111</sup> Caymanas Track Limited. Letter to PGI-Simon Nicholls. 2008 July 14

<sup>112</sup> Simon Nicholls. Email response to CTL. 2008 July 16

*this reported betting revenue to IMC, as was previously done with PGI. This resulted in CTL being able to continue its business of providing the Content to its customers with no disruption or change in terms.”<sup>113</sup> (OCG Emphasis)*

In light of the contents of the IMC letter, which stated that CTL and IMC had a ‘verbal agreement’, it is instructive to note that CTL’s former CEO, Mr. Walford Brown, in a letter to the OCG, which was dated 2008 July 17, stated that “*Although there is no contract in place we intend to make payment to IMC pending a formal contract. These payments will be made to IMC as a rights fee at a rate of four percent (4%) of gross sales on a monthly basis.*”<sup>114</sup>

Having regard to the foregoing, the OCG found that CTL has a tentative commercial arrangement, in place, with IMC, for the provision of satellite signals from the UK and South Africa which is in point of fact a ‘Government Contract’ within the meaning of the Contractor-General Act.

The foregoing position is unequivocally supported by the definition of a ‘Government contract’ which is contained in Section 2 of the 1983 Contractor-General Act. Section 2 clearly states that a “*government contract includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or service.*”<sup>115</sup> (OCG Emphasis).

In this respect, according to IMC, subsequent to its purchase of the PGI rights, CTL and IMC verbally agreed to maintain the existing terms and conditions of the PGI/CTL contract pending the official signing of a formal contract between IMC and CTL.

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<sup>113</sup> IMC. Letter to CTL. 2008 September 23

<sup>114</sup> CTL. Letter to the OCG. 2008 July 17

<sup>115</sup> Contractor-General Act. 1983

With regard to the CTL operations and the provision of uplink satellite services, the OCG notes that the contract with RCN is a key part of the transmission of CTL's content to its OTBs for betting purposes. Therefore, the ability to re-broadcast the simulcast satellite signals which are acquired by CTL is a common feature of CTL's contracts with overseas simulcast satellite signal providers.

However, it is instructive to note that in a letter, which was dated 2008 August 7, Attorney-At-Law, Mr. Gordon Robinson, representing the CTL Management, stated that *“Please note that the draft contract sent by IMC very cunningly seeks to provide that the signal may not be rebroadcast (see Clause 3 and the first of two Clauses numbered 7) which, if agreed by CTL, would place CTL in the position of being forced to award the uplink contract to IMC which CTL has no intention whatsoever of doing.....These Clauses are included in the draft contract by IMC's Attorneys despite their certain knowledge that CTL would have no other purpose for purchasing the signal than for re-broadcast.”*<sup>116</sup>

In this regard, the OCG found that the terms of the draft IMC contract for the provision of the PGI signal to CTL would not allow for the re-broadcast of the said signal via RCN to CTL's OTBs in accordance with CTL's modus operandi.

Based upon Mr. Robinson's analysis of the draft IMC/CTL contract, CTL would be forced to award the uplink contract, which is currently being operated by RCN, to IMC. In this respect, it should be noted that on 2008 April 24, SportsMax had submitted a proposal to provide CTL with the said services.

CTL has refused to sign the IMC/CTL contract as it has deemed the conditions of the contract to be unsatisfactory given that the IMC draft contract reportedly prohibits the re-broadcast of the signal.

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<sup>116</sup> Gordon Robinson. Letter to the OCG. 2008 August 7

### ***International Media Content & SportsMax***

Based upon the fact that CTL's management was unaware of the shareholder/owner relationship between SportsMax and IMC, the OCG's Investigation sought to ascertain the level of inter-connectivity between both entities.

This was particularly important in light of the 2008 September 23 letter from IMC to CTL which stated that "*Per notice given in the letter dated July 10, 2008 and email dated August 12, 2008 from Mr. Simon Nicholls, Vice President of International Operations for Phumelela Gold International ("PGI") to Caymanas Track Limited ("CTL"), International Media content ("IMC") is the owner of the PGI racing content rights.... and **SportsMax Limited are IMC's local agent in Jamaica...***"<sup>117</sup>(OCG Emphasis).

Based upon the foregoing, it is instructive to note that at no point during the Investigation did Mr. Oliver McIntosh and/or Mr. Patrick Rousseau indicate to the OCG that SportsMax was an agent of IMC in respect of the subject PGI signals and CTL's acquisition of same.

The 2008 September 23 letter from IMC to CTL, which was submitted to the OCG by CTL, is the only documentation which has definitively attested to SportsMax being an agent for IMC in regard to the PGI signal.

Further, the OCG in its 2008 July 30 Requisition to Mr. Oliver McIntosh, the President and CEO of SportsMax, asked the following question:

*"Please provide an Executive Summary detailing the relationship, if any, between IMC and SportsMax. The summary should include:*

- i. The date(s) of incorporation of both companies;*
- ii. A statement as to the correlation, if any, between the two companies, and the circumstances relating to the same;*

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<sup>117</sup> IMC. Letter to CTL. 2008 September 23

- iii. *A statement as to the core business operations of both companies;*
- iv. *Detail the functions and role of each company, in regard to the alleged proposal(s) made to CTL to provide satellite services for simulcast racing from South Africa and the United Kingdom.*

*Please provide documentary evidence to substantiate your assertions where possible.”<sup>118</sup>*

In his response to the OCG, which was dated 2008 August 14, Mr. Oliver McIntosh stated that:

- i. *“SportsMax Limited was incorporated in Jamaica on May 16, 2002 International Media Content Ltd. was incorporated in St. Lucia on May 24 2002.*
- ii. *SportsMax Limited is a wholly owned subsidiary of IMC;*
- iii. *IMC’s primary business is the acquisition of broadcasting rights for sporting events, the sale of those rights and the distribution of the SportsMax channel throughout the Caribbean.*  
*SportsMax operates the SportsMax channel, provides production services for sporting events throughout the Caribbean and provides satellite services to third party companies wishing to deliver audio visual content via satellite.*
- iv. **IMC owns the rights for certain racing content and there is included in the draft agreement presented to CTL a provision for the delivery of the signal that CTL is currently using to receive the racing content from South Africa and the UK..”** (OCG Emphasis).

It should be noted that nowhere in his response did Mr. McIntosh assert that SportsMax was an agent for IMC in respect of the PGI simulcast signals.

Further, based upon the allegations of a conflict of interest on the part of the Honourable Mr. Patrick Rousseau, in respect of SportsMax and IMC, the OCG asked Mr. McIntosh the following questions:

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<sup>118</sup> OCG Requisition to Mr. Oliver McIntosh. 2008 July 30



*“To the best of your knowledge, kindly provide an Executive Summary Listing detailing the following information:*

- i. The name(s) of the shareholders, directors, shadow directors of IMC;*
- ii. The name(s) of individuals with beneficial interest in IMC;*
- iii. The name(s) of the shareholders, directors, shadow directors of SportsMax;*
- iv. The name(s) of individual(s) with beneficial interest in SportsMax.”<sup>119</sup>*

In his response to the OCG’s Requisition, which was dated 2008 August 14, Mr. McIntosh stated that:

*“i. IMC is a St. Lucia listed corporation. There are no shadow directors of IMC.*

*The Directors of IMC are:*

- a. The Honourable Patrick Rousseau, O.J.*
- b. Philip Martin*
- c. Arthur Bell*
- d. Ramon Murphy*
- e. Neil Shaka Hislop*
- f. Daryl Myers*

*ii. SportsMax is a wholly owned subsidiary of IMC. The Directors of SportsMax are:*

- a. The Honourable Patrick Rousseau, O. J.*
- b. Philip Martin*
- c. Oliver McIntosh*
- d. Courtney Walsh*
- e. Nigel Chen-See”<sup>120</sup>*

In addition, in its Requisition, which was dated 2008 July 30, the OCG asked Mr. Rousseau the following questions:

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<sup>119</sup> OCG Requisition. 2008 July 30

<sup>120</sup> Oliver McIntosh. Response to the OCG’s Requisition. 2008 August 14

*“Kindly provide an Executive Summary Listing detailing the following information:*

- i. The name(s) of the shareholders, directors, shadow directors of IMC;*
- ii. The name(s) of individuals with beneficial interest in IMC;*
- iii. The name(s) of the shareholders, directors, shadow directors of SportsMax;*
- iv. The name(s) of individual(s) with beneficial interest in SportsMax;*
- v. State whether you have any personal and/or professional relationship with IMC and/or SportsMax. Include details on whether you are a shareholder, director, shadow director and/or have beneficial interest in IMC and SportsMax; and the date(s) in which you became a shareholder, director, shadow director and/or gained beneficial interest.”<sup>121</sup>*

In his response to the OCG’s Requisition, which was dated 2008 August 12, Mr. Rousseau stated that:

*“i. and ii: This matter only relates to my conflict position and I do not understand the relevance of this information.*

*(iii) There are no shadow directors. The directors are:*

*Philip Martin*

*Oliver McIntosh*

*Nigel Chen See*

*Hon. Courtney Walsh OJ.*

*Patrick Rousseau*

*(iv) SportsMax is a wholly owned subsidiary of IMC.*

*(v) I am the Chairman of SportsMax and IMC and a director of both companies. I am not a beneficial shareholder in either company. There are no directors of CTL who are either directors or shareholders of IMC.”<sup>122</sup>*

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<sup>121</sup> OCG Requisition. 2008 July 30

<sup>122</sup> Patrick Rousseau. Response to the OCG’s Requisition. 2008 August 12

As is clearly indicated in the aforementioned answers which were given by Mr. Rousseau and Mr. McIntosh, to the specific questions which were posed by the OCG, it is unequivocally clear that both gentlemen failed to disclose the requisitioned shareholder information, for IMC, to the OCG.

The Findings of the OCG's Investigation revealed that Mr. Rousseau is the Chairman for both IMC and SportsMax.

The current arrangement between CTL and IMC, as discussed earlier, was as a result of IMC purchasing the broadcast rights from PGI for its UK and South African tracks. These simulcast signals, as at 2008 June 1, can only be obtained through IMC, which purchased the rights from PGI.

However, the OCG has not seen any documentary evidence that the NCC's approval was sought and/or granted for the then CTL contract with PGI and/or for the current CTL commercial arrangement with IMC. In fact, by all indications, approval for the then CTL contract with PGI and/or CTL's current commercial arrangement with IMC was confined to the management of CTL.

Having regard to the appearance of a conflict of interest on the part of Mr. Rousseau, particularly since the OCG's Investigation has revealed that (a) Mr. Rousseau is the Chairman of not only CTL but also IMC and SportsMax, and (b) the management of CTL, which was responsible for negotiating the contract for simulcast satellite services from the UK and South Africa, was unaware of the relationship between SportsMax and IMC, the OCG was interested in exploring whether there was merit to the allegations of impropriety and possible cronyism.

***What is a Conflict of Interest?***

The allegations and/or assertions that were contained in (a) the 2008 July 6 *Sunday Herald* article which was entitled “*Rousseau in powwow...*” and, (b) a letter which was written by Mr. Andrew Azar and which was published in the Track and Pools magazine of 2008 July 19, alluded to the possible conflict of interest that would arise given that Mr. Rousseau was the Chairman of both SportsMax and CTL.

The OCG notes that these allegations have primarily been premised upon the assumption that SportsMax had allegedly presented CTL with a proposal to supply satellite services from the UK and South Africa.

However, the OCG’s Investigation has revealed that SportsMax did not submit a proposal to CTL for the provision of UK and South African simulcast signals.

With respect to the proposals which were submitted by SportsMax to CTL, which are all unrelated to the referenced simulcast signals from the UK and South Africa, the OCG found that Mr. Rousseau fulfilled his duties according to Section 17 (2) (a) of the Public Bodies Management Act and Section 193 (1) (b) of the Companies Act, 2004, as he had disclosed his interest in SportsMax and requested that all information with regard to dealings between SportsMax and CTL be withheld from him.

However, there still exists the matter of the contract between IMC and CTL and whether Mr. Rousseau had declared his interest in IMC pursuant to **Section 17 (2) of the Public Bodies Management Act and/or Section 193 (1) (b) of the Companies Act.**

**Section 17 (2) (a) and (b) of the Public Bodies Management & Accountability Act,** provides as follows:

*“A director who is directly or indirectly interested in any matter which is being dealt with by the board-*

*(a) shall disclose the nature of his interest at a board meeting;*

*(b) shall not take part in any deliberation of the board with respect to that matter”.*

**Section 193 (1) (b) of the Companies Act** provides, *inter alia*, as follows:

*193.-(1) A director or officer of a company who is: -*

*(b) a director or an officer of any body or has an interest in any body that is a party to a contract or proposed contract with the company.....*

*shall disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of his interest.*

Mr. Rousseau’s declaration of interest in IMC would have been particularly important in light of the fact that (a) CTL’s Management and Board were unaware of the connection between SportsMax and IMC, and (b) IMC had submitted, to CTL, a letter, which was dated 2008 September 23, requesting that the betting revenues in regard to the PGI signal for the months of June, July and August 2008, be reported to facilitate the preparation of an invoice.

In fact, the OCG’s Investigation revealed that the CTL’s Management and Board only became aware of a shareholder/owner relationship between IMC and SportsMax in 2008 July, one month after IMC had taken up full responsibility for the PGI signal.

In this regard, the OCG was interested in Finding out what exactly constitutes a conflict of interest.

According to the *Conflict of Interest Statement for Inclusion in the GPPH*, a conflict of interest “*arises where a public officer has a private or personal interest sufficient to appear to influence or to appear to be capable of influencing, the objective exercise of his official duties.*”<sup>123</sup>

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<sup>123</sup> NCC Conflict of Interest Statement for Inclusion in the GPPH. 2006 January 23

It is noted in the referenced statement that a conflict of interest may be deemed to exist, *inter alia*, under any of the following circumstances:

1. Engagement in private activity similar to official functions;
2. Using information and/or any material gained from an official position for private gain of relatives or family members or an organization in which relatives or family members have interest;
3. Exploiting the status and privilege of one's position for private gain;
4. Conducting private business during work hours and/or on government property;
5. Engaging in transactions with relatives or family members, or an organization in which the officers' relatives or family members have interest;
6. Ownership of investment or shares in any company or undertaking.<sup>124</sup>

Further, according to the GPPH, "*A public officer shall not enter into or knowingly remain in a situation of a conflict of interest. A public officer who is aware or is unsure whether he is in a conflict of interest situation shall report the situation at the earliest opportunity to the Head of the Ministry, Department or other Government Agency to which he is engaged.*"<sup>125</sup>

A conflict of interest exists even if no unethical and/or improper act results from the association. However, a conflict of interest can create an appearance of impropriety which undermines confidence in the person, profession, company and/or the procurement process.

A conflict of interest can be mitigated by removing the interested party from the deliberations on matters where that party has a conflict of interest. However, notwithstanding the removal of an interested party from the deliberations, a conflict of interest may still exist.

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<sup>124</sup> NCC Conflict of Interest Statement for Inclusion in the GPPH. 2006 January 23

<sup>125</sup> NCC Conflict of Interest Statement for Inclusion in the GPPH. 2006 January 23

The OCG found that a conflict of interest situation is present in the fact that Mr. Rousseau is the Chairman of IMC, SportsMax and CTL.

In the first instance, that is (a) the proposal of SportsMax to broadcast CTL live content; and (b) the proposal from SportsMax to provide satellite uplink services to CTL, Mr. Rousseau declared his interest in SportsMax and, in doing so, complied with **Section 17 (2) (a) of the Public Bodies Management Act** and **Section 193 (1) (b) of the Companies Act**.

However, the OCG has seen no documentary evidence to indicate that Mr. Rousseau complied with the requirements of **Section 17 (2) (a) and (b) of the Public Bodies Management Act** and **Section 193 (1) (b) of the Companies Act**, by declaring his interest in IMC and/or by removing himself from the deliberations of the CTL Board with regard to the acquisition of satellite signals from the UK and South African race tracks.

Further, in light of Mr. Rousseau's non-disclosure of his interest in IMC, it is important to note **Section 193 (8) of the Companies Act, 2004**, which provides that:

*“Where a director or officer of a company fails to disclose in accordance with this section, his interest in a material contract made by the company, the Court may, upon the application of the company, set aside the contract on such terms as the Court thinks fit”.*

#### ***Alleged Impropriety on the Part of the Hon. Mr. Patrick Rousseau, OJ***

In an email, which was dated 2008 January 14, from the Hon. Mr. Patrick Rousseau to Mr. Oliver McIntosh, the CTL Board and the CTL Management, Mr. Rousseau stated that *“I thank you for bringing to my attention the fact that you have commenced discussions about satellite services being provided by SportsMax to CTL. As I explained to you both this creates a conflict for me as I am the Chairman of both companies.”*<sup>126</sup> (OCG Emphasis).

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<sup>126</sup> Patrick Rousseau. Email to CTL Board and Management. 2008 January 14

Mr. Rousseau further stated that *“I am formally declaring my interest and also as a director of Desnoes & Geddes Ltd. (Red Stripe) and Cable & Wireless Jamaica Ltd...I am directing both organisations to not send me any information on the discussions or the process at any time and not to discuss the matter with me. I am sure you will have no problem observing this request.”*<sup>127</sup>

However, in this email, Mr. Rousseau failed to disclose his interest in IMC. Further, the OCG found that Mr. Rousseau also declared his interest in two other companies, none of which were relevant to the provision of satellite services and/or simulcast signals to CTL.

It is also instructive to note that in a letter, which was dated 2008 July 14, from CTL’s Mr. Donald Tankoy to Mr. Simon Nicholls, Vice President International Operations, PGI, it was stated that *“We have been having preliminary discussions with SportsMax and now have in our possession a draft contract which indicates that a company known as International Media Content (IMC) is acting on behalf of SportsMax in executing this contract. We seek clarification from you as to whether IMC has been duly authorized by you to act on behalf of SportsMax.”*<sup>128</sup> (OCG Emphasis).

In an email response from Mr. Simon Nicholls, which was dated 2008 July 16, to the referenced letter, Mr. Nicholls stated that, *“We did sell our rights to IMC and not SportsMax. Sorry I thought you know they were linked. Any payments prior to June 1<sup>st</sup> are for Phumelela, anything after June 1<sup>st</sup> is IMC/SportsMax. The contract has been signed and is fully operational, I no longer have the ability to deal with you direct.”*<sup>129</sup> (OCG Emphasis).

Based upon the foregoing, the OCG found that (a) CTL was not made aware of the association between SportsMax and IMC prior to IMC submitting a contract for the PGI signal to CTL, and (b) Mr. Rousseau was not forthright in his disclosure of interest to the CTL Board as he had only disclosed his interest in SportsMax.

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<sup>127</sup> Patrick Rousseau. Email to CTL Board and Management. 2008 January 14

<sup>128</sup> CTL. Letter to Simon Nicholls. 2008 July 14

<sup>129</sup> Simon Nicholls. Email to CTL. 2008 July 16



It is instructive to note that Mr. Patrick Rousseau, in a statement to the OCG, which was dated 2008 September 23, stated that “... As Chairman and a director of both IMC/SportsMax and because of the close operating procedure I use references to IMC and SportsMax interchangeably unless I am aware of the details. **In this case I assumed that since there was local delivery to CTL that it was SportsMax.**”<sup>130</sup> (OCG Emphasis).

However, the OCG undertook a review of the statements which were issued by SportsMax to determine the veracity and implications of Mr. Rousseau’s foregoing assertions.

In a letter to the OCG, which was dated 2008 August 12, SportsMax sought to clarify “*the misunderstanding in relation to certain matters...*”<sup>131</sup> surrounding the allegations in the 2008 July 6 media report and the line of questioning which was contained in the OCG’s Requisition, which was dated 2008 July 30.

The letter stated, *inter alia*, that:

- (i) “*International Media Content Ltd. (“IMC”), the parent company of SportsMax, has acquired rights to Racing UK content from Phumelela Gold Enterprises. IMC has continued to provide the same content, as before now received from Phumelela by CTL and various bookmakers (collectively the “Recipients”), and has offered draft agreements, based on the same terms as was previously agreed to between Recipients and Phumelela. There is no “award” of contract (by CTL) taking place here (and we have duly noted the guidance in paragraph 2 of page 4 of the Notice under reference);*
- (ii) *The above offer has nothing to do with satellite service for simulcast racing from South Africa and IMC has made no such offer to CTL;*

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<sup>130</sup> Statement by Mr. Patrick Rousseau dated 2008 September 23

<sup>131</sup> Letter from SportsMax to OCG. 2008 August 12

- (iii) *SportsMax has made a proposal to CTL to distribute via satellite, content internal to CTL and its betting outlets, consistent with services SportsMax now provides and offers to other companies that require distribution of audio/video content. Again this matter is at the proposal stage and no contracts have been signed.*<sup>132</sup>

Based upon the foregoing statement and a review of a letter to the Editor of *The Gleaner* from Mr. Oliver McIntosh, which was published in *The Gleaner* on 2008 July 31, the OCG found that (a) there was a clear indication as to which entity, i.e. IMC, and not SportsMax, that bought the PGI rights, (b) SportsMax's proposal to CTL was unrelated to the PGI rights, and (c) there was no mention that SportsMax was an agent for IMC in regard to the PGI signal.

It is instructive to note that the OCG in its Follow-up Requisition to Mr. Rousseau, which was dated 2008 September 8, asked the following question:

- a. *“When did you declare your interest in International Media Content (IMC)?*
- i. *The name(s) and title(s) of the individual(s) to whom the declaration was made;*
  - ii. *The date(s) on which a declaration was made, and the form which the declaration took;*
  - iii. *The circumstances relating to the same;*
  - iv. *The action(s) taken by CTL to mitigate against the appearance and/or the occurrence of a conflict of interest; and the date(s) on which such action(s) was/were undertaken.*<sup>133</sup>

In his sworn response to the OCG's Requisition, which was dated 2008 September 23, Mr Rousseau stated that *“I advised the Board of my interest in television through SportsMax and IMC when the matter of expanding TV and radio coverage of local racing*

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<sup>132</sup> Letter from SportsMax to OCG. 2008 August 12

<sup>133</sup> OCG Requisition. 2008 September

*was discussed by the Board at its meeting on January 3, 2008, when I asked for a proposal to be prepared for the Board by the Marketing Department. Whenever the subject of TV coverage has come up at the Board, I have reminded the Board of my interest.”<sup>134</sup>*

However, having reviewed the Minutes of the CTL Board Meeting, which was dated 2008 January 3, the OCG has seen no evidence of any such declaration by Mr. Rousseau. In fact, the Minutes confirmed that Mr. Rousseau had asked for a proposal to be presented.

In this regard, the Minutes stated, *inter alia*, that “*The Chairman said he was recommending radio and television coverage on a more widespread basis to make the sport more popular. He asked for a proposal to be provided to the Board.*”<sup>135</sup>

However, no declaration of Mr. Rousseau’s interest in IMC was recorded in the Minutes of the referenced Board Meeting.

It is also instructive to note that the following CTL Board Directors were listed as being in attendance at the 2008 January 3 CTL Board Meeting at which Mr. Rousseau asserted that he had disclosed his interest in IMC:

1. Mr. Kelvin Roberts
2. Deputy Mayor Lee Clarke, J.P.
3. Mr. Geoffrey Campbell
4. Mr. Ian Parsard

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<sup>134</sup> Patrick Rousseau. Response to the OCG Requisition. 2008 September 23

<sup>135</sup> Minutes of the Board of Directors. 2008 January 3

Out of an abundance of caution, the OCG sought to ascertain from the CTL Board Members, inclusive of the above-named Board Members that were listed as being in attendance at the referenced meeting, whether Mr. Rousseau had in fact made a declaration of his interest in IMC.

In its respective Requisitions to the CTL Board Members, which were dated 2008 September 8, the OCG asked all Board Members the following question:

*“In a letter written by the Deputy Chairman, Mr. Peter Lawson, dated 2008 July 29, to Minister Don Wehby, with regard to the supply of satellite signal from Phumelela Gold International (PGI) to Caymanas Track Ltd. (CTL), he stated that “...Mr. Rousseau had declared ‘interest’ in this subject and instructed the CTL Board of Directors and Management that he was not to be sent or copied on any information, documentation or material relating to this subject.” Please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses.*

- a. When did the CTL Board Chairman, the Honourable Mr. Patrick Rousseau declare his interest in International Media Content (IMC)?*
  - i. The name(s) and title(s) of the individual(s) to whom the declaration was made;*
  - ii. The date(s) on which a declaration was made, and the form which the declaration took;*
  - iii. The circumstances relating to the same;*
  - iv. The action(s) taken by CTL to mitigate against the appearance and/or the occurrence of a conflict of interest; and the date(s) on which such action(s) was/were undertaken..”*

In responding to the OCG, all Board Members stated that they were unaware of a disclosure by the Chairman of his interest in IMC.

In respect of those members who were present at the 2008 January 3 Board Meeting, in which Mr. Rousseau stated that he declared his interest in IMC, the OCG found that Mr. Kelvin Roberts, Mr. Geoffrey Campbell and Mr. Ian Parsard, in their responses to the OCG, which were dated 2008 October 1, all stated that *“I am not aware of any declaration of interest by the CTL Board Chairman, the Honourable Patrick Rousseau (“the Chairman”) in IMC.”*

Director Mayor Lee Clarke, in his response to the OCG, which was dated 2008 September 16, stated that *“I am not aware of any declaration of interest in the Company IMC by the Chairman.”*<sup>136</sup>

The position of the Members of the CTL Board comprehensively contradicts Mr. Rousseau’s sworn statement of 2008 September 23, to the OCG, that *“I advised the Board of my interest in television through SportsMax and IMC when the matter of expanding TV and radio coverage of local racing was discussed by the Board at its meeting on January 3, 2008.....”*<sup>137</sup>

Further, when questioned by the OCG about his knowledge of the relationship between SportsMax and IMC, Director Mayor Lee Clarke, in his response to the OCG’s Requisition, which was dated 2008 September 16, stated that *“A relationship was indicated in the OCG’s media release of July 21, 2008 regarding an investigation into the provision of satellite services to CTL. I have no other knowledge that there is a relationship between IMC and SportsMax.”*<sup>138</sup>

By way of letter, which was dated 2008 July 18, Minister Don Wehby wrote to Mr. Rousseau enquiring into the veracity of the allegations which were contained in the letter which was written by Mr. Andrew Azar, that was published on 2008 July 19 in the Track and Pools magazine. (NB. Minister Wehby’s letter was dated 2008 July 18 and the date which appears on the *Track and Pools*’ publication was 2008 July 19).

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<sup>136</sup> Deputy Mayor Lee Clarke, J.P. Response to the OCG Requisition. 2008 September 16

<sup>137</sup> Patrick Rousseau. Response to the OCG Requisition. 2008 September 23

<sup>138</sup> Deputy Mayor Lee Clarke, J.P. Response to the OCG Requisition. 2008 September 16

Minister Wehby's letter stated that *"Additionally, please advise if the contents of the letter are accurate and what actions were taken by the Board to ensure good Corporate Governance."*<sup>139</sup>

In response to the Minister's enquiry, by way of letter, which was dated 2008 July 29, CTL's Deputy Chairman, Mr. Peter Lawson, writing on behalf of the CTL Board, stated that *"...Mr. Rousseau had declared 'interest' in this subject and instructed the CTL Board of Directors and Management that he was not to be sent or copied on any information, documentation or material relating to this subject. Additionally, Mr. Rousseau has not attended any meetings or been party to discussions or negotiations on this subject."*<sup>140</sup>

The letter further explained the circumstances under which SIS and PGI separated and stated that *"...post-separation with SIS, Phumelela continued to supply its signal to CTL on a 'good faith' basis and under the same rate terms until a new agreement was in place."*<sup>141</sup>

In addition, the letter informed Minister Wehby that IMC was appointed agents for Phumelela and that IMC had submitted a draft proposal to CTL for the supply of the signal and that the proposal was still being reviewed by CTL's attorneys.

The letter then stated that (a) *"Additionally, the Board had previously instructed CTL's management that any agreement relating to simulcasting would require formal Board approval"* and, (b) *"...no payments are to be made on the signal being received from Phumelela controlled racetracks until an agreement has been properly executed."*<sup>142</sup>

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<sup>139</sup> Minister Wehby's letter to Mr. Rousseau. 2008 July 18

<sup>140</sup> Pater Lawson. Letter to Minister Don Wehby. 2008 July 29

<sup>141</sup> Pater Lawson. Letter to Minister Don Wehby. 2008 July 29

<sup>142</sup> Pater Lawson. Letter to Minister Don Wehby. 2008 July 29

It is, however, instructive to note that on 2008 September 23, IMC wrote to CTL, requesting a report of its revenues for the months June, July and August 2008, in an effort to prepare the invoices.

Further, it is also important to note that the referenced letter is the first written document containing information which definitively alluded to SportsMax being an agent for IMC. In addition, the date on the letter, viz. 2008 September 23, is the said date on which Mr. Rousseau submitted his answers to the OCG's Follow-up Requisition in which the OCG had asked Mr. Rousseau about the timeline in which he declared his interest in IMC.

The IMC letter stated, *inter alia*, that “...*International Media Content (“IMC”) is the owner of the PGI racing content rights (the “Content”) **and SportsMax Limited are IMC’s local agent in Jamaica**....As per previous discussions with CTL regarding the above, we came to a **verbal agreement** that, until a signed contract was in place, CTL would, on a monthly basis, report to IMC the betting revenues on the Content and pay four percent (4%) of this reported betting revenue to IMC, as was previously done with PGI. This resulted in CTL being able to continue its business of providing the Content to its customers with no disruption or change in terms.*”<sup>143</sup>

In light of this, the OCG has found that a contract existed between CTL and IMC, as at 2008 June 1, for the acquisition of the PGI signal from the UK and South Africa. It is based upon this fact, that IMC, was able to write to CTL on 2008 September 23, requesting a report of the monthly betting revenues, of which 4% would be owing to IMC by CTL who continued to access the PGI signal.

It is, however, interesting to note that in his letter to Minister Wehby, written on behalf of the CTL Board, Mr. Lawson stated that Mr. Rousseau had declared his interest in the matter. However, when Mr. Lawson and the CTL Board Members were asked by the OCG about a declaration of interest by the Chairman in IMC, all of the Directors informed the OCG that they were not aware of any such declaration.

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<sup>143</sup> IMC. Letter to CTL. 2008 September 23

In this regard, the OCG found the respective statements by Mr. Lawson and the CTL Board, to the OCG, and to the Minister, conflicting and, as such, questions the veracity of the assertions that are contained in their sworn declarations and response to the OCG's Requisition.

Further, the OCG notes that Mr. Rousseau, in an email to the Minister, regarding the assertions of a conflict of interest that were contained in Mr. Andrew Azar's letter which appeared in the Track & Pools magazine, stated that "*I have had a preliminary meeting with my lawyers and the statements are libelous [sic].*"<sup>144</sup>

Attached to that email was another email, which was copied to the CTL Board. In the other email, which was dated 2008 July 18, Mr. Rousseau stated that, "*PR had discussions in prior years with SportsMax about selling the rights to the signal to SportsMax and to have SportsMax distribute the signal on their behalf. A deal was struck between SportsMax and PR and SportsMax now owns the rights for Jamaica. SportsMax has sold those rights to the local bookmakers and to CTL.*"<sup>145</sup> (OCG Emphasis).

It is critically important to note that Mr. Rousseau's email stated that SportsMax, and not IMC, held the rights to the PGI tracks. However, in his letter to the Minister, which was written on behalf of the CTL Board, Mr. Lawson contradicted Mr. Rousseau and advised the Minister that IMC was the PGI agent.

When questioned by the OCG regarding the discrepancy in the information that he had supplied to the Minister and that which was contained in Mr. Rousseau's 2008 July 18 email, Mr. Lawson informed the OCG that "*As a Director of CTL, I rely primarily on the management of CTL to provide the details of contracts. While I cannot definitively*

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<sup>144</sup> Patrick Rousseau. Email to Don Wehby. 2008 July 18

<sup>145</sup> Patrick Rousseau. Email to Steve Shelton and CTL Board. 2008 July 18



*explain the discrepancy, it was probably inadvertent and due to the fact that two separate statements were made by two different persons.*"<sup>146</sup>

When asked by the OCG about when the relationship between IMC and SportsMax was disclosed to him, Mr. Lawson stated that, *"It was disclosed to me that IMC is a 50% shareholder in SportsMax during a meeting subsequent to a CTL Board meeting on July 31, 2008..."*<sup>147</sup>

Mr. Lawson, in his response to the OCG's Requisition, which was dated 2008 October 8, stated that, *"There was no intentional failure to disclose. The response to the Minister dated July 29, 2008 preceded the meeting on July 31 2008."*<sup>148</sup>

On the other hand, Mr. Rousseau, in response to the OCG's Requisition, regarding the discrepancy in the information which was supplied to the Minister, stated that *"I cannot explain the letter written by Mr. Lawson. As Chairman and a director of both IMC/SportsMax and because of the close operating procedure I use reference to IMC and SportsMax interchangeably unless I am aware of the details. In this case I assumed that since there was a local delivery to CTL that it was SportsMax. Even today I do not know who the contracting parties are and that will have to come from either CTL or SportsMax. Another clear indication, of my non-participation in this process."*<sup>149</sup>

The OCG was forced to question the veracity of Mr. Rousseau's response having regard to the fact that (a) he is the Chairman of all three corporate entities, CTL, SportsMax and IMC, (b) IMC and SportsMax are two separate and distinct registered corporate entities in law and in fact, (c) Mr. Rousseau is an eminent and accomplished lawyer and would be well aware of this distinction, (d) there was a general lack of knowledge, up until 2008 July, on the part of both the Board and Management of CTL about the shareholder/owner relationship between SportsMax and IMC, and (e) there was curiously no declaration of

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<sup>146</sup> Peter Lawson. Response to the OCG Requisition. 2008 October 8

<sup>147</sup> Peter Lawson. Response to the OCG Requisition. 2008 October 8

<sup>148</sup> Peter Lawson. Response to the OCG Requisition. 2008 October 8

<sup>149</sup> Patrick Rousseau. Response to the OCG Requisition. 2008 September 23

interest in IMC by Mr. Rousseau although he had seen it fit to disclose to CTL his interest in other corporate entities which were wholly unrelated to the issue of CTL's acquisition of satellite services and/or the broadcast of simulcast signals.

Further, the OCG found Mr. Rousseau's assertion that "*Even today I do not know who the contracting parties are and that will have to come from either CTL or SportsMax...*"<sup>150</sup> to be ironic in light of the fact that (a) he was instrumentally involved in the negotiations regarding the acquisition of the PGI rights, (b) SportsMax is a subsidiary of IMC and Mr. Rousseau is the Chairman of both entities, (c) Mr. Rousseau would have been privy to information regarding the PGI rights prior to his ascendancy to the post of CTL Chairman on 2007 October 29, (d) CTL's expenditure has to be approved by the CTL Board and, as at 2008 June 26, the management of CTL was instructed that all simulcast agreements were to be approved by the CTL Board, (e) by way of letter, which was dated 2008 July 17, CTL advised the OCG that "*Although there is no contract in place we intend to make payments to IMC pending a formal contract*" and, (f) Mr. Rousseau would have been privy to CTL's operations of which its simulcast signals are an integral part.

Given the foregoing, the OCG found that Mr. Rousseau has breached, *inter alia*, Section 17 (1) (a) and (2) (a) and (b) of the Public Bodies Management & Accountability Act and Section 193 (1) (b) of the Companies Act, in that he has failed, *inter alia*, to disclose his interest in IMC, thereby failing to act honestly and in good faith in the best interest of CTL.

Further, in respect of the IMC/CTL contract, the OCG found that based upon the fact that Mr. Rousseau has failed to disclose his interest in IMC, the CTL/IMC contract award and/or settlement process would have lacked, *inter alia*, transparency and would have been tarnished with impropriety and irregularity.

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<sup>150</sup> Patrick Rousseau. Response to the OCG Requisition. 2008 September 23

It is also instructive to note that the OCG, in its Requisition, which was dated 2008 July 30, asked Mr. Rousseau the following question:

*“It has been reported that Mr. Oliver McIntosh, CEO of SportsMax, in defending his company’s right to bid to provide services, has stated that the deal is “a project we have been working on for the last four years prior to Mr. Rousseau’s ascension to the Chairmanship of CTL...”*

- i. Please provide a statement as to your belief of the veracity, or otherwise, of the reported statement and any documentary evidence substantiating your reasons for the same;*
- ii. Provided that the statement is true and the proposal preceded your becoming Chairman of CTL, was your interest and/or potential interest in a pending GOJ contract disclosed to the Minister with Portfolio Responsibility for CTL, and/or any other public official. If yes, please provide the date(s) on which this was done, the manner in which this was done, the circumstances relating to same, and any documentary evidence to substantiate your assertions.”*

In his response to the second part of the OCG’s question about his declaration of interest, Mr. Rousseau stated that *“No; because when I ceased to participate, no deal and been [sic] made with PGI and at that stage we were in discussion with only the Bookmakers about these rights. I was also not aware of any requirement to disclose every potential conflict to the Minister at the time of the appointment nor was this brought to my attention by your office when I met with Senior officers including the Contractor-General, for a briefing before I accepted the post of Chairman and a director of CTL.”*<sup>151</sup>

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<sup>151</sup> Patrick Rousseau. Response to the OCG’s Requisition. 2008 August 12

The OCG found Mr. Rousseau's foregoing assertions to be disingenuous, especially having regard to the fact that his referenced meeting with the OCG occurred prior to his appointment to the CTL Board.

In fact, on meeting with the Contractor General and Senior Officers of the OCG, on 2007 October 9, Mr. Rousseau was advised that since he had not yet been officially appointed to the CTL Board, the OCG was not in a position to divulge information pertaining to CTL or to answer any specific questions which he may have had regarding CTL.

This, the OCG explained, it was constrained to do in light of the prohibitions that are imposed upon a Contractor General by Section 24 (1) of the Contractor-General Act, which provides as follows:

*“A Contractor-General and every person concerned with the administration of this Act shall regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act, except that no disclosure -*

- a. made by a Contractor-General or any person aforesaid in proceedings for an offence under section 29 of this Act or under the Perjury Act, by virtue of section 18 (2) of this Act; or*
- b. which a Contractor-General thinks necessary to make in the discharge of his functions or for the purpose of executing any of the provisions of sections 20, 21 and 28,*

*shall be deemed inconsistent with any duty imposed by this subsection.”*

However, the OCG was able to provide Mr. Rousseau with an overview of (a) the GOJ Procurement Policies and Practices and, (b) the initiatives of the OCG to discharge its statutory obligations under the Contractor General Act.

In addition, the OCG allowed Mr. Rousseau to ask several questions relative to Government procurement, to which answers were provided. However, nowhere in the referenced discussions did Mr. Rousseau disclose any interest whatsoever in racing and/or questioned the OCG about conflict of interests situations.

Further, it is interesting and surprising to note that Mr. Rousseau stated that he did not know that he needed to have declared “*every potential conflict*” of interest to the Minister given that (a) he had declared his interest in several entities to the CTL Board, (b) as an Attorney and a Businessman, Mr. Rousseau is deemed to have a special knowledge about the provisions of the Companies Act of Jamaica, (c) ignorance of the law is no excuse, and (d) as a senior public official and as a Director and Chairman of a Public Body, he should have been aware, or should have made himself aware, of the provisions, *inter alia*, of Section 17 of the Public Bodies Management and Accountability Act.

**Section 17 (1) and (2) of the Public Bodies Management and Accountability Act** provide as follows:

*17 (1) “Every director and officer of a Public Body shall, in the exercise of his powers and the performance of his duties-*

*(a) act honestly and in good faith in the best interests of the Public Body; and*

*(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer{.*

*17 (2) “A director who is directly or indirectly interested in any matter which is being dealt with by the board-*

*(a) shall disclose the nature of his interest at a board meeting;*

*(b) shall not take part in any deliberation of the board with respect to that matter”.*

### ***CTL Board Deliberations***

Based upon Mr. Rousseau's failure to disclose his interest in IMC, the OCG's Investigation has found that the deliberations of the CTL Board which was chaired by Mr. Rousseau have been brought into question with particular reference to CTL's acquisition of overseas simulcast signals and the co-mingling of bets.

In the foregoing regard, the OCG notes that SIS and PGI both provide CTL with simulcast satellite signals from tracks in the UK, via the rights holders, IMC and Tote Investment Ltd.

In light of the fact that (a) IMC is a direct competitor of Tote Investment Ltd./SIS, (b) Mr. Rousseau is the Chairman of IMC, and (c) Mr. Rousseau is Chairman of CTL which receives simulcast signals from both Tote Investment Ltd./SIS and IMC, the OCG found that Mr. Rousseau's participation in the deliberations regarding CTL contracts with Tote Investment Ltd./SIS to be irregular and improper as his objectivity and impartiality in the matter can be questioned and may be considered, in the circumstances, to amount to a conflict of interest.

In this regard, it is instructive to note that by way of a letter, which was dated 2008 June 24, the United Bookmakers Association (UBA) wrote to CTL regarding the supply of simulcast racing signals from SIS and stated that *"As the UBA is now in the process of establishing a deeper strategic relationship with CTL related to the betting platform used, we strongly believe that there must also be unity in the content that is carried by both of us. While we have attempted to renew the agreement with SIS at terms that are market rates, we have been unable to do so. Thus we are urging CTL to discontinue the carriage of the SIS feed in favour of the relationship we are developing."*<sup>152</sup>

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<sup>152</sup> Xavier Chin. United Bookmakers Association. Letter to CTL. *"Carriage of Simulcast Racing from SIS"*. 2008 June 24

The letter further stated that “As you know, recent developments in Britain have resulted in the Phumelela tracks and the SIS tracks being offered separately. SportsMax Limited has acquired the broadcasting rights for the Phumelela tracks, which it is now providing to the UBA (and we assume to CTL as well) under acceptable terms. **However, both the UBA and SportsMax have made overtures to SIS to continue delivering racing from the tracks that SIS represents but have been unable to agree to the terms.** We are very much open to negotiating and agreeing to a deal with SIS but based on the terms that have been presented by the agents of SIS in Jamaica, agreeing to their deal would be uneconomical and threaten our business model. If the UBA and CTL are to become true partners on a singular betting platform that would add significant value to both of us, it is critical that we also be unified in our approach to content that we carry. We would like to discuss this with you as soon as possible so that the SIS signal can be taken down and know that you understand our position.”<sup>153</sup> (OCG Emphasis)

Subsequent to CTL’s receipt of the referenced letter, it is instructive to note that in the Minutes of the Board of Directors, which was dated 2008 June 26, CTL’s Chairman, Mr. Rousseau “...advised Mr. Tankoy that he had received complaints from the bookmakers that they have not been able to reach an agreement with SIS and this is affecting their business. He did not wish the matter of our possible getting to a single betting platform with the Bookmakers to be prejudiced by taking racing from a single source. It was agreed that CTL should advise SIS that if they could not agree to a suitable arrangement with the Bookmakers CTL may have to give consideration to stop taking their signal. This was in order to protect CTL’s position of achieving a single betting platform.”<sup>154</sup>

The Minutes further stated that “Mr. Tankoy was advised that all new simulcast contracts/deals must be presented to the Board before signing and acceptance.”<sup>155</sup>

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<sup>153</sup> Xavier Chin. United Bookmakers Association. Letter to CTL. “Carriage of Simulcast Racing from SIS”. 2008 June 24

<sup>154</sup> Minutes of the Board of Directors, Caymanas Track Limited. *Section (4) SIS-Bookmakers*. 2008 June 26

<sup>155</sup> Minutes of the Board of Directors, Caymanas Track Limited. *Section (4) SIS-Bookmakers*. 2008 June 26

This series of developments, that is, the comments which are attributed to Chairman Rousseau in the Minutes of the 2008 June 26 CTL Board meeting and the letter from the UBA, which was dated 2008 June 24, raised several concerns for the OCG.

The OCG's concerns included, *inter alia*, the following:

1. The 2008 June 24 letter from the UBA had made mention of an apparent partnership with SportsMax to acquire the SIS signal which had failed and Mr. Rousseau is the Chairman of SportsMax;
2. The integrity of the CTL Board's deliberations apparently had been compromised;
3. Mr. Rousseau, in his capacity as the Chairman of CTL, was deliberating on a CTL issue which involved a company (i.e. Tote Investment Ltd./SIS) which was a direct competitor of IMC, at a time when he, Mr. Rousseau was also the Chairman of IMC and its affiliate, SportsMax;
4. The deliberations appeared to be highly irregular and improper.

#### ***Correspondence between Mr. Rousseau and other Stakeholders***

During the relevant period, that is, 2007 October to 2008 July, a number of business related emails were circulated between Mr. Rousseau and Mr. Nicholls of PGI. These emails were copied to Mr. Oliver McIntosh, the CEO of SportsMax and Mr. Xavier Chin of the UBA. In an effort to determine whether there was any impropriety on the part of Mr. Rousseau, the OCG conducted a review of these emails.

It is critically instructive to note that the referenced emails are all dated 2008 January 7, prior to the date on which Mr. Rousseau made his declaration of interest in SportsMax to the CTL Board. Mr. Rousseau's declaration of interest in SportsMax was made to the CTL Board on 2008 January 14.



Below, are the germane verbatim extracts from the emails which, notably, bore the caption: “**Caymanas and SportsMax**” (OCG Emphasis).

(1) Email from Mr. Simon Nicholls to Hon. Patrick Rousseau:

*“Pat-ref caymanas- I am sorting out my diary and travel arrangements for the first quarter of this year. Would you still like me to present to your board my vision based on global experience for Jamaican racing and betting using the SA model? You had mentioned the end of Jan? I am meeting Xavier on Thursday in London and **I need you now to consider the commercial implications of putting UK and SA product on sportmax initially for Jamaica only.** I understand you do not see it having a big value in year 1 but that you will commercialise it through telephone betting or sponsorship from United bookmakers. This will not happen without commercial consideration for the racetracks. **I realise you do not want to be in a conflicted position but would welcome your thoughts on this.**”(OCG Emphasis)*

(2) Email from Hon. Patrick Rousseau to Mr. Simon Nicholls:

*“**I spoke to Oliver and he will respond. We cannot set up a racing channel to do Jamaica only and we have said that consistently from day 1.** Telephone betting is on the cards but not immediate because the legislation has to be amended. The United Bookmakers will not be the only beneficiaries of wide TV exposure for your racing; you have to consider what part of the tab you pick up yourself. ..” (OCG Emphasis)*

(3) Email response from Mr. Simon Nicholls to Hon. Patrick Rousseau:

*“Thanks for your note. I was under the impression that you could direct to Jamaica as a test Island using the local cable network and it need not necessarily be to the whole of the West Indies. **I was also under the impression that Caymanas, United and SportsMax would be involved in a three way deal to take all the rights for Jamaica only From Feb 1<sup>st</sup> and prove to the rest of the world how best to commercialise the**”*

**content.** *I cannot do a deal for the whole region so if this is a major hurdle then we should cease negotiating now. I was also under the impression that the **political climate** was such in Jamaica that positive growth was expected from the market and the introduction of new initiatives. **You said during our meeting you had a way of introducing telephone betting without the necessity to change legislation.** Bookmakers in other Islands are against having UK racing on a cable network and want to restrict access and retain an air of exclusivity. I have recently turned off Arima from showing it on cable in Trinidad. I have only until the end of the month to sort this out so **look forward to Oliver's [sic] proposal on Wednesday.** We have spoken today already. Alternately I will try and do a deal with Xavier on Thursday. **I had believed we were close and it seems now we have done a complete U turn and I may need to provide decoders to the outlets.** The down side of this is there may end up being no English racing in Jamaica from Feb 1<sup>st</sup> which would be a travesty....” (OCG Emphasis)*

(4) Email response from Hon. Patrick Rousseau to Mr. Simon Nicholls:

**“I do want to do a deal with all the parties but I have to get enough information to brief the Board** before you come and I have just circulated your email with the attachments to the Board members this morning. I did not realise you had a 31<sup>st</sup> January deadline. We must then set a date as early as possible and it would help if United Tote attended the same meeting so we can try and bring the matter to a head at the meeting. Give me some dates so I can find out about the availability of people. **It is critical for me to have Don Tankoy available as he has been dealing with simulcast for years.**” (OCG Emphasis)

(5) Email from the Hon. Patrick Rousseau to the members of the CTL Board and Management attaching the foregoing emails (1) through (4):

*“I am sending you some interesting correspondence with Simon Nichols of Phumelela who is working with United Tote. I know that his Jan. 31 deadline is real because*

*their deal with SIS for the broadcast of English racing come [sic] to an end at that date. **I had previously met with him and Xavier Chin, representing the United Bookmakers on the fees. I suggested he negotiate with Xavier and then put the deal before us for further negotiations.** I am also attaching two emails from him....**I am asking Don to look at the cost and do a computation and advise how it compares with what we are now paying for simulcast.** Remember our present supplier has advised that if we do not go to comingling before the end of the month they will terminate the signal.”<sup>156</sup> (OCG Emphasis)*

Based upon the foregoing emails, the concerns raised for the OCG include, *inter alia*, that:

1. In the second email, Mr. Rousseau states “*We cannot set up a racing channel to do Jamaica only and we have said that consistently from day 1*”. Given the foregoing, it would appear that Mr Rousseau was negotiating in the interest of SportsMax. This is also evidenced by the fact that Mr. Oliver McIntosh was copied on all emails between Mr. Nicholls and Mr. Rousseau.

As such, the OCG questions the propriety of Mr. Rousseau’s actions in including Mr. Oliver McIntosh in the said correspondence given SportsMax’s interest in acquiring the PGI rights.

This is further compounded by Mr. Rousseau’s sworn declaration to the OCG, which was dated 2008 August 12 and in which he stated that, “**IMC/SportsMax has had on going discussions with PGI regarding the betting and broadcast rights for its racing for over three years and I was involved in those discussions. When I became Chairman of CTL, I withdrew from those negotiations and they were continued by Mr. Oliver McIntosh and his team and I took no further part...**”<sup>157</sup>

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<sup>156</sup> Patrick Rousseau. Email to CTL Board & Management. “*Caymanas and SportsMax*. 2008 January 7

<sup>157</sup> Patrick Rousseau. Response to the OCG’s Requisition. 2008 August 12

While Mr. Rousseau's assertions to the OCG may not be entirely incorrect, what is clear is that during the referenced 2008 January 7 email correspondence he made several representations for and on behalf of SportsMax.

2. Mr. Rousseau, being Chairman of CTL, SportsMax and IMC at the same time, appeared to have been in negotiations with PGI to have CTL receive satellite signals from the UK and SA, through SportsMax and/or IMC, without the input of CTL's management and/or without disclosing to CTL his interest in either SportsMax or IMC. In this regard, one questions for whom was Mr. Rousseau negotiating, and whose interest was being substantially or substantively served.
3. It is also instructive to note that the OCG, in its Requisition, which was dated, 2008 July 30, asked Mr. Rousseau, the following question:

*What is the extent of your knowledge of the alleged proposal(s) from SportsMax to provide satellite services for simulcast racing from South Africa and the United Kingdom to Caymanas Track Limited (CTL)? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.*

In his response to the referenced question, which was dated 2008 August 12, Mr. Rousseau stated that *"I only know a proposal was made but I have never seen the proposal. **Proposals to purchase betting rights on overseas horse racing are not discussed at the Board of CTL and are processed and decided on by competent Managers of CTL.** Since my appointment as Chairman I have never seen any proposal relating to the purchase of betting rights on overseas horse racing put before the Board. I advised the IMC/SportsMax Executive Committee that I could not participate in any proposal to CTL and any proposal they made has not been shown to me and has been handled by the CEO, Mr. Oliver McIntosh."*<sup>158</sup>

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<sup>158</sup> Patrick Rousseau. Response to the OCG. 2008 August 12

No where in this response did Mr. Rousseau state that (a) he had been in negotiations and/or discussions with PGI for the acquisition of the rights for simulcast signal for South African and UK racing, (b) that he had represented both CTL and SportsMax in these negotiations, and (c) PGI was once under the impression that CTL, SportsMax and the UBA were in a three way deal to commercialise racing and acquire the PGI signal rights for Jamaica.

Further, Mr. Rousseau was negotiating on behalf of CTL without the input of the CTL Board and/or the Management, contrary to his assertions. By all indications, Mr. Rousseau had initiated and carried out the negotiations and later informed the management and Board.

This is substantiated, *inter alia*, by Mr. Rousseau's assertions in the referenced emails wherein he stated that, "*....I have to get enough information to brief the Board before you come and I have just circulated your email with the attachments to the Board members this morning.....It is critical for me to have Don Tankoy available as he has been dealing with simulcast for years.*"

4. PGI was under the impression, that "*...Caymanas, United and Sportsmax would be involved in a **three way deal** to take all the rights for Jamaica only From Feb 1<sup>st</sup> ...*"
5. The emails were directed to the Board on 2008 January 7 and Mr. Rousseau made his declaration of interest in SportsMax on 2008 January 14, seven (7) days after he had engaged in critical contract deliberations which involved both CTL and SportsMax.

In light of the emails which were circulated, the OCG found that, based upon the assertions of PGI, SportsMax, UBA and CTL were seeking to develop a three-way commercial arrangement to secure the PGI rights for Jamaica.

However, IMC, the parent company of SportsMax, in turn, bought the rights from PGI and then sought to sell access to the said signals to CTL. This fact is particularly interesting because PGI stated in its email that it was looking forward to a proposal from Mr. Oliver McIntosh who, at all material times, was copied on all the email deliberations which were undertaken by CTL's Chairman, Mr. Patrick Rousseau.

Further, Mr. Rousseau's involvement in the foregoing email deliberations revealed that he was representing not just SportsMax, but CTL.

These circumstances are such that the OCG has found that the agreement that was entered into by CTL with IMC was not one which was settled impartially and it was not one which was settled in circumstances which did not involve impropriety and irregularity.

Having regard to all of the foregoing circumstances, it is difficult not to find that they constitute compelling *prima facie* evidence of the commission of an act of corruption on the part of Mr. Patrick Rousseau, in contravention of the provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act, in the award and/or settlement of a contract between IMC and CTL.

**Section 14 (1) (b) of the Corruption Prevention Act** provides, *inter alia*, as follows:

*“14. (1) A public servant commits an act of corruption if he-  
(b) in the performance of his public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person”.* (OCG Emphasis).

### ***The CTL Board's Statutory and Fiduciary Duties***

It is interesting to note that, with the exception of Mr. Lee Clarke, all of the Directors of the CTL Board informed the OCG that, on 2008 July 31, it was disclosed to them that IMC is a 50% shareholder in SportsMax.

Director Lee Clarke, on the other hand, stated that he became aware of the connection between SportsMax and IMC after learning of the OCG's Media Release of 2008 July 21.

The OCG's Media Release, which was dated 2008 July 21, stated that “ *The OCG will also be investigating a commercial arrangement, for the provision of the subject satellite services, which appears to be tentatively in place between CTL, Phumelela Gold International (which is reportedly affiliated with Phumelela Gold Enterprises, a South African entity which owns international broadcast rights for horseracing), and International Media Content Limited (IMC), a St. Lucian based corporation....has been described by both CTL and the SportsMax website as “the parent company” of SportsMax Limited. Several media stories which were carried in 2007 named the Hon. Patrick Rousseau as the Chairman of IMC.*” (OCG Emphasis)

Further, the OCG in its Media Release, which was dated 2008 July 21, stated that, based upon SportsMax's website, Mr. Rousseau was the Chairman of IMC.

It is instructive to note that on 2008 July 29, two days prior to the Board being informed of IMC's interest in SportsMax, CTL's Deputy Chairman, Mr. Peter Lawson, writing on behalf of the CTL Board, to the Minister, stated that IMC had been appointed agents for PGI and that CTL was in possession of and reviewing a contract with IMC.

Mr. Peter Lawson also informed the Minister that the Chairman had declared his interest in the referenced matter.

However, all CTL Board Members, in sworn statements made to the OCG, have attested that they were unaware of a declaration of interest by the Chairman in IMC.

Notwithstanding the inconsistencies in the representations that were made by the Board Members, what is clear is that at the meeting on 2008 July 31, all Board Members were in fact aware of the questions regarding a conflict of interest on the part of the Chairman.

However, having gained this knowledge and having presented the Minister with inaccurate information about Mr. Rousseau's declaration of interest on 2008 July 29, the OCG found that the Board of Directors failed in respect of those of their fiduciary duties CTL and, arguably, also failed in respect of its duties that are stipulated, *inter alia*, in Section 6 of the Public Bodies Management and Accountability Act, in particular Sub-Section (d).

**Section 6 (d) of the Public Bodies Management and Accountability Act** provides that:

*Every board shall-....*

*(d) advise the responsible Minister on matters of general policy relating to the management of the body.*

The OCG's Finding is premised, *inter alia*, upon the fact that the OCG, in its Requisition, which was dated 2008 September 8, to all the Directors of the CTL Board, asked the following question:

*“Was the information about a possible relationship between IMC and SportsMax declared to the Minister in subsequent correspondence? If yes, please provide a copy of the relevant documents and state the circumstances relating to the same and the date(s) on which this was done”.*

Three (3) of the CTL Directors stated that they did not know whether subsequent correspondence was sent to the Minister, while two directors, Mr. Peter Lawson and Mr. Ian Parsard, stated as follows:

*“I am not certain, but I do not think that there has been further formal communication with the Minister since the letter dated July 29, 2008.”<sup>159</sup>*

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<sup>159</sup> Response by the CTL Board of Directors.



Director Lee Clarke, in his response to the OCG's Requisition, which was dated 2008 September 16, stated that "*I am not aware if any declaration of a possible relationship between IMC and SportsMax has been made to the Minister in subsequent correspondence.*"<sup>160</sup>

In so far as the responsibilities that are imposed by law upon the Board of Directors of CTL are concerned, it being a "*Public Body*", it is instructive to record the provisions which are contained in Sections 6, 17 and 25 of the Public Bodies Management and Accountability Act.

**Section 6 of the Public Bodies Management and Accountability Act** provides as follows:

*"6. Every board shall-*

*(a) take such steps as are necessary-*

*(i) for the efficient and effective management of the public body;*

*(ii) to ensure the accountability of all persons who manage the resources of the public body;*

*(b) develop adequate information, control, evaluation and reporting systems within the body;*

*(c) develop specific and measurable objectives and performance targets for that body.*

*(d) advise the responsible Minister on matters of general policy relating to the management of the body."*

**Section 17 (1) and (2) of the Public Bodies Management and Accountability Act**

*17.-(1) Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties-*

*(a) act honestly and in good faith in the best interests of the public body; and*

*(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.*

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<sup>160</sup> Director Lee Clarke. Response to the OCG's Requisition. 2008 September 16

*(2) A director who is directly or indirectly interested in any matter which is being dealt with by the board-*

*(a) shall disclose the nature of his interest at a board;*

*(b) shall not take part in any deliberation of the board with respect to that matter.*

**Section 25 (1) and (2) of the Public Bodies Management and Accountability Act** provide as follows:

*“(1) If the Court is satisfied on an application by the Attorney-General that any person has contravened any of the provisions of-*

*(a) section 4 (acquisition of shares and payment of dividends);*

*(b) section 5 (exercise of borrowing powers);*

*(c) section 6 (corporate governance);*

*(d) section 14 (general duties of auditors);*

*(e) section 15 (failure to furnish information to auditor);*

*(f) section 20 (levels of emoluments);*

*(g) section 21 (restriction on formation of new companies),*

*the Court may exercise any of the powers referred to in subsection (2).*

*(2) The Court may-*

*(a) order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or*

*(b) grant an injunction restraining that person from engaging in conduct described in subsection (1)”.*

Having regard to the foregoing responsibilities which are imposed upon a Public Body's Board of Directors, the OCG's Investigation has revealed that there is sufficient *prima facie* evidence to suggest that the CTL Board and/or some Board Members of CTL have failed in the fulfilment of those of their responsibilities which are mandated by Sections 6 and 17 (1) and (2) of the Public Bodies Management and Accountability Act.

The OCG's Findings are also supported by the following germane facts:

1. On 2008 January 7, Mr. Rousseau was involved in email discussions with PGI for the acquisition of the said PGI signals. During these email discussions, which were copied to the CTL Board, Mr. Rousseau made representations on behalf of CTL and SportsMax, another entity in which he had an interest. However, Mr. Rousseau never declared his interest in SportsMax, to the CTL Board, until 2008 January 14.
2. CTL and IMC subsequently entered into an agreement for the provision of the said signals – signals which appeared to have been the subject of the 2008 January 7 email deliberations, all of which were circulated to the CTL Board on the said date.
3. The CTL Board, on 2008 July 29, had informed the Minister that Mr. Rousseau had disclosed his interest regarding the PGI signal. To the contrary, however, the same Board Members have declared in sworn testimony to the OCG that Mr. Rousseau had never declared his interest in IMC.
4. The CTL Board became aware of the relationship between SportsMax and IMC on 2008 July 31.
5. Subsequent to 2008 January 31, no attempt was made by the CTL Board to inform the Minister and/or the OCG about the contents of the 2007 January 7 emails and/or the implications of Mr. Rousseau's participation in the said deliberations in respect of which he represented both SportsMax and CTL.

***What is the going Market Fee or Percent paid for Simulcast Signal?***

Another area of concern for the OCG, with regard to the acquisition of the referenced satellite signals, was whether CTL was paying a fair market price for the said services.

The OCG found that the amount which was being paid to PGI by CTL, and which would be payable to IMC, was 4% of the betting revenues. Upon a review of several other simulcast contracts to which CTL is a party, the OCG found that the figure of 4% appeared to be within the going range for said services.

The table below highlights the figures being paid by CTL for comparative services:

ENTITY	AMOUNT
PGI/IMC	4%
2006 Breeders Cup Ltd	(1) 5% (Race 1- very subtle Stakes) (Race 2-Acke Ack Handicap) (2) 6% (Breeders Cup World Championship Races 3-10)
The Sports Wire Preakness Day Simulcast	6% of total handle wagered
Australian Racing	3.75% of gross total pari-mutuel handled realised on the races, a sum equal to 5% for the special event named the Melbourne Cup
California Authority of Racing Fairs	3% of all wagers

Based upon the foregoing, the OCG found that the simulcast providers charge between 3% and 6% of all wagers. The PGI/IMC figure of 4% is, therefore, well within this going range.

## **CONCLUSIONS**

Based upon the documents which have been reviewed as well as the sworn testimony which has been received from the CTL representatives and the representatives of IMC and SportsMax, the OCG has concluded that there is evidence of breaches of the GPPH, the Contractor-General Act, the Financial Administration Act, the Public Bodies Management and Accountability Act, the Companies Act, and the Corruption Prevention Act, in the award and/or settlement of contracts by CTL.

The OCG's Investigation has concluded that there are three (3) areas of interest with regard to the relationship between CTL, SportsMax and IMC. The areas of interest are as follows:

- (a) The live broadcast of local racing content from Caymanas Park;
- (b) The proposal for the Satellite Distribution of CTL content to OTBs;
- (c) CTL's acquisition of simulcast signals from the UK and South Africa.

The OCG's Conclusions in respect of these areas of interest are as follows:

### ***The Live Broadcast of Local Racing Content from Caymanas Park***

1. The OCG has concluded that in respect of this matter, Mr. Rousseau declared his interest in SportsMax pursuant to Section 17 (2) (a) of the Public Bodies Management and Accountability Act and Section 193 (1) (b) of the Companies Act.
2. CTL has, however, failed to comply with several provisions of the GPPH in the procurement of services for the live broadcast of its races.

Among the breaches of the GPPH, is the fact that the 2008 March 14 Letter of Invitation to Tender did not have an attached comprehensive tender document which outlined the deliverables, eligibility criteria, and evaluation and selection criteria.

In this regard, the OCG has concluded that CTL's Letter of Invitation to Tender for the live broadcast of races from Caymanas Park breached Section 5.1.1.1 of the GPPH. Section 5.1.1.1 states that the procuring entity shall prepare Terms of Reference (TOR) that clearly define the objectives, goals, and scope of the engagement and provide any relevant background information to facilitate the consultants' preparation of their proposal.

***The Proposal for the Satellite Distribution of CTL content to OTBs – The CTL/RCN Arrangements***

3. In respect of the CTL/RCN contractual arrangements, the OCG has found that the Right of First Refusal (RFR) Clause, as is drafted, allows for an automatic right of first refusal, ***without more***. The OCG has concluded that competition, which is an integral feature of public sector procurement, is significantly curtailed by the inclusion of the RFR Clause, in the CTL/RCN contract. In the present instance, RCN has the opportunity and privilege to match or better the offer of a third party in respect of consideration. However, RCN must agree to the terms and conditions of the proposed third party contract.

Further, the inclusion of the RFR clause, in its current format, in the RCN service contract, stands in contravention of the Government of Jamaica Procurement Policy and some of the key tenets of public procurement, inclusive of the following:

- (a) The requirement that public sector procurement activities shall be conducted fairly, allowing for equal treatment of contractors. RFR places the contracting party in a privileged position.
- (b) The requirement of competition to ensure the achievement of value for money. In the present instance, the rates being paid to RCN are considered excessive and the procuring entity is encumbered by the stipulations of the RFR clause.

***CTL's acquisition of simulcast signals from the UK and South Africa***

4. The procurement method which was utilised by CTL in selecting the contractors for the provision of simulcast satellite signals is that of the Sole Source methodology. However, the use of the Sole Source methodology, by CTL, was in breach of (a) Section 2.1.3.4 of the GPPH and (b) the Ministry of Finance & Planning Circular No. 17, which is dated 2007 May 15 and which is entitled Public Sector Procurement Policy & Procedural Guidelines for Sole Sourcing.
5. The OCG has seen no documentary evidence which would suggest that the contracts for CTL's acquisition of simulcast signals were approved by the CTL Procurement Committee, the CTL Board, the NCC and/or the Cabinet, as the case might be.
6. The OCG has also concluded that the CTL Board of Directors has failed in its duty to ensure that the Procurement Committee of CTL discharged those of its mandates as are prescribed by Section 1.5.2.3 of the GPPH.
7. The OCG has further concluded that the CTL Accounting Officer and/or Accountable Officer have failed in the discharge of those of their duties that are prescribed, *inter alia*, by Sections 16, 19 and/or 24F of the Financial Administration and Audit Act. The CTL Accounting Officer and/or Accountable Officer have failed, *inter alia*, to ensure that the simulcast contracts and/or commitments that were made on behalf of CTL were signed and approved, at all material times, by a duly authorised officer of the company.
8. By all accounts, most overseas simulcast contracts were signed by Mr. Donald Tankoy, CTL's former Executive Manager, Off-Track Betting (OTB) and, up until 2008 June 26, CTL Board approval was not required for the signing of the simulcast contracts. In addition, the OCG has concluded that this constitutes a breach, *inter alia*, of the Financial Administration and Audit Act since, Mr. Tankoy, who signed

several of CTL's contracts, was neither the Accounting and/or Accountable Officer for CTL.

9. Furthermore, CTL had no clear guidelines, inclusive of the necessary checks and balances and/or approval process, for the contracts to provide simulcast satellite signals. In this regard, the OCG concludes that the contracts for the acquisition of overseas simulcast racing, which have been entered into by CTL, were settled in an irregular manner, all in contravention of the Contractor-General Act, the GPPH and the Financial Administration and Audit Act.
10. With regard to CTL's acquisition of simulcast signals from the UK and South Africa, the OCG has concluded that an agreement subsists between CTL and IMC for access to the said signals. This agreement was settled between IMC and CTL subsequent to IMC acquiring the rights for the PGI signal. As such, in an effort not to disrupt its services, CTL maintained the PGI signal and, as at 2008 June 1, became liable to make payments to IMC for the said signals.
11. The OCG has also concluded that a conflict of interest does exist in the fact that Mr. Patrick Rousseau is the Chairman of the three (3) entities, i.e. CTL, IMC and SportsMax, which were involved in the interest areas that were the subject of the OCG's Investigation.
12. The OCG has concluded that Mr. Rousseau failed, *inter alia*, in the discharge of those of his duties as are prescribed by Sections 6 and 17 (1) and (2) of the Public Bodies Management and Accountability Act and Section 193 (1) (b) of the Companies Act. He failed, *inter alia*, to disclose to the Board and Management of CTL, in a timely fashion or at all, (a) his interest in IMC and/or (b) the relationship which existed and which exists between SportsMax and IMC. Mr. Rousseau, while he was the Chairman of CTL, SportsMax and IMC, represented the interests of CTL, SportsMax and IMC in circumstances which questioned the discharge of his fiduciary duties to CTL and in



circumstances which ultimately led to the settlement of a commercial agreement between CTL and IMC.

Further, in light of Mr. Rousseau's non-disclosure of his interest in IMC, it is important to note the provisions of **Section 193 (8) of the Companies Act, 2004**.

**Section 193 (8)** provides that *"Where a director or officer of a company fails to disclose in accordance with this section, his interest in a material contract made by the company, the Court may, upon the application of the company, set aside the contract on such terms as the Court thinks fit.* (OCG Emphasis)

13. Having regard to the foregoing, the OCG's Investigation has found that the agreement which was settled between CTL and IMC was devoid of impartiality and was settled in circumstances which involved irregularity and impropriety.

In addition to the foregoing Conclusions, the OCG's Investigation has also made the following determinations:

14. Both Mr. Rousseau and Mr. Oliver McIntosh have attested to the fact that IMC had been in negotiations with PGI for the acquisition of its rights prior to Mr. Rousseau's ascension to the Chairmanship at CTL on 2007 October 29. These negotiations, according to Mr. Oliver McIntosh, took place over the *"last four years..."*

The OCG has, however, found that within the time in which IMC was allegedly negotiating with PGI, PGI had presented CTL with an opportunity on 2005 August 3 to control and distribute the related signal in Jamaica.

Further, based upon the email correspondence, of 2009 January 7, between Mr. Rousseau and Mr. Nicholls, which was copied at all material times to Mr. Oliver McIntosh, the OCG questions the veracity of the assertions of both Mr. Oliver

McIntosh and Mr. Rousseau with regard to IMC's acquisition of the PGI signal rights.

This is premised upon the fact that prior to Mr. Rousseau's declaration of interest in SportsMax on 2008 January 14, Mr. Rousseau, while he was the Chairman of CTL, SportsMax and IMC, was involved in negotiations with Mr. Nicholls of PGI. The referenced negotiations are evidenced by certain email communications which are dated 2008 January 7 and in which the following, *inter alia*, has been disclosed:

- (a) PGI was of the opinion that SportsMax, CTL and the UBA were in a three way deal to acquire the PGI signal for Jamaica;
- (b) In these negotiations, Mr. Rousseau was apparently representing both CTL and SportsMax, in consequence of which he had a conflicting interest;
- (c) The proposed terms of the deal which were being discussed in the emails were not deemed by Mr. Rousseau to be beneficial to SportsMax;
- (d) Mr. Oliver McIntosh apparently presented a separate proposal to PGI;
- (e) Six months after the referenced email correspondence, IMC, the parent company of SportsMax, became the rights holder for the PGI signals.

In the circumstances, the OCG has concluded that Mr. Rousseau acted, *inter alia*, in breach of his fiduciary and/or statutory duties of trust to CTL.

The *prima facie* evidence would suggest that, through his position as Chairman of the CTL Board, Mr. Rousseau has carried on negotiations with representatives of PGI and has passed information acquired in that capacity to Mr. Oliver McIntosh, the CEO and President of SportsMax, with a view to a benefit accruing to SportsMax and/or to IMC.

The OCG has found that these discussions preceded IMC's acquisition of the rights to the PGI signal, the said signal which had been offered to CTL by PGI in 2005 and which would have given CTL "*an opportunity to control the distribution to Jamaica bookmakers and for Caymanas to be in charge of that and earn some income for the service*".

In the circumstances, it is difficult not to conclude that the Findings that are set out in this Report constitute compelling *prima facie* evidence of the commission of an act of corruption, on the part of Mr. Patrick Rousseau, in contravention of the provisions of Section 14 (1) (b) of the Corruption Prevention Act, in CTL's award and/or settlement of the referenced agreement with IMC.

Consequently, and in the discharge of its statutory mandates under Section 21 of the Contractor General Act, the OCG believes that there are sufficient and justifiable grounds which would warrant that the matter should be referred to the Director of Public Prosecutions, the Corruption Prevention Commission and the Commissioner of Police for further investigations and/or for such action as any or all of them may deem to be appropriate.

15. Both Mr. Oliver McIntosh and Mr. Patrick Rousseau failed to provide full and complete answers to the OCG's 2008 July 30 Requisition. In particular, both gentlemen failed to disclose the requisitioned shareholder information for IMC to the OCG.

Consequently, the OCG has concluded that the *prima facie* evidence which is before it would suggest that both Mr. Rousseau and Mr. McIntosh failed, without lawful justification or excuse, to comply with a lawful Requisition of a Contractor-General in contravention of Section 29 (b) (ii) of the Contractor-General Act.

16. In respect of Mr. Rousseau's purported declaration of interest in IMC, the OCG has concluded that, on 2008 September 23, he provided the OCG with a statement which appears to be false in that he unequivocally asserted in the said statement, which was sworn before a Justice of the Peace to be true, that he had made a declaration of his interest in IMC at a CTL Board Meeting which was convened on 2008 January 3.

The documentary evidence and the sworn statements which have been provided to the OCG by the CTL Board Members have, however, comprehensively and unequivocally contradicted Mr. Rousseau's assertions. It is for this reason that the OCG feels that there is sufficient *prima facie* evidence on record which would suggest that Mr. Rousseau has acted in contravention of Section 29 (a) of the Contractor General Act.

17. The OCG has found that there is sufficient *prima facie* evidence to suggest that the CTL Board and/or some CTL Board Members have failed in the discharge of some or all of those of their duties that are prescribed, *inter alia*, by Section 17 (1) (a) and (b) and Section 6 of the Public Bodies Management and Accountability Act.

18. An assessment of the email correspondence, which was dated 2008 January 7, between Mr. Nicholls of PGI and Mr. Rousseau, has revealed that Mr. Rousseau was negotiating on behalf of not only SportsMax, but also CTL. In this respect, the OCG has serious questions as to who was Mr. Rousseau negotiating for and whose interest was being served.

The OCG has concluded that Mr. Rousseau has breached his fiduciary duties to CTL and has acted in breach of Section 17 (2) of the Public Bodies Management and Accountability Act and Section 193 (1) (b) of the Companies Act. Mr. Rousseau failed to disclose his interest in SportsMax prior to his participation in the referenced email correspondence. Mr. Rousseau's declaration of interest in SportsMax to the CTL Board occurred on 2008 January 14, seven (7) days after the email deliberations with PGI in regard to CTL and SportsMax.

## **REFERRALS**

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

**Section 21 of the Contractor-General Act** provides as follows:

**“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”**<sup>161</sup> (OCG Emphasis)

The OCG finds that there is sufficient *prima facie* evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest that the Board and/or some Board Members of CTL were negligent in the exercise of those duties that are prescribed, in particular, by Section 17(1) (a) and (b) and Section 6 (d) of the Public Bodies Management and Accountability Act.

The Deputy Chairman of the CTL Board, Mr. Peter Lawson, and those members of the Board of the CTL:

- (a) who assisted in the preparation of the 2008 July 29 letter to Minister Don Wehby and posited that contracts for the acquisition of overseas simulcast signals were outside of the scope of the Government Procurement Guidelines;
- (b) who failed to exercise due care, skill and diligence, in researching and acting upon::

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<sup>161</sup> Contractor-General Act. 1983

- (i) the information on IMC and SportsMax, in light of the allegations and the disclosures which were previously made to the Minister on 2008 July 29 and by the OCG's Media Release, which was dated 2008 July 21, and
  - (ii) the commercial arrangement which was being proposed between IMC and CTL, and
- (c) who were in receipt of the 2008 January 7 emails which particularised Mr. Rousseau's discussions with PGI and which indicated that Mr. Rousseau was apparently not only representing CTL, but also SportsMax, a company in which Mr. Rousseau subsequently declared his interest on 2008 January 14,

... have (a) acted negligently in the discharge of their responsibilities as CTL Directors and/or (b) abused their authorities and offices as Directors of CTL and/or (c) breached their respective duties of trust to the company and/or (d) breached their respective fiduciary or statutory duties to the company.

The Members of the CTL Board also failed to take any action to properly ensure that (a) the circumstances which led to the award of a contract to IMC were fair, transparent and impartial, (b) the GPPH was complied with in the award and/or settlement of the said contract, and/or (c) that there was strict compliance, *inter alia*, with the provisions of the Financial Administration and Audit Act by the management of the CTL.

In respect of Mr. Rousseau, his failure, *inter alia*, to disclose his interest in IMC is a **direct** contravention of the provisions of **Section 17 (2) of the Public Bodies Management and Accountability Act** and **Section 193 (1) (b) of the Companies Act** and a breach of his fiduciary and statutory duties to CTL.

**Section 17 (2) of the Public Bodies Management and Accountability Act** provides that, "A director who is directly or indirectly interested in any matter which is being dealt with by the board- (a) **shall disclose the nature of his interest at a board meeting**; (b)

**shall not take part in any deliberation of the board with respect to that matter.**” (OCG Emphasis).

**Section 193 (1) (b) of the Companies Act** provides, *inter alia*, as follows:

*193.-(1) A director or officer of a company who is: -*

*(b) a director or an officer of any body or has an interest in any body that is a party to a contract or proposed contract with the company.....*

**shall disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of his interest.** (OCG Emphasis).

Further, it is instructive to record that Sections 6 and 17 of the Public Bodies Management and Accountability Act impose certain specific responsibilities upon the Board of Directors of Public Bodies as well as Board Members themselves.

Had these and other responsibilities been fully discharged in the instant matter, the affairs of CTL would not have been shrouded by the appearance of unethical and/or improper practices.

It is particularly important to record that Boards of Directors of Public Bodies are appointed, *inter alia*, to efficiently and effectively manage Public Bodies and to ensure the accountability of all individuals who manage the resources of the said Public Bodies.

**Section 6 of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*“6. Every board shall-*

*(a) take such steps as are necessary-*

*(i) for the efficient and effective management of the Public Body;*

*(ii) to ensure the accountability of all persons who manage the resources of the Public Body;*

*(b) develop adequate information, control, evaluation and reporting systems within the body;*

- (c) develop specific and measurable objectives and performance targets for that body;*
- (d) advise the responsible Minister on matters of general policy relating to the management of the body”.*

**Section 17 (1) of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*17- (1) “Every director and officer of a Public Body shall, in the exercise of his powers and the performance of his duties-*

- (a) act honestly and in good faith in the best interests of the Public Body; and*
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.*

**Section 25 of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*25. (1) If the Court is satisfied on an application by the Attorney-General that any person has contravened any of the provisions of-*

- (a) section 4 (acquisition of shares and payment of dividends);*
  - (b) section 5 (exercise of borrowing powers);*
  - (c) section 6 (corporate governance);*
  - (d) section 14 (general duties of auditors);*
  - (e) section 15 (failure to furnish information to auditor);*
  - (f) section 20 (levels of emoluments);*
  - (g) section 21 (restriction on formation of new companies),*
- the Court may exercise any of the powers referred to in subsection (2).*

*(2) The Court may-*

- (a) order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or*
- (b) grant an injunction restraining that person from engaging in conduct described in subsection (1).*

*(3) In exercising its powers under this section the Court shall have regard to-*



- (a) *the nature and extent of the default;*
  - (b) *the nature and extent of any loss suffered by any person as a result of the default;*
  - (c) *the circumstances of the default;*
  - (d) *any previous determination against the person concerned.*
- (4) *If in the opinion of the Attorney General there is a contravention of section 7, 8 or 9, he may make an application to the Court and the provisions of subsections (1), (2) and (3) shall apply in relation thereto*

Having regard, *inter alia*, to the foregoing, the OCG now makes the following considered Referrals:

- (1) In the premises, and pursuant to the mandatory statutory obligations which are imposed upon a Contractor-General by Section 21 of the Contractor-General Act, the OCG is hereby formally referring a copy of this Report to the Attorney General on the basis that there is *prima facie* evidence which is recorded herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that there was, *inter alia*, a breach of duty specifically on the part of (a) Mr. Patrick Rousseau, the Chairman of CTL, and (b) the Board of Directors of CTL and/or one or more of their members, all in contravention, *inter alia*, of Sections 6 and 17 of the provisions of the Public Bodies Management and Accountability Act.

The matter is being referred to the Attorney General for such action as the Attorney General may deem appropriate particularly in light of the provisions that are contained in Sections 6, 17 and 25 of the Public Bodies Management and Accountability Act.

Additionally, the matter is being referred to the Attorney General for consideration as to what actions, if any, may be pursued against any of the offending CTL Board Directors, having regard to all of the circumstances of the case.

- (2) Further, pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Corruption Prevention Commission, the Commissioner of Police and the Director of Public Prosecutions for such further action as any or all of them may deem appropriate.

The referral is being made on the basis that there is *prima facie* evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that Mr. Rousseau, while actively holding the position of Chairman of the CTL, SportsMax and IMC Boards, has improperly carried on negotiations with representatives of PGI and has passed information in his capacity as the Chairman of CTL to Mr. Oliver McIntosh, the CEO and President of SportsMax and IMC, with a view to a benefit accruing to SportsMax and/or IMC, contrary to Section 14 (1) (b) of the Corruption Prevention Act.

**Section 14 (1) (b) of the Corruption Prevention Act** provides that “A *public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*”.

The referral is also being made to the Corruption Prevention Commission, the Commissioner of Police and/or the Director of Public Prosecutions to investigate the circumstances which surround the settlement of the above-referenced agreement between CTL and IMC to determine if there was a conspiracy or agreement between Mr. Rousseau and Mr. Oliver McIntosh or any other person to facilitate, *inter alia*, what could be the possible commission, on the part of the Mr. Rousseau or any other person, of an act or acts of corruption contrary to Section 14 (1) (b) of the Corruption Prevention Act.

- (3) Further, pursuant to the mandatory statutory obligations which are imposed upon a Contractor-General by Section 21 of Contractor General Act, the OCG is hereby formally referring a copy of this Investigation Report to the Director of Public Prosecutions and the Commissioner of Police, for such further action as one or both of them may deem appropriate, on the basis that there is *prima facie* evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that Mr. Patrick Rousseau and Mr. Oliver McIntosh both failed, without lawful justification or excuse, to comply with a lawful requirement of a Contractor-General, in contravention of Section 29 (b) (ii) of the Contractor General Act. Mr. Rousseau, in his 2008 August 12 response to the OCG's Requisition, and Mr. McIntosh in his 2008 August 14 response to the OCG's Requisition, both failed to provide responses to all of the questions which were contained in the OCG's Statutory Requisitions that were dated 2008 July 30, and which were respectively directed to them and, in particular, failed to disclose the particulars of the shareholders of IMC.
- (4) Further, pursuant to the mandatory statutory obligations which are imposed upon a Contractor-General by Section 21 of Contractor General Act, the OCG is hereby formally referring a copy of this Investigation Report to the Director of Public Prosecutions and the Commissioner of Police, for such further action that one or both of them may deem appropriate, on the basis that there is *prima facie* evidence that is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that Mr. Patrick Rousseau attempted to mislead a Contractor General, in contravention of Section 29 (a) of the Contractor General Act and/or knowingly and wilfully made a false statement to a Contractor General in a material particular, contrary to Section 8 of the Perjury Act. In his 2008 September 23 response to the OCG's Requisition, Mr. Rousseau stated that he had disclosed his interest in IMC to the CTL Board of Directors in a Board meeting which was convened on 2008 January 3.

The documentary evidence and the sworn witness statements which have been provided to the OCG by the CTL Board Members have, however, comprehensively contradicted Mr. Rousseau's assertions. Accordingly, the OCG feels that there is sufficient *prima facie* evidence which is stated herein, and more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would warrant that the matter be referred to the referenced authorities for such action as one or both of them may deem appropriate.

**Section 29 of the Contractor General Act** provides, *inter alia*, as follows:

*“Every person who –*

*(d) wilfully makes any false statement to mislead or misleads or attempts to mislead a Contractor- General or any other person in the execution of his functions under this Act; or*

*(e) without lawful justification or excuse –*

*(j) obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or\*

*i. fails to comply with any lawful requirement of a Contractor- General or any other person under this Act, ....*

*shall be guilty of an offence ...”.*

**Section 8 of the Perjury Act** provides, *inter alia*, as follows: *“Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-*

*(a) in a voluntary declaration; or ....*

*(b) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,*

*shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.*

- (5) Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Auditor General on the basis that there is *prima facie* evidence which is recorded herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that there was a breach of duty on the part of the Accounting Officer and/or on the part of the Accountable Officers of CTL and that one or more of the said Officers may have contravened, *inter alia*, the provisions of the Financial Administration and Audit Act. The matter is being referred to the Auditor General for such action as the Auditor General may deem to be appropriate, particularly in light of the provisions which are contained, *inter alia*, in Sections 16, 19, 20 and 24F of the Financial Administration and Audit Act.

**Section 20 (1) Financial Administration and Audit Act** provides as follows:

*“20. (1) If it appears to the Financial Secretary upon a report by the Auditor General that any person who is or was an officer-*

*(a) has failed to collect any moneys owing to the Government for the collection of which such person is or was at the time of such employment responsible;*

*(b) is or was responsible for any improper payment of public moneys or for any payment of such moneys which is not duly vouched; or*

*(c) is or was responsible for any deficiency in, or for the loss or destruction of, any public moneys, stamps, securities, stores, or other Government property, and if, within a period specified by the Financial Secretary, an explanation satisfactory to him is not furnished with regard to such failure to collect, improper payment, payment not duly vouched, deficiency, loss or destruction, as the case may be, the Financial Secretary may surcharge against the said person the amount not collected or such improper payment, payment not duly vouched, deficiency, loss or the value of the property destroyed, as the case may be, or such lesser amount as the Financial Secretary may determine.”*

## **RECOMMENDATIONS**

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that Investigation **and make such Recommendations as he considers necessary in respect of the matter which was investigated.**” (OCG’s Emphasis).*

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following Recommendations:

1. CTL should prepare a detailed Request for Proposal (RFP) and/or tender document, when any form of procurement is being undertaken. The RFP and/or tender document must, at a minimum, make provision for:
  - (a) Details of the scope of work for the project;
  - (b) Standard format for technical and financial proposals;
  - (c) Details of the selection procedure to be followed;
  - (d) Deadline for submission;
  - (e) The method by which the proposal shall be submitted;
  - (f) If not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by CTL;
  - (g) Any conditions for subcontracting a part of the assignment;
  - (h) The procedure for handling clarifications;
  - (i) Location for the deliverables;
  - (j) Tender security (if required);
  - (k) Evaluation methodology;
  - (l) Selection criteria.

2. It is recommended that an immediate review of the accounting, procurement and public administration management practices at CTL be undertaken by the Public Administration and Appropriations Committee of the House of Representatives, the Auditor General and the Ministry of Finance and the Public Service.

The review should be conducted to ensure that adequate procedures, systems, checks and balances are not only implemented, but are aggressively enforced to secure a radically improved level of compliance on the part of CTL and its officials and officers with relevant Government approved procedures, regulations and laws.

Particular attention must be paid to the requirements of the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act, the Contractor-General Act and the GPPH.

3. The OCG also recommends that the Auditor General conducts an exhaustive Investigation and/or audit into the expenditure approval processes of CTL. The Investigation should be carried out particularly in light of the fact that there are several contracts and/or commercial arrangements for simulcast satellite services to which CTL is a party and in respect of which significant amounts of public funds are being disbursed without the requisite approvals being sought and/or granted.

The Investigation should seek to determine if any of the said circumstances warrant the initiation of disciplinary or other adverse proceedings against any employee or officer of CTL.

4. The OCG recommends that the portfolio Permanent Secretary and the CTL Board, take a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, checks and balances and other appropriate management systems at CTL, in an effort to mitigate against any possibility of deviations from the GPPH by the institution's management and procurement staff.

5. The OCG further respectfully recommends that Parliament should implement legislation to ensure that Directors of Public Body Boards who flagrantly abuse their office and/or authority and/or who fail substantially in the discharge of their fiduciary and statutory responsibilities to their Boards, the Public Body and, by extension, to the Taxpayers of Jamaica, are effectively barred from serving in any like capacity in the future.
6. The OCG also respectfully recommends that all Appointees to the Board of Directors of any Public Body are duly and fully made aware of their responsibilities and obligations under the provisions that are contained, *inter alia*, in the Public Bodies Management and Accountability Act.
7. The OCG feels compelled to strongly recommend, again, as it has in previous Investigation Reports, that the Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.

If this recommendation is not wholeheartedly accepted and implemented, at the very least, the OCG recommends that the Public Bodies Management and Accountability Act be reviewed in respect of the Board of Directors' disclosure of interests. In this respect, the OCG recommends that Directors be mandated to disclose their interests to the Portfolio Minister, and the relevant Accounting Officer and Accountable Officers, when being appointed, so as to ensure full disclosure and transparency in the affairs of the public sector.



8. In light, *inter alia*, of (a) the CTL's Chairman's non-disclosure of his interest in IMC, (b) IMC's 2008 September 23 letter regarding the payments to be made in respect of the 'verbal' agreement which was reached between CTL and IMC; and (c) the provisions of Section 193 of the Companies Act, the OCG respectfully recommends that CTL should make an application to the Courts to set aside the CTL/IMC agreement on such terms as the Court may deem fit. In this respect, CTL should seek appropriate legal advice from the Attorney General's Department.
  
9. The OCG also recommends that immediate steps should be taken by the Cabinet to amend the Government Procurement Rules to require that any private corporate entity that is desirous of tendering on any Government of Jamaica contract must, as a mandatory pre-requisite, submit to the relevant contracting Public Body, certified and sworn particulars of its incorporation documents, certified particulars of its shareholders and certified particulars of all of its beneficial shareholders.

The OCG feels compelled to make this recommendation in light, *inter alia*, of Mr. McIntosh's and Mr. Rousseau's failure to disclose the particulars of the shareholders of IMC, a company which is incorporated and registered off-shore in the jurisdiction of St. Lucia. The OCG has observed that there is a growing trend of on-shore and off-shore incorporated private companies that are receiving Government of Jamaica contracts, but whose shareholders and/or beneficial shareholders are substantially unknown. These practices have posed significant concerns for the OCG, particularly regarding the issue of transparency in the expenditure of the taxpayers' money.

10. Finally, the OCG believes that it is timely to remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain and/or for the benefit of others, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption. The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that "A *public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits*

*to do any act for the purpose of obtaining any illicit benefit for himself or any other person”.*

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

**SPECIAL OCG COMMENT**

The OCG wishes to formally record that it regrets the passing, on September 10, 2008, of Mr. Donald Tankoy, CTL's former Executive Manager for Off-Track Betting. The OCG takes this opportunity to express to his family, and to his colleagues at CTL, its most sincere condolences.

# APPENDIX

## SPECIMEN OF OCG FORM OF REQUISITION

July 30, 2008

Honourable Mr. Pat Rousseau  
Chairman  
Caymanas Track Limited  
Gregory Park P.O.  
Portmore  
St. Catherine

Dear Hon. Mr. Rousseau:

**Re: Notice of Formal Requisition for Information and Documentation to be Supplied under the Contractor General Act – Conduct of Investigation – Concerning Allegations of irregularity in the proposal of SportsMax to provide satellite service for simulcast racing from South Africa and the United Kingdom for Caymanas Track Limited.**

The Office of the Contractor General (OCG), acting on behalf of the Contractor General, has formally commenced an investigation into the circumstances surrounding the allegations of irregularity in the proposal of SportsMax to provide satellite service for simulcast racing from South Africa and the United Kingdom for Caymanas Track Limited (CTL).

As we will require your assistance and full cooperation to successfully prosecute this investigation, it is very important that your attention is formally directed to the following provisions of the Contractor General Act:

- (1) Sections 4 (1) (a) (i) and (ii) which mandates the Contractor General, "... on behalf of Parliament- to monitor the award and the implementation of Government contracts with a view to ensuring that such contracts are awarded impartially and on merit (and that) the circumstances in which each contract is awarded ... do not involve impropriety or irregularity ...".
- (2) Section 4 (1) (b) which mandates the Contractor General, "... on behalf of Parliament- to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof".
- (3) Section 15 (1) which prescribes the discretionary power of a Contractor General to conduct an investigation into any or all of the following matters:

- (a) “the registration of contractors”;
  - (b) “tender procedures relating to contracts awarded by public bodies”;
  - (c) “the award of any Government contract”;
  - (d) “the implementation of the terms of any Government contract”;
  - (e) “the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence”;
  - (f) “the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.
- (4) Section 4 (2) (b) which prescribes the power of a Contractor General “to have access to all books, records, documents, stores or other property belonging to Government, whether in the possession of any officer of a Public Body or a contractor or any other person”.
- (5) Section 4 (2) (d) which prescribes the power of a Contractor General “to have access to all books, records, documents or other property used in connection with the grant, issue, suspension or revocation of any prescribed licence whether in the possession of any public officer or any other person”.
- (6) Section 4 (2) (e) which prescribes the power of a Contractor General “to have access to any premises or location where he has reason to believe that any such books, records, documents or other property as are referred to in paragraph (d) or any property which is the subject of a prescribed licence, may be found”.
- (7) Section 4 (3) of the Act which prescribes the power of a Contractor General to “require any Public Body to furnish in such manner and at such times as may be specified by the Contractor General, information with regard to the award of any contract and such other information in relation thereto as the Contractor General may consider desirable”.
- (8) Section 4 (4) which prescribes that, “For the purposes of paragraphs (d) and (e) of subsection (2) the Contractor-General shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Contractor-General, information with regard to the grant, issue, suspension or revocation of any prescribed licence and such other information in relation thereto as the Contractor-General considers desirable”.
- (9) Section 5 (1) which provides that, “In the exercise of the powers conferred upon him by this Act, a Contractor-General shall not be subject to the direction or control of any other person or authority”.
- (10) Section 17 (1) which prescribes the power of a Contractor General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit”.

- (11)Section 17 (2) which provides that “Nothing in this Act shall be construed as requiring a Contractor General to hold any hearing and, no person shall be entitled as of right to comment on any allegations or to be heard by a Contractor General”.
- (12)Section 18 (1) which prescribes the power of a Contractor General, “at any time, (to) require any officer or member of a public body or any other person who, in his opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matter as may be in his possession or under the control of that officer, member or other person”.
- (13)Section 18 (2) which prescribes the power of a Contractor General “to summon before him and examine on oath any person who has made representations to him or any officer, member or employee of a public body or any other person who, in the opinion of the Contractor General, is able to furnish information relating to the investigation – and such examination shall be deemed to be a judicial proceeding within the meaning of Section 4 of the Perjury Act”.
- (14)Section 18 (3) which provides that “For the purposes of an investigation under this Act, a Contractor General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents”.
- (15)Section 18 (4) which provides that “Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person under the Official Secrets Act, 1911 to 1939 of the UK (or of any Act of Parliament of Jamaica replacing the same in its application to Jamaica) or, subject to the provisions of this Act, by any law (including a rule of law) shall not apply in relation to the disclosure of information or the production of any document or thing by that person to a Contractor General for the purpose of an investigation ...”.
- (16)Section 18 (5) which provides that “No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing he could not be compelled to give or produce in proceedings in any court of law.”
- (17)Section 22 which provides that, “The proceedings of a Contractor-General shall not be rendered void for want of form”.
- (18)Section 29 which provides as follows:
- “Every person who –
- (a) wilfully makes a false statement to mislead or attempts to mislead a Contractor General or any other person in the execution of his functions under this Act, or
  - (b) without lawful justification or excuse –

- (i) obstructs, hinders or resists a Contractor General or any other person in the execution of his functions under this Act; or
- (ii) fails to comply with any lawful requirement of a Contractor General or any other person under this Act, ....

shall be guilty of an offence ...”.

It is also instructive that you should note that there are Public Officers who are misguided in the belief that the aforementioned powers of the Contractor General, to monitor or to investigate the “award” of contracts etc., do not arise until the subject contract or licence/permit is actually awarded or issued, as the case may be. We are obliged to advise you that any such belief is unfounded and has no validity in law. In the case of *Lawrence v. Ministry of Construction (Works) and the A.G. (1991) 28 J.L.R. 265*, the Supreme Court of Jamaica was moved by way of originating summons, at the instance of the Contractor General, to rule on this very point. Mr. Justice Courtney Orr, in that case, held unequivocally as follows:

*“The proper interpretation of the (Contractor General) Act is one which empowers the Contractor General to monitor the pre-contract stages of government contracts and to obtain information from public bodies prior to the award of such contracts (my emphasis)... The ordinary meaning of the words of the statute in light of the context and grammar suggest no other interpretation”.*

In the discharge of the mandates of the Contractor General under the Contractor General Act and in furtherance of the expressed powers which are reserved to him by the Act, the OCG, acting on behalf of the Contractor General, now hereby formally requires you to fully comply with the below-mentioned requisitions by providing all of the information and documentation which is demanded of you and to supply same in a sealed envelope, marked ‘Confidential’ and addressed to the Contractor General. **The envelope must be deposited at the reception desk of the Offices of the Contractor General, PIOJ Building, 16 Oxford Road, Kingston 5, no later than 3:00 PM in the afternoon on Thursday, August 14, 2008.**

In responding to the below-mentioned requisitions or questions, you are respectfully asked to be guided by the following:

- (a) You must provide written responses to all of the requisitions or questions.
- (b) Your responses must be declared and certified by you before a Justice of the Peace to be complete, accurate and truthful. Your declaration must be in the form which is enclosed herewith.
- (c) All written responses which are provided by you must be provided in a single document and must be numbered in the same chronological sequence as the questions or requisitions to which they relate. For example, your response to Requisition/Question #1 must be numbered ‘1’, your answer to Requisition/Question #2 must be numbered ‘2’, and so forth.

- (d) Any document which is supplied by you in support of a response must be properly labelled, numbered and marked to identify what it is and the requisition or question to which it relates.
- (e) Should you mislead, resist, obstruct or hinder a Contractor General in the execution of his functions or fail to provide a complete, accurate and truthful response to any of the requisitions or questions which are set out below, you will become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor General Act.

### **REQUISITIONS / QUESTIONS**

1. What is the extent of your knowledge of the alleged proposal(s) from SportsMax to provide satellite services for simulcast racing from South Africa and the United Kingdom to Caymanas Track Limited (CTL)? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.
2. What is the extent of your knowledge of the arrangement(s) for International Media Content (IMC) to provide satellite services to CTL? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.
3. Were you instrumental and/or involved in the preparation, and/or conception of the alleged proposal(s) which was received by CTL, from SportsMax to provide satellite services for simulcast racing from South Africa and the United Kingdom? If yes, please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses.
  - i. State the date(s) on which you became involved in the preparation of the alleged proposal(s).
  - ii. What factor(s) and/or circumstances prompted the preparation of the alleged proposal(s) to provide CTL with satellite services for simulcast racing from South Africa and the United Kingdom?
  - iii. Detail the source of information which informed the decision to prepare the alleged proposal(s) and the date(s) on which this information was communicated to SportsMax.
4. Please provide an Executive Summary detailing the relationship, if any, between IMC and SportsMax. The summary should include:
  - i. The date(s) of incorporation of both companies;
  - ii. A statement as to the correlation, if any, between the two companies, and the circumstances relating to the same;



- iii. A statement as to the core business operations of both companies;
- iv. Detail the functions and role of each company, in regard to the alleged proposal(s) made to CTL to provide satellite services for simulcast racing from South Africa and the United Kingdom.

Please provide documentary evidence to substantiate your assertions where possible.

5. Who, and/or what entity(s) initiated contact to provide satellite services for simulcast racing from South Africa and the United Kingdom to CTL? Please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses.
- i. The rationale and purpose for initiating contact in regard to the same;
  - ii. The name(s) of the entity(s) and/or individual(s) and the title(s) of the individual(s) who initiated contact, the circumstances relating to same, as well as the date(s) on which such interactions took place;
  - iii. The name(s) and title(s) of the CTL Official(s) who was/were approached and/or was/were involved in discussions relating to same;
  - iv. The terms and conditions of the agreement(s);
  - v. Any other particulars that are pertinent to the agreement(s) which was/were negotiated with the CTL.
6. Did CTL approach Phumelela Gold International (PGI), in relation to purchasing satellite signals for simulcast racing from South Africa and the United Kingdom? If yes, please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses.
- i. The rationale and purpose of making such an approach(s);
  - ii. The date(s) CTL initiated contact with PGI in regard to the same;
  - iii. The name(s) and title(s) of the CTL Representative(s) who initiated contact with PGI;
  - iv. The outcome(s) of the approach(s);
  - v. The name(s) of the PGI Representative(s) who was/were approached;
  - vi. Any other particulars that are pertinent to any agreement(s) which was/were reached and/or entered into by CTL with PGI.

7. What services have International Media Content (IMC) and SportsMax been contracted and/or is being contracted to provide to CTL? Please provide an Executive Summary Listing all agreement(s), if any, which were entered into between CTL, IMC and SportsMax, and/or detail the specifics of the contract(s) with IMC which is/are being reviewed by CTL for signing. The summary should detail:
- i. The rationale and purpose of each agreement(s);
  - ii. The date(s) of initiation of each agreement(s);
  - iii. The date(s) of the signing of all contractual agreement(s) listed;
  - iv. The name(s) of the entity(s) and/or individual(s) and the title(s) of the individual(s) who initiated each of the listed agreement(s), the circumstances relating to same, as well as the date(s) on which such interactions took place;
  - v. The name(s) and title(s) of the CTL Official(s) and/or GOJ Official(s) who negotiated and concluded the agreement(s) and/or who is/are currently engaged in negotiations in regard to the agreement(s);
  - vi. The name(s) and title(s) of the IMC Official(s) and SportsMax Official(s) who negotiated and concluded the agreement(s) and/or who is/are currently engaged in negotiations in regard to the agreement(s);
  - vii. The terms and conditions of each of the agreement(s);
  - viii. Any other particulars that are pertinent to the agreement(s) which was/were entered into and/or which is/are being reviewed for signing between the CTL, IMC and SportsMax.

Please provide documentary evidence, where possible, to substantiate your assertions/responses.

8. Did CTL at any point directly approach IMC and/or SportsMax to supply CTL with satellite services for simulcast racing from South Africa and the United Kingdom and/or any other territory?
- i. If yes, please state when such an approach(s) was/were made, by whom and to whom and the outcome(s).
  - ii. If no, please state the circumstances which led CTL to approach IMC for the provision of said services.

Please provide documentary evidence, where possible, to substantiate your assertions/responses.

9. In a letter to the Office of the Contractor General, dated July 17, 2008, from Mr. Walford Brown, CEO, CTL, he stated that CTL has "...been informed by PGI, that IMC should be paid for satellite services from June 1, 2008 onwards." Please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses.
- i. What, if any, is and/or was the contractual arrangement(s) in place between CTL and PGI, for which they directed payments to be made to IMC?
  - ii. How was this information communicated to CTL? Where possible, please provide copies of the related correspondence;
  - iii. What was the rationale and purpose for the said arrangement(s);
  - iv. What was/were the date(s) on which such arrangement(s) was/were initiated and the date(s) the agreement(s) was concluded;
  - v. The name(s) of the CTL Representative(s) who negotiated the arrangement(s) with PGI;
  - vi. The name(s) of the PGI Representative(s) who negotiated the arrangement(s) with CTL;
  - vii. Any other particulars that are pertinent to the agreement(s) which was/were entered into between PGI and CTL.
10. Why was there a need to solicit the services of IMC and/or SportsMax? Please provide documentary evidence, where possible, to substantiate your assertions/responses.
11. Did CTL approach any other entity(s) in regard to the provision of satellite services for simulcast racing from South Africa and the United Kingdom?
- i. If yes, detail:
    - a. The name(s) of the entity(s) and/or individual(s) approached;
    - b. The date(s) on which the entity(s) and/or individual(s) was/were approached;
    - c. Detail the result(s) of the approach(s).
  - ii. If no, give the rationale for the decision not to approach any other carrier.

Please provide documentary evidence, where possible, to substantiate your assertions/responses.

12. Was CTL approached by any other entity(s) in regard to the provision of satellite services for simulcast racing from South Africa and the United Kingdom? If yes, detail:

- i. The name(s) of the entity(s) and/or individual(s) who made the approach(s);
- ii. The date(s) on which the entity(s) and/or individual(s) made the approach(s);
- iii. Detail the result(s) of the approach(s).

Please provide documentary evidence, where possible, to substantiate your assertions/responses.

13. What are the factor(s) and/or circumstances which prompted the draft contract from IMC to supply CTL with satellite services? Please provide documentary evidence, where possible, to substantiate your assertions/responses.

14. State the nature of the agreement(s) between CTL and IMC for which it is reported that payments as a rights fee of four (4%) percent of gross sales on a monthly basis are being made, pending a formal contract. Please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses.

- i. The rationale and purpose of the agreement(s);
- ii. The date(s) of initiation of the agreement(s);
- iii. The date(s) of the signing the agreement(s);
- iv. The name(s) of the entity(s) and/or individual(s) and the title(s) of the individual(s) who initiated the agreement(s), the circumstances relating to same, as well as the date(s) on which such interactions took place;
- v. The name(s) and title(s) of the CTL Official(s) and/or GOJ Official(s) who negotiated and concluded the agreement(s);
- vi. The name(s) and title(s) of the IMC Official(s) who negotiated and concluded the agreement(s);
- vii. The terms and conditions of the agreement(s);
- viii. The name(s) of the CTL Official(s) who approved payment(s) for this interim agreement(s);
- ix. Any other particulars that are pertinent to the agreement(s) which was/were entered into between the CTL and IMC.

15. What factors determined the rights fee of four percent (4%) which is being paid by CTL to IMC? Please provide documentary evidence to substantiate your assertions, where possible.
  - i. Was/were the fee(s) being charged in keeping with the current market rates?
16. How did CTL go about getting proposals to provide satellite services for simulcast racing from South Africa and the United Kingdom? Please provide documentary evidence, where possible, to substantiate your assertions/responses.
17. Did CTL have a detailed Request For Proposal, outlining (a) the criteria for selection; and (b) conditions of agreement, to provide satellite services for simulcast racing from South Africa and the United Kingdom? If yes, please provide documentary evidence, where possible, to substantiate your assertions/responses.
18. What methodology was used in the evaluation of the alleged proposal(s) which was/were received by CTL from SportsMax and/or any other entity, for the provision of satellite services for simulcast racing from South Africa and the United Kingdom? Please provide documentary evidence, where possible, to substantiate your assertions/responses.
19. In regard to the evaluation of the alleged proposal(s) which was/were received by CTL from SportsMax and/or any other entity, for the provision of satellite services for simulcast racing from South Africa and the United Kingdom, please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses:
  - i. The criteria by which each proposal(s) was/were assessed;
  - ii. Detail the primary conditions of agreement which the proposal(s) should satisfy;
  - iii. The source of the data which informed the criteria by which each proposal(s) was/were measured. Please provide, where possible, documentary evidence to support same;
  - iv. Detail the priority areas of concern for CTL in assessing the proposal(s);
  - v. The scoring system which was utilized in the evaluation of each proposal, if any, and the score attached to each criterion used in evaluating the proposal(s).
20. In regard to the alleged proposal(s) which was/were received by CTL from SportsMax to provide satellite services for simulcast racing from South Africa and the United Kingdom. Please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses:

- i. Who and/or what entity(s) first initiated the contact which culminated in the drafting of the alleged proposal(s) from SportsMax;
  - ii. The name(s) of the SportsMax Representative(s) and the title(s) of the individual(s) who initiated communication with CTL;
  - iii. The date(s) communication in regard to the alleged proposal(s) which was/were received by CTL from SportsMax to provide satellite services for simulcast racing from South Africa and the United Kingdom was initiated;
  - iv. Detail the circumstances relating to same.
21. It has been reported that the alleged proposal(s) which was/were received by CTL from SportsMax, was evaluated by a Sub-Committee of CTL's Board, which was appointed by you. Please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses.
- i. Please provide a statement as to your belief of the veracity, or otherwise, of the report that you appointed a Sub-Committee for the evaluation of the alleged proposal(s);
  - ii. The date(s) on which the Sub-Committee was appointed by you;
  - iii. The name(s) of the individual(s) and the title(s) of the individual(s) who was/were appointed to the Sub-Committee to evaluate the alleged proposal(s) from SportsMax;
  - iv. The rationale for selecting each member of the Sub-Committee;
  - v. The Terms of References which guided the Sub-Committee;
  - vi. The circumstances relating to same, as well as the date(s) on which such activity was/were undertaken;
  - vii. Detail your role and the Terms of Reference by which you were guided in determining the Sub-Committee for the evaluation process;
  - viii. Who was/were the primary contact person(s) at SportsMax at the time the proposal(s) was/were being reviewed?
  - ix. Do you think that your selecting the members of the Sub-Committee could be considered a 'conflict of interest'?
22. Did CTL seek to ascertain the name(s) of the shareholders, directors, shadow directors of IMC; and/or individual(s) with beneficial interest in IMC, prior to engaging in negotiations for the provision of services? If yes, please provide documentary evidence, where possible, to substantiate your assertions/responses.

23. Kindly provide an Executive Summary Listing detailing the following information:

- i. The name(s) of the shareholders, directors, shadow directors of IMC;
- ii. The name(s) of individuals with beneficial interest in IMC;
- iii. The name(s) of the shareholders, directors, shadow directors of SportsMax;
- iv. The name(s) of individual(s) with beneficial interest in SportsMax;
- v. State whether you have any personal and/or professional relationship with IMC and/or SportsMax. Include details on whether you are a shareholder, director, shadow director and/or have beneficial interest in IMC and SportsMax; and the date(s) in which you became a shareholder, director, shadow director and/or gained beneficial interest.

Please provide documentary evidence, where possible, to substantiate your assertions/responses.

24. It has been alleged that IMC is an agent for PGI, which distributes satellite signals for simulcast racing. Please answer the following questions and, where possible, provide documentary evidence to substantiate your assertions.

- i. Please provide a statement as to your belief of the veracity, or otherwise, of the allegation and any documentary evidence substantiating your reasons for the same;
- ii. State the date(s) on which IMC became agents for PGI;
- iii. State the date(s) on which IMC became agents for PGI for the provision of satellite services for simulcast racing from South Africa and the United Kingdom;
- iv. Detail the terms and conditions of the arrangement(s);
- v. Detail the geographical region in which IMC is the agent for PGI, and state whether this arrangement allows for IMC to have sole distribution rights.

25. In regard to the alleged proposal(s) which was/were received by CTL from SportsMax, it has been reported that you have “been careful not to compromise the deal’s transparency or integrity” by “detaching” yourself “from the negotiations to ensure that there is no conflict.” Please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses.

- i. State the date(s) on which your interest in the referenced transaction was disclosed;
  - ii. To whom and/or what entity was the declaration made?
  - iii. State the manner in which your interest was disclosed.
26. It has been reported that Mr. Oliver McIntosh, CEO of SportsMax, in defending his company's right to bid to provide services, has stated that the deal is "a project we have been working on for the last four years prior to Mr. Rousseau's ascension to the chairmanship of CTL..."
- i. Please provide a statement as to your belief of the veracity, or otherwise, of the reported statement and any documentary evidence substantiating your reasons for the same;
  - ii. Provided that the statement is true, and the proposal preceded your becoming Chairman of CTL, was your interest and/or potential interest in a pending GOJ contract disclosed to the Minister with Portfolio Responsibility for CTL, and/or any other public official. If yes, please provide the date(s) on which this was done, the manner in which this was done, the circumstances relating to same, and any documentary evidence to substantiate your assertions.
27. What is and/or was the role of the Advisory Committee in regard to the provision of services for simulcast racing? Provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses.
- i. Was the Advisory Committee a separate group from the Sub-Committee which was allegedly appointed by you? If yes, detail:
    - a. The name(s) and title(s) of the members of the Advisory Committee;
    - b. The Terms of Reference of the Advisory Committee;
    - c. The name(s) of the individual(s) and/or entity(s) who appointed the Advisory Committee;
    - d. The date(s) on which the Advisory Committee was formed;
    - e. The rationale for forming the Advisory Committee;
    - f. The circumstances relating to same, as well as the date(s) on which such activity was undertaken;
    - g. Were you a member of the Advisory Committee and what was your role on this committee?



28. Did you in any way (a) recommend, (b) influence and/or (c) approve the arrangement and/or contract with IMC to provide satellite services to CTL? If yes, please provide all relevant particulars.
29. Did any of the principals, shareholders, directors, partners, officers and/or employees of IMC, or anyone acting on their behalf, approach you and/or any public official, soliciting assistance in getting approval for a contract to IMC to provide satellite services to CTL? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the relevant principals, shareholders, directors, partners, officers and/or employees of IMC, the date(s) assistance was/were sought, and the nature of the assistance sought.
30. Did any of the principals, shareholders, directors, partners, officers and/or employees of SportsMax, or anyone acting on their behalf, approach you and/or any public official, soliciting assistance in getting approval for the alleged proposal to provide satellite services for simulcast racing from South Africa and the United Kingdom? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the relevant principals, shareholders, directors, partners, officers and/or employees of IMC, the date(s) assistance was/were sought, and the nature of the assistance sought.
31. Did you and/or anyone acting on your behalf and/or any of the principals, shareholders, directors, partners, officers and/or employees of SportsMax, or anyone acting on their behalf, approach any public official, soliciting assistance in getting approval for the alleged proposal to provide satellite services for simulcast racing from South Africa and the United Kingdom? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the relevant principals, shareholders, directors, partners, officers and/or employees of SportsMax, the date(s) assistance was/were sought, and the nature of the assistance sought.
32. Did you and/or anyone acting on your behalf and/or any of the principals, shareholders, directors, partners, officers and/or employees of IMC, or anyone acting on their behalf, approach any official/officer or Employee of CTL, soliciting assistance in getting approval for a contract to IMC to provide satellite services to CTL? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the relevant principals, shareholders, directors, partners, officers and/or employees of IMC, the date(s) assistance was/were sought, and the nature of the assistance sought.
33. Have you and/or any person acting on your behalf, received, whether directly or indirectly, any benefit(s), in cash or in kind, as a result of your involvement in and/or association with the granting and/or approval of a contract to IMC to provide satellite services to CTL? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of a description of the benefit(s) received. In any case where the benefit was received by a person who was acting on your behalf, please also provide the full name, profession and address of the person(s) and a description of the relationship which you have had with that person(s).

34. Have any of your relatives, friends and/or associates benefited, either directly or indirectly, in cash or in kind, as a result of your involvement in and/or association with the with the granting and/or approval of a contract to IMC to provide satellite services to CTL? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the full name, profession and address of the relative, friend or associate and a description of the benefit(s) received.
35. Do you know of any Official/Officer or Employee of CTL, or anyone acting on their behalf, who has received, either directly or indirectly, any benefit(s), whether in cash or in kind, as a result of that Official's/Officer's or Employee's involvement in and/or association with the granting and/or approval of a contract to IMC to provide satellite services to CTL? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the Public Official/Officer or Employee, his/her job title and function, the name of the recipient(s) and a description of the benefit(s) received.
36. Do you know of any other Public Official/Officer or Employee (former or present), or anyone acting on his/her behalf, who has received, either directly or indirectly, any benefit(s), whether in cash or in kind, by virtue of the grant and/or approval of a contract to IMC to provide satellite services to CTL? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the Public Official/Officer or Employee, his/her job title and function, the name of the recipient(s) and a description of the benefit(s) received.
37. Are you aware of any relative, friend and/or associate of any Public Official/Officer or Employee (former or present), who has benefited, either directly or indirectly, in cash or in kind, as a result of the Public Official's/Officer's or Employee's involvement in and/or association with the grant and/or approval of a contract to IMC to provide satellite services to CTL? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the full name of the Public Official/Officer or Employee, his/her job title and function, the full name of the relative, friend or associate and a description of the benefit(s) received.
38. Are you aware of any arrangements which are presently subsisting for any of the persons who are referenced in Requisitions/Questions #29 through #37 to receive any future benefit(s) in respect of the grant and/or approval of a contract to IMC to provide satellite services to CTL, whether same has been expressed to be in cash or in kind? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the intended recipient(s) and the description of the benefit(s) which is/are to be received.
39. Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.

We would like to thank you in advance for your full and anticipated cooperation in this endeavor.

Should you have any questions, please do not hesitate to contact me.

Yours sincerely,

\_\_\_\_\_  
Special Investigator  
for and on behalf of the Contractor General

Enclosure –Form of Declaration

### **Form of Declaration**

#### **The Voluntary Declarations Act: Section 7: Declaration to be in form in Schedule:**

I, John Brown, do solemnly and sincerely declare as follows:

1. That I am [number] years of age and I reside and have my true place of abode at [address] in the parish of .
2. That I have answered the questions posed and fulfilled the requisitions made to me in a letter from the Contractor-General dated July 30, 2008, completely, accurately and truthfully.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Voluntary Declarations Act.

**TAKEN and ACKNOWLEDGED** )  
**by the said JOHN BROWN at [address]** )  
**in the parish of** )  
**on this day of 2008** )  
**in the presence of:** )

\_\_\_\_\_  
**JOHN BROWN**

\_\_\_\_\_  
**JUSTICE OF THE PEACE**  
**For the parish of:-**