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Myth and reality: what's really at stake with the America's Cup

In a recent interview Ernesto Bertarelli made several claims that we believe need correction. The following summary addresses the key points raised and summarizes the relevant factual background to them.

Myth 1: The only real problem with the original protocol was that Alinghi should have done a better PR job and taken more time to present its vision for the future. Apart from that it was a fundamentally good document.

Reality: The protocol was unacceptable for the following reasons:

- Defender able to change the rules at any time
- Defender able to exclude or disqualify any challenger at the discretion of its management company, ACM
- Defender elected the race officials and the arbitration panel
- Defender allowed to race in the challenger series. As they are already guaranteed a place in the America's Cup they can therefore eliminate a team or influence the outcome of the series at no risk to themselves.
- Defender deciding a new design rule that it had a potential head start in developing
- Defender eliminated the Common Declaration that requires both sides to declare their race boat at the same time. The challenger was required to use the boat they qualified in, but Alinghi remained free to select its race boat just before the start of the match. This was a huge advantage as the new design rule created boats whose performance varied considerably with wind conditions: in light wind a boat designed for nine knots would beat one designed for 13 knots by five meters per minute. Unlike the challenger, the defender could select its preferred boat for the forecast at the time of the race.
- Defender set the challengers' practice race schedule – Alinghi would decide when challengers could practice and who they were allowed practice against. (see Myth 3)

For these reasons, seven syndicates (Luna Rossa, Mascalzone Latino, Areva Challenge, United Internet Team Germany, Emirates Team New Zealand, BMW

ORACLE Racing, Victory Challenge) all wrote calling it the worst protocol in the history of the event.

Mascalzone Latino and Emirates Team New Zealand have continued to publicly strongly oppose the protocol. ETNZ is suing Alinghi for exercising anti-competitive control over the event.

Myth 2: It is agreed that the protocol did have some problems but that it was only intended as a first draft and Alinghi fixed all serious concerns.

Reality: It is fair to note that the revised protocol removed some of the defender's earlier rights to remove Arbitration Panel members. But otherwise it retains a whole new level of control over the event. Under the "new" protocol the following conditions still apply:

- The defender can change the protocol back at any time it wishes to the previous document
- Challengers gain no input on the appointment of neutral officials
- The defender and ACM are pointedly excluded from any binding obligation to act in a manner that complies with fair dealing, good sportsmanship or fair play
- The defender can still disqualify any competitor who disputes the protocol.

Myth 3: Each team would have only one boat, and the defender setting the sailing schedule would make the event fairer and more affordable.

Reality: The rules allowed each team to build two boats and doing so was part of Alinghi's development strategy from the outset.

Additionally, Alinghi gained the new power to organize the challengers' practice schedule. This could be done to suit its training preferences and needs at the expense of rivals. No other sport permits a defending champion to do this. The schedule should be set by an independent body.

Myth 4: While Alinghi attempted to negotiate a reasonable way forward "the Americans wouldn't even come to the meetings."

Reality: There were in fact close ongoing negotiations involving all parties. As a result of these discussions, on 15 November 2007 Emirates Team New Zealand, Team Origin, and Team Shosholoza joined with GGYC in formally putting a compromise proposal to the defender. Alinghi rejected this. The defender was offered the choice of ten mediators. But it also rejected these.

Myth 5: Alinghi attempted to negotiate a genuine multihull race but GGYC refused to enter into these negotiations in order to maximize an unfair advantage it had in build time.

Reality: GGYC requested meetings with Alinghi to negotiate a mutual consent regatta involving all teams. The defender declined to enter into these discussions. It also insisted as a prerequisite to negotiating a Deed of Gift race that it not only have the right to name the venue but also the challenger's right to name the date. The build time requirements were clear to both teams from the outset. Alinghi's later claims to have been "surprised" by the timing were inconsistent with Ernesto Bertarelli's earlier statements in late 2007 that he was already preparing for a multihull race in 2008.

Myth 6: Alinghi continued to offer new changes to the protocol but GGYC always demanded more.

Reality: In support of the above compromise proposal, on 15 November 2007, GGYC in fact formally committed to putting a letter to discharge its court case in the hands of a third party for action when Alinghi settled (thus ensuring any agreement was binding and would not be subject to any further negotiation.)

Myth 7: There is no reason to re-open the protocol

Reality: This dogged refusal to re-examine the protocol suggests Alinghi wants to retain the very serious imbalances in its favor as set out in Myth 2 for obvious reasons.

Myth 8: Alinghi's power to refuse any entry is not a real problem

Reality: This raises the question as to why they insist on retaining it. In fact this right confers a huge power on the defender. It is hard to think of any sport where a defender gets to pick and choose between who can challenge it.

Myth 9: Concerns about CNEV were only technical, so it has been perfectly reasonable for Alinghi to also respond by challenging technical details

Reality: CNEV was not, nor ever has been a genuine yacht club. CNEV has itself essentially admitted this fact. And while the rules may have been bent in the past for new entrants this has never been done for a Challenger of Record, let alone one acting in collusion with the defender.

No one has ever seriously disputed the proposition that in return for securing the event in Spain CNEV agreed to whatever conditions the defender wanted. The generous terms it was prepared to give the defender as part of this deal are reflected in the protocol. (See Myth 1)

Myth 10: While is it unusual for Alinghi to be "judge organization and participant at the same time" this is acceptable as part of implementing a better vision for the future.

Reality: It is revealing that Alinghi do not dispute this description of the protocol. They merely argue that they can be trusted with such a disproportionate level of

power. The fact is no major credible sporting organization has ever agreed to such an imbalanced proposition.

Myth 11: The issues at stake are not really worth all this delay and upset and we should all move on to an event along the lines that Alinghi is suggesting.

Reality: Having a regatta that is called the “America’s Cup” does not mean it really is the America’s Cup. Take away the prospect of genuine competition between equal teams and you end the event. Protecting a genuine America’s Cup is definitely worth fighting for.

Myth 12: GGYC just don’t want to settle this.

Reality: GGYC’s offer to return to the successful rules of the last event is still on the table. Alinghi could agree to this and we could all go sailing tomorrow. We believe most syndicates would welcome this as a sensible solution, but Alinghi have never explained just why it remains so deeply unattractive to them.

Ends