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28 June 1995

Telecommunications
Industry
Ombudsman

Strictly Confidential

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road
RMB 4408
CAPE BRIDGEWATER VIC 3306

John Pinnock
Ombudsman

By facsimile: (055) 267 230

Dear Mr Smith

I refer to your recent correspondence.

So far as your request concerning the Bell Canada raw data is concerned, our file shows that on 15 August 1994 you asked the Arbitrator to direct Telecom to produce this information. On 16 August 1994 Dr Hughes asked Telecom for its reaction to your request so that he could consider appropriate directions on the matter. There is no indication on our file that Telecom responded. Nonetheless, on 25 August 1994 you provided statutory declarations to the Arbitrator to the effect that your claim documentation was complete.

Our file then shows that by letter dated 28 December 1994 you again formally requested the Arbitrator to require Telecom to provide the raw data associated with the Bell Canada testing. The Arbitrator wrote to Telecom that day enclosing a copy of your letter and requesting a submission in relation to your request. Telecom's submission, dated 13 January 1995, insofar as it related to your request for the raw data stated:

" Telecom located some of Bell Canada International's working documents which were thought to be in the possession of Bell Canada International but which were later found to have been left with Telecom staff in Australia.

Those working documents, insofar as they related to Mr Smith's business and fell within the scope of his FOI request of December 1993 were provided to Mr Smith under cover of my letter dated 21 October 1994. Mr Smith has previously been informed (by letter dated 15 December 1994 from Telecom to Mr Smith) that, as far as I am aware, all Bell Canada International's working documents (including raw data) in Telecom's possession have already been provided to him."

"... providing independent, just, informal, speedy resolution of complaints."

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Dr Hughes provided you with a copy of this submission on 23 January 1995, noting that Telecom did not consider it had any further information of relevance in its possession. Dr Hughes then invited you, within twenty-four hours, to respond to Telecom's submission. Our file does not indicate that you took the matter any further.

In other correspondence you refer to what you apparently now see as problems in the process of developing the Fast-Track Arbitration Procedure, an agreement which flowed from the Fast Track Settlement Proposal negotiated by AUSTEL and the parties in November 1993.

I understand that during that negotiation process Mr Schorer and Mrs Garms sought their own independent legal advice. Of course you had the opportunity to do likewise.

The Arbitration Procedure that was subsequently agreed to by all the parties set out a fair and realistic framework within which these longstanding disputes could be resolved.

The problems in the provision of documentation under FOI did cause delays in the progress of these arbitrations. However, as you are aware, this office has no jurisdiction over FOI, which is instead within the realm of the Commonwealth Ombudsman.

As you know, Dr Hughes took the view that it would assist neither the parties nor the process itself to insist on the adherence to submission deadlines when FOI applications by the claimants remained outstanding. It was not possible or appropriate for Dr Hughes or this office to play a more active role in the FOI issue.

Your concerns, only recently expressed, with the Arbitration Procedure appear to be based on the grounds that you had no guidance as to how to present your claim to the Arbitrator, in the face of the far greater resources available to Telstra for the preparation of its defence. Of course, in order to maintain the integrity and impartiality of the arbitration procedure, neither this office nor the Arbitrator could provide you with such guidance. Dr Hughes states in his Award that he took into account the fact that you formulated your claim submissions without legal representation. He also notes that he did not believe it would have been reasonable to expect you to present your claim in a manner similar to that which would have been adopted by a legal practitioner.

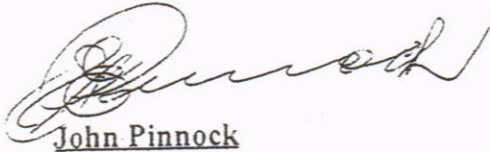
While you may be disappointed with the Arbitrator's findings as to the losses which flowed from the considerable technical difficulties for which Telecom was found liable, this should not detract from your justifiable sense of great achievement with regard to the technical findings.

The Arbitration process has run its course, and a final resolution has been achieved. There is nothing to be gained by revisiting issues which have been dealt with in the arbitration procedure. Neither Dr Hughes nor this office has any further role to play in the matters which gave rise to your dispute with Telecom which has now been resolved.

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However, if you do experience any further problems with your telecommunications services that are unrelated to the matters resolved by the arbitration procedure please do not hesitate to contact us.

Yours sincerely



John Pinnock
Ombudsman