



Editor  
New Zealand Herald  
PO Box 32  
Auckland, New Zealand

June 16th, 2014

Dear Sir,

### **The 35<sup>th</sup> America's Cup**

Since the Protocol for the 35<sup>th</sup> America's Cup was released two weeks ago, I have watched as the New Zealand media, and the New Zealand Herald in particular, have continued to publish inaccurate interpretations of how the next America's Cup will be organized.

While no one is obliged to support the America's Cup it seems to me that at the very least, journalists have an obligation to their readership to provide honest reporting. Regrettably, that has been in very short supply in your newspaper's coverage of the America's Cup of late. The latest story by Paul Lewis – 'Oracle protocol raises red flags' - is particularly reprehensible.

Paul Lewis wrote: *"Fast forward nearly seven years, and Coutts seems to have changed his mind a lot. In their 2014 protocol, Oracle have said they can have two boats but everyone else can't."*

\* In negotiations for the current Protocol, ORACLE TEAM USA proposed that all teams should have the option of building two sets of hulls on the same terms as currently apply to ORACLE TEAM USA (namely no extra wings or components, very limited sailing time, have to race the first set of hulls, second set of hulls built from same moulds). ORACLE TEAM USA would continue to support that position should the Challengers wish to reconsider their position. Note that ORACLE TEAM USA can't unilaterally change the Protocol: it can only be changed by majority vote.

*35<sup>th</sup> America's Cup Protocol, Article 20.1: "this Protocol may only be amended with the agreement of GGYC, the Challenger of Record and a majority of the Competitor Forum."*

Paul Lewis wrote: *"Oracle can race in the challenger series and the points count towards the Cup (meaning they can theoretically influence which challengers advance to the finals)."*

\* There is a fundamental difference to what was being disputed in 2007 in that under the current Protocol all Competitors, including the Defender, are incentivised to win and not throw races because the overall results count towards one point in the America's Cup final match. In 2007, the Defender could have thrown races without any consequence to themselves.

*35th America's Cup Protocol, Article 29.1(b): "if the winner of the America's Cup Qualifiers is a Competitor in the Match, it shall start the Match with a score of one (1) point."*



Paul Lewis wrote: *“Oracle have far greater sway over the selection of arbitration panel members and the regatta director - establishing as much (if not more) of the control that Oracle objected to when they were challengers.”*

\* Again, this is not true. The Regatta Director is appointed by simple majority vote amongst all Competitors.

35th America's Cup Protocol, Article 6.1: *“Appointment of Regatta Director: An independent Regatta Director whose role is further described in Article 7 shall be appointed by a simple majority vote of the Competitor Forum. The Competitor Forum may remove and replace the Regatta Director provided that seventy-five per cent. (75%) or more of those entitled to vote approve such removal and a simple majority approves the proposed replacement.”*

\* Lewis's story is also not true in reference to the Arbitration Panel, which shall be constituted as follows:

35th America's Cup Protocol, Article 11.3: *“Constitution and chairman: The Arbitration Panel shall comprise three (3) persons appointed as follows: (a) the Arbitration Panel chairman shall be appointed jointly by GGYC and the Challenger of Record from the list of Court of Arbitration for Sport (CAS) arbitrators established by the International Council of Arbitration for Sport (ICAS); (b) the Competitor Forum shall appoint the second member of the Arbitration Panel; and (c) the two (2) Arbitrators appointed pursuant to Articles 11.3(a) and 11.3(b) above shall together appoint the third Arbitrator.”*

In contrast, under the proposed 2007 Protocol, the Arbitration Panel would have been appointed solely by the Defender and the Challenger of Record and there was no requirement for any of the arbitrators to have to be members of the Court of Arbitration for Sport.

Article 22.2 of the 2007 Protocol: *“Appointment. Upon signing the Protocol, the Parties hereto have agreed in a separate document on the names of the Arbitration Panel members.”*

Further, the 35<sup>th</sup> America's Cup Protocol ensures the impartiality of the Regatta Officials by spreading the funding for such officials equally across the teams in accordance with a budget (the Regatta Officials Fund) agreed by all of the teams, one vote per team. In fact, the first US\$1-million instalment of the entry fee payable by each team is earmarked for this purpose.

35<sup>th</sup> America's Cup Protocol, Article 6.6: *“Regatta Officials Fund: The Regatta Director shall manage the Regatta Officials Fund and shall have the authority to direct payments from the Regatta Officials Fund, in each case within the approved budget and within the commitment policies agreed between the Regatta Director and the Competitor Forum.”*

35<sup>th</sup> America's Cup Protocol, Article 16.3(a): *“First installment of the Entry Fee: the first installment of the Entry Fee in the sum of US\$1,000,000 (one million United States Dollars) by wire transfer direct to the Regatta Officials Fund...”*



I would have expected that a paper with the standing of the New Zealand Herald would put more effort into ensuring the accuracy of its stories. I trust you will print these corrections and I look forward to a more balanced and accurate coverage of the America's Cup in the future.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Russell Coutts". The signature is fluid and cursive, with a prominent loop at the beginning and a sharp, downward-pointing stroke at the end.

Russell Coutts  
Director  
America's Cup Event Authority LLC