



Any reply or subsequent reference to this communication should be addressed to the **Contractor-General** and the following reference quoted:-

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March 11, 2009

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Dear Sirs and Mesdames:

Re: OCG Response to the Letters Written by the Members of the Former Board of Directors of Caymanas Track Limited (CTL) and the Hon. Patrick Rousseau, OJ, the Former Chairman of CTL – 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 CTL

I write with reference to my letter to you of the 4th instant in the captioned regard.

The Office of the Contractor General (OCG) has now completed its review of the letters that were written by the Members of the former Board of Directors of Caymanas Track Limited (CTL) and the Hon. Mr. Patrick Rousseau OJ, the former Chairman of CTL. The referenced letters, which were respectively dated February 19 and 26, 2009, were written in response to the OCG's Investigation Report into the captioned matter.



Having reviewed the contents of both letters, the OCG hereby categorically and unequivocally reiterates that it stands firmly and unconditionally behind each and every one of the Findings, Conclusions, Recommendations and Referrals which are contained in its Investigation Report.

Further, the OCG is fortified in its position that the charges that have been made by the former Members of the CTL Board and Mr. Rousseau are (a) entirely baseless, (b) lacking in merit, and (c) devoid of any credible and/or sustainable foundation. These charges have also disingenuously sought to take advantage of the public's general lack of knowledge of the extensive details that are embodied in the OCG's 187-page Report of Investigation.

The OCG implores stakeholders to read its Investigation Report thoroughly and not to rely upon the flawed and unsubstantiated interpretations of the Findings, Conclusions, Recommendations and Referrals which are contained in the referenced letters.

Below are the OCG's Responses to the charges, assertions and/or issues which have been advanced by the former CTL Board of Directors and by the Hon. Patrick Rousseau, in their respective letters.

The OCG wishes to state categorically that its Responses herein are made entirely without prejudice to the OCG's Investigation Report into the matter, inclusive of the Findings, Conclusions, Recommendations and Referrals which are contained therein and which continue to remain the OCG's definitive positions thereon.

THE FORMER CTL BOARD & MR. ROUSSEAU'S COMMON ASSERTIONS

The OCG notes that the former CTL Board of Directors and Mr. Rousseau have, in some instances, posited similar and/or identical assertions. The material ones, together with the OCG's Responses thereto, are as follows:

1. **COMMON ASSERTION A- That there was no contract and/or agreement between International Media Content (IMC) and CTL.**

OCG'S RESPONSE TO THE COMMON ASSERTION A

The OCG refutes this assertion as being wholly without merit. The compendium of facts that are outlined hereunder, unequivocally points to the existence of a contract between IMC and CTL. Further, it is evident that Mr. Rousseau and the former CTL Board of Directors have significantly misguided themselves on the law.

It is trite law that, except for very narrow and specific categories of contracts/agreements, legally binding and enforceable agreements do not have to be evidenced in writing, nor do legally binding agreements need to be evidenced by a formal written contract.

The written evidence which is on record and which substantiates the existence of an agreement between CTL and IMC, as at June 1, 2008, is as follows:

- (1) Mr. Simon Nicholls, the Vice President of International Operations for Phumelela, in an email to CTL, which was dated July 16, 2008, 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 1st are for Phumelela, anything after June 1st is***



IMC/SportsMax. The contract has been signed and is fully operational, I no longer have the ability to deal with you direct." (OCG Emphasis. See Page 108 of the OCG's Investigation Report).

- (2) Mr. Peter Lawson, the former Deputy Chairman of CTL, in a letter to Minister Don Wehby, which was dated July 29, 2008, stated that **"In an effort to avoid disruption to CTL's UK race betting sales, 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. Subsequently, Phumelela sent a letter to CTL stating that International Media Content (IMC) had been appointed the agent in Jamaica for Phumelela with effect from June 1, 2008....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."**(OCG Emphasis. See Pages 125-126 of the OCG's Investigation Report).
- (3) CTL's Management by way of a letter, which was dated July 17, 2008, advised the OCG that **"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 payments 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."** (OCG Emphasis. See Page 152 of the OCG's Investigation Report).
- (4) IMC, by way of letter to CTL, which was dated September 23, 2008 and which was signed by Mr. Oliver McIntosh, the CEO of SportsMax/IMC, 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."** (OCG Emphasis. See Page 127 of the OCG's Investigation Report).
- (5) IMC's letter further stated that **"IMC is formally requesting that CTL provide, by September 26, 2008, official transcripts of betting revenue sales on the Content provided by IMC for the months of June, July and August 2008 so that IMC can provide the requisite invoices, and upon receipt, CTL make payment immediately to IMC."** (OCG Emphasis. See Page 127 of the OCG's Investigation Report).
- (6) In the said CTL Board letter response to the OCG's Investigation, which was dated February 19, 2009, the Directors asserted that **"...on or about August 2008 CTL management decided to terminate the Phumelela signal even though the payment terms and conditions remain the same...."**

In the instant matter, the OCG's Investigation Report has asserted that while there was no **formal written** contract in place between IMC and CTL, as at June 1, 2008, both parties had nonetheless entered into a contractual agreement for the supply of simulcast signals from the United Kingdom and South Africa.

¹ Simon Nicholls. Email to CTL. 2008 July 16



If, however, as the former CTL Board and Mr. Rousseau now asserts, there was no contract or agreement between CTL and IMC, then the former CTL Board and Mr. Rousseau are now obliged to provide credible and persuasive answers to the following critical questions:

- (a) If there was no contract and/or agreement subsisting between IMC and CTL as at June 1, 2008, then on what basis did CTL, which is a Public Body, indicate its intention to pay IMC, as at June 1, 2008, 4% of the betting revenues pending the signing of a formal contract?
- (b) If there was no contract and/or agreement subsisting between IMC and CTL, then what agreement and/or arrangement was terminated in or about August 2008 by the CTL Management, particularly when one considers the fact that Phumelela had advised CTL in writing, on July 16, 2008, that its agreement with CTL had been terminated effective May 30, 2008 and that, effective, June 1, 2008, ***"I no longer have the ability to deal with you direct"***?
- (c) If there was no contract and/or agreement subsisting between CTL and IMC, what arrangements did CTL have in place as at June 1, 2008 and onwards for receiving the Phumelela simulcast signals?
- (d) If there was no contract and/or agreement subsisting between IMC and CTL, in respect of what matter had the Board informed Minister Wehby that Mr. Rousseau had declared his interest?

Finally, if the assertions of the former CTL Board of Directors and Mr. Rousseau are accurate, and there was no contract or agreement in existence between IMC and CTL, then it necessarily follows that Mr. Oliver McIntosh, the CEO of SportsMax and IMC, would have committed a criminal offence since his written demand to CTL of September 23, 2008, for payment on the basis of the existence of a **"verbal agreement"**, would have been clearly made under false pretences.

In such circumstances, the OCG would be legally compelled to formally refer the matter to the Commissioner of Police and to the Director of Public Prosecutions. It is, therefore, in the collective interests of the CTL Directors, Mr. Rousseau (the Chairman of CTL, IMC and SportsMax), Mr. McIntosh (the CEO of IMC and SportsMax) and IMC, that they formally determine who is speaking the truth and who is not. They should, thereafter, formally communicate their final positions to the OCG, the Commissioner of Police and the DPP so that the appropriate determinations can be made as to what actions should be taken..

2. **COMMON ASSERTION B-** That Mr. Rousseau's declaration of interest in SportsMax served to keep him ***"excluded from all communications, discussions, process and/or dealings concerning the Phumelela signal, effecting the very object and intent of a declaration of a conflict of interest"***.

OCG'S RESPONSE TO THE COMMON ASSERTION B

The former CTL Board and Mr. Rousseau have apparently failed to realize that Mr. Rousseau participated in email deliberations on January 7, 2008, in which he represented both SportsMax and CTL. At that point, Mr. Rousseau had not yet declared his interest in SportsMax to the said CTL Board.

Mr. Rousseau's subsequent disclosure of his interest in SportsMax, does not and cannot be interpreted as a disclosure of his interest in IMC, since both entities are separate and distinct registered corporate entities in law and in fact.



Further, attributing Mr. Rousseau's lack of knowledge with regard to IMC being the rights holder for the PGI signals, to his not being privy to documentation – based upon his SportsMax declaration of interest – represents a strained act of obfuscation by Mr. Rousseau and the former Board of Directors.

Mr. Rousseau's request for documentation to be withheld from him, as was contained in his email of January 14, 2008, was in respect of information which related to dealings between SportsMax and CTL. The SportsMax/IMC decision, regarding the ownership of the PGI rights, is one which was clearly external to CTL. As such, the OCG finds it highly unlikely that such a business decision, which had nothing to do specifically with CTL, would have been withheld from Mr. Rousseau, who was and is the Chairman of both SportsMax and IMC.

It is also instructive to note that Mr. Rousseau and the former CTL Board have again significantly misguided themselves on the applicable laws. Even if it were true that there was no CTL/IMC contract/agreement in place, a position which the OCG strongly resists, what has been conclusively admitted, even by Mr. Rousseau himself, is that there was a **draft contract** that was being negotiated between the two parties – CTL and IMC.

In respect of this draft contract, it is instructive to note the provisions of Section 193(1) of the Companies Act. The referenced Section does not in any way restrict the disclosure of interest by a director to a signed contract but, rather, expressly extends the disclosure requirement to "**proposed contracts**".

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)*

The OCG would also like to emphasize and reiterate that the documentary evidence and the **sworn statements** of the former CTL Board of Directors, which were submitted to the OCG during the course of its Investigation, have clearly and unambiguously attested to the fact that Mr. Rousseau has **failed to disclose his interest in IMC**, in clear violation of the law.

In addition, it is instructive to record that Mr. Rousseau has been disingenuous in his letter which comments on the OCG's Investigation Report when he states that "*I declared that potential conflict of interest from as early as the 2nd meeting of CTL's Board (January 2008), and that **declaration was not limited to SportsMax, although IMC was not specifically mentioned.**"*

To the contrary, however, Mr. Rousseau, in his **sworn** response to the OCG's Requisition, which was dated September 23, 2008, 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 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.*"² (Please see Pages 122-123 of the OCG's Investigation Report).

² Patrick Rousseau. Response to the OCG's Requisition. 2008 September 23



The foregoing makes it unequivocally clear that Mr. Rousseau has, therefore, patently contradicted his own sworn and written evidence which has been formally entered upon the OCG's records of Investigation.

As such, he would have committed additional criminal offences under Section 29 of the Contractor General Act and Section 8 of the Perjury Act by, *inter alia*, willfully making a false statement to mislead a Contractor-General and/or knowingly and willfully making a statement which is false in a material particular.

3. **COMMON ASSERTION C**- That the OCG's Investigation Report has held the former CTL Board accountable for activities which preceded its tenure that commenced on October 29, 2007.

OCG'S RESPONSE TO THE COMMON ASSERTION C

The former CTL Board of Directors and Mr. Rousseau, by virtue of this assertion, have substantially misstated the facts and Findings of the OCG's Investigation Report. The OCG's Investigation Report has not held the CTL Board accountable for any activities which occurred prior to October 29, 2007.

The OCG, as it is mandated to do by law, has only referred the Board, to the relevant State Authority, *viz*, the Attorney General, based upon *prima facie* evidence which has been unearthed in its Investigation Report.

The OCG's Referral of the CTL Board of Directors to the Attorney General, is premised upon the activities which occurred during its tenure and/or the inaction on its part with regard to the manner in which it dealt with the conflict of interest issue which arose on the part of the CTL/IMC/SportsMax Chairman, the Hon. Patrick Rousseau.

Specifically, the terms of the OCG's Referral of the CTL Board, at pages 157-158 of the OCG's Investigation Report, read as follows:

*"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 Webby 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:*
- (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.”

4. **COMMON ASSERTION D-** That the Contractor-General failed entirely to understand the nature of the transactions he purported to investigate.

OCG’S RESPONSE TO THE COMMON ASSERTION D

This assertion of Mr. Rousseau and the former CTL Board is erroneous and has blurred the issues which are contained in the OCG’s Investigation Report.

The OCG’s Findings, Conclusions, Recommendations and Referrals are all based upon **sworn written statements and documentary evidence** which have been provided to the OCG by Mr. Rousseau, the entire former CTL Board of Directors, the former and current CTL Management and Mr. Oliver McIntosh, the President and CEO of SportsMax & IMC. These individuals were deemed to be sufficiently knowledgeable, by the OCG, about the matter which was being investigated. (Please see a detailed explanation of the OCG’s Methodology for the Conduct of its Investigation, at pages 59-73 of its Investigation Report).

However, if Mr. Rousseau and the former CTL Board of Directors are now alleging that there is a misunderstanding of the Findings, Conclusions, Recommendations and Referrals that are contained in the OCG’s Investigation Report, and which are premised upon their sworn statements and documentary evidence, it begs the question as to the veracity of the representations which they have made to the OCG – much of which is used verbatim throughout the OCG’s Report - and whether, by so doing, these Respondents have willfully misled a Contractor General or perjured themselves – thus committing further offences under the law.

5. **COMMON ASSERTION E-** That the Contractor-General completely misinterprets the correspondence of January 7 and 8, 2008 between Mr. Rousseau and Simon Nichols of PGI “... *because he does not understand the issues and does not bother to ask*”. According to the CTL Board these emails involved discussions on betting platforms and not simulcast signals.

OCG’S RESPONSE TO THE COMMON ASSERTION E

This assertion elides the significant assertions, in law and in fact, of the contents of the referenced emails. Verbatim extracts of the emails are contained in the OCG’s Investigation Report, at pages 137-139. Below are key extracts from the emails which have informed the OCG’s Findings with regard to same:

➤ Email from Mr. Simon Nicholls to Hon. Mr. Patrick Rousseau:

- (1) *“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) “...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 1st and prove to the rest of the world how best to **commercialise the content.**”(OCG Emphasis).

➤ Email response from Hon. Patrick Rousseau to Mr. Simon Nicholls:

(1) “I do want to do a deal with all the parties but I have to get enough information to brief the Board... **It is critical for me to have Don Tankoy available as he has been dealing with simulcast for years.**” (OCG Emphasis)

(2) “...**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.**” (OCG Emphasis).

It is also critical for the OCG to highlight that Mr. Rousseau was, at all material times, the Chairman of both SportsMax and CTL. Further, at the time when he commenced said discussions, he had not yet disclosed his interest in SportsMax to the CTL Board pursuant to Section 17 of the Public Bodies Management and Accountability Act. As such, his actions, as are evidenced by the referenced emails, were improper, highly irregular and unlawful.

These emails were also presented to the CTL Board, which Mr. Rousseau, seven days later on January 14, 2008, had informed about his interest in SportsMax.

6. **COMMON ASSERTION F** – That the acquisition of simulcast signals “*does not and/or should not fall within the relevant (GPPH) provisions*” because (a) overseas tracks have only one supplier of their simulcast signals and (b) there are no competitors offering the same signal.

OCG’S RESPONSE TO THE COMMON ASSERTION F

The OCG has found that there is general confusion about its Recommendation for tendering which is detailed at page 166 of its Investigation Report. The OCG wishes to emphasize that the Recommendation which was made for a detailed Terms of Reference to be prepared by CTL, when undertaking any form of procurement, was not made with respect to CTL’s acquisition of simulcast racing signals as has been stated by Mr. Rousseau and the former CTL Board.

Any individual who reads the referenced Recommendations in isolation of the OCG’s Investigation Findings and Conclusions, would have miss-interpreted the said Recommendation to be an all-encompassing one which should be applicable to all CTL procurement activities.

However, and as is unequivocally documented at pages 149-150 of the OCG’s Investigation Report, this Recommendation was confined solely to CTL’s procurement of a service provider for the live broadcast of CTL races.



The OCG's analysis of the required tendering methodology for simulcast racing signals is limited to CTL's application of the ***Sole Source Methodology***. The recognition of this fact is clearly expressed by the OCG, *inter alia*, in its Summary of Findings at page 30, item #12 of the Investigation Report where it is clearly stated 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."

ASSERTION BY THE FORMER CTL BOARD OF DIRECTORS

- 7. THE FORMER CTL BOARD'S ASSERTION #1-** That "... *the sale of the rights to broadcast live racing from Caymanas Park is not a government contract ...*", based upon Section 2 of the Contractor General Act.

OCG'S RESPONSE TO THE FORMER CTL BOARD'S ASSERTION #1

It is likely that readers of the letters of the former CTL Board and Mr. Rousseau may be misled into believing that the above-referenced contract (hereinafter called the "Live-Racing Contract") was the central focus of the OCG's Report. It was not.

The main contract or agreement which stands at the center of the OCG's Investigation is the agreement which was entered into between IMC and CTL for the provision, by IMC, to CTL, of satellite simulcast racing signals from South Africa and the United Kingdom. And it was in respect of this contract that Mr. Rousseau has failed to disclose his interest in IMC.

Having said that, the OCG must nevertheless summarily refute the assertion that has been made that the Live-Racing Contract was not a "*Government contract*" within the meaning of the Contractor General Act. The assertion is one which is both unfounded in fact and in law.

Section 2 of the Contractor General Act expressly states that a Government contract "***includes*** any licence, permit or 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". Accordingly, it is pellucidly clear that the Section, in its definition of Government contracts, has not outlined an absolute class of contracts as the former CTL Board and Mr. Rousseau would have their readers believe.

Be that as it may, the OCG re-asserts that a "*government contract*" was clearly crystallized from the factual circumstances that have emerged in its Findings of its Report of Investigation. The referenced Live-Racing Contract is clearly one for the provision of "*services*" – services that are specifically structured to provide CTL, a Public Body, with access to a network infrastructure which would be capable of delivering CTL's live racing content, from Caymanas Park, to its stakeholders.

As a consequence, the referenced services of the service provider must be procured by CTL, on merit and in circumstances which do not involve impropriety or irregularity, in conformance with the Government's Procurement Guidelines and the Contractor General Act.



MR. ROUSSEAU'S SUMMARY OF COMMENTS

8. **MR. ROUSSEAU'S SUMMARY COMMENT #2-** That the Contractor General's "*accusations are based on agreements that do not exist as there are no signed agreements for (i) satellite services with IMC/Sportsmax as these services have just been put to tender recently (ii) the simulcast rights for PGI's product sold to IMC has not yet been signed by CTL and IMC and is only a work in progress and (iii) the live racing rights for Jamaican racing from Caymanas Park was put to tender... and no contract has been granted.*"

OCG'S RESPONSE TO MR. ROUSSEAU'S SUMMARY COMMENT #2

The OCG's Investigation Report has highlighted that there were three (3) areas of interest with regard to SportsMax and/or IMC and CTL as highlighted in Mr. Rousseau's comments. However, contrary to Mr. Rousseau's assertions, the OCG's Investigation Report did not posit (a) that there was an agreement between CTL and SportsMax/IMC for the satellite uplink services (See pages 84-90 of the OCG's Investigation Report), and (b) that there was an agreement between CTL and SportsMax/IMC for the live broadcast of the CTL content (See pages 76-84 of the OCG's Investigation Report).

The OCG has, however, maintained that, in law and in fact, there was a contract or agreement subsisting between CTL and IMC for the provision of simulcast signals from the UK and South Africa as at June 1, 2008. (See pages 104-110 of the OCG's Investigation Report and Clause #1 above).

Consequently, Mr. Rousseau's assertion substantially misstates the facts and Findings of the matter.

9. **MR. ROUSSEAU'S SUMMARY COMMENT #3-** Whether the Contractor-General has jurisdiction to investigate "*...a putative contract and/or the terms of an assignment of a contract from PGI to SportsMax or IMC.*"

OCG'S RESPONSE TO MR. ROUSSEAU'S SUMMARY COMMENT #3

- (i) Mr. Rousseau's assertion of a '*putative contract*' clearly contradicts the documentary evidence which has been detailed by the OCG in its Response at Clause #1. The OCG reiterates and reasserts that there was, in law and in fact, a contract and/or agreement in place between CTL and IMC as at June 1, 2008, although same was not at that time evidenced by a formal written contract.

Further, it is instructive to note that **there are Public Officers, such as Mr. Rousseau, who are misguided in the belief that the 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.**

The OCG is obliged to advise that any such belief is unfounded and has absolutely 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 (OCG emphasis)... The ordinary meaning of the words of the statute in light of the context and grammar suggest no other interpretation”.

Of critical note is that the above decision was expressly detailed in verbatim terms in all of the Requisitions/Questionnaires which were directed by the OCG to the Respondents in the CTL matter, inclusive of Mr. Rousseau. Indeed, evidence that Mr. Rousseau was expressly advised in writing of this judicial decision is made clear at page 175 of the OCG’s Investigation Report.

As such, Mr. Rousseau’s assertion and inference are, in all material respects, unfounded.

- (ii) Contrary to the assertions of Mr. Rousseau, the OCG, in its Investigation Report, has never sought to explore and/or question the terms of the contract which was entered into between SportsMax/IMC and PGI. The OCG is of the view that for Mr. Rousseau to make such an inference is to substantially misstate the facts and Findings of the matter as are outlined in its Report of Investigation.

The only issue which arose for the OCG in relation to the said arrangement was with respect to the timing of the contract in light of the January 7, 2008 emails in which Mr. Rousseau was not only representing the interest of SportsMax, but also that of CTL. (Please see Pages 136-142 of the OCG’s Investigation Report).

These said emails were copied at all material times to Mr. Oliver McIntosh of SportsMax and IMC. However, this act of sharing information was not equally reciprocated with the then CTL Board until the final email in the thread was written.

10. MR. ROUSSEAU’S SUMMARY COMMENT #4- That “*the Contractor-General abused or exceeded his jurisdiction in several respects during the course of this investigation, both in his method and his manner. Among the abuses and/or excess of jurisdiction are:*

- a. “the investigation by way of a premature press release when there was no, or insufficient information upon which to act;”*

OCG’S RESPONSE TO MR. ROUSSEAU’S SUMMARY COMMENT #4(a)

The OCG asserts that the charges which have been made by Mr. Rousseau are erroneous. As is well known by Mr. Rousseau himself, the OCG’s decision to commence the Investigation was taken, *inter alia*, after it had (a) carried out a preliminary enquiry into the allegations which had been made and (b), had received a letter, which was dated July 17, 2008, from the then Chief Executive Officer of CTL. The CTL letter was written in direct response to a **formal OCG letter of enquiry which was dated July 9, 2008**. (Please see Pages 51-52 of the OCG’s Investigation Report).

In its letter of response to the OCG, CTL advised the OCG that IMC had been designated by Phumelela as its agent to distribute the subject satellite signals in Jamaica and also that Phumelela had informed CTL “... **that IMC should be paid for satellite services from June 1, 2008 onwards**”.



CTL further advised the OCG that it had received a draft contract from IMC which it had sent to its lawyers for perusal. However, it said that "... **although there is no contract in place, we intend to make payment to IMC pending a formal contract (and) 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**".

The OCG, having conducted other enquiries, found that IMC, whose primary business was reported to be the acquisition of television and radio broadcasting rights for sporting events, was the **'parent company'** of SportsMax. The OCG's other preliminary enquires had also disclosed that several media stories, which were carried in 2007, had named the Hon. Patrick Rousseau as the Chairman of IMC.

Based upon the foregoing preliminary enquires, the OCG then initiated its Investigation on July 18, 2008, by way of letter which was directed to Mr. Walford Brown, the President and CEO of CTL. The letter, comprehensively articulated the majority of the foregoing particulars, among others, as the reason why the Investigation was being undertaken. The OCG's letter was formally copied to the Minister of Finance, the Financial Secretary, the Cabinet Secretary and to Mr. Rousseau himself. It was not until July 21, 2008 that the OCG issued its standard information Media Release which summarized the contents of the OCG's letter of July 18, 2008 and disclosed the fact that the OCG had commenced the subject Investigation.

- b. ***That the Contractor-General has "...unreasonably refused to meet with the directors of CTL who were anxious to meet with him to impart information which would have avoided many of the mistakes and confusion which has crept into his report."***

OCG'S RESPONSE TO MR. ROUSSEAU'S SUMMARY COMMENT #4(b)

It is critically instructive to note that Mr. Rousseau has sought to rely upon his charges above to substantiate his erroneous claim that the Contractor General has exceeded his jurisdiction and abused his powers and is, therefore, not a fit and proper person to hold the office of Contractor-General.

In the circumstances, it is imperative that the OCG directs the attention of the Mr. Rousseau to Sections 17 (1) and (2) and Section 22 of the Contractor General Act, which provide as follows:

Section 17 (1) and (2):

"(1) A Contractor-General may adopt whatever procedure he considers appropriate to the circumstances of a, particular case and, subject to the provisions of this Act, may obtain information from such person and in such manner and make such enquiries as he thinks fit.

(2) 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."

Section 22:

"The proceedings of a Contractor-General shall not be rendered void for want of form."

Taken together, these three provisions of the Contractor General Act, among others, unequivocally describe the manner in which a Contractor-General is lawfully entitled to execute his Investigation proceedings. They make clear that the charges of Mr. Rousseau have absolutely no basis in law.



Be that as it may, it is nevertheless 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 will be 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.** (See full description of the methodology which is utilized by the OCG in the conduct of its Investigations, and the reasons for same, at pages 59-73 of the OCG's Investigation Report).

In hindsight, the wisdom of the OCG's preference for the afore-stated means of evidence gathering, as opposed to the convening of meetings with Respondents, is demonstrably justified by the conflicting representations which are now clearly evident in the conflicting and contradictory assertions which have been presented by Mr. Rousseau and, in particular, the unsubstantiated assertions which were made by him in respect of a meeting which he had with Representatives of the OCG on October 9, 2007, prior to his becoming the Board Chairman of CTL. (Please see a comprehensive account of this incident at Pages 131-133 of the OCG's Investigation Report)

This misrepresentation of the facts by Mr. Rousseau, regarding the referenced October 9, 2007 meeting, clearly and unambiguously strengthens the OCG's position that **the taking of sworn written statements** from all Respondents who are persons of interest in OCG Investigations, is the most prudent manner in which to conduct its Investigations – this as opposed to convening informal meetings with Respondents – a course of conduct which it is evident that Mr. Rousseau and his associates at IMC/Sportsmax would have clearly preferred.

Mr. Rousseau has also erroneously charged that the convening of meetings by the OCG with Respondents, inclusive of himself, would have provided the opportunity “*to impart information which would have avoided many of the mistakes and confusions which has crept into his report*”. His clear imputation is that in the absence of such meetings, the OCG would not have been availed with information which was considered by him and others to be pertinent to the Investigation.

What Mr. Rousseau has disingenuously not stated, however, is that, in addition to the several questions that were expressly posed to all Respondents, inclusive of himself, was a “**catch all**” question which was precisely designed to provide him with the very opportunity that he now claims he was denied.

A verbatim extract of the “**catch all**” Question that was posed to Mr. Rousseau and every other Respondent, and which appears on pages 61 and 186 of the OCG's Investigation Report, is as follows:

“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”.

- c. That the Contractor-General “*...was oppressive and threatening and bullying in his communication exhibiting none of the impartiality and decorum required of an individual exercising quasi-judicial powers.*”



OCG'S RESPONSE TO MR. ROUSSEAU'S SUMMARY COMMENT #4(c)

The OCG has found Mr. Rousseau's assertions to be unfounded.

Mr. Rousseau's disquiet and discontent appears to be founded upon the fact that he and his colleague, Mr. Oliver McIntosh of SportsMax and IMC, were unsuccessful in their attempts to dictate the manner in which the OCG should conduct what was, in essence, a Statutory Investigation.

Mr. Rousseau is apparently upset that the OCG chose to elicit information from him and other Respondents, as it is lawfully entitled to do, **by way of sworn written statements** rather than through the conduct of meetings in which event there would have been no certainty or proof of what was stated or communicated by a Respondent.

The OCG also wishes to state, for the record, that all of its communications with Respondents who were involved in the referenced Investigation, inclusive of Mr. Rousseau, were formally conveyed in writing. The said communications are, therefore, available for full public or judicial scrutiny should Mr. Rousseau wish to further press his charge that the Contractor General "...was *oppressive and threatening and bullying in his communication exhibiting none of the impartiality and decorum required of an individual exercising quasi-judicial powers*".

Once these communications are fully and publicly disclosed and carefully examined, the flaws, fallacies and untruths that are inherent in Mr. Rousseau's charges will be laid bare.

- d. ***That the Contractor-General "...conducted a full investigation of a contract between CTL and IMC that has not yet been awarded, and thereby reached conclusions in the report that cannot be sustained. For example, he concluded that CTL spent over \$166m of public funds to procure simulcast racing signals when in fact those funds represented the standard commission that CTL received on bets placed and paid only after money was collected..."***

OCG'S RESPONSE TO MR. ROUSSEAU'S SUMMARY COMMENT #4(d)

- (i) With regard to the law as it relates to the jurisdiction of a Contractor General to monitor and to investigate a Government contract which "*has not yet been awarded*", please see the OCG's Response at Clause #9 herein. As to the question as to whether or not CTL had entered into a commercial agreement, contract or arrangement with IMC as at June 1, 2008, please see the OCG's Response at Clause #1 herein.
- (ii) The example which has been cited by Mr. Rousseau, in the captioned assertion, represents a clear misstatement of the facts and Findings of the OCG's Investigation Report. The OCG's Investigation Report has clearly identified that the J\$166 Million was paid to simulcast providers during the period January 2006 to July 2008. The OCG's Findings and subsequent Conclusions, with respect to the J\$166 Million, were focused entirely upon (a) the requirements that are laid down by the law and the Procurement Guidelines for CTL's approvals of such payments and (b) the procurement process which is required to be pursued in respect of the acquisition of the referenced simulcast signals. (Please see Pages 99-103 of the OCG's Investigation Report).



11. **MR. ROUSSEAU'S GENERAL COMMENT #1.3-** That the Contractor-General *"In his first letter to me dated July 30, 2008, he sets out all his relevant powers under the Act including an implied threat to prosecute if you dare to commit one of the offences outlined in his letter...Even a simple request for an extension of time to answer subsequent questions draws a rebuke and a warning about having committed a criminal offense...These threats and implied threats of prosecution are another example of Mr. Christie's abuse of the powers granted to him under the Act."*

OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #1.3

The OCG has found Mr. Rousseau's assertions to be ludicrous and wholly without merit.

The OCG, pursuant to its Internal Investigation Policies and Procedures, and as a Standard Operating Procedure (SOP), as a matter of course, formally informs all Respondents, for their own guidance and benefit, of its legal authority to requisition the information which is being sought in its Requisitions/Questionnaires, and of the implications of providing false, inaccurate or misleading statements to the OCG.

The OCG considers this procedure to be an investigative best practice and it is no way different from the measures which should be properly employed by other Law Enforcement Investigators who should inform witnesses of their rights and potential liabilities before they are questioned.

Mr. Rousseau also asserted that *"Even a simple request for an extension of time to answer subsequent questions draws a rebuke and a warning about having committed a criminal offence."*

With regard to the CTL Investigation, the OCG received a request for an extension of time from nine (9) Respondents, inclusive of all of the former Members of the CTL Board of Directors. Of critical import, and contrary to the imputations of Mr. Rousseau, is that none of these requests for an extension of time was denied by the OCG.

However, the OCG wishes to record that the only firm stance which it took, with any of the nine Respondents, occurred only after seemingly questionable representations were made by Hart Muirhead and Fatta, the Attorneys-At-Law of record for the former Members of the CTL Board of Directors. For the avoidance of doubt, we have reproduced hereunder, the OCG letter which fully describes the issue which arose and precisely how it was dealt with. The letter is dated September 25, 2008 and was directed by the OCG to Hart Muirhead and Fatta.

"VERY URGENT AND IMMEDIATE

September 25, 2008

*Hart Muirhead Fatta
Attorneys-At-Law
Third Floor
2 St. Lucia Avenue
Kingston 5*

Attention: Mr. Conrad E. George and Ms. Noelle-Nicole Walker, Attorneys-At-Law



Dear Sirs:

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(CTL)

I write in respect of the captioned matter.

First, I must acknowledge receipt of your faxed letter of even date in which you have formally requested an extension to the deadline which has been specified for your Clients to formally respond to the lawful Requisitions of the Office of the Contractor General (OCG).

Your request applies to the following CTL Board Members on whose behalf you have advised the OCG, in writing, that you act:

- (1) Mr. Peter Lawson*
- (2) Mr. Ian Persard*
- (3) Mr. Kelvin Roberts*
- (4) Mr. Geoffrey Campbell*
- (5) Mr. Lee Clarke, J.P.*
- (6) Mrs. Veronica Bennet-Warmington*

The referenced Requisitions to which your request for an extension applies were dated and issued on September 8, 2008. Your Clients were required to formally respond to, and comply with, the said Requisitions by 3:00PM on September 17, 2008.

However, in response to a prior request for an extension, dated September 16, 2008, which was made by you, an extension was granted by the OCG, by way of letter which was dated September 16, 2008, to today, September 25, 2008.

It is important to note that by way of letter which was dated September 17, 2008, you were advised by the OCG that any further requests for exemptions would be considered only on an individual basis.

By way of letter which was dated September 18, 2008, it was also emphasized to you that “the deadline of September 25, 2008 must be observed by your Clients” and that “the OCG gives no undertaking that any further extensions can or will be granted”.

Despite the foregoing, you have, however, now seen it fit to request, on September 25, 2008, the extended deadline date, a further whole-scale extension in respect of all of your Clients.

It is also important that I place on the record the fact that one of the CTL Directors, Mr. Lee Clarke, on whose behalf you have stated that you act, has, on his own volition, already complied with the subject OCG Requisition.

This was done under cover of a letter which was dated, September 16, 2008. Mr. Clarke’s written response to the OCG’s Requisition was received by the OCG on September 19, 2008 and was formally acknowledged by the OCG on September 22, 2008.



September 16, 2008 is the date on which you represented to the OCG, in writing, that all of your Clients, inclusive of Mr. Clarke, were “requesting an extension to October 9, 2008”. Further, and of greater significance, is the fact that your letter of even date, after naming all of your Clients, inclusive of Mr. Clarke, asserts that you are seeking “another extension”.

The OCG regards this development as being very grave and disturbing in its import.

It is one which has called into question the veracity and integrity of the written representations which you have made to the Commission of the Contractor General, a Commission which I should remind you is an Independent Commission of Parliament and is, by the expressed provisions of Section 18 (3) of the Contractor General Act, vested with the powers of a Judge of the Supreme Court for the purposes of an investigation under the Contractor General Act.

You are no doubt aware that Section 29 (a) of the Contractor General Act provides that “Every person who willfully 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 shall be guilty of an offence ...”.

Having regard to all the circumstances of this matter, inclusive of the representations which you have made, the considerations which you have pleaded and the dates on which you have pleaded same, the OCG is not satisfied that its Requisitions are being treated with the seriousness that they deserve.

The lawful Requisitions of the OCG are statutory Requisitions which must not be taken lightly. They must be respected and they must be addressed with a sense of urgency and diligence.

In the premises, I must now therefore formally advise you as follows:

- 1. A final extension is hereby granted to all of your named Clients, with the exception of Ms. Veronica Bennet-Warmington and Mr. Lee Clarke, JP, to fully comply, in all respects, with the OCG’s Requisition of September 8, 2008, no later than 12:00 Noon on Tuesday, September 30, 2008.*
- 2. A final extension is hereby granted to Ms. Veronica Bennet-Warmington to fully comply, in all respects, with the OCG’s Requisition of September 8, 2008, no later than 12:00 Noon on Thursday, October 2, 2008.*
- 3. Mr. Lee Clarke has already satisfied the OCG’s Requisition of September 8, 2008.*
- 4. A failure or refusal on the part of any of your Clients to fully comply with the subject OCG Requisitions of September 8, 2008, on or before the afore-stated deadlines, will result, inter alia, in the formal referral of the matter to the Director of Public Prosecutions without any further reference to you or to them.*

I trust that you will be guided accordingly.

Yours respectfully,

*Greg Christie
Contractor General*

Copy: Mr. Lee Clarke, JP”



Having regard to the foregoing, the OCG challenges Mr. Rousseau to provide evidence of any instance in which the OCG has unjustly denied a Respondent an extension of time and the circumstances in which such denial constitutes an abuse or jurisdictional excess, under law, of the statutory powers that are accorded to a Contractor General.

It should also be noted that it was following upon CTL's Deputy Chairman, Mr. Peter Lawson's, failure to comply with the afore-stated deadlines that he was referred by the OCG, on October 3, 2008, to the DPP. (Please see page 66 of the OCG's Investigation Report).

Mr. Rousseau's assertion of abusive and threatening behaviour, on the part of the Contractor-General, is one which clearly seeks to impugn the discretionary and independent responsibilities of the Contractor-General, at law, as they relate to the determination of a timely response and the reasonableness of requests for the extension of time to respond to OCG interrogatories.

In every instance where there is a request for an extension, the OCG considers several factors in arriving at its decision. These include (a) the circumstances of the request, (b) the reasons which have been advanced for the request, (c) the merits of the request, (d) the reasonableness of the request and (e) any other circumstances which could potentially impact the efficient and effective conduct of the Investigation, and then responds accordingly and appropriately in accordance with the lawful discretionary powers that are expressly conferred upon a Contractor General by the Contractor General Act.

To encapsulate the OCG's positions on these matters, and to further show that Mr. Rousseau's charges of an "abuse of power" and jurisdictional excess are without any lawful foundation, it is also necessary to bring into sharp focus the following provisions that are contained in the Contractor General Act.

Section 4 (3): "...*The Contractor General shall have the power 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 considers desirable*".

Section 5 (1): "*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.*"

Section 18 (1) "... *A Contractor General may at any time 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 the possession or under the control of that officer or other person*".

12. **MR. ROUSSEAU'S GENERAL COMMENT #1.4-** That "*The Contractor-General has no power to commence proceedings under any of the Jamaican Acts he refers to in his Report. Proceedings can only be commenced if the DPP agrees that the evidence he presents supports his conclusions and then the DPP may commence proceedings.*"

OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #1.4

Nowhere in the OCG's Report of Investigation has the OCG claimed that it has the power to conduct any "Proceedings" except that of an Investigation which a Contractor General is lawfully entitled to conduct under Sections 15 and 16 of the Contractor General Act – and the OCG challenges Mr. Rousseau to demonstrate



otherwise.

The OCG also wishes to categorically state that it is subjected to the expressed obligation, under Section 21 of the Contractor General Act, to make formal referrals to the relevant and competent State Authorities in any instance in which “*the Contractor General finds ... that there is a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body*”. The OCG has dutifully discharged its lawful obligations, as aforesaid, in the instant matter.

A Contractor General is also lawfully entitled, under Section 20 (1) of the Act, “*after conducting an investigation under the Act*”, “*to make such recommendations as he considers necessary in respect of the matter which was investigated*”.

13. **MR. ROUSSEAU’S GENERAL COMMENT #1.5-** That “*... I find Mr. Christie has introduced into the Jamaican judicial system trial by media.*”

OCG’S RESPONSE TO MR. ROUSSEAU’S GENERAL COMMENT #1.5

Mr. Rousseau’s assertions are baseless.

As regards the OCG’s Media Release of July 21, 2008, the OCG has only sought to be transparent in its activities by using the Media to communicate with its stakeholders – the Jamaican people – to inform them that it had commenced a formal Investigation into certain allegations which were publicly made, in a National Newspaper, by a third party, which imputed, *inter alia*, impropriety in the award of a Government contract.

As regards the publication of OCG Investigation Reports, the OCG wishes to state, for the benefit of Mr. Rousseau, that once an Investigation Report of the OCG is tabled in both Houses of Parliament – pursuant to the provisions that are contained in Sections 28 (2) and (3) of the Contractor General Act, a Contractor General is lawfully entitled by Section 28 (4) of the Act, “*in the public interest*”, to publish same “*in such manner as he thinks fit*”.

It is also well within the public knowledge that once an OCG Report is formally tabled in either the House of Representatives or the Senate, copies of the Report are often distributed by the Parliament directly to representatives of the Media. This is an act which is entirely lawful but one which is, nevertheless, beyond the control of the OCG.

In respect of the reference that Mr. Rousseau has made to the Media, it is also instructive to note that Section 23 (3) of the Contractor General expressly provides that “*For the purposes of the Defamation Act, any report by a Contractor General under this Act and any fair and accurate comment thereon shall be deemed to be privileged*”.

The OCG is a creature of the law and is governed by same in its disclosure and/or divulgence of any information which is in its possession. The OCG, therefore, challenges Mr. Rousseau to credibly substantiate his inferences that the OCG has acted unlawfully in this matter.

14. **MR. ROUSSEAU’S GENERAL COMMENT #1.6-** That the Contractor-General “*...does not fully understand the issues he is investigating. In his Report he mentions matters that he links together although they are completely separate.*” These are (i) betting rights, (ii) broadcast rights, (iii) satellite services and (iv) live racing from Caymans:



OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #1.6

The OCG has already addressed, in part, this comment from Mr. Rousseau. (Please see Clauses #4 and #8).

However, the OCG wishes to state that Mr. Rousseau's assertions are without merit. The OCG's Investigation Report has only linked the issue of satellite services for uplink to the Off-Track Betting (OTB) Parlours, with simulcast signals, based upon the analysis of Attorney-At-Law, Mr. Gordon Robinson, who represents the CTL Management. (Please see Page 110 of the OCG's Investigation Report).

Mr. Robinson had informed the OCG 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.**"³*

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 Roberts Communication Network (RCN), to IMC. It is instructive to note that CTL has refused to sign the said 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.

15. **MR. ROUSSEAU'S GENERAL COMMENT #2.1-** That "*The Contractor-General accused me of not answering all his questions. I could not answer some of his questions as at no time was I aware of **satellite services** being sold by Sportsmax to CTL....it was only when I received his Report that I knew that PGI had assigned its simulcast rights to IMC and not Sportsmax.*"

OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #2.1

Mr. Rousseau's comments are untrue and misleading.

- (i) The only Referral that the OCG has made of Mr. Rousseau to the DPP, with respect to his failure to answer the OCG's Questions, was expressly founded upon the fact that he had failed and/or refused to divulge the names of the IMC shareholders as he was lawfully required to do.
- (ii) The OCG, in its official Investigation initiation letter to CTL, which was dated July 18, 2008, and which was formally copied to Mr. Rousseau, had clearly advised of the following:

"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.*

³ Gordon Robinson. Letter to the OCG. 2008 August 7.



Lucian based company, International Media Content Limited (IMC), “as agents to distribute those satellite signals in Jamaica”.

This above disclosure was expressly reiterated by the OCG in its Media Release which was publicly issued on July 21, 2008 and placed on the OCG’s official website. Of critical importance, also, is the fact that both OCG documents were discussed by the Rousseau led Board in its Board Meeting, which was held on July 31, 2008 and at which, the records indicate, Mr. Rousseau was in attendance.

Based upon the foregoing, for Mr. Rousseau to now assert that “*it was only when I received the (OCG’s) Report (which was formally submitted to the Parliament of Jamaica on January 22, 2009) that I knew that that PGI had assigned its simulcast rights to IMC and not Sportsmax*”, is therefore surprising.

16. **MR. ROUSSEAU’S GENERAL COMMENT #3.1-** That “*I am advised that there was no supply of satellite services being offered to CTL by Sportsmax in January, 2008.*”

OCG’S RESPONSE TO MR. ROUSSEAU’S GENERAL COMMENT #3.1

The OCG’s Investigation Report has not asserted in any way that SportsMax was at any time supplying CTL with satellite services. To the contrary, the OCG’s Investigation Report has stated that “*SportsMax had submitted a proposal to CTL for end-to-end content distribution of both local and international content directly from Caymanas Park, to all requisite locations, via SportsMax’s uplink service offering*”. (Please see Pages 84-90 and, in particular, Page 88 of the OCG’s Investigation Report).

17. **MR. ROUSSEAU’S GENERAL COMMENTS #3.4-** That the Contractor-General “*If he had behaved with the decorum and dignity of a High Court Judge he would have entertained the interview with Mr. McIntosh and his Counsel, Mr. Hamilton and he would not have continued to repeat the error by asking me about Sportsmax or about satellite services.*”

OCG’S RESPONSE TO MR. ROUSSEAU’S GENERAL COMMENT #3.4

The OCG again directs Mr. Rousseau to Sections 5, 17 (1) and (2) and 22 of the Contractor General Act and to Clause #10 (b) and Clause #10 (c) above.

18. **MR. ROUSSEAU’S GENERAL COMMENT #3.5-** That “*If I understand the Contractor-General’s position he is suggesting that PGI cannot choose its own agent or purchaser.*”

OCG’S RESPONSE TO MR. ROUSSEAU’S GENERAL COMMENT #3.5

The OCG’s Investigation Report has made no assertions and/or drawn any conclusions with regard to PGI’s right to select its agent.

19. **MR. ROUSSEAU’S GENERAL COMMENT #3.7-** That “*Summary of Findings- Page 15: While stating that I declared a conflict of interest because of my position in Sportsmax the Contractor-General states that I failed to do so in respect of IMC. My recollection of the matter is that all the discussions were always with and about Sportsmax. It was at a very late stage that IMC was interposed, and at that stage I was excluded both by CTL and Sportsmax.*”



OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #3.7

Please see the OCG's Response at Clause #2 above. The OCG would also like to state that the documentary evidence still supports the fact that Mr. Rousseau has not disclosed his interest in IMC. Interestingly, Mr. Rousseau declared his interest in other entities. However, he failed to do the same in respect of the 'parent company' of an entity which had an interest in doing business with CTL.

20. MR. ROUSSEAU'S GENERAL COMMENTS #3.9- That *"I had withdrawn from any participation with any of CTL, IMC and Sportsmax from January, 2008 and my last contact with Simon Nichols of PRacing related to acquiring "video rights" for their racing to be used by Sportsmax to create a racing channel for cable TV. This is a matter which created no conflict with CTL since they have no interest in cable TV."*

OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #3.9

- (i) Please see the OCG's Response at Clause #5 above. However, it is also instructive to highlight that CTL's vested interest may not be in the operation of a cable television station, but rather that of the content being broadcasted by the cable station and the possible impact on its revenue.

Further, while the OCG recognizes that the 'betting' and 'broadcast' rights to the PGI signals are separate issues, the OCG must also direct Mr. Rousseau to Mr. Gordon Robinson's analysis of the draft IMC/CTL contract for the said signals.

Mr. Robinson informed the OCG 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."*⁴

- (ii) The OCG does not deny that a proposal for a racing channel was being discussed by PGI and SportsMax. However, Mr. Nichols has asserted that *"...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 1st and prove to the rest of the world how best to commercialize the content."*(OCG Emphasis)

Therefore, to not disclose that his company had an interest (even if CTL's interest was different from that of SportsMax) in a signal which CTL was currently receiving was highly unethical and improper.

21. MR. ROUSSEAU'S GENERAL COMMENTS #3.10- That *"On page 24 the Contractor-General engages in some sophistry by suggesting by his bracketed comment that I withdrew from any negotiations by PGI on October 29, 2007 when I was appointed Chairman of CTL. I did not accept the appointment to the Board of CTL until November 1, 2007..."*

⁴ Gordon Robinson. Letter to the OCG. 2008 August 7



OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #3.10

The OCG's insertion of the date (October 29, 2007) was to qualify Mr. Rousseau's assertion in his own sworn written statements to the OCG. His statement, which was contained in his August 12, 2008 response to the OCG's Requisition, is as follows:

"When I became Chairman of CTL, I withdrew from those negotiations and they were continued by Mr. Oliver McIntosh..."

However, the sworn documentary evidence has contradicted Mr. Rousseau's assertions, as the facts clearly indicate that he was involved in negotiations with PGI, as at January 7, 2008, and subsequent to his appointment as CTL Chairman, for and on behalf of not only SportsMax but also CTL.

22. **MR. ROUSSEAU'S GENERAL COMMENT #3.12-** That *"Nichols, Oliver McIntosh and I, for a long time prior to January 7, 2008, had been talking about Sportsmax getting the "video rights" for the West Indies from PGI for the horse racing controlled by PGI in order to create a racing channel on cable TV."*

OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #3.12

The OCG does not deny that these emails included discussions about a racing channel. However, of import are Mr. Rousseau's assertions in this section. Mr. Rousseau stated that *"If he (Simon Nichols) could get us to take the video rights, he knew that **SportsMax had the capacity to deliver the PGI signal for the simulcast across Jamaica to CTL and all the bookmakers that PGI dealt with in selling its simulcast right.**"*

For Mr. Rousseau to now assert that SportsMax's interest in the PGI signals was totally separate from CTL's interest, is disingenuous. Therefore, while the betting and broadcast rights are separate, a viable commercial simulcast business will at some point involve both.

Further, in the said letter, Mr. Rousseau stated that he informed Mr. Nichols that *"SportsMax will play no part in negotiations for the LOB rights (the trade name for betting rights) because that is an issue for CTL and the Bookmakers. **SportsMax can make any deal it wants with either CTL or the Bookmakers.**"*

23. **MR. ROUSSEAU'S GENERAL COMMENT #3.16** – That the Contractor-General in the presentation of the January 7 and 8, 2008 emails *"...in his haste to try and attribute a motive to me without any facts to support his conclusion, is to select the portions of the correspondence that suits his presentation.."*

OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #3.16

The first email which has been identified by Mr. Rousseau at #3.16, was never submitted to the OCG. Extracts of the emails which were received by the OCG are reproduced verbatim in the OCG's Investigation Report at pages 137-139. The contents of the emails fully substantiate the OCG's Response to those of Mr. Rousseau's Comments that were made at General Comment #3.12. (See Clause #22 above).

The OCG has questioned Mr. Rousseau's motives for his handling of the email deliberations, during which he was clearly representing both CTL and SportsMax.



Further, Mr. Rousseau has himself added credence to the OCG's opinion that his involvement in the referenced email communications is questionable. In the very letter, in which he comments on the OCG's Investigation Report, he provides documentation in which he states that *"I have a possible conflict of interest as Chairman of both SportsMax and Caymanas Track Limited and I may ask one of the other directors who understands the betting to represent the CTL position."*

24. **MR. ROUSSEAU'S GENERAL COMMENT #3.17-** That *"The Contractor-General ignores one other email to Simon Nichols of November 26, 2007 where I make it absolutely clear that I would not be involved in the simulcast betting rights when I stated that: I have a possible conflict as Chairman of both Sportsmax and Caymanas Track Limited and I may ask one of the other directors who understands the betting to represent the CTL position."*

OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #3.17

The OCG has never been in receipt of the referenced email at #3.17, and it would have been the responsibility of Mr. Rousseau to provide same in response to the OCG's Requisition Questionnaire.

It must be noted that Mr. Rousseau's assertions, in the referenced email, also adds credence to the OCG's questions which were raised with regard to his participation in the January 7, 2008 emails. Mr. Rousseau has asserted that SportsMax's interest was with regard to the **'broadcast rights'** while CTL's interest was with regard to the **'betting rights'** and, as such, there was no conflict.

In the email which was presented by Mr. Rousseau, he is noted as identifying a *'possible conflict as Chairman of both Sportsmax and Caymanas Track Limited'*. The OCG's questions to Mr. Rousseau would then be as follows:

- a. Why was he involved in the January 7, 2008 email deliberations, representing both companies, having recognized that there may have been a conflict of interest on his part?
- b. Why did he not have another CTL Board Director represent CTL's interest as he had asserted in the referenced email?

25. **MR. ROUSSEAU'S GENERAL COMMENT #4.1-** That *"Based on all his misconceptions and misunderstandings, the Contractor-General comes to a series of conclusions by deriving positions based on assumptions for which he has no foundation and these are:-*

- (a) *"On page 25: of his Report....the Contractor-General accuses me of "passing information which he has acquired in that capacity" (Chairman of CTL) to Mr. Oliver McIntosh."*

OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #4.1 (a)

The OCG stands by its Conclusions which are premised upon its Findings in respect of this matter. The OCG has articulated its positions with respect to the January 7, 2008 emails in its Response at Clause #5 above as well as in its Response to Mr. Rousseau's General Comments at #3.12 and #3.16. (See Clauses #22 and #23 above).



The fact still remains that these emails were copied at all material times to Mr. Oliver McIntosh, prior to even the CTL Board being becoming privy to the said emails. Further, 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" (at pages 136-142 and 153-155)

- (b) *"Page 120: of the Report he states "Mr. Rousseau also declared his interest in two other companies, none of which were relevant to the provision of satellite services and/or simulcast services." The words...reflect a totally incorrect statement, again without foundation because Cable & Wireless one of the companies named, not only has the capacity to provide satellite services but to deliver CTL's product by a variety of other means..."*

OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #4.1 (b)

The OCG finds this assertion by Mr. Rousseau to be obfuscatory with regard to the core issue of his failure to disclose his interest in IMC.

If, as Mr. Rousseau has asserted, Cable & Wireless (C&W) has the ability to deliver the referenced services to CTL, the OCG, during the course of its Investigation, has seen no evidence that an attempt was actually made by C&W to offer its services to CTL.

Further, the fact that Mr. Rousseau saw it fit to disclose his interest in C&W, a publicly listed entity, based upon its alleged capability to supply CTL with the referenced services, adds credence to the OCG's position that Mr. Rousseau should have disclosed his interest in IMC, a company which is registered in St. Lucia and which is the parent company of SportsMax.

Mr. Rousseau's failure to disclose his interest in IMC begs the question as to the rationale behind such an act, and whether Mr. Rousseau was being less than forthright in his disclosure of interest.

- (c) *"On page 122: the Contractor General again proceeds on an assumption that he has made no attempt to verify. He has assumed that I read the statement made by Oliver McIntosh in the Gleaner on July 31, 2008. Further, in relation to his comments on page 130, It should be noted that I knew absolutely nothing about the letter of July 17, 2008. This is an attempt to "tar" me with something I knew nothing about."*

OCG'S RESPONSE TO MR. ROUSSEAU'S GENERAL COMMENT #4.1 (c)

This assertion is without merit and is a misrepresentation of the facts and Findings of the OCG's Investigation Report. Page 122 of the OCG's Investigation Report, which was referred to by Mr. Rousseau (along with the preceding pages), deals with questions which were posed to Mr. Rousseau, with regard to his disclosure of interest in IMC and his subsequent response.

With regard to Mr. Rousseau's knowledge about the July 17, 2008 letter from CTL, it must be noted that the contents of the said letter, was included in the OCG's Investigation initiation letter, which was dated July 18, 2008, and which was formally copied and delivered to Mr. Rousseau.



- (d) *“On Pages 134 and 135: Again because he does not inquire of CTL, the Contractor-General makes statements suggesting that my “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..”*

OCG’S RESPONSE TO MR. ROUSSEAU’S GENERAL COMMENT #4.1 (d)

The OCG stands by its Findings and Conclusions with respect of Mr. Rousseau’s participation in the deliberations of the CTL Board Meeting with regard to Tote Investment Ltd./SIS (at pages 134-136). The comments which were attributed to then CTL Chairman, Mr. Rousseau, in the Minutes of the June 26, 2008 CTL Board meeting and the letter from the United Bookmakers Association, which was dated June 24, 2008, raised several concerns for the OCG. The concerns included, *inter alia*, the following:

- (1) The June 24, 2008 letter from the United Bookmakers Association had made mention of an apparent partnership with SportsMax to acquire the SIS signal which had failed. Mr. Rousseau is the Chairman of SportsMax;
- (2) The integrity of the CTL Board’s deliberations had apparently 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.

OCG’S CLOSING STATEMENT

Mr. Patrick Rousseau, in his letter, has erroneously asserted that the Contractor General has *“abused or exceeded his jurisdiction in several respects”* and that he is therefore *“not a fit and proper person to hold the office of the Contractor-General”*.

Additionally, Mr. Rousseau has gone beyond the pale to impute improper and malicious motives to the OCG by falsely alleging that the Contractor General *“has made un-supported charges against the members of the Board of Directors and myself as Chairman, all in a quest to damage our reputations”*.

The OCG, in its detailed Responses to Mr. Rousseau’s assertions of jurisdictional excess and abuse of power, has shown that the said assertions are unsubstantiated in law and are inherently flawed in their import.

The OCG is also resolved in its stance that the letters from the former CTL Board of Directors and Mr. Rousseau represent, at best, an evidently desperate attempt to absolve their authors from responsibility for the flagrant breaches of the Government’s Procurement Procedures, the Contractor General Act, the Companies Act, the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act, and the Corruption Prevention Act, which the evidence has unearthed in this matter.

As an independent, anti-corruption Commission of Parliament, the OCG is fully committed to the diligent and lawful discharge of those of its responsibilities and obligations which are mandated by the Contractor General Act.



The OCG has always discharged and will continue to discharge those responsibilities in accordance with the highest standards of probity, fairly and impartially, but forthrightly and fearlessly, in the interest of the people and taxpayers of Jamaica. And the OCG will leave no stone unturned to vigorously defend its Reports of Investigation and its integrity.

The OCG wishes to reiterate that having reviewed the referenced letters from the former CTL Board of Directors and the Hon. Mr. Patrick Rousseau, it categorically stands by those of its Findings, Conclusions, Recommendations and Referrals which are contained in the said Investigation Report.

And I so respectfully advise.

Very respectfully yours,

Greg Christie (Signed)

Greg Christie
Contractor General

Copy: Mrs. Heather Cooke, Clerk to the Houses of Parliament
Ms. Sharon Crooks, Financial Secretary

Mr. Anthony Hart, Chairman, CTL
The Hon. Patrick Rousseau, OJ, Former Chairman and Director, CTL
Mr. Ian Parsard, Director, CTL
Mr. Peter Lawson, Former Director, CTL
Mr. Kelvin Roberts, Former Director, CTL
Mr. Lee Clarke, Former Director, CTL
Mr. Geoffrey Campbell, Former Director, CTL
Mrs. Veronica Warmington, Former Director, CTL