



FERRIER HODGSON CORPORATE ADVISORY

BY COURIER

Our Ref:A1.4

15 November 1995

Mr John Pinnock  
Telecommunications Industry Ombudsman  
TIO Limited  
321 Exhibition St  
MELBOURNE VIC 3000

Dear Sir,

**RE : Telecommunications Industry Ombudsman - Resource Unit  
Fast Track Arbitration - Alan Smith**

We refer to your letter dated 9 November 1995 with the attached facsimile from Mr Alan Smith dated 8 November 1995, and your recent conversations with Ms Susan Hodgkinson of this office concerning the above completed arbitration.

You have asked us to provide clarification of the issue raised by Mr Smith relating to the deletion of references to a potential addendum on possible discrepancies in Smith's Telecom bills in the final Technical Evaluation Report. We have spoken to Lane Telecommunications Pty Ltd ("Lanes"), who acted as Technical Consultants to the Resource Unit in the above Arbitration, and they have provided the following comments in relation to the issue raised by Mr Smith:

*"At a late stage of the Arbitration process, at the time of preparation of the Technical Evaluation Report, there was discussion about billing issues which had been raised by Mr Smith. A draft of the Technical Evaluation Report therefore included reference to the billing matters, which it was thought might require further work beyond the time of issue of the Report.*

*The primary matter concerned Mr Smith's bills for outgoing calls from Cape Bridgewater. Mr Smith had observed that there was a discrepancy between the call durations of STD calls on his bills and the durations shown by Telecom's call recording equipment connected to Mr Smith's line (in the Customer Access Network).*

*Discussions were held with Telecom (Mr Peter Gamble) in Mr Smith's presence during the visit to Cape Bridgewater in April 1995, which provided the following information:*

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD  
A.C.N. 052 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK  
LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000  
TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

LICENSED INVESTMENT ADVISER

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- For outgoing calls on a normal customer exchange line, the caller notes the answer of the called party by cessation of the ring tone and the answering voice. However, there is no corresponding physical (electrical) signal on the caller's line (CAN side of the exchange) for the call recording equipment to register that an answer has occurred. Consequently, timing of the call recording equipment is configured to allow a fixed time to answer (say 30 seconds) from the time the caller lifts the handset, or from the completion of dialling, until it assumes that answer has taken place. Thus the overall measured duration of the call from lifting to replacement of the handset is reduced by this fixed amount to give the (assumed) nominal conversation time.
- Billing on the other hand is based on signals recorded at the caller's exchange, including a physical signal to indicate called party answer. Thus the billing duration is precise.
- At an individual call level, there will therefore be discrepancies between the two sets of call duration records except where the actual and assumed times to answer are the same.
- Lanes considered and accepted this technical explanation from Telecom as plausible, and believe Mr Smith also understood and accepted it. Consequently, as the discussion appeared to have resolved this matter, it was not included in the formal Technical Evaluation Report.

A second matter involved 008 calls. Again, this matter was current at a late stage (April 1995) of the Arbitration process. This matter concerned possible overlap in the records of 008 calls made to Mr Smith, and for which he was billed. However, Lanes and DMR Group Inc concluded that the level of disruption to Mr Smith's overall service was not clear, and that it was unlikely that further work would clarify the matter to the extent that it would have a measurable effect on the Arbitrator's determination. The matter was discussed in Section 2.23 of the Technical Evaluation Report, and an assessment of "Indeterminate" was reached.

As no further progress was likely to be made on these matters, the formal version of the Technical Evaluation Report did not leave the billing issue open."

I trust that the above advice from Lane Telecommunications clarifies the issue raised by Mr Smith regarding the Resource Unit's Technical Evaluation Report.



If you have any further queries please do not hesitate to contact the writer or Ms Susan Hodgkinson on (03) 629 8855.

Yours faithfully,  
**FERRIER HODGSON CORPORATE ADVISORY**

A handwritten signature in cursive script, appearing to read 'John Rundell', written in dark ink.

**JOHN RUNDELL**  
Project Manager  
Associate Director

cc Dr Gordon Hughes, Hunt & Hunt  
Mr Andrew Crouch, Lane Telecommunications Pty Ltd  
Mr Paul Howell, DMR Group Inc

457

four trips which have been paid for by Telecom or the TIO or Austel?---That's only since - in 1993, yes.

I guess there are some questions as to whether these trips were claimed on Telecom - and the more information Mr Smith provides, I guess the better his claim stands up. But we're prepared to let it run as it stands.

THE ARBITRATOR: Mr Smith, if there is any information you can provide me this week, please provide it?---All right.

Beyond that we will just proceed on the basis of the assertions that you have made and if Telecom wishes to respond by saying that those assertions can be sustained then it's a matter for me to make up my mind as to where I think the truth lies?---Okay.

Final page, final question. "Documents provided do not address the documents requested in Telecom's letter dated 30 August 1994. Please provide copies of any missing documentation which should have been enclosed in the document headed with the following table." Can you find that document?---Yes, I know which one it is. Sue, if you can bring them over and I will show you.

Which document do you have there? SM18

The document referred to on p.8 of Telecom's request for further information, in point B 1A is my document AS4, okay?---Right. The deletion of one is incorrect charging by Peter Turner. I believe that the documentation I would receive because of the time within that 4 months I asked for them from Telecom, that's the only reports I have been able to substantiate - I pre-empted. So you can draw that one out because although it's in I didn't get the print-out to marry up. The incorrect charging is once again - I put this

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through and I was pretty stressful when I put it through but it does marry up. For instance, if you look at 1993 this is the smart 10-minute analysis print-out. If you go to here in this B12, what you have really got to do is use your own judgment. You will see 1993, these are my itemised accounts, right. If you cheque my itemised accounts you will see the figuring there - 5 seconds, 7 seconds, 14 seconds, 13 seconds, 10 seconds. All those are seconds, right. Now, what you have got to do is - these are minutes and seconds. Like, 13 minutes you charge \$4.62. Let's just take the 13 minutes, for instance. You go to 1993 and you check the date. That's all you have to do, the exact date, which is 8/6/93. You check the phone number which is the phone number on the chart and you will see 37 seconds. But you go to here and you find it's 47 seconds. Not one of them - not one of them - is correct. I'm being charged as much as 11 seconds 94, so I'm charged 4 seconds. Here it runs for 32,000 seconds - I have been charged 148 seconds. Here is 162 seconds, right, and I'm charged for 37. That's Telecom's way. If you go to the next page and it's all their way. You get 16 seconds which is the charging on the sheet and yet I have been charged for 23; 17 seconds on here and I have been charged for 25. I will find another one here - 43 seconds on the chart and that's the element that all this is based on, that's all your bills are based on, and I'm charged for 53 seconds. It just goes on and on. So that's how you can substantiate it right the way through.

So where does that leave us in relation to the provision of

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any missing documentation?---I thought it was all there. It's just that you have got to marry it up. Does Telecom have any questions in relation to that?

MR BLACK: The one table I had to marry up with 911. What was the second table?---You marry it up with the '93 itemised account. The thing is, the next one is the 008 account. What I have done here, for instance, that is a copy - that's my itemised account from gold phone. You will come up here with - I have been charged for 17 seconds and yet it actually rang for 12 seconds. Here on their charging sheets, the conversation time, you will see 12 seconds. But when you check up on my gold phone I have been charged for 1 minute and 42 seconds and yet it was only a 12-second conversation. We go one down again - this is at all times, the same phone numbers, right, and the same time coming in - you check the CCS data again and it has registered 10 seconds, same time, yet I have been charged 1 minute and 4 seconds. It goes right the way through. I have 7 minutes where I have only been on the phone for 1 minute and I can substantiate - I have only just done that in one book but I probably get 30. I have 7 seconds where I have been charged for 4 minutes. The instance that's on the video which is in here where that Heidi lady, the 1100 operator, rang me. She has verified that she was only on the phone for 10 seconds and I was charged for 4 minutes and 15 seconds. I can substantiate that, not only here, but all the other documentation. I can substantiate it. I have had a fellow look at it. It's all here. Then you go to the 267230 account which is - - -

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THE ARBITRATOR: I don't think we need any further examples.

I accept that. Telecom, any further submissions?

MR BLACK: Just on those points, I accept that they can be  
matched up but each one appears to require special  
knowledge to match it up?---I'm only a layman. I can do  
it and I'm sure your technical people can do it.

I know you can it's just that you have photocopied bits and  
pieces and put them together?---I didn't photostat it.  
That's all your stuff. The only thing I photostated was  
that it's the 11008 and to make it a bit easier I put it  
on that docket. I'm sure your technical people can pick  
that up.

Mr Arbitrator, what we might have to do is to go back directly  
to Mr Smith and work through a couple of examples so  
that we can fully understand it.

THE ARBITRATOR: It might be appropriate to do that or it  
might be appropriate for DMR to - - -

MR BLACK: Perhaps that would be just as good from our  
perspective.

THE ARBITRATOR: That seems to bring us to the end of that  
process. Before we all pack up and go home let's just  
recap where we are. Except for the issue of the status  
or possible status of former partners, it seems to me  
that any further documentation to be provided can be and  
will be provided by 14 October subject to certain third  
parties co-operating with you?---The thing is,  
Dr Hughes, I provide them to you under some sort of  
supervision. I'm not Telecom-bashing but I have so much  
proof - and which has been shown to other parties -  
where the security of Telecom has got a lot to be  
desired and I'm now going to - they know who I ring,

2.22 All services for CBHC were lost for 3 hours due to an exchange data programming error. Such major impact due to an operational error is deemed a less than reasonable level of service.

ASSESSMENT - Service was less than reasonable.

2.23 Continued reports of 008 faults up to the present. As the level of disruption to overall CBHC service is not clear, and fault causes have not been diagnosed, a reasonable expectation is that these faults would remain "open".

ASSESSMENT - Indeterminate.

3. About 200 fault reports were made over December 1992 to October 1994. Specific assessment of these reports other than where covered above, has not been attempted.

## 5 Summary

CBHC telephone services have suffered considerable technical difficulties during the period in question. Telecom, certainly initially fully concentrated on the CAN/CPE elements, and if they were 'intact', faults would be treated as NFF (No Fault Found). As can be seen from the above, faults did exist that affected the CBHC services, causing service to fall below a reasonable level and apart from CPE problems, most of these faults or problems were in the Inter Exchange Network.

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DONALD LAINE FINER REPORT

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5 Summary

CBHC telephone services have suffered considerable technical difficulties during the period in question. Telecom, certainly initially fully concentrated on the CAN/CPE elements, and if they were 'intact', faults would be treated as NPF (No Fault Found). As can be seen from the above, faults did exist that affected the CBHC services, causing service to fall below a reasonable level and apart from CPE problems, most of these faults or problems were in the Inter Exchange Network.

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# Hunt & Hunt LAWYERS

Handwritten initials/signature in the top left corner.

23 January 1996

Our Ref: GLH  
Master No:

Mr J Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE Vic 3000

Partner & Solicitor  
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James M. Light  
Wayne B. Cull  
Mervyn C.J.C. De  
Gore D. Fisher  
Charles Vasson  
William P. O'Sh  
David G. Watts  
Counsel  
Kenneth M. Mc  
Richard J. Kelly  
Andrew Justice  
Associates  
Shane C. Ford  
John S. Molnar  
Malcolm A. Hunt  
Francis Y. Gault  
John D.F. Mann  
Michael S. Carr  
Incorporating  
Francis Adams

Dear Mr Pinnock

## INSTITUTE OF ARBITRATORS - COMPLAINT BY ALAN SMITH

I enclose copy letters dated 18 and 19 January 1996 from the Institute of Arbitrators Australia. I would like to discuss a number of matters which arise from these letters, including:

- (a) the cost of responding to the allegations;
- (b) the implications to the arbitration procedure if I make a full and frank disclosure of the facts to Mr James.

Yours sincerely

  
GORDON HUGHES

Encl.  
cc P Bartlett

melbo  
sydney  
sydney  
brisb.  
canb  
newca  
perth  
adela  
darwin

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John W Rundle  
95 Dandy Street  
BRIGHTON VIC 3186

Private & Confidential

Mr John Pinnock  
Ombudsman  
Telecommunications Industry Ombudsman  
315 Exhibition Street  
Melbourne VIC 3000

COPY

13 February 1996

Dear John

Fast Track Arbitration Procedure - Alan Smith

Other matters: D M Ryan letter of 22 December 1995

I acknowledge receipt of your letter of 23 January 1996, enclosing a copy of a letter dated 22 December 1995, which you received from Mr Derek Ryan. I have reviewed his letter and refute that the statement that FHCA had excluded a large amount of information from their final report "at the request of the arbitrator".

I did advise Mr Ryan that the final report did not cover all material and working papers.

The Ferrier Hodgson report was prepared for the arbitrator and was provided as part of the Fast Track Arbitration to Mr Ryan and Mr Smith for comment and they did so in writing to the arbitrator.

I am surprised that it is only now some 8 months since my telephone calls with Mr Ryan that this matter has been raised with you.

Contact with Mr Derek Ryan

For your information, I now outline the details of my limited discussions with Mr Ryan.

1. On 8 May 1995, I received a telephone call from Mr Ryan and at the time Ms Susan Hodgkinson was in my office. The discussion was cautious and I was unwilling to meet with Mr Ryan at that time. I suggested that I would be happy to meet with him after the appeal period for the Smith arbitration had passed, but only to discuss the information required and preferred approach in relation to other claims. I felt this may be useful as Mr Ryan had advised me that he acted for a number of other COT

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claimants and also I knew Mr Ryan professionally from his time as a partner of Touche Ross.

2. Further, on Thursday, 18 May (not 17 May 1995, as dated by Mr Ryan) I received two pager messages from Mr Ryan. I then returned his call early afternoon by mobile phone. I do not have a file note record of this call as I was in a car at Tyab on the Mornington Peninsular. I do not believe that I made the statement he has attributed to me. From my recollection of the call, Mr Ryan was attempting to make me commit to statements, which I was unwilling to comment on. Unfortunately, I can provide no further details of this call.

#### Other Matters

Further, I wish to advise that I am most concerned by the fact that Mr Smith engaged a private investigator, who visited me at my home on 27 December 1995, with the intention of discussing matters associated with the Ferrier Hodgson report. I find such an intrusion into my privacy and home (and also the tape recording of our discussion without advice) highly unusual and inappropriate.

As you may be aware, I have contacted the Brighton CIB in relation to:

1. damage to property at my home
2. the actions of Mr Smith impersonating me and pursuing me via the use of a private investigator.

You should be aware that the Brighton CIB intend to interview Mr Smith in relation to criminal damage to my property, but regard the matter of his impersonation and tape recording and telephoning me at home as civil matters.

Could you please provide a copy of relevant correspondence sent to Mr Smith advising him not to make contact with members of the resource unit to assist the police in their investigations.

You should also be aware that as a result of the actions by Mr Smith in contacting me at home, I have reluctantly found it necessary to install a private and silent telephone line at home. Although, Telstra offered to provide this without charge, I would not accept that and will be paying the cost on my account.

May I take this opportunity of wishing you and your staff all the best for 1996, and I trust that you will shortly receive resolution of these outstanding fast track arbitration's.

Please do not hesitate to contact me directly at KPMG should you wish to discuss any matters associated with these arbitration's. My direct line is 9288 5457.

Yours faithfully



John W Rundell

cc

Ms Susan Hodgkinson  
Project Manager  
Resource Unit  
Ferrier Hodgson Corporate Advisory

# DMR CORPORATE

DMR

D M R Corporate Pty Ltd  
40 Market Street  
Melbourne  
Victoria 3000  
Australia

A.C.N. 063 564 045  
Facsimile (03) 9629 4588  
Telephone (03) 9629 4277  
Mobile 018 635 107

6 December 1995

Senator R Alston  
Level 2, Suite 3  
424 St Kilda Road  
Melbourne  
Vic

Dear Senator Alston,

## Re: Casualties of Telecom ("COT") - A Smith

Over the last 2 years I have acted as an independent accountant for Alan Smith and I prepared the independent assessment of his losses and damages which formed part of his submission to the arbitrator, Dr G Hughes.

In response to accounting documents and evidence submitted to the arbitrator, he appointed Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd ("FHCA") to support him in assessing the losses and damages.

The FHCA report was inaccurate and incomplete. I have since been advised by a staff member of FHCA that a large amount of information was excluded from their final report at the request of the arbitrator. This has left the report in an incomplete state and it is impossible for anyone to re-calculate or understand how the FHCA loss figures were determined. This effectively meant that it was impossible to challenge the assumptions, calculations and the time periods used in the FHCA report.

After receiving a copy of the FHCA report I responded with a letter dated 9 May 1995 and a copy of that letter is attached for your information. I have never been provided with a response or any further details in respect of this letter.

I consider that a grave miscarriage of justice has occurred in relation to the A Smith arbitration and that without a full and open inquiry it may be impossible to ever determine how the arbitrators award was calculated.

Yours sincerely

Derek Ryan

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# DMR CORPORATE

DMR

D M R Corporate Pty Ltd  
40 Market Street  
Melbourne  
Victoria 3000  
Australia

A.C.N. 053 564 045  
Facsimile (03) 9629 4898  
Telephone (03) 9629 4277  
Mobile 018 535 107

22 December 1995

Mr J Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
Melbourne  
VIC 3000

Dear Mr Pinnock,

Re: Alan Smith

Further to your letter dated 20 December 1995 I respond to your request as follows:

1. The Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd ("FHCA") report was dated 3 May 1995 and I received a copy of the report on 5 May. After discussions with Alan Smith it was decided that I should reply to the report as soon as possible. I worked all day Saturday and Sunday with Alan Smith trying to interpret the FHCA report. After this work I considered that the report was incomplete as the calculations of the FHCA loss figures were not included in their report.
2. On 8 May 1995 I telephoned FHCA and spoke to John Rundell and requested a meeting to discuss how the FHCA loss figures were determined. He was reluctant to talk to me at that time however we set a tentative date of 17 May 1995 for us to discuss this matter again. I have a note in my diary for the 17 May 1995 - John Rundle - Ferriers -604 5188.

My response to the FHCA report was lodged on 9 May 1995.

On 17 May I telephoned John Rundell and he stated that he was unable to discuss anything with me until the appeal period had expired. During that telephone conversation I told him that I was unable to recalculate the FHCA figures and that I felt that the report was deficient in that regard. He then stated that he understood my problems and that FHCA had excluded a large amount of information from their final report at the request of the arbitrator.

To the best of my recollection the above facts are exactly as they occurred.

Yours faithfully

Derek Ryan

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# Hunt & Hunt

LAWYERS

15 February 1996

Our Ref: GLH  
Matter No: 5122795

Mr John Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE Vic 3000

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Peter J. Ewin  
Peter D. Francis  
Jenni M. Lightowers  
Wayne B. Cahill  
Neville G.H. Debney  
Grant D. Seton  
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John S. Molnar  
Melissa A. Henderson  
Francis V. Galichio  
John D.F. Morris  
Michael S. Carrick  
Incorporating  
Francis Abourbik Ligh

Dear Mr Pinnock

**ALAN SMITH**

I enclose a draft letter which I propose forwarding to the Institute of Arbitrators Australia in response to the complaint by Mr Smith.

I would appreciate your confirmation that there is nothing in the proposed letter which would embarrass your office or jeopardise the current arbitrations.

|| You may consider it appropriate for you to provide an independent letter of support. This is of course a matter for your discretion.

I await your response.

Yours sincerely

*Gordon Hughes*  
**GORDON HUGHES**

Encl.

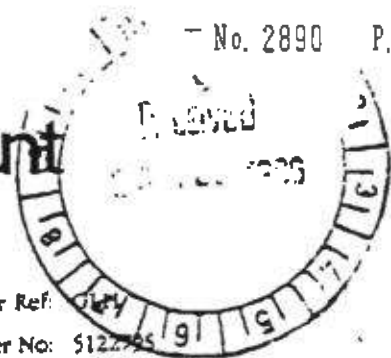
*Enclosure with Lia  
To speak to Gordon re 3 arbitrations X  
letter in support to be prepared.  
2/16*

melbourn  
sydney  
sydney  
brisbane  
canberra  
newcastle  
perth  
adelaide  
darwin

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# Hunt & Hunt LAWYERS



Our Ref: 95/100  
Matter No: 5122/95

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**Incorporating:**  
 Francis Abourizab Pty.

16 February 1996

Mr L E James  
 President  
 Institute of Arbitrators Australia  
 Level 1, 22 William Street  
 MELBOURNE Vic 3000



Dear Mr James

## COMPLAINT - ALAN SMITH

I acknowledge receipt of your letter dated 18 January 1996.

It is difficult for me to comment on a number of the matters raised by Mr Smith because of the confidentiality which surrounds not only his own claim but also numerous related claims which are still current.

### Smith's Letter of 15 January 1996

There is no evidence of which I am aware to suggest that the arbitration rules were not followed or that either party was denied natural justice.

Mr Smith's recollection and interpretation of events surrounding the commencement of the arbitration in April 1994 are incorrect. He makes reference to the involvement of Peter Bartlett of Messrs Minter Ellison. I am enclosing a letter from Mr Bartlett to the Telecommunications Industry Ombudsman (the administrator of the arbitration procedure) dated 17 January 1996 which is self explanatory. I do not believe it is necessary for me to add more.

Mr Smith's assertion that the technical report of an expert witness has not been signed is incorrect. A copy of the signed cover letter to the document, dated 30 April 1995, is attached.

The assertion that another expert witness attached to the Resource Unit, John Rundell, deleted material from his report at my request is incorrect and misconceived. The allegation was first raised in a letter from Mr Smith's accountant, Derek Ryan, to the Telecommunications Industry Ombudsman, dated 22 December 1995. In this regard, I enclose copy of a letter from Mr Rundell (now of KPMG) to the Telecommunications Industry Ombudsman dated 13 February 1996 which addresses the allegation. Again I do not believe it is necessary for me to add more.

- Melbourne
- Sydney
- Sydney
- Brisbane
- Canberra
- Newcastle
- Perth
- Adelaide
- Darwin

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**Document - "One Example of Incorrect Statements"**

Mr Smith forwarded you a document headed "One Example of Incorrect Statements Made by the Technical Unit Attached to the FTAP". I am not convinced that this document contains any allegations to which I need respond. I note, nevertheless, some suggestion that evidence was ignored at an oral hearing. If, in paragraph (b), Mr Smith is referring to the oral hearing which took place on 11 October 1994, the transcript reveals no reference to "four exercise books" as he claims. Reference is made to "diaries" which contained evidence of complaints and these were in fact placed into evidence.

**D M Ryan Letters**

I have noted the two letters from D M Ryan Corporate dated 6 December and 22 December 1995. I have already commented on one of the letters above. Apart from being inaccurate, they reveal a misunderstanding by Mr Ryan of the arbitration agreement. He does not appreciate the unique role given to the "Resource Unit" comprising Ferrier Hodgson Corporate Advisory and DMR Group Inc (Canada). Perhaps Mr Ryan was not adequately briefed by Mr Smith in this regard.

**Letter to Senator Evans**

Mr Smith provided you with a copy of a letter to Senator Gareth Evans dated 4 January 1996. I presume you require me to comment on those aspects of the letter which reflect upon my conduct as an arbitrator.

The letter to Senator Evans is littered with inaccuracies. Some examples are:

- contrary to Mr Smith's assertion on page 3, his 24,000 (sic) documents were all viewed by me, Ferrier Hodgson Corporate Advisory, DMR Group Inc. (Canada) and Lane Telecommunications Pty Ltd in accordance with the arbitration procedure. Mr Smith was provided with a list of documents in a technical report from the Resource Unit dated 30 April 1995. This list summarised the major documents culled from the 24,000 documents and upon which the findings of the technical experts were based;
- Mr Smith's assertion on page 4 that a technical expert, Mr Read, refused to discuss technical information at his premises on 6 April 1995 is correct - in this regard, Mr Read was acting in accordance with his interpretation of my direction which prohibited him from speaking to one party in the absence of the other party at any site visit;
- if, on page 5, Mr Smith is disputing that I worked in conjunction with the Resource Unit throughout the weekend of 29 to 30 April 1995, he is incorrect;

the remainder of the letter deals with matters which have either been addressed above or which are generalisations of little or no relevance to my conduct as an arbitrator.

### Smith's Letter of 18 January 1996

I have noted Mr Smith's letter to you dated 18 January 1996. This does not raise any matter which is not dealt with above.

### Comment

I sympathise in many respects with Mr Smith. This level of sympathy was reflected in my award and the reasons which accompanied the award. In essence, Mr Smith suffered financially and emotionally as a result of investing in a business which was in some respects, and to some extent, poorly serviced by Telstra.

Mr Smith was previously awarded a sum of money by Telstra in an out-of-court settlement. Telstra agreed to reopen his claim and submit his grievances to a dispute resolution process which ultimately took the form of an arbitration. I was asked by the Telecommunications Industry Ombudsman if I would act as arbitrator, and both parties subsequently acquiesced. As a result of the arbitration, Mr Smith was awarded further compensation.

I awarded Mr Smith a sum substantially less than the amount he was claiming and substantially less than the amount which Derek Ryan apparently led him to believe he would recover. It was, nevertheless, a sum in excess of the damages recommended by Ferrier Hodgson Corporate Advisory in its capacity as an independent financial expert witness.

It seems Mr Smith can only rationalise the result of the arbitration by retrospectively finding fault with the agreed procedure, by alleging a "conspiracy" between me and Telstra and by asserting that I have overlooked relevant information contained in the 24,000 documents to which he refers. Put simply, he is wrong.

I consent to you disclosing this letter to Mr Smith, save that I do not consent to the disclosure of the attached correspondence from third parties.

Yours sincerely



GORDON HUGHES

Encl.

cc J Pinnock (Telecommunications Industry Ombudsman)

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**COPY**

**MEMORANDUM**

**TO :** Dr Gordon Hughes  
**FROM :** Susan Hodgkinson  
**DATE :** 2 August 1996  
**SUBJECT :** A Smith Letter dated 25 June 1996

I refer to your letter dated 31 July 1996 (received 1 August 1996) concerning Mr Smith's letter dated 25 June 1996. I have not received a copy of Mr Smith's letter however I have reviewed Matt Deeble's summary and provide the following information concerning Mr Smith's allegations:

Telstra letter referred to by A Smith	Letter from G Hughes with Telstra letter at attachment	Letter from G Hughes (with Telstra letter as attachment) sent to Mr Alan Smith and copied to:			
		Resource Unit	Telstra	TIO	Special Counsel
16 December and 8 December 1994	Letter addressed to J Rundell only				
27 April 1995	Letter addressed to J Rundell only				
12 April 1995	✓	✓	✓	✓	✓
Two letters dated 9 May 1995	✓	✓	✓	✓	✓
16 September 1994	Unable to locate a letter				
23 September 1994	Letter only, no Telstra attachment	Letter only	Letter only	Letter only	Letter only
3 October 1994	Letter only, no Telstra attachment	Letter only	Letter only	Letter only	Letter only
6 December 1994	✓	✓	✓	✓	✓
16 December 1994	Refer to comments above				
22 December 1994	✓	✓	✓	✓	✓
6 January 1995	✓	✓	✓	✓	✓
12 April 1995	Refer to comments above	✓	✓	✓	✓
23 December 1995	As the Arbitration was completed I did not research this further.				

451A

NB1 At the time of the letter from Austel, Mr Smith's telephone problems were being addressed in the Arbitration. Due to a number of factors including confidentially, it was felt not appropriate to answer Austel's comments in detail, in particular the issue was under consideration in the Arbitration. As agreed the Resource Unit did not respond to the Austel letter.

NB2 The covering letter refers to a number of letters from Telstra dated, 12 April 1995, I have assumed the relevant one concerning the TF200 was also enclosed.

I have attached copies and extracts of the relevant documents.

If you have any further queries please do not hesitate to contact me.

Regards



**Sussan Hodgkinson**

cc: Mr Matt Deeble, TIO Ltd



## FERRIER HODGSON CORPORATE ADVISORY

17 March 1998

Mr Alan Cameron  
Chairman  
Australian Securities Commission  
Level 23  
Bourke Place  
600 Bourke Street  
MELBOURNE VIC 3000

COPY

Dear Sir,

RE : **Facsimile from Mr Alan Smith to the Australian Securities Commission ("ASC") dated 10 March 1998**

I would like to take the opportunity to strongly refute a number of serious, unsubstantiated, defamatory allegations contained in a facsimile dated 10 March 1998 from a Mr Alan Smith to Ms Marie Scalise, ASC Complaints Assessment Management Program (copy attached for your convenience).

By way of background I am Chairman of Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd ("FHCA"). FHCA is part of the firm of Ferrier Hodgson, Chartered Accountants and is the appointed Resource Unit to the Telecommunications Industry Ombudsman ("TIO"). This appointment required FHCA to act as the Resource Unit on a number of Arbitrations between Telstra and their customers.

Mr Smith had a long running dispute with Telstra and agreed to Arbitrate his complaint. FHCA, along with technical experts Lane Telecommunications Pty Ltd ("Lane") and DMR Canada Inc ("DMR") collectively acted as the Resource Unit on Mr Smith's Arbitration. Mr Smith's complaint against Telstra was Arbitrated and an award in his favour was handed down on 11 May 1995. As neither Mr Smith nor Telstra appealed the award, the Arbitration is considered finished.

Since 1995 Mr Smith has been making a number of allegations against DMR, Lane and, to a lesser extent, FHCA concerning whether or not certain claim documents were addressed by the Resource Unit and whether sections of the assessment reports were altered at the request of the Arbitrator. We have previously responded to these allegations to the TIO. We have stated that all documents submitted by Mr Smith were considered in our analysis and our reports were not altered at the request of the Arbitrator or any other party.

For your information I have provided the following response to Mr Smith's allegations in his facsimile of 10 March 1996:

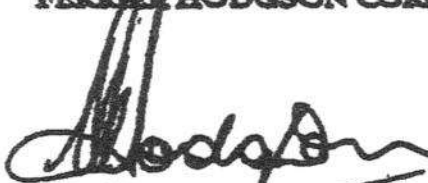
- Point 4: DMR, Lane and FHCA did consider all of the Claim documents submitted by Mr Smith.
- Point 5: DMR and Lane did address all of the claim documents submitted to the Arbitrator.
- Point 6: This statement has been refuted previously in a letter to the TIO. Under no circumstances did the Arbitrator or any other party instruct FHCA to withdraw large amounts of information from our report on Mr Smith's Claim.

In closing I would like to strongly refute Mr Smith's suggestion that FHCA, Lane or DMR submitted an incomplete report to the Arbitrator, or in any other way conspired to deny Mr Smith natural justice or acted in a way that was unprofessional or prejudicial to Mr Smith.

If I can be of any further assistance please do not hesitate to contact me.

Yours sincerely,

FERRIS HODGSON CORPORATE ADVISORY



A G HODGSON  
Chairman

Encl.

- cc Mr Tom Dale, Assistance Secretary, Department of Communication and the Arts (Fax 02 6271 1555)  
Mr David Hawker MP, Federal Member for Wannon (Fax 03 5572 1141)  
Mr John Pinnock, Telecommunications Industry Ombudsman (Fax 9277 8797)

451

FERRIS HODGSON  
CORPORATE ADVISORY