

## MARKET SOLUTIONS TO OLYMPIC PROBLEMS: DO ATHLETES, NETWORKS, AND SPONSORS REALLY NEED THE IOC?

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### I. INTRODUCTION

At present, the International Olympic Committee (IOC), the professed leader of the Olympic Movement,<sup>1</sup> appears to be at a crossroads and as troubled about which path to take as an expedition leader is with a faulty compass on a cloudy night. In public, the IOC espouses to take the 'high road'. The IOC Charter states that the goal of the organisation is to "contribute to building a peaceful and better world by educating youth through sport practised without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play".<sup>2</sup> Reports of the IOC's private actions of the past decade, however, have documented the organisation's frequent jaunts down the 'low road'. One exposé described the current Olympics as "a secret, elite domain where the decisions about sport ... are made behind closed doors, where money is spent on creating a fabulous life style [sic] for a tiny circle of officials rather than providing facilities for athletes, where money destined for sport has been siphoned away to offshore bank accounts and where officials preside forever, untroubled by elections".<sup>3</sup> Other commentators, in response to the most recent IOC corruption scandals over the selection of Sydney and Salt Lake City as the host cities for the 2000 Summer and 2002

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1 See The Olympic Charter ("The IOC is the supreme authority of the Olympic Movement.") <[www.olympic.org/ioc/e/fact...ter%5Fold/charter\\_movmement\\_e.html](http://www.olympic.org/ioc/e/fact...ter%5Fold/charter_movmement_e.html)>.

2 *Ibid.*

3 RN Davis, "Introduction to the Association of American Law Schools 1996 Annual Meeting of the Section of Law and Sports: Legal Issues and the Olympic Games" (1996) 3 *Villanova Sports & Entertainment Law Journal* 391 at 393-4 (quoting V Simson and A Jennings, *Dishonored Games: Corruption, Money and Greed at the Olympics* (1992)).

Winter Olympic Games, respectively, have analogised the 'Olympic Family' to the Mafia.<sup>4</sup> While Olympism, defined as "a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind",<sup>5</sup> could arguably embrace either path, as long as the IOC dedicated body, mind, and soul to the pursuit of either altruism or greed, all would agree that the IOC should take the road less travelled.

Whether the IOC can learn from its mistakes, reform its practices and get back on the right track is uncertain. This article, however, does not seek to debate the prospects of the IOC undertaking meaningful internal reform.<sup>6</sup> Rather, the purpose here is to note possible market solutions if the IOC fails to restore integrity and confidence in the 'Olympic Movement'. More specifically, the incorporation of the IOC and the creation of a new 'Olympic' brand supplier are presented as alternatives to the status quo. To provide background for a discussion of the proposed market solutions, the nexus between the commercialisation of the Olympics and the current problems plaguing the Olympic Movement, and the effect of the corruption and doping scandals on the Olympic brand, will be briefly reviewed.

## II. THE LINK BETWEEN THE COMMERCIALISATION OF THE MODERN OLYMPIC GAMES AND THE CURRENT BRIBERY AND DOPING SCANDALS

Though the classical Greek philosophy of *kalokagathia*<sup>7</sup> inspired the French aristocrat Pierre de Coubertin to resurrect the Olympic movement, he quickly learned that the real spirit reflected in the Games was not a love for one's neighbour, but rather a love of money.<sup>8</sup> According to one commentator the Olympic ideals "have never been anything more than ephemeral fantasies, as far removed from the crass, realpolitik of staging the Games as Santa Claus and the Tooth Fairy" since the Games have always been "vulnerable to prevailing political and economic controversies".<sup>9</sup> A point of departure for understanding

4 See for example, R Masters, "IOC's 'family' values - pomp and pretence" *Sydney Morning Herald*, 23 January 1999 <wysiwyg://contents.96/http://www....ews/9901/23/pageone/pageone2.html>; "Mauled by the Media" *Sydney Morning Herald*, 20 March 1999 (reporting an Austrian newspaper headline calling the IOC the "Incredible Organised Corruption") <wysiwyg://contents.96/http://www....ews/9903/20/pageone/pageone7.html>.

5 See The Olympic Charter, note 1 *supra*.

6 The IOC has already undertaken efforts to reform its internal practices. See G Korporal, "IOC to make Audited Finances Public as part of Reform Process" *Sydney Morning Herald*, 27 February 1999 (discussing IOC proposals to publish its financial reports and audits, to form an ethics commission to oversee its members, and to establish a new system for selecting host cities) <wysiwyg://contents.96/http://www....ews/9902/27/pageone/pageone3.html>.

7 Philosophy of *kalokagathia* focused on the harmonic combination of beauty and goodness.

8 See W Drozdiak, "Torching the Olympic Myth", Outlook, *The Washington Post*, 1999 WL 2199729 \*1 (February 14, 1999) (noting Coubertin's lamentation that "the mercantilist spirit that threatens to invade sporting circles, due to the fact that sport has developed within a society in danger of rotting to the core because of its love of money").

9 *Ibid.*

the nexus between the commercialisation of the modern Olympics and the recent bribery and doping scandals is the IOC's status in 1980, the year Juan Antonio Samaranch was named President of the organisation.

In 1980, the IOC was on the brink of bankruptcy.<sup>10</sup> The 1984 Summer Games had been awarded to the only city to submit a bid, Los Angeles. The reason for the lack of interest in hosting the Games was in no small part due to the fact that the organiser of the 1976 Summer Olympic Games, Montreal, had amassed US\$1 billion in debts from its production efforts.<sup>11</sup> To save the Olympic Movement from financial ruin, Samaranch and the IOC executive board negotiated sponsorship agreements with multinational corporations, which were only too eager to associate themselves with the purity and wholesomeness symbolised by the Olympic rings.<sup>12</sup> Corporate sponsorship had an immediate impact. The Los Angeles Games returned a profit of US\$220 million to the organisers.<sup>13</sup>

The commercial nature of the Olympics has only accelerated since 1984. Each major sponsor in eleven different product categories (that is, The Olympic Partners, or TOP sponsors) pays approximately US\$50 million to affiliate itself with a given Olympiad.<sup>14</sup> In 1995, NBC paid US\$3.55 billion for the exclusive US television rights to the Olympic Games through to the year 2008.<sup>15</sup> The Atlanta Games, (aka the "Coca-Cola Games"), established the current apogee of commercialisation reflected by the selling of sponsorships for the "Official Game Show" and the "Official Vidalia Onion Sauce" of the 1996 Summer Olympic Games.<sup>16</sup>

In addition to increasing the IOC's account balance,<sup>17</sup> commercialisation of the Olympics has been a contributing cause of the current bribery and doping scandals. Instead of imploring a city to undertake the burden of serving as Olympic host, the IOC now stages a highly competitive bidding contest among cities wanting to partake of the estimated US\$10 billion each Olympiad generates.<sup>18</sup> These auctions have led to corruption inside the IOC with winning proposals no longer depending on the merits of a particular city's bid, but rather

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10 *Ibid.*

11 *Ibid.* \*2.

12 *Ibid.*

13 *Ibid.*

14 See "Tarnished rings: Corporations play vital role in modern Olympics" *Daily Yomiuri/Yomiuri Shimbun* 1999 WL 5465841 \*1 (29 January 1999) (describing role of multinational corporations in funding the Olympic Movement).

15 See K Pope, S Beatty, and S Fatsis, "Olympics Bring Advertising Heat to NBC" *The Wall Street Journal* 1999 WL-WSJ 5436628 B6 (13 January 1999) (reporting the details of NBC's contract with the IOC).

16 See AC Copetas, R Thurow, and S Fatsis, "Tarnished Rings? For the Olympics, Worrisome Clouds over its Lofty Image" *The Wall Street Journal*, 1999 WL-WSJ 5435462 A1 (6 January 1999) (describing the 1996 Atlanta Summer Games as the most commercialised Olympics in history).

17 The IOC's surplus has grown from approximately US\$500 000 in 1980 to US\$121.2 million at the end of 1998. See W Drozdiak, note 8 *supra* (noting the IOC's account balance in 1980); IOC Financial Indicators, <[www.olympic.org/fla/1\\_99...ut\\_ioc/financial/indicator\\_e.html](http://www.olympic.org/fla/1_99...ut_ioc/financial/indicator_e.html)> (listing the IOC Key Financial Indicators and current financial resources).

18 See A Copetas, note 16 *supra*.

on the gifts a city can bestow on IOC delegates.<sup>19</sup> Commercialisation has played a similar role with respect to the doping scandal. Once relatively impoverished, athletes wearing the label of 'Olympic Champion' can now receive multi-million dollar endorsement contracts from corporations wanting to promote themselves as winners.<sup>20</sup> The allure of lucrative endorsement opportunities has tempted some athletes to use whatever means possible, including the use of performance-enhancing drugs, to win Olympic gold.

### III. THE INTERNAL CORRUPTION AND EXTERNAL DOPING SCANDALS THREATEN TO RUIN THE OLYMPIC BRAND

Given the causal connection between commercialisation and corruption of the Olympics Games, a call to eliminate, or cap, the revenue from corporate sponsorship and private telecasts of the Olympic competition would be a rational suggestion for reform. Such a recommendation, however, is not likely to be well received by Olympic officials or athletes since it would stop the flow of millions of dollars into the Olympic Movement.<sup>21</sup> Ironically, the source of the flow, corporate sponsors and broadcasters, have generally been viewed as victims, rather than abettors, of the current scandals.

Concern for the Olympic sponsors and networks has been raised because the bribery and doping problems threaten to destroy the Olympic brand. That corporations are willing to spend large sums to support the Olympic Movement if and only if the Olympics symbolise the ultimate in nobility, fairness, and meritocracy was made abundantly clear in the wake of the host city debacle. After the story broke, several major corporations announced that they would terminate their continued sponsorship of the Games if the IOC could not protect their investments in the Olympic rings.<sup>22</sup> Since the IOC has yet to implement major reforms,<sup>23</sup> the organising committees for Salt Lake City and Sydney have

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19 See M Moore, "Revealed: how Sydney bought the Olympics" *Sydney Morning Herald*, 23 January 1999 <wysiwyg://contents.96/http://www....ews/9901/23/pageone/pageone1.html>; W Drozdiak, note 8 *supra* ("The decision to 'hand over' the 1984 Los Angeles Games to the private sector resulted in a Faustian bargain that salvaged the finances of the Olympic movement but ultimately led to the rampant excesses of materialistic greed that have spawned today's corruption scandal.").

20 See W Drozdiak, note 8 *supra*.

21 A reduction in corporate involvement in the Olympics was not put forward in either the Mitchell Report or the Salt Lake City Board of Ethics Report. See Report of the Special Bid Oversight Commission (Mitchell Report) <www.smh.com.au/news/content/olyscandal/report.html>; The Board of Ethics of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 Report to the Board of Trustees <www.slc2002.org/news/html/report.html>.

22 See G Kitney, "Car giant's threat to pull out of Games" *Sydney Morning Herald*, 10 March 1999 <wysiwyg://contents.96/http://www....ews/9903/10/pageone/pageone11.html> reporting on Daimler Chrysler's intent to end its long standing association with the Olympic unless "the IOC deals with corruption urgently").

23 See L Riley Roche, "IOC to decide on reforms by end of year", *deseretnews.com*, 20 August 1999, <www.desnews.com/dn/view/1,11249,115004292,00.html?> (reporting that the IOC will decide by the end of 1999 "whether to adopt reforms to prevent a repeat of the Salt Lake bid scandal").

faced difficulties attracting sponsors for their Olympic productions.<sup>24</sup> NBC, network of the Games, has lost bargaining power in negotiations with advertisers for commercial time during Olympic broadcasts<sup>25</sup> and has sought to recoup a portion of its outlay for the Olympic rights by exacting a surcharge on cable television operators wishing to carry Olympic programming.<sup>26</sup> If bribery allegations concerning the IOC in its negotiations with sponsors and broadcasters are proved true, further withdrawal of corporate support for the organisation's activities will likely occur.<sup>27</sup>

Though the bribery scandal has had a significant, short term detrimental effect on the Olympics, "the escalating doping scourge [may be the] greater threat to the future of the Olympic movement".<sup>28</sup> One sports marketing executive has succinctly framed the issues with respect to corporations and the doping scandal:

[Corporations] need to be seriously concerned about IOC anti-doping efforts because keeping the Games drug free is the key to protecting their asset. If the IOC can't clean up its drug act, the product is tainted and all sponsorship bets are off.<sup>29</sup>

To date, the IOC's anti-doping efforts would not rate it a spot on the medal podium; it has been slow to adopt a uniform anti-doping code and establish an independent international doping agency.<sup>30</sup>

#### IV. MARKET SOLUTIONS TO THE OLYMPIC SCANDALS

At the outset, it is important to remember that the commercialisation of the Olympics is an irreversible phenomenon. Olympic officials and athletes earnestly desire the corporate dollars, and many multinational corporations have earned favourable returns from their Olympic investments. For mega-media companies, hungry for live premium sports events that can attract a large

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- 24 See J Larkin and M Evans, "Major Olympic sponsor may quit" *Sydney Morning Herald*, 15 February 1999 <[wysiwyg://contents.96/http://www...ews/9902/15/national/national4.html](http://www...ews/9902/15/national/national4.html)> (documenting Samsung's "concerns about continuing its ... sponsorship of the Olympics- including the Sydney Games- because of the ongoing corruption scandal"); L Riley Roche, "2002 Games gain furniture supplier", *deseretnews.com*, 19 August 1999, <[www.desnews.com/dn/view/1,11249,115004292,00.html](http://www.desnews.com/dn/view/1,11249,115004292,00.html)?> (noting that the bribery scandal "has scared off many would-be corporate supporters").
- 25 See K Pope, note 15 *supra* (quoting media experts who predict that the Olympic scandal is likely to reduce the prices NBC can charge advertisers for time during Olympic coverage).
- 26 See NBC's Opening Bid: \$1-Plus for Olympics, Multichannel News, 1999 WL 10008692 ( 19 April 1999) (reporting on NBC's attempt to charge cable operators a "Olympic surcharge" to carry Olympic coverage on its CNBC and MSNBC cable channels).
- 27 See "Can of Worms", *Delaney Report*, 1999 WL 11944789 (15 February 1999) (quoting an Olympic Games source that the networks and sponsors have for years bribed Olympic officials for favourable decisions from the IOC with respect to television and sponsorship rights, respectively); M Gorrell, "Olympic Bid Process for Telecasts a Sham, Broadcasters Claim" *The Salt Lake City Tribune*, 1999 WL 3342882 (20 January 1999) (reporting accusations that the Salt Lake Organizing Committee had "an unfair bidding process in its selection of a host broadcast company").
- 28 A Copetas, note 16 *supra*.
- 29 *Ibid*.
- 30 *Ibid*, (noting the difficulties the IOC has had in dealing with the doping issue); Submission by the Australian Olympic Committee for the World Conference on Doping in Sport (Nov. 30, 1998) (calling for the IOC "to demonstrate leadership of sport" by adopting an "Uniform Anti-Doping Code" and creating "a single international anti-doping authority") (on file with author).

viewing audience for their network divisions,<sup>31</sup> and provide a large quantity of quality programming hours for their cable and satellite channels,<sup>32</sup> the Olympics will continue to be a hot commodity. Similarly, corporate sponsors and suppliers will always seek to associate with an event embodying 'Olympic' ideals since such a connection improves consumers' attitudes toward their products.<sup>33</sup> Given their desire for the Olympic product, multinational corporations can be expected to take active steps to restore or reinvent the Olympic brand if the IOC fails to undertake meaningful reform.

### A. Incorporation of the IOC

Incorporation of the IOC is a reform measure that would bring private market discipline to bear on the organisation. A management consultant company, "working on behalf of one of the Olympics' largest commercial partners", briefed the IOC on such a proposal in response to the host city scandal.<sup>34</sup> Under this plan, the IOC's commercial properties, "including its massive broadcasting, sponsorship, and marketing rights, would be placed in a separate entity and floated".<sup>35</sup> The newly created corporation would sell its commercial products and "work in conjunction with host cities' local authorities to develop Olympic facilities".<sup>36</sup> The theory is that incorporation would increase the IOC's financial transparency and improve its productive efficiency while eliminating personal profit motives from its governance structure.<sup>37</sup> In the alternative to an equity offering, the consulting firm proposed that the IOC "issue a multi-billion dollar bond...and use broadcasting revenues...over the next two tournaments as a guarantee".<sup>38</sup>

Though the "current holders of the Olympics broadcasting rights...are understood to be open-minded" to the incorporation idea, others are less than optimistic about it.<sup>39</sup> In particular, critics assert that national federations' claims of ownership interests in the Olympic product could spawn legal challenges to the incorporation plan and entangle the IOC in a legal quagmire.<sup>40</sup> These concerns are valid since the issue of who owns the Olympics is a murky one.

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31 See R Masters, "Why O'Neil's 2020 vision is blurred" *Sydney Morning Herald*, 20 August 1999 <wysiwyg://contents.145/http://www....u/news/9908/20/sport/sport13.html> (noting that the three most watched television programs in Sydney in the first half of 1999 were the rugby league State of Origin games).

32 See NBC, "Cables Set 330 Hours of Olympics from Sydney" *Florida Today*, 1999 WL 18268660 (25 June 1999) (reporting that NBC will air more than 170 hours of Olympic coverage from the 2000 Sydney Games on its two cable channels).

33 "Torch Values?" Promo, 1999 WL 12729744 (1 March 1999) (noting that Coca-Cola "conducted marketing programs in 135 countries for the Atlanta Games, boosting worldwide case sales by eight percent in the process").

34 See J Cassy, "Olympics could enter stock market arena" *The Express on Sunday* 1999 WL 5810227 (7 March 1999) (describing the proposal to spin off the IOC's commercial properties).

35 *Ibid.*

36 *Ibid.*

37 *Ibid.*

38 *Ibid.*

39 *Ibid.*

40 *Ibid.*

Arguably, each national federation, as well as other members of the Olympic Movement and signatories to the Olympic Charter, has voluntarily relinquished any equity interest in the Olympics. The Olympic Charter states:

The IOC is the supreme authority of the Olympic Movement. Any person or organization belonging in any capacity whatsoever to the Olympic Movement is bound by the provisions of the Olympic Charter and shall abide by the decisions of the IOC...The Olympic Games are the exclusive property of the IOC which owns all rights relating thereto, in particular, and without limitation, the rights relating to their organization, exploitation, broadcasting and reproduction by any means whatsoever.<sup>41</sup>

Apparently then, the IOC can claim a contractual right to all Olympic commercial and intellectual properties.

Despite the assertions of the Olympic Charter, ownership squabbles may still arise. For example, the United States Olympic Committee (USOC) may claim that the *Ted Stevens Olympic and Amateur Sports Act* grants it exclusive ownership of the marketing and sponsorship rights to the Olympic symbols in the United States.<sup>42</sup> The Olympic Charter apparently addresses such a claim in that it provides that

[e]ven if the national law or a trademark registration grants to an NOC [National Olympic Committee] the protection of the Olympic symbol, such NOC may only use the ensuing rights in accordance with instructions received from the IOC Executive Board.<sup>43</sup>

This provision, however, has not prevented clashes between the IOC and the USOC over the ownership and sale of Olympic broadcasting and sponsorship rights in the United States. The force of the USOC's argument is reflected in the current agreement between the two organisations under which the USOC receives approximately 10 per cent of the revenue from the sale of the United States television rights and 20 per cent of the income from the TOP (The Olympic Partner) sponsorships.<sup>44</sup> The USOC is the only NOC that receives a direct cut of the IOC's revenues from its sale of broadcasting or sponsorship rights.<sup>45</sup>

An examination of legislation recently proposed in the United States Congress, further demonstrates that the Olympic Charter may not provide the IOC with as strong an ownership claim to the rights to the Olympics as its wording may suggest. The "International Olympic Accountability Act" would divert revenues from American corporations' purchases of Olympic television

41 The Olympic Charter, note 1 *supra*.

42 See 36 U.S.C. § 220506(a) (granting the USOC the exclusive right to use all Olympic symbols).

43 The Olympic Charter, Bye-Law 1.2, note 1 *supra*.

44 See G Deister, "Uncle Sam's Games" *Sydney Morning Herald*, 14 April 1999, <[wysiwyg://contents.96/http://www...au/news/9904/14/sport/sport9.html](http://www.sport9.com.au/news/9904/14/sport/sport9.html)> (commenting on the battle between the IOC and USOC over control over the Olympic Games); M Zuckoff and J Powers, "Senators lean on Olympics to reform" *Boston Globe* A1 1999 WL 6052391 (14 March 1999) (reporting that the USOC currently receives 10 per cent of the funds from the sale of the US television rights and will receive 12.5 per cent of this revenue in 2004).

45 See M Zuckoff, note 44 *supra* (citing IOC marketing director Michael Payne for the proposition that the USOC is the only NOC that gets a direct share of the revenue from the IOC's sale of television rights).

and marketing rights from the IOC to the USOC.<sup>46</sup> Since monies from American multinational corporations have funded and made feasible the Olympic Games for the past several decades, the proposed American legislation would effectively shift the balance of power over the Olympic Movement from the IOC to the USOC.<sup>47</sup> According to Congressional leaders, USOC control over the Olympics will ensure greater financial accountability and transparency than what the IOC currently provides.<sup>48</sup> Negative response to the American legislation from European countries asserting their own economic interests in the Olympics illustrates how quickly a battle over ownership of Olympic properties can escalate.<sup>49</sup>

Congress, however, would not likely oppose the incorporation of the IOC as long as the major American Olympic sponsors supported it. The thrust of the International Olympic Accountability Act is to protect American corporations' sizeable investments in a valuable, but fragile, property. If these corporations expressed confidence in the spin off of the IOC's commercial properties, then Congress would likely defer to their business judgment. To gain corporate support for a spin off proposal, the IOC would be wise to name well respected independent directors to the new corporation's board of directors.

## **B. Multinational Corporations' Development of an Alternative Supplier to the IOC**

Since the athletes and the aura surrounding the competition are the features of the Olympics that attract consumers to the Games,<sup>50</sup> the entry of a new supplier of the 'Olympic' brand is another way the market may respond to the IOC's problems. Unlike the incorporation solution, however, this proposal significantly, if not completely, marginalises the role of the IOC. The idea here is for the corporate sponsors and television networks to control the production of the athletic competition and ensure the performance of the administrative and humanitarian functions the IOC currently performs.

If the IOC continues its inefficient production and maintenance of the Olympic brand, then purchasers of its products can reasonably be expected to turn to a new supplier. There is nothing sacrosanct about the IOC as a competition organiser or humanitarian organisation. In fact, multinational

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46 See L Riley Roche, "Will Congress hit IOC in pocketbook" *Deseret News* A01, 1999 WL 13868922 (25 March 1999) (reporting on the proposed federal legislation to amend the Ted Stevens Amateur Sports Act to put all monies from the sale of Olympic television rights under the control of the USOC).

47 *Ibid.*, (noting the shift in the balance of power over the Olympics from the IOC to the USOC if Congress passed the proposed legislation); "Europe battles to halt US takeover of Olympics" *Agence France-Presse* 1999 WL 2588401 (22 April 1999) (noting that American firms contribute approximately 80 per cent of the IOC's funding).

48 See L Siddons, "US Senate tears strips off absent Samaranch" *Sydney Morning Herald*, 16 April 1999, <wysiwyg://contents.96/http://www...au/news/9904/16/national/national7.html> (noting U.S. Senator McCain's disbelief about the IOC's policy of keeping the minutes of its general assemblies and executive board secret for ten and twenty years, respectively).

49 See *Agence France-Presse*, note 47 *supra* (reporting the European Olympic Committees' negative response to the American legislation).

50 See Promo, note 33 *supra* ("Consumers are far more interested in the athletes and the games themselves than in its faceless managers.").



corporations, as the principal financial benefactors of the Olympics,<sup>51</sup> arguably, already undertake all of the IOC's activities. The corporations could develop substitutes to the IOC in a number of different ways. For example, with respect to staging the athletic competition, the sponsors and networks could decide to accept bids from firms willing to organise the event on their behalf. Or, the corporations could agree among themselves to enter into a joint venture and organise the competition collectively. Another option is for the largest stakeholder in the Olympic product, typically a mega-media company, such as NBC, that purchases the exclusive United States television rights, to organise and own the competition and sell sponsorship and supplier rights to recoup its production costs. Though this latter option may be the most efficient alternative since the firm with the greatest interest in reducing costs controls production, corporate sponsorship for a "Media-Olympics" may suffer under this scheme. Other corporations may not want to fund an undertaking of a mega-media company that, in the increasingly consolidated marketplace, may be a competitor in another area.

The market can also ensure the performance of the IOC's humanitarian activities. To relate to the examples suggested above, the multinational corporations could state in its auction announcement that all bids must include a guarantee of funding for the NOCs participating in the competition that equals or surpasses the amounts the IOC now distributes to them. Similarly, corporate organisers, realising that a successful 'Olympic-like' product requires a strong emphasis on humanitarian objectives, could include in their cost bases funding for NOCs and other activities the IOC sponsors.

Like any new venture, developing a new Olympic competition would not be without its challenges. Principal among these would be acquiring as strong a consumer association with the 'new and improved' Olympic Games as the IOC presently has with the venerable Olympic Games. Given the dependency of the IOC on corporate funding, however, this obstacle most likely would not thwart the development of a new supplier. Without funding the IOC would be severely weakened. In this state, the new organiser would have several options to obtain the Olympic brand. The multinational corporations, negotiating from a superior bargaining position, could offer to purchase the IOC's intellectual property rights. Alternatively, the new organiser could negotiate individually with each major NOC, promising guaranteed funding and stable management in exchange for its alleged ownership interest in the Olympic rights. Once the support of its NOC is obtained, a country's government would likely not protest against the marginalisation of the IOC. Reaching agreements with the major NOCs would provide the critical mass for the new producer to enlist the support of the remaining NOCs. Alternatively, the multinational corporations, if pushed to this solution by the IOC's utter mismanagement, may decide that a new brand must be developed in order to forge a complete break with the tarnished Olympic image. If a new brand is developed, then the prospects of competing products (that is, rival international competitions) increase since several corporate groups

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51 See M Zuckoff, note 44 *supra* (noting that the IOC does not receive public funding).

may attempt to fill the void created by the IOC's demise. Competition in the market, however, is not to be despised since it enhances consumer welfare. In fact, if the IOC faced greater competitive pressure, then many of the present problems owing to its mismanagement may not have arisen.

The Goodwill Games, originally created by Ted Turner and now produced by Time Warner Inc's Turner Sports, demonstrates that a multinational corporation, and in particular a mega-media company, can organise a major international athletic competition with an Olympic-like motif. There have been four Summer Goodwill Games since 1986.<sup>52</sup> Though the Summer Goodwill Games have lost a total of US\$109 million since its inception, Turner Sports has decided to hold the first Winter Goodwill Games in February 2000 at Lake Placid, New York, site of the 1980 Winter Olympic Games.<sup>53</sup> Turner remains committed to this event because "it creates opportunities for athletes and provides much needed programming" for the company's cable channels.<sup>54</sup> If other corporations would be willing to support Time Warner's product, which they may if the humanitarian objectives of the project, rather than Time Warner's profit margin, were stressed, the Goodwill Games would provide a platform from which to launch a new 'Olympic' brand.

### C. Application of the Market Solutions to the IOC Scandals

The market solutions presented here are likely to have a greater effect in preventing a recurrence of the host city bribery scandal than in deterring athletes from using performance enhancing drugs. Incorporation of the IOC's commercial properties and the development of a new product supplier will both result in the Olympic organiser, at least with respect to commercial endeavours, being a public corporation. A corporate Olympic organiser will be more accountable to its stakeholders, and have greater financial transparency to the public, relative to today's IOC, because of the legal disclosure requirements that apply to a public corporation. Control over the Olympic Games by a public corporation will also eliminate the hidden personal profit motives of Olympic officials. Though profit maximisers, the officers and directors of public corporations, unlike IOC delegates, are subject to discipline and oversight from the market in general and shareholders and government officials, in particular. Under the market solutions, organisational decisions for the Olympic Games, such as host city selections, should once again be based on objective criteria rather than on the subjective desires of individual IOC delegates.

The market solutions, however, will not affect or reduce some athletes' use of performance enhancing drugs because they do not eliminate the financial incentives for achieving Olympic glory. As long as athletes can profit from their Olympic achievements, a significant temptation for doping will continue to exist. Though they will not stop it, corporate Olympic organisers will likely be more

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52 See "Turner Sports to Hold Winter Version of Goodwill Games in Lake Placid" *The Wall Street Journal - Europe* 1999 WL-WSJE 5509686 UK9A (11 March 1999) (reporting on the first Winter Goodwill Games planned for 2000).

53 *Ibid.*

54 *Ibid.*

effective than the IOC has been in combating drug use. An Olympic organiser with a corporate governance structure will have less inertia in its decision making process than the IOC currently does. A corporate organiser, especially the developer of a new 'Olympic' product, by having control over the competition centralised in a single board of directors, could implement more expeditiously anti-doping measures than the IOC, with its unwieldy governance structure, has to date.<sup>55</sup>

## V. CONCLUSION

The Olympic brand is one of the most valuable pieces of intellectual property in the world. The IOC has dramatically increased the financial resources of the Olympic Movement by selling Olympic products to corporate sponsors, suppliers and television networks. Despite its benefits, commercialisation of the Games has also spawned serious problems, in particular the recent bribery and continuing doping scandals. Unfortunately, the IOC, hindered by its inefficient governance structure, has failed to respond adequately to these scandals. If the IOC fails to implement meaningful reforms to restore integrity and credibility to the Olympic brand, then corporate backers may turn to market-based solutions to protect their investments. Though they are not without their problems, these solutions do offer notable advantages over current IOC practices. Without swift, effective action by the IOC, the real corporate Olympic Games may soon begin.

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<sup>55</sup> See A Copetas, note 16 *supra* (noting that the IOC's response to the doping scandal has been slowed by the divergent views in the organisation over the issue).

## **SOONER, LATER, NEVER: THE OLYMPIC GAMES AND THE CRIMINAL JUSTICE PROCESS**

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### **I. INTRODUCTION**

Virtually everybody in New South Wales will be affected in some way by the Olympic Games next year - and not all for the better. Some, notably government agencies not involved in Games projects, are feeling the pinch already.

When it was first suggested publicly that there may be an impact on our courts, the government (per the Attorney General) immediately and vigorously denied that there would be any changes to the courts; specifically, that any courts would close down during the Games. Calmer thoughts prevailed, however, and a committee was set up to consider the issue.

All courts will be affected, of course. Civil proceedings will merely be postponed. Is there reason to be more concerned about the criminal justice process?

There is no evidence that the Olympic Spirit, battered and bruised as it is (or even at the peak of its luminescence) has the power to banish crime. Indeed, some forms of crime seem to accompany it in its biennial peregrinations around the globe. The recent experience of Atlanta shows us that fraud of various kinds, especially, and sexual and other assaults and thefts proliferate in the shadow of the Games. On the civil side, contracts often require crucial intervention for their enforcement. Ordinary offending and civil disputation do not take a holiday, either.

### **II. PROBLEMS**

People. The Olympic and Paralympic Games together will be the biggest public event Australia has ever held. It has been estimated that they will bring an additional 750 000 people to the streets of Sydney at peak times. In a city of

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about 4 million this will place extraordinary pressure on our transportation systems - from footpaths (thoughtfully being widened in the CBD) to roads, buses and trains. Travelling in and about the CBD and the Homebush/Parramatta area, particularly, will be slow and difficult. Priority will be given to Olympics travel, so the private and public businesses in those areas particularly, and between those areas, will be difficult to access.

The people involved, residents and visitors alike, will have the Olympics on their minds. The last thing they will want to do is to spend those days in a courtroom, even (in many cases) if their own interests are being litigated. Magistrates, judges, jurors, witnesses, legal practitioners, court officers and all the others ordinarily involved in court proceedings will also have other things on their minds - even if it is just plotting the journey home.

Foreign, interstate and country residents in large numbers will come here to see the Games. Some may become involved in legal proceedings here, as parties, witnesses or their associates. Most would no doubt prefer not to have to go to court during the Games or to prolong their stays or to return to Sydney later. On the other hand, some parties (notably defendants in criminal cases) may prefer to get the proceedings over with as quickly as possible. Not all wishes are going to be able to be satisfied.

Police vehicles will be fully deployed on Games related functions. The Corrective Services Department will not want to add to traffic congestion by having to transport prisoners to and from court.

Police officers will be specially deployed for many weeks before the Games and during them. Around 30 per cent of each Local Area Command across the State will be diverted to metropolitan Olympics duties for periods from early August to the end of October. Three thousand metropolitan officers, 1500 from country NSW and 300 from interstate, will be committed to security duty over a total period of 122 days (500 police will be staffing the Olympic Village). They will not have been able to take leave with their usual frequency. There will be much leave owing after the Games. Accordingly, for some time before, during and after the Games there will be very few, if any, police available to attend courts anywhere in the State as witnesses or to work with them in other capacities.

### III. SOLUTIONS

While plans are still evolving in some areas, a few decisions have been made.

The Olympic Games will run from 15 September to 1 October 2000. The Paralympic Games will run from 18 October to 29 October. School and TAFE holidays are scheduled from 11 September to 2 October.

The Local Court has produced a detailed draft model of operations which in the Sydney metropolitan area provides for two Provincial Local Courts (Central and Parramatta - two or three courts at each venue) to operate seven days per week for extended hours (8.00am to 7.00pm), dealing principally with offenders who have been refused police bail or whose pleas of guilty can be disposed

immediately. Eight other metropolitan courts will operate in accessible locations during normal hours. Priority is expected to be given to criminal matters and to defendants in custody. Defended matters will be adjourned to dates after the Games.

Specialist Local Court operations (juvenile bail courts, urgent AVOs and search warrant applications, Family Law injunctions, Coronial services) will be available throughout the Games period. Other court registries will be open, but there will be not court sittings at those locations.

In the country, the Local Courts will concentrate on civil cases and cases in which the police are available.

The District Court has decided to take its variable mid-year (June/July) vacation from 4 to 29 September 2000. It is expected that the limited vacation sittings of past years will not be scheduled, although a final decision is yet to be made. Normal sittings will be held in June/July.

The Supreme Court has decided to fix a judicial vacation for the three weeks commencing 11 September 2000. Judges who wish to sit for that period may fix civil matters by agreement with the parties. The Court of Appeal may do likewise. Some severity appeals may also be heard by the Court of Criminal Appeal. Duty Judges and a Bails Judge will be available as in court vacations. Urgent applications may be made for bail and warrants (listening devices, telephone intercepts) and other orders.

The Compensation Court has decided to fix its variable vacation for the three weeks commencing on 11 September 2000.

The Administrative Decisions Tribunal will sit only for urgent matters during the period 14 September 2000 to 2 October 2000. The Drug Court at Parramatta will continue to sit, but no new participants will be admitted to its program during the Olympic period.

Consideration is still being given to the operations of the Land and Environment Court, Industrial Relations Commission, Residential Tenancies Tribunal and the Consumer Claims Tribunal.

#### IV. REMAINING PROBLEMS

The focus on the Olympic Games provides an ideal opportunity to consider a number of areas of law reform. Some work is being done on these matters within the Attorney General's Department.

It would greatly facilitate the conduct of court proceedings involving residents of foreign countries if their evidence (if they are witness) could be taken on videotape before they leave Australia or by videolink once they have returned home. Legislation permitting such a course was passed for the Atlanta Games, with a sunset clause provided. There are good arguments in favour of the omission of such a clause in Australian legislation. Foreign witnesses cannot be forcibly returned to Australia to testify. There is a precedent for the pre-trial recording of evidence in the arrangements existing in Western Australia in respect of cases involving child witnesses. We already have some provisions for

the taking of evidence interstate and internationally by videolink in civil and criminal cases (for example s 47, *Federal Court of Australia Act 1976* and *Evidence (Audio Visual and Audio Linking) Act 1997* (Vic)).

Foreign defendants may be held in custody or released on bail with conditions preventing their leaving the country. In reality, if they leave Australia before a hearing they will not be brought back - those who commit offences sufficiently serious to warrant later extradition (if necessary) will presumably be held in custody. Consideration is being given to diversionary schemes for adults to enable prompt alternative disposition of some cases.

For homegrown defendants and witnesses there will be delays in having matters finalised. Some defendants may be kept in custody on remand for longer periods than usual. That would seem to be an inevitable price for the unavoidable temporary disruption to the administration of the courts.

If the authorities are serious about reducing the impact of the Games on the court systems, consideration should also be given to extending the availability of legal aid to those who will appear in the courts during the altered arrangements, at least for the limited purpose of giving advice and appearing at mentions.

Forensic science services (for example drug testing) should also be made available more rapidly.

For all the adjustments able to be made, however, there must remain a lingering doubt that the criminal justice process, particularly, will be able to operate throughout 2000 with even its present level of efficiency. Some deals will be done to dispose of matters sooner than would otherwise be the case, some cases will be heard later - and in some cases justice will never be done.

Whatever measures are put in place, the backlog of cases to be heard in NSW in both criminal and civil jurisdiction will have blown out again by the date of the true beginning of the third millenium.