

RS GILBERT
ACT

19 March 2001

Telecommunications Inquiry
Productivity Commission,
PO Box 80
Belconnen ACT 2616

Dear Sir,

REVIEW OF TELECOMMUNICATIONS SPECIFIC REGULATION
FURTHER SUBMISSION BY R. S.GILBERT

A majority Decision by the High Court dated 15 March 2001, in a case Melway Publishing Pty. Ltd. v. Robert Hicks Pty. Ltd., would seem to indicate that s. 46 of the Trade Practices Act does not require a supplier (even a monopoly supplier) to supply someone outside its chosen distribution network - even though the refusal to supply might inhibit (and might be intended to inhibit) competition between the entity refused supply and the supplier's chosen distributors.

The Commission is presently conducting an inquiry into Parts XIB and XIC of the Trade Practices Act, under which Telstra is required to allow its competitors access to its (Telstra's) facilities to enable them to compete against Telstra in the provision of telecommunication services - with the ACCC even able to dictate the price Telstra can charge its competitors for the use of those facilities.

Apart from the obvious questions this raises about the nature of the so-called 'competition' arising from these access provisions, the Commission might like to consider whether the principle that seems to have emerged from the High Court Decision referred to, even though that Decision related to s.46 of the Act, has implications for its consideration of Parts XIB and XIC of the Act - in particular, whether, if other sections of the Act do not force a supplier (even a monopoly supplier) to help someone compete with his distributors, it is appropriate as a matter of principle that a supplier should be forced to help others compete with him.

Yours faithfully,

(signature)

(R. S. GILBERT)