



Telecommunications
Industry
Ombudsman

Umbudsman

24 October 1997

Ms Pauline Moore
Secretary
Senate Environment, Recreation, Communications
and the Arts Legislation Committee
Parliament House
CANBERRA 2600

Dear Ms Moore

'Questions on Notice' by Senator Borwell

I refer to previous correspondence and discussions with the Committee's Research Officer, Ms Duster, concerning a series of questions put on notice by Senator Borwell and arising out of the Committee's proceedings of 26 September 1997.

I understand that the questions are treated as tabled questions and hence questions of the Committee.

The COT Arbitration Procedures contain provisions relating to the confidentiality of the proceedings, which bind the parties. Those provisions also bind the Arbitrators, the Resource Unit, the Special Counsel and the TIO in my role as Administrator.

I have also advised the Committee on a previous occasion that one of the COT claimants, Mrs Gurnis, has notified me in writing that she intends to join me as a party to Appeal proceedings she has commenced concerning the Arbitrator's Award.

Accordingly, I ask that the answers given below to the questions on notice be treated as confidential by the Committee and not be published.

1. In November 1995 I received correspondence from a COT member expressing concern about the Technical Resource Unit. The COT member:

- expressed concern that the purchase by Pacific Star of Lase Telecommunications compromised the independence of the Technical Resource Unit;
- * • stated that there were inaccuracies and biases evident in the Lase Telecommunications/DAR Technical Evaluation Report;
- requested the Telecommunications Industry Ombudsman to dissolve the Resource Unit.

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14

2. On 6 November 1995 I was advised by Mr Steve Black of Telstra that Lane Telecommunications and Pacific Star had already worked together on several Pacific Star contracts in Queensland and Western Australia and for the Federal Government.
3. I did investigate the commercial relationship between Telstra and Pacific Star. Based on the material provided to me by Telstra and Lane Telecommunications, it was established that:
- There were three Pacific Star separate operating entities, Pacific Star Mobile, Pacific Star Communications and Pacific Star Data Services.
 - Pacific Star Mobile was a significant reseller of Telstra MobileNet products, but did not provide products or services to Telstra.
 - Pacific Star Communications was in competition with Telstra.
 - Pacific Star Data Services ("Pacific Star") was the entity which acquired Lane Telecommunications. Pacific Star was independent of Telstra. It facilitated services provided by carriers and vendors on behalf of clients. I was advised that the core requirement of this business was to be independent so that selection was based on the optimum provision of the required facilities, performance and cost.

Further than this, I do not have details of different commercial arrangements between Telstra and Pacific Star.

4. When providing a response to a COT member on 6 December 1995 I had requested information from Lane Telecommunications and Telstra as to whether any conflict of interest arose out of the purchase by Pacific Star of Lane Telecommunications. To the best of my knowledge and based on the information I had received at the time, I concluded there was no conflict of interest.
5. I do not have and have never had available any details concerning the Arbitrator and/or associated companies off-shore work for Telstra and/or associates and I am unaware of any such information.
6. Apart from the evidence I gave to the Committee on 26 September 1997 concerning the purchase of Lane Telecommunications by Ericsson Australia, I have recently been advised by one of the Arbitrators that he will be transferring his legal practice to Blake, Dawson, Waldron, Solicitors. I am aware that that firm is currently acting for Telstra in relation to a number of matters. Arrangements are being made to discuss with Blake, Dawson, Waldron any possible conflicts of interest.
7. I refer to my letter to the Secretary of the Committee dated 29 September 1997. I referred this question to the TIO Council for consideration at its meeting on 16 October 1997 and I advise that the Chairman of the Council will be writing to the Chairman of the Committee on this matter.
8. It is my recollection that I have never stated in person or by telephone to individual COT members and/or their representatives that the arbitration has failed. My views on the arbitration procedure are contained in my written submission made to the Committee on 26 September 1997.

14

9. Yes, from time to time I received complaints from foundation COT members, concerning a range of matters, including alleged non-compliance with the rules of the Fast Track Arbitration Procedures by Telstra and/or the Arbitrator and/or the Technical and Accounting Resource Unit. Identifying individual instances of complaints and detailing the response taken will require a huge amount of administrative resources in searching TIO files. Please advise me whether the Committee requires the undertaking of this work and its relevance to the Committee's inquiry.
10. Yes, I have refused to provide COT members with a copy of Telstra's Preferred Rules of Arbitration. A copy of this document was not provided because it was of historical interest only, and the COT members did not advance any arguments as to why it was relevant to their arbitration. A copy is provided for the information of the committee.

Yours sincerely

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14