Hunt & Hunt
LAWYERS

12 May 1995

Our Ref: GLH
Matter No:
Your Ref:

BY FAX: 277 8797

Mr Warwick Smith
Telecommunications Industry Ombudsman
321 Exhibition Street
Melbourne VIC 3000

Dear Warwick

FAST-TRACK ARBITRATION PROCEDURE

You have asked me for my comments on the arbitration process, now that I have delivered my first ruling.

Upon my return from leave in 2 weeks, I would be happy to discuss this matter with you in detail.

In simple terms, my observations are as follows:

- as far as I could observe, both Telecom and Smith co-operated in the Smith arbitration;
- the time frames set in the original Arbitration Agreement were, with the benefit of hindsight, optimistic;
- in particular, we did not allow sufficient time in the Arbitration Agreement for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of technical reports;
- there have been allegations by Smith and other claimants that Telecom deliberately slowed the process by delaying the production of documents under FOI - certainly the FOI claims have caused delays but I am unable to comment as to whether there has been a deliberate delaying tactic;
- request for further particulars are, I think, unavoidable - although the emphasis in the arbitration process is upon a quick resolution of the dispute, a party (in this case Telecom) faced with a significant claim

557

against it is entitled to be presented with particularised complaints, not generalised and unsubstantiated allegations;

- the preparation of technical reports by the claimants is always going to be a problem - in simple terms, Telecom has all the information and the claimant has to pay a technical expert to examine and interpret it.

In summary, it is my view that if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement.

There are some other procedural difficulties which revealed themselves during the Smith arbitration and which I would like to discuss with you when I return. These centre principally upon the fact that claimants, who are often seeking large sums, are generally unable to specify the legal basis for their claim (eg negligence, breach of contract, Trade Practices Act), yet it is necessary for me to base my rulings upon a breach of legal duty. This means that I have to in part rely upon Telecom to identify the legal basis of the claim made against it (which is somewhat perverse and which was in any event handled by Telecom is a less than satisfactory manner), and/or I have to search myself for a legal basis without assistance from the parties (which inevitably contributes to the time and expense associated with the proceedings).

I wonder whether some pro forma document could be developed which could point claimants in the right direction.

I apologise for the brevity of these comments. I am happy to provide you with a more detailed written report when I return from leave in 2 weeks. Ultimately, I think we should have a conference involving you, me and Peter Bartlett to consider these and related issues.

Yours sincerely

GORDON HUGHES

55A

MEDIA Release

Telecommunications Industry Ombudsman

FRIDAY 12TH MAY, 1995

MEDIA RELEASE

1ST TELECOM COT CASE ARBITRATION FINALISED

The Telecommunications Industry Ombudsman, Administrator of the Fast-Track Arbitration Procedure, today released to the parties the Arbitrator's Award in the first COT Case arbitration.

The arbitration is a **confidential** process, with the arbitration agreement having been negotiated by the parties and the Administrator with the assistance of Special Legal Counsel in mid 1994. This arbitration process flowed from a settlement proposal brokered by AUSTEL.

The Administrator noted that the arbitration process, under the direction of the independent Arbitrator Dr Gordon Hughes, appointed with the agreement of the parties, had been run in accordance with principles of natural justice.

"While the issue of the customer's access to documentation via FOI had caused delays in the process, the arbitration procedure proved to be a fair and successful means of finally resolving this long-standing dispute" the Administrator said.

Whilst not identifying the claimant or the quantum of the Award, the Administrator noted that the findings of the Resource Unit, the specialist technical advisers to the Arbitrator, indicated that the claimant had suffered considerable technical difficulties during the period in question. It was found that faults did exist which caused the service to fall below a reasonable level, and that apart from some customer premises equipment (which includes telephone cabling, phones, answering machines or facsimiles connected within the customer premises), most of the problems were in the Inter Exchange Network.

For further information please contact: MR WARWICK SMITH
PH: (03) 9277 8777

55 B

F/UR

PRIVATE &

CONFIDENTIAL

Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

FACSIMILE COVER SHEET

TO: The Hon. Lionel Bowen AC (Council Chairman)
Mr. Ross Ramsay (Board Chairman) - Manager Government Liaison
Optus Communications Pty. Ltd.
Mr. Ted Benjamin - National Manager, Customer Response Unit
Telecom Australia
Ms. Holly Raiche - Communications Law Centre
Mr. Ewan Brown - Executive Director
SETEL
Ms. Elizabeth Morley - ACA
Mr. John Rohan - Managing Director
Vodafone Australasia Pty. Ltd.
Mr. Andrew Bailey - Director, Corporate & Regulatory Affairs
Optus Communications Pty. Ltd.
Ms. Gillian Welshe - Director of Corporate Affairs
Telecom Australia
Mr. Rob Simpson - General Counsel
Optus Communications Pty. Limited
Mr. John Fries - Financial Director
Vodafone Pty. Ltd.
Mr. Graeme Ward - Director of Corporate Planning
Telstra

FROM: Warwick Smith

DATE: May 12, 1995

NO. OF PAGES Including Coversheet (4)

Message:

Memo and attach. follow

Graham

Yellow Pages

Term of Ombudsman

Provisions re his contract.

Articles of Association re Appointment.

55C

TIO LTD ACN 057 634 787
National Headquarters
321 Exhibition Street

Box 18098
Collins Street East
Melbourne 3000

Telephone (03) 277 8777
Facsimile (03) 277 8797
Mobile 018 591 208