




- 1.6 On 12 December 2001, ASIC commenced proceedings number 5934 of 2001 ("the ASIC Proceedings") at which time it filed a Statement of Claim ("SOC").
- 1.7 On 11 March 2002, ASIC filed an Amended Statement of Claim ("the ASOC") in the ASIC Proceedings.
- 1.8 On 1 July 2002, ASIC filed a Further Amended Statement of Claim ("the FASOC") in the ASIC Proceedings.
- 1.9 On 22 November 2002 ASIC filed a Second Further Amended Statement of Claim ("the SFASOC") in the ASIC Proceedings.
- 1.10 On 24 June 2003 ASIC filed a Third Further Amended Statement of Claim ("TFASOC") in the ASIC Proceedings.
- 1.11 Greaves denies the allegations made in the ASIC Proceedings.
- 1.12 ASIC and Greaves have entered into settlement negotiations in respect of the ASIC proceedings so far as they affect Greaves.
- 1.13 The parties have agreed to settle the ASIC Proceedings and all issues between them on the terms set out in this Enforceable Undertaking.
- 1.14 For the purposes of the settlement of the ASIC Proceedings, ASIC and Greaves have prepared a Statement of Agreed Facts in which Greaves responds to the allegations made by ASIC against him, and the relief sought by ASIC, in the SOC, the ASOC, the FASOC, the SFASOC, and the TFASOC filed in the ASIC Proceedings.




1.15 Greaves has entered into separate settlement negotiations with One.Tel's liquidators in relation to proceedings brought against him and others by the liquidators ("the bonus proceedings"). ~~1.16~~ As part of the settlement negotiations referred to in recitals 1.12 and 1.15 above, Greaves has requested ASIC and the liquidators to vote in favour of a proposed Deed of Arrangement in the form that is annexed to this Enforceable Undertaking and marked Schedule D.



1.16 As a consequence of this request the liquidators have undertaken due diligence into Greaves's financial circumstances and have held a creditors committee meeting following which a decision was made that the liquidators agreed to enter into a deed of release and settlement with Greaves and subsequently to vote in favour of the proposed Part X arrangement.



1.17 Based on the liquidators' due diligence and decision to vote in favour of the proposed Part X arrangement, ASIC has also agreed that it will vote in favour of the Part X arrangement in respect of the proposed costs order in ASIC's favour in the sum of \$350,000.



1.18 ASIC has considered all relevant issues in relation to the proposed settlement and has confirmed its view that the proposed settlement terms are appropriate in all the circumstances and will instruct counsel to so advise the court on ASIC's application for approval of the settlement.

2. Settlement of the ASIC Proceedings

2.1 In full and final settlement of all Claims against Greaves which ASIC has:

- (a) Greaves will make the Statement of Agreed Facts with ASIC in relation to the ASIC Proceedings in the form that is annexed to this Enforceable Undertaking and marked Schedule A;
- (b) Greaves will consent to the declarations in the paragraphs numbered 1 to 4 of Schedule B to this Enforceable Undertaking, being made against him in the ASIC Proceedings;
- (c) Greaves will consent to an order, in the form of the order in the paragraph numbered 5 of Schedule B to this Enforceable Undertaking, being made against him in the ASIC Proceedings;
- (d) Greaves will consent to an order, in the form of the order in the paragraph numbered 6 of Schedule B to this Enforceable Undertaking, being made against him in the ASIC Proceedings;
- (e) Greaves will consent to an order, in the form of the order in the paragraph numbered 7 of Schedule B to this Enforceable Undertaking, being made against him in the ASIC Proceedings;
- (f) Greaves will make a statement of contrition in the form that is annexed to this Enforceable Undertaking and marked Schedule C;
- (g) Greaves will at the hearing of any application for the making of the declarations and orders referred to in clauses 2.1(b), 2.1(c), 2.1(d) and 2.1(e) of this Enforceable Undertaking:
 - I. join with ASIC in handing to the Court the Statement of Agreed Facts in relation to the ASIC Proceedings in the form that is annexed to this Enforceable Undertaking and marked Schedule A;
 - II. make with ASIC joint submissions to the Court that:

- (i) the Court's orders in so far as they apply to Greaves should take into account his contrition and the fact that he negotiated settlement of the proceedings with ASIC and thereby saved ASIC incurring significant legal costs;
- (ii) the appropriate period of disqualification from managing a corporation in Greaves' case is four years;

III. join with ASIC in informing the Court that:

- (i) the proceedings against Greaves have been settled;
- (ii) Greaves has admitted the allegations against him as set out in the Statement of Agreed Facts;
- (iii) Greaves has consented to the declarations and orders referred to in paragraphs 2.1(b), 2.1(c), 2.1(d) and 2.1(e) above;
- (h) Greaves will not make any public statements in relation to the terms of the settlement agreed between ASIC and Greaves or his conduct as admitted in the Statement of Agreed Facts that in any way contradict any of these terms of settlement, or any admissions contained in the Statement of Agreed Facts.

2.2 Notwithstanding the provisions of clause 2.1 of this Enforceable Undertaking, ASIC and Greaves acknowledge that the Court may exercise its discretion to make declarations and orders other than those referred to in clause 2.1 of this Enforceable Undertaking.

2.3 In the event that the Court exercises such discretion and makes orders and declarations other than those referred to in clause 2.1 of this Enforceable Undertaking, ASIC and Greaves nevertheless agree to be bound by such declarations and orders and by this Enforceable Undertaking.

3. Acknowledgements

- 3.1 By accepting the undertakings made by Greaves in clause 2 above, and upon the court making the declarations and orders referred to in clause 2.1 of this Enforceable Undertaking or such other declarations and orders as the Court may deem fit to make against Greaves in the ASIC Proceedings ASIC will not take any further action against Greaves in respect of the ASIC Proceedings or Greaves's involvement in One.Tel Limited.
- 3.2 ASIC agrees that it will vote in favour of the Part X arrangement referred to in clauses 1.17 and 1.18 of this Enforceable Undertaking in respect of the proposed costs order in ASIC's favour in the sum of \$350,000 referred to in clause 2.1(e) of this Enforceable Undertaking.
- 3.3 ASIC agrees that it will not to take any steps to enforce the costs order referred to in clause 2.1(e) of this Enforceable Undertaking or any other costs order that may be made by the Court against Greaves in the ASIC Proceedings against the property or person of Greaves other than to vote in the Part X arrangement referred to in clauses 1.17 and 1.18 of this Enforceable Undertaking and to seek recovery of any such costs order pursuant to the Part X arrangement.
- 3.4 Greaves acknowledges that ASIC:
- (a) may issue a media release on execution of this undertaking and approval of the proposed settlement by the court;
 - (b) may from time to time publicly refer to this underaking; and
 - (c) will make this undertaking available for public inspection.
- 3.5 ASIC acknowledges that any media releases or statements will not contradict any of these terms of settlement, or any admissions contained in the Statement of Agreed Facts.

- 3.6 Greaves acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct.

Executed by JOHN HUYSHE GREAVES)
in the presence of:)

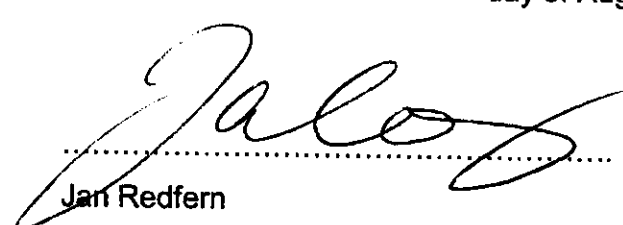
.....
Witness


.....
John Huyshe Greaves

CHRIS KINTIS
.....
Name (please print)

Accepted by the Australian Securities and Investments Commission pursuant to section 93AA of the Australian Securities and Investments Commission Act by its duly authorized delegate.

Dated this *30th* day of August 2004


.....
Jan Redfern
Executive Director
Enforcements

SCHEDULE A**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION****V****JOHN HUYSHE GREAVES & ORS****SUPREME COURT EQUITY DIVISION PROCEEDINGS****NO. 5934 OF 2001****STATEMENT OF AGREED FACTS BY ASIC AND
JOHN HUYSHE GREAVES**

1. This is a Statement of Agreed Facts by ASIC and the Third Defendant, Mr Greaves, in support of their joint application for the declarations and orders consented to by Mr Greaves.

Short Description of One.Tel's business

2. One.Tel Limited commenced its business in May 1995 as an Optus GSM service provider in Australia. It listed on the Australian Stock Exchange in November 1997. By the time the Administrators were appointed to the company on 29 May 2001, the company had operations not only in Australia but also in the United Kingdom, France, Germany, Switzerland, the Netherlands, Hong Kong and Singapore.
3. As at 31 December 2000, One.Tel Limited had 2.4 million customers worldwide. The UK operations, for example, had 527,000 active customers.
4. At the time the company went in to administration its businesses included:
 - (a) its digital business or "Optus SP" business, which was the reselling of Optus mobile phone services;
 - (b) its fixed wire business, which resold Telstra local and long distance and international calls;

- (c) its One.Net business unit, which resold Telstra internet services;
 - (d) its One.Card business unit which sold pre-paid phone cards for long distance calls; and
 - (e) its Next Generation business unit which provided mobile phone services using the Group's own network (which had not been fully constructed by the time the company was placed into administration). To build this network, in April and September 1999, One. Tel Limited signed contracts worth over \$1.1 billion with Lucent Technologies for the roll-out of a national GSM 1800 Network in Australia.
5. As at 29 May 2001, the company globally employed 3000 employees.
6. The major public companies News Limited ("News") and Publishing and Broadcasting Limited ("PBL") invested in combination directly and through their subsidiaries, around \$1 billion in One.Tel Limited over 1999.

The extent of the collapse of the One.Tel Group and its effects

7. Annexed to the Statement of Agreed Facts is a copy of the most recent report to creditors by the liquidator of One.Tel Limited (in liquidation) dated 29 June 2004. The liquidators have currently admitted creditors' claims with a total value of \$334,378,547. They presently estimate that the overall dividend paid to creditors may range between 25 and 28 cents in the dollar (of which 21cents in the dollar has already been paid to ordinary unsecured creditors). The liquidators presently estimate that the dividend range would leave a shortfall to admitted creditors' claims of between \$250,783,910 and \$240,752,553.
8. ASIC alleges that as between 28 February 2001 and 29 May 2001 (when administrators were appointed), One.Tel Limited suffered a reduction in net realisable value and trading loss of at least \$92 million.

9. Further, ASIC alleges that:
- (a) as at 28 February 2001, the net liquidity position had been a deficiency of \$24.5 million;
 - (b) as at 29 May 2001, the net liquidity position of the One.Tel Limited Group was a deficiency of \$98.7 million.
10. Mr. Greaves has no means available to him to agree or dispute that the financial circumstances of One.Tel alleged by ASIC and referred to in paragraphs 8 and 9 above are accurate but Mr Greaves will not object to ASIC tendering to the court reports made by Mr Paul Carter of PricewaterhouseCoopers in these proceedings in relation to the financial circumstances of One.Tel.

Background of Mr Greaves

11. Mr Greaves' experience has predominantly been in finance. His experience includes:
- (a) in the early 1980's Mr Greaves was the General Manager, Financial Services of Mayne Nickless Limited;
 - (b) between 1989 and 1990 Mr. Greaves was the Chief Financial Officer of Wormald Ltd;
 - (c) between 1990 and 1992 Mr. Greaves was the Chief Financial Officer of Tyco European Operations;
 - (d) in mid 1992 Mr Greaves was appointed as the Chief Financial Officer of Optus;
 - (e) in early 1995 Mr Greaves was appointed as a non-executive director of One.Tel;
 - (f) in early 1996 Mr Greaves was appointed as the Chief Financial Officer of John Fairfax Holdings Ltd.

Admissions by Mr Greaves

12. Mr. Greaves makes the admissions, non-admissions and denials set out below of the allegations made in the Third Further Amended Statement of Claim ("TFASC") in so far as those allegations are made against him. ASIC does not admit the sufficiency or correctness of Mr Greaves' non-admissions and denials.
13. Mr Greaves admits paragraph 1 of the TFASC.
14. In relation to paragraph 3 of the TFASC Mr Greaves:
 - (a) says that he occupied the office of non-executive director of One.Tel from 28 February 1995 to 31 December 1995, from 25 July 1997 to 11 September 1998 and from 11 September 1998 to 30 March 2001;
 - (b) says that he occupied the office of chairman of directors of One.Tel from May 1995 to 31 December 1995 and from 25 July 1997 to 30 March 2001;
 - (c) says that he occupied the office of chairman of the finance and audit committee of One.Tel from at least 1 July 2000 to 30 March 2001;
 - (d) otherwise does not admit paragraph 3 of the TFASC.
15. In relation to paragraph 6 of the TFASC, Mr Greaves admits that paragraph save that he says that he occupied the office of director of One.Tel until 30 March 2001 and not 31 March 2001.
16. In relation to paragraph 8 of the TFASC, Mr Greaves:
 - (a) admits that he had a duty to fulfill the responsibilities enumerated in sub-paragraphs 8(a), 8(b), and 8(c);
 - (b) admits that he had a duty to take reasonable steps to ensure, in conjunction with the Joint Managing Directors, that systems were maintained and monitored which resulted in material financial information which was

accurate and reliable, flowing from management to the Board of One.Tel but otherwise denies sub-paragraph 8(d);

- (c) does not admit sub-paragraphs 8(e) to 8(i);
- (d) says that he occupied the office of director of One.Tel until 30 March 2001 and not 31 March 2001; and
- (e) otherwise does not admit paragraph 8.

17. In relation to paragraph 10 of the TFASC Mr Greaves admits that he owed the statutory duty of care described to the extent of his admissions to paragraph 8 of the TFASC.

18. In relation to paragraphs 11 and 12 of the TFASC Mr Greaves has no means available to him to agree or dispute that the financial circumstances of One.Tel alleged by ASIC in these paragraphs are accurate.

19. In relation to paragraph 17 of the TFASC Mr Greaves:

- (a) accepts that had he and all other directors, executive and non-executive officers of One.Tel fully discharged their statutory duties, he ought to have known on a timely basis the actual financial position of One.Tel in the period 1 January to 30 March 2001;
- (b) has no means available to him to agree or dispute that the financial circumstances of One.Tel alleged by ASIC in paragraph 17 are accurate;
- (c) says that he occupied the office of director of One.Tel until 30 March 2001 and not 31 March 2001.

20. In relation to paragraph 18 of the TFASC Mr Greaves:

- (a) repeats his response to paragraph 17 of the TFASC;

- (b) otherwise is unable to admit the allegation in paragraph 18 as the information that would have been available to him if he had discharged his duty would have remained dependant upon the performance of other officers and directors of One.Tel.

21. In relation to paragraph 19 of the TFASC Mr Greaves:

- (a) repeats his response to paragraph 18 of the TFASC;
- (b) admits that if he knew that One.Tel's financial position and performance was as is alleged by ASIC in a timely fashion then he would have:
 - (i) promptly ensured that the Board was aware of One.Tel's financial position and performance;
 - (ii) considered and recommended alternative strategies to the Board for One.Tel going forward, which may have included the appointment of an administrator to One.Tel or the cessation of trading by One.Tel.

22. In relation to paragraph 27 of the TFASC, Mr Greaves:

- (a) admits that he failed to take reasonable steps to ensure, in conjunction with the Joint Managing Directors, that in the period January to March 2001, that systems were maintained and monitored which resulted in material financial information which was accurate and reliable, flowing from management to the Board of One.Tel but otherwise does not admit sub-paragraphs (a), (b) and (c);
- (b) admits that he did not make the recommendation identified in subparagraph (d);
- (c) says that he occupied the office of director of One.Tel until 30 March 2001 and not 31 March 2001.

23. In relation to paragraph 28 of the TFASC, Mr Greaves:
 - (a) admits that he failed to take reasonable steps to ensure, in conjunction with the Joint Managing Directors, that in the period January to March 2001, that systems were maintained and monitored which resulted in material financial information which was accurate and reliable, flowing from management to the Board of One.Tel but otherwise does not admit sub-paragraphs (a), (b), (c) and (d);
 - (b) says that he occupied the office of director of One.Tel until 30 March 2001 and not 31 March 2001.
24. Mr Greaves denies paragraph 29 of the TFASC.
25. In relation to paragraph 30 of the TFASC, Mr Greaves:
 - (a) admits that so much of the conduct which he has admitted in paragraphs 27 and 28 of the TFASC in the circumstances described in paragraphs 3,6,8,11,12,17-19 of the TFASC, to the extent that he has admitted them, constituted contraventions of section 180 of the Corporations Law;
 - (b) otherwise does not admit paragraph 30.
26. Mr Greaves denies paragraph 38 of the TFASC.
27. Mr Greaves does not admit paragraphs 39 and 40 of the TFASC.
28. In relation to paragraph 49 of the TFASC Mr Greaves:
 - (a) repeats his response to paragraph 17 of the TFASC;
 - (b) agrees that if the financial circumstances as alleged by ASIC are accurate, then there was no reasonable factual basis for the release;
 - (c) otherwise does not admit paragraph 49.

29. Mr Greaves does not admit paragraph 51 the TFASC.
30. In relation to paragraph 52 of the TFASC, Mr Greaves admits that had he been aware on a timely basis of the financial position of One.Tel alleged by ASIC, then he would have taken steps to ensure that the appropriate One.Tel officer notified the ASX of the financial position of the company at that time.
31. In relation to paragraph 54 of the TFASC Mr Greaves:
- (a) repeats his response to paragraph 17 of the TFASC;
 - (b) otherwise denies the allegation.
32. In relation to paragraph 56 of the TFASC Mr Greaves:
- (a) admits that so much of the conduct which he has admitted in paragraphs 27 and 28 of the TFASC in the circumstances described in paragraphs 3,6,8,11,12,17-19 of the TFASC, to the extent that he has admitted them, constituted contraventions of section 180 of the Corporations Law;
 - (b) otherwise denies paragraph 56.
33. In relation to paragraphs 58 and 59 of the TFASC, Mr Greaves has no means available to him to agree or dispute that the financial circumstances of One.Tel alleged by ASIC in those paragraphs are accurate.

Expressions of contrition by Mr Greaves

34. Mr Greaves expresses his contrition and regret for what he acknowledges was a failure to effectively discharge his responsibilities as a non-executive chairman and non-executive director of One.Tel Ltd in the last three months before he resigned his office as a director of the company on 30 March 2001.

35. For its part, ASIC acknowledges that it has never been part of its case against Mr Greaves that he acted in any way dishonestly in relation to the performance of his duties as a non-executive director and non-executive chairman of the company.
36. As a non-executive director, Mr Greaves relied on the financial information provided to him by the executive directors and officers of the company. Based on the information that was provided to him, he believed that the financial position of the company was secure when he resigned on 30 March 2001.

DATED:

.....
Signed by or on behalf of ASIC

.....
Signed by John Huyshe Greaves

SCHEDULE B

**IN THE SUPREME COURT OF NEW SOUTH WALES
DIVISION: EQUITY
NO: 5934 of 2001
REGISTRY: SYDNEY**

IN THE MATTER OF ONE.TEL LIMITED (IN LIQUIDATION) ACN 068 193 153

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

JOHN DAVID RICH
First Defendant

JOHN HUYSHE GREAVES
Third Defendant

MARK ALAN SILBERMANN
Fourth Defendant

DECLARATIONS AND ORDERS
IN RESPECT OF THE THIRD DEFENDANT

Definitions

In this document:

"The January circumstances" means the deterioration in, and the circumstances relating to, the financial position and performance of the One.Tel Group during January 2001 set out in paragraphs S1 to S7 and S39 to s 46A of the Schedule hereto ("Schedule");

"The February circumstances" means the deterioration in, and the circumstances relating to, the financial position and performance of the One.Tel Group during February 2001 set out in paragraphs S1 to S24 and S39 to S46A of the Schedule; and

"The March circumstances" means the deterioration in, and the circumstances relating to, the financial position and performance of the One.Tel Group during March 2001 set out in paragraphs S1 to S34 and S39 to S51 of the Schedule.

The effect of the declarations and orders

The Court makes the following declarations and orders noting:

- (a) that they are intended to be operative only between the Plaintiff and the Third Defendant and are not intended to be binding on or in any way affect any other defendant in the proceedings;
- (b) that in particular the declarations concerning the conduct that constituted the contraventions of the *Corporations Law* are not binding upon or conclusive evidence of facts against any other defendant in the proceedings.

The agreed declarations and orders

The Third Defendant consents to the making of the following declarations and orders against him:

1. A declaration, pursuant to Section 1317E of the *Corporations Act*, that between 1 January 2001 and 30 March 2001, the Third Defendant, as the Chairman of Directors of One.Tel, contravened s 180(1) of the *Corporations Law* by:
 - (a) failing to take reasonable steps to promptly ensure that he and the Board were aware of the January circumstances;
 - (b) failing to take reasonable steps to promptly ensure that he and the Board were aware of the February circumstances;
 - (c) failing to take reasonable steps to promptly ensure that he and the Board were aware of the March circumstances; and

- (d) failing to recommend to the Board (if necessary, at a special Board meeting convened by him for that purpose) on, or alternatively after 28 February 2001, that the Group cease trading or appoint an administrator unless the Board was satisfied that cash injections totalling in the order of at least \$270m could be obtained as and when required over the next 9 to 12 months of trading.
2. A declaration, pursuant to Section 1317E of the *Corporations Act*, that between 1 January 2001 and 30 March 2001, the Third Defendant, as the Chairman of Directors of One.Tel, contravened s 180(1) of the *Corporations Law* by failing to take reasonable steps to monitor management of the One.Tel Group, to properly assess the financial position and performance of the One.Tel Group, and to properly and promptly detect and assess material adverse developments affecting the financial position and performance of the One.Tel Group.
 3. A declaration, pursuant to section 1317E of the *Corporations Act*, that between 1 January 2001 and 30 March 2001, the Third Defendant, as the Chairman of Directors of One.Tel, contravened s 180(1) of the *Corporations Law* by failing to take reasonable steps to ensure that all material financial information was provided to the Board to enable the Board of One.Tel to monitor management, to properly assess the financial position and performance of the One.Tel Group, and to properly and promptly detect and assess any material adverse development affecting the financial position and performance, in particular information revealing the matters set out in paragraph 28(b) of the Third Further Amended Statement of Claim ("TFASC").
 4. A declaration, pursuant to section 1317E of the *Corporations Act*, that between 1 January 2001 and 30 March 2001, the Third Defendant, as the Chairman of Directors of One.Tel, contravened s 180(1) of the *Corporations Law* by failing to take reasonable steps to ensure, in conjunction with the Joint Managing Directors, that systems were maintained and monitored which resulted in material financial information which was accurate and reliable, flowing from management to the Board of One.Tel.
 5. An order, pursuant to sections 206C and 206E of the *Corporations Act*, that the Third Defendant be prohibited from managing corporations for four years.

6. An order, pursuant to section 1317H(1) of the *Corporations Act*, that the Third Defendant pay compensation to One.Tel in an amount of \$20 million.
7. An order that the Third Defendant pay the Plaintiff's costs of its claim against him in the agreed amount of \$350,000.00, inclusive of all outstanding costs orders.
8. Note that it is agreed between ASIC and the Third Defendant that the declarations and orders to which the Third Defendant is consenting will not constitute full satisfaction of ASIC's claims made in these proceedings and that ASIC is at liberty to pursue its claims against the other defendants and any other persons.

Ordered:

Entered:

SCHEDULE**Systematic "Management" of Cash and Creditors**

S1. From late December 2000, there was a systematic process of "management" of cash and creditors as follows:

- (a) payments to creditors were selectively deferred so that the month end cash balances for 31 January 2001, 28 February 2001 and 31 March 2001 revealed in the flash reports provided to the directors individually, and to the Board in the Board papers for its meetings on 25 January 2001 and 30 March 2001, did not give a full and accurate view of the cash position of the One.Tel Group;

Particulars

See Annexure A

- (b) one of the means by which payments to creditors were selectively deferred was by drawing cheques, recording the payees as paid on the creditors ledger of the Australian operations of the One.Tel Group, and delaying the release of the cheques to creditors so as to ensure that the cheques were not presented for payment until after month end (hereafter referred to as "the unrepresented cheques").

The \$8 million Pledge

S2. Over the period from 1 January 2001 to 29 May 2001 approximately \$8 million of cash held by companies within the international operations of the One.Tel Group was the subject of a pledge as security for bank guarantees (hereafter referred to as the "the \$8 million pledge") and was unavailable for payment of debts of companies in the One.Tel Group.

The True Cash and Creditors Position - January 2001

S3. As at 31 January 2001 :

- (a) the cash available within the One.Tel Group to pay creditors of companies within the Group was approximately \$71 million, after deducting the \$8 million

pledge and the unrepresented cheques as at 31 January 2001 in the amount of approximately \$7 million;

- (b) the cash available within the Australian operations of the One.Tel Group to pay creditors was approximately \$22 million, after deducting the amount of unrepresented cheques referred to in (a).

S4. This was so notwithstanding that :

- (a) the forecast presented to the Board at its meeting on 28 September 2000 of cash of the One.Tel Group as at 31 January 2001 was \$123 million;
- (b) the forecast presented to the Board at its meeting on 24 November 2000 of cash of the One.Tel Group as at 31 January 2001 was \$100 million;
- (c) the flash report for January 2001 sent to the directors on or about 7 February 2001 reported a cash balance of the One.Tel Group as at 31 January 2001 of \$86 million.

S5. The above cash amounts of \$71 million and \$22 million were only achieved after deferring the drawing of cheques to major creditors of companies within the Australian operations of the One.Tel Group (to be contrasted with the process of delaying the release of cheques to creditors referred to in paragraph S1(b) above) as a result of which the total amount outstanding on debts owed by those companies which were overdue as at 31 January 2001 was about \$24 million.

Particulars

See Annexure B

S6. Further, as at 31 January 2001 :

- (a) the amount owed to trade creditors, but not then overdue, by companies within the Australian operations of the One.Tel Group was about \$22.3 million, and those companies had incurred additional current liabilities of about \$74.6 million;
- (b) the amount owed by companies within the UK operations of the One.Tel Group to trade creditors was approximately \$61.7 million of which approximately \$49.7 million was overdue and at least \$21.6 million had been outstanding for more than 90 days.

- S7. On 15 January 2001 the main operating account of the Australian operations of the One.Tel Group exceeded its gross overdraft limit of \$10 million.

The True Cash and Creditors Position - February 2001

- S8. As at 28 February 2001 :

- (a) the cash available within the One.Tel Group to pay creditors of companies within the Group was approximately \$48 million, after deducting the \$8 million pledge and the unpresented cheques as at 28 February 2001 in the amount of approximately \$8 million;
- (b) the sum of the bank accounts of the companies within the Australian operations of the One.Tel Group was a negative balance of \$1 million.

- S9. This was so notwithstanding that:

- (a) the forecast presented to the Board at its meeting on 28 September 2000 of cash of the One.Tel Group as at 28 February 2001 was \$114 million;
- (b) the forecast presented to the Board at its meeting on 24 November 2000 of cash of the One.Tel Group as at 28 February 2001 was \$87 million;
- (c) the forecast presented to the Board at its meeting on 25 January 2001 of cash of the One.Tel Group as at 28 February 2001 was \$82 million;
- (d) the flash report for February 2001 sent to the directors on or about 5 March 2001 reported a cash balance of the One.Tel Group as at 28 February 2001 of \$64 million.

- S10. As at 28 February 2001 the above cash amounts of \$48 million and \$1 million negative cash balance, and the cashflow amounts for the month of February 2001 referred to below, were only achieved after deferring the drawing of cheques to major creditors, as a result of which the total amount outstanding on debts owed by companies within the Australian operations of the One.Tel Group which were overdue as at 28 February 2001 was about \$29.3 million.

Particulars

See Annexure B

S11. Further, as at 28 February 2001 :

- (a) the amount owed to trade creditors, but not then overdue, by companies within the Australian operations of the One.Tel Group was about \$25.6 million, and those companies had incurred additional current liabilities of about \$71.6 million;
- (b) the amount owed by companies within the UK operations of the One.Tel Group to trade creditors was approximately \$80.6 million of which approximately \$56 million was overdue and at least \$26.5 million had been outstanding for more than 90 days.

S12. The outflow of cash, net of all receipts and payments (hereafter referred to as "cash usage"), for the One.Tel Group for the month of February 2001 was \$26 million notwithstanding :

- (a) the forecast presented to the Board at its meeting on 28 September 2000 of cash usage for the month of February of \$9 million;
- (b) the forecast presented to the Board at its meeting on 24 November 2000 of cash usage for the month of February of \$13 million;
- (c) the forecast presented to the Board at its meeting on 25 January 2001 of cash usage for the month of February of \$3 million.

S13. The cash usage of the One.Tel Group for the period from 1 July 2000 to 28 February 2001 was \$209 million (an average of \$26 million per month), excluding a repayment to Lucent Technologies Australia Pty Limited ("Lucent") in December 2000, but including non-trading cash receipts, which occurred notwithstanding the forecast presented to the Board at its meeting on 28 September 2000 of net cash usage for that period of \$156 million.

S14. According to the Board papers for the Board meeting on 30 March 2001, the cash usage of the Australian operations of the One.Tel Group, excluding the Next Generation business, for the month of February 2001 was \$7 million.

S15. The above cash usage of \$7 million for the month of February 2001 of the Australian operations, excluding the Next Generation business, of the One.Tel Group occurred notwithstanding :

- (a) the forecasts presented to the Board at its meetings on 28 September 2000 and 24 November 2000 of net inflow of cash, net of all receipts and payments, (hereafter referred to as "positive cashflow") for those operations for February 2001 of \$1 million;
- (b) the forecast presented to the Board at its meeting on 25 January 2001 of positive cashflow for those operations for the month of February 2001 of \$13 million.

S16. According to the Board papers for the Board meeting on 30 March 2001, the cash usage of the Next Generation business of the One.Tel Group for the month of February 2001 was \$27 million.

S17. The above cash usage of \$27 million for the month of February 2001 of the Next Generation business of the One.Tel Group occurred notwithstanding :

- (a) the forecast presented to the Board at its meeting on 28 September 2000 of a cash usage for that month of \$13 million;
- (b) the forecast presented to the Board at its meeting on 24 November 2000 of a cash usage for that month of February of \$11 million;
- (c) the forecast presented to the Board at its meeting on 25 January 2001 of a cash usage for the month of February of \$11 million.

S18. As at 28 February 2001, the companies within the Australian operations of the One.Tel Group had insufficient cash to pay all of the debts of those companies which were then overdue.

Particulars

See Annexure B

S19. As at 28 February 2001, the companies within the Australian operations of the One.Tel Group had insufficient cash and liquid assets to pay all of the debts of those companies which had then been incurred, including debts which were then overdue.

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Particulars

See Annexure C

S20. In respect of the cash balances of the Australian operations of the One.Tel Group during February 2001 :

- (a) on 16 February 2001, according to One.Tel's general ledger, the main operating account of the Australian operations of the One.Tel Group exceeded its gross overdraft limit of \$10 million by about \$13.1 million;
- (b) on each day from 19 to 22 February 2001, according to One.Tel's general ledger, the main operating account of the Australian operations of the One.Tel Group exceeded its gross overdraft limit of \$10 million, including exceeding the limit by an amount of about \$11.7 million on 22 February 2001;
- (c) after excluding the unused balance of a cash advance from Lucent of about \$9.5 million, which advance was required to be used for the purchase of handsets, the sum of all bank account balances of the Australian operations of the One.Tel Group resulted in a negative cash balance on each day from 19 February to 28 February 2001, including a negative cash balance of \$4.6 million on 19 February which negative cash balance progressively increased to a negative cash balance of \$12.5 million on 22 February 2001;
- (d) even after including the above cash advance from Lucent, the sum of all bank account balances of the Australian operations of the One.Tel Group on each day from 22 February to 26 February 2001 resulted in a negative cash balance, including a negative cash balance of about \$3 million on 22 February 2001.

S21. To address the cash and creditors position of the Australian operations of the One.Tel Group, Silbermann travelled to London on or about 26 February 2001 in order to obtain the transfer to the Australian operations of the sum of \$26 million from the UK operations over the objection of Mr Weston, the Chief Executive Officer of the UK operations, and Mr Werner, the Financial Controller of the UK and European operations.

S22. In spite of the objections of Mr Weston and Mr Werner, and on the instructions of Rich and Silbermann, on 28 February 2001 the sum of \$26 million was transferred

from the UK operations to the Australian operations of the One.Tel Group and received by the Australian operations on 1 March 2001.

- S23. The \$26 million transfer from the UK operations enabled the payment on 1 and 2 March 2001 of creditors totalling \$26.3 million, including \$7.2 million paid to creditors on 1 March 2001 which were overdue as at 28 February 2001 and for whom cheques had been drawn, but not released, prior to February month end.
- S24. As a result of the above transfer of funds from the UK operations of the One.Tel Group, the companies within the UK operations had an available cash balance of only about \$11.5 million, which amount was insufficient cash to pay all of the debts of those companies, including creditors which were overdue, as a consequence of which, in due course, Worldcom withdrew supply of carrier and network services and various threats were made by other major creditors to withdraw services.

Particulars

See Annexure D

The True Cash and Creditors Position - March 2001

S25. As at 31 March 2001 :

- (a) the cash available within the One.Tel Group to pay creditors of companies within the One.Tel Group was approximately \$58 million, after deducting the \$8 million pledge and the unrepresented cheques as at 31 March 2001 in the amount of \$3 million;
- (b) the cash available within the Australian operations of the One.Tel Group to pay creditors was approximately \$16 million after deducting the amount of unrepresented cheques referred to in (a).

S26. This was so, notwithstanding that :

- (a) the forecast presented to the Board at its meeting on 28 September 2000 of cash of the One.Tel Group was \$112 million as at 31 March 2001;
- (b) the forecast presented to the Board at its meeting on 24 November 2000 of cash of the One.Tel Group was \$92 million as at 31 March 2001;

- (c) the forecast presented to the Board at its meeting on 25 January 2001 of cash of the One.Tel Group as at 31 March 2001 was \$97 million.

S27. The above cash amounts of \$58 million and \$16 million and the cashflow amounts for the month of March 2001 referred to below were only achieved after the drawing of cheques to major creditors was deferred, as a result of which the total amount outstanding on debts owed by companies within the Australian operations of the One.Tel Group which were overdue as at 31 March 2001 was about \$49.7 million.

Particulars

See Annexure B

S28. Further, as at 31 March 2001 :

- (a) the amount owed by companies within the UK operations of the One.Tel Group to trade creditors, which was then overdue, was about \$82.2 million of which about \$32.5 million had been outstanding for more than 90 days;
- (b) the amount owed, but not then overdue, by companies within the Australian operations of the One.Tel Group to trade creditors was about \$14.3 million, and those companies had incurred additional current liabilities of about \$77.1 million.

S29. The cash usage of the One.Tel Group for the month of March 2001 was \$3 million notwithstanding :

- (a) the forecast presented to the Board at its meeting on 28 September 2000 of cash usage for that period of \$2 million;
- (b) the forecast presented to the Board at its meeting on 24 November 2000 of positive cash flow into the One.Tel Group for that period of \$5 million;
- (c) the forecast presented to the Board at its meeting on 25 January 2001 of positive cash flow into the One.Tel Group for that period of \$15 million.

29A. In respect of cash usage of the One.Tel Group for the quarter ended 31 March 2001:

- (a) actual cash usage for that period was \$43 million;

- (b) if the overdue creditors balance for the One.Tel Group had been held constant between 31 January and 31 March 2001 the actual cash usage for that period would have been \$101 million;
 - (c) such cash usage occurred notwithstanding the forecast for cash usage for this period presented to the Board at its meeting on 25 January 2001 of \$4 million.
- S30. The cash usage of the One.Tel Group for the period from 1 July 2000 to 31 March 2001 was \$212 million (an average of \$24 million per month), excluding a repayment to Lucent in December 2000, but including capital receipts.
- S31. There was a positive cash flow for the Australian operations of the One.Tel Group, excluding the Next Generation business, for the month of March 2001 of only about \$2 million, notwithstanding the forecasts made to the Board at its meetings on 28 September 2000 and 24 November 2000 of positive cashflow for that month of \$5 million, and the forecast made to the Board at its meeting on 25 January 2001 of positive cashflow for that month of \$10 million.
- S32. The cash usage of the Next Generation business of the One.Tel Group for the month of March 2001 was about \$12 million, notwithstanding the forecast made to the Board at its meeting on 28 September 2000 of cash usage for that month of \$13 million, the forecast made to the Board at its meeting on 24 November 2000 of cash usage for that month of \$9 million, and the forecast made to the Board at its meeting on 25 January 2001 of cash usage for that month of \$4 million.
- S33. As at 31 March 2001, the companies within the Australian operations of the One.Tel Group had insufficient cash to pay all of the debts of those companies which were then overdue.

Particulars

See Annexure B

- S34. As at 31 March 2001, the companies within the Australian operations of the One.Tel Group had insufficient cash and liquid assets to pay all of the debts of those companies which had then been incurred, including the debts which were then overdue.

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Particulars

See Annexure C

The True Cash and Creditors Position - April 2001

- 34A. On or about 17 April 2001, One.Tel and Lucent made an agreement deferring payment for services already supplied and to be supplied over the period to 30 June 2001 until after 30 June 2001 and providing for payment of invoices in respect of such services within 5 business days of receipt of an invoice.
- S35. As at 30 April 2001 :
- (a) the cash available within the One.Tel Group to pay creditors of companies within the One.Tel Group was approximately \$21 million, after deducting the \$8 million pledge and the unrepresented cheques as at 30 April 2001 in the amount of about \$13 million;
 - (b) the sum of the bank accounts of the companies within the Australian operations of the One.Tel Group was a negative balance of \$3 million.
- S36. The cash available was \$21 million notwithstanding :
- (a) the forecast presented to the Board at its meeting on 28 September 2000 of cash of the One.Tel Group of \$106 million as at 30 April 2001;
 - (b) the forecast presented to the Board at its meeting on 24 November 2000 of cash of the One.Tel Group of \$93 million as at 30 April 2001;
 - (c) the forecast presented to the Board at its meeting on 25 January 2001 of cash of the One.Tel Group of \$88 million as at 30 April 2001;
 - (d) the forecast presented to the Board at its meeting on 30 March 2001 of cash of the One.Tel Group of \$53 million as at 30 April 2001.
- S37. The above cash amounts of \$21 million and \$3 million negative cash balance, were only achieved after the drawing of cheques to major creditors was deferred, as a result of which the total amount outstanding on debts owed by companies within the Australian operations of the One.Tel Group which were overdue as at 30 April 2001 was about \$54 million.

Particulars

See Annexure B

S38. Further, as at 30 April 2001:

- (a) the amount owed by companies within the UK operations of the One.Tel Group to trade creditors, which were then overdue, was about \$82.8 million, of which about \$27.6 million had been outstanding for more than 90 days;
- (b) the amount owed, but not then overdue, by companies within the Australian operations of the One.Tel Group to trade creditors was about \$11.5 million, and those companies had incurred additional current liabilities of about \$88.6 million.

S38A. As at 30 April 2001, the companies within the Australian operations of the One.Tel Group had insufficient cash to pay all of the debts of those companies which were then overdue.

Particulars

See Annexure B

S38B. As at 30 April 2001, the companies within the Australian operations of the One.Tel Group had insufficient cash and liquid assets to pay all of the debts of those companies which had then been incurred, including the debts which were then overdue.

Particulars

See Annexure C

The True Debtors & EBITDA Position of One.Tel

S39. Major contributors to the deterioration in the cash and creditors position of the One.Tel Group referred to above were the doubtful debtors and EBITDA positions described in paragraphs S40 to 0A below.

S40. The provision for doubtful debts of the companies in the Australian operations of the One.Tel Group from at least 31 December 2000 was significantly understated as follows:

- (a) as at 31 December 2000, the trade debtors of companies within the Australian operations outstanding for more than 180 days were \$56.4 million and for more than 90 days were \$66.3 million out of total trade debtors of \$144.4 million;
- (b) as at 31 January 2001, the trade debtors of companies within the Australian operations outstanding for more than 330 days were \$39.9 million, for more than 180 days were \$51.6 million, and for more than 90 days were \$65.6 million out of total trade debtors of \$152 million;
- (c) as at 28 February 2001, the trade debtors of companies within the Australian operations outstanding for more than 330 days were \$41.4 million, for more than 180 days were \$53.4 million, and for more than 90 days were \$71 million out of total trade debtors of \$130.3 million;
- (d) as at 31 March 2001, the trade debtors of companies within the Australian operations outstanding for more than 330 days were \$47.7 million, for more than 180 days were \$61.3 million, and for more than 90 days were \$84.1 million out of total trade debtors of \$148.6 million;
- (e) as at 30 April 2001, the trade debtors of companies within the Australian operations outstanding for more than 330 days were \$50 million, for more than 180 days were \$66 million, and for more than 90 days were \$91.7 million out of total trade debtors of \$157.9 million;
- (f) the experience of the Australian operations over the 7 months from 30 June 2000 to 31 January 2001 was that of debtors outstanding for more than 90 days only less than 10% was collectable;
- (g) the experience of the Australian operations concerning the collection of billings based upon bills issued during the six months to 31 December 2000 was that approximately 10% of billings was uncollectable;
- (h) the provisions for doubtful debts of companies within the Australian operations of the One.Tel Group needed to be increased by \$36.8 million to \$86.7 million as at 31 December 2000, by \$40.5 million to \$91.7 million as at 31 January 2001, by \$43.9 million to \$96.9 million as at 28 February 2001, by \$47 million to \$102.3 million as at 31 March 2001, by \$50.5 million to \$107.3

million as at 30 April 2001 and by \$54.9 million to \$112.3 million as at 29 May 2001; and

- (i) the provision for doubtful debts as a percentage of debtors over 90 days in respect of companies within the Australian operations of the One.Tel Group fell from 89.3% at 30 June 2000 to 78% at 31 January 2001, to 74.7% at 28 February 2001, to 65.7% at 31 March 2001, and to 62% at 30 April 2001.

S41. When adequate provision for doubtful debts and an adjustment made to correctly recognise the operating expenses of the Australian operations were made to the actual results, EBITDA losses were suffered by the One.Tel Group as follows:

- (a) for the months of January 2001 of \$25.8 million, February 2001 of \$20.4 million, March 2001 of \$12.4 million, and April 2001 of \$25 million;
- (b) for the year to date to 28 February 2001 of \$186.2 million;
- (c) the quarter of trading to 31 March 2001 of \$58.6 million;
- (d) for the year to date to 31 March 2001 of \$198.7 million; and
- (e) for the year to date to 30 April 2001 of \$223.6 million.

Particulars

See Annexure E

S42. The EBITDA losses referred to in paragraph S41 occurred notwithstanding:

- (a) the public forecast made to the ASX on 1 February 2001 of an EBITDA loss for the One.Tel Group for the financial year ending 30 June 2001 of \$91 million;
- (b) the EBITDA forecast of profits for the months of January 2001 of \$1.7 million, February 2001 of \$3 million and a forecast of a loss in March 2001 of \$2.1 million in the business plan for the One.Tel Group prepared in September 2000, which plan formed the basis of EBITDA forecasts to the Board at its meeting on 28 September 2000;

- (c) the forecast referred to in the last report for the month of February 2001 of an EBITDA loss for the One.Tel Group for the year to date to 28 February 2001 of \$92.669 million;
 - (d) the forecast EBITDA losses for the quarter ended 31 March 2001 presented to the Board at its meeting on 30 March 2001 of about \$12 million and the forecast for that quarter in the September business plan of an EBITDA profit of about \$3 million;
 - (e) the forecast referred to in the flash report for the month of March 2001 of an EBITDA loss for the One.Tel Group for the year to date to 31 March 2001 of \$92.745 million; and
 - (f) the forecast referred to in the flash report for the month of April 2001 of an EBITDA loss for the One.Tel Group for the year to date to 30 April 2001 of \$92.117 million.
- S43. From at least January 2001, the digital and fixed wire business of the Australian operations of the One.Tel Group traded at a loss, with a third quarter loss of \$25.0 million, notwithstanding the forecast presented to the Board at its meeting on 30 March 2001 that these operations would make profits in the third quarter of the 2001 financial year of \$4.8 million, and the forecast in the September business plan that these operations would make a profit in the third quarter of the 2001 financial year of \$5.9 million.

Particulars

See Annexure E

- S44. From at least 1 January 2001, the Next Generation business of the One.Tel Group traded at a loss with a third quarter loss of \$29.9 million, notwithstanding the forecast in the September business plan that this business would incur a loss of \$22.3 million for the third quarter and the forecast presented to the Board at its meeting on 30 March 2001 that this business would incur a loss in the third quarter of \$23.4 million.

Particulars

See Annexure E

S44A. The EBITDA losses for the One.Tel Group referred to in S41 above and the losses of the Next Generation business referred to in S44 above did not take account of costs of acquisition of customers of Next Generation (principally relating to the costs of handsets) in an amount of approximately \$30 million over the period from 1 January to 30 April 2001 which costs were capitalised and amortised over the life of subscribers' contracts rather than treated as a cost of sales and debited in full to the profit and loss account.

S44B. Significant contributors to the EBITDA losses referred to in S41 above were :

- (a) decreases in gross margin totalling \$66.3 million over the period from 1 January to 30 April 2001 arising from revenue and gross margin percentage shortfalls against budget, particularly in the digital and fixed wire business unit of the Australian operations and in the international operations;
- (b) growth in uncollectable trade receivables in the Australian operations totalling \$14.3 million over budget over the period from 1 January to 30 April 2001;
- (c) increases in operating expenses over budget in the digital and fixed wire business unit of the Australian operations totalling \$12.9 million over the period from 1 January to 30 April 2001.

S44C. A major cause of the decrease in gross margin derived by the digital and fixed wire business of the Australian operations over the period from 1 January to 30 April 2001 referred to in S44B above was a change in sales composition in which a greater proportion of revenue was derived from low margin, or even negative margin, sales on local calls compared to higher margin international and long distance calls.

The Flash reports were false and misleading

S44D. The monthly flash reports sent to directors of One.Tel during the period from 1 January 2001 to 30 April 2001 misstated the actual EBITDA performance of the Group even without making the adjustments to recognise an adequate provision for doubtful debts and to correctly recognise the operating expenses of the Australian operations referred to in S41 above.

Particulars

| | Dec-00 | Jan-01 | Feb-01 | Mar-01 | Jan to Mar | Jul to Mar | Apr-01 | Jul to Apr |
|--------------------------------|--------------|---------------|---------------|----------------|---------------|---------------|----------------|---------------|
| | YTD | | | | | | | YTD |
| | \$000 | \$000 | \$000 | \$000 | \$000 | \$000 | \$000 | \$000 |
| Flash reports' EBITDA | | | | | | | | |
| profit/(loss) | (100,547) | (7,693) | (3,664) | 542 | (10,815 | (111,362 | (299) | (111,661 |
| | | | | |) |) | |) |
| Management accounts' | | | | | | | | |
| EBITDA profit/(loss) | (103,288) | (20,869 | (16,032) | (7,710) | (44,612 | (147,900 | (20,002) | (167,902 |
| | |) | | |) |) | |) |
| Understatement of flash | | | | | | | | |
| reports' EBITDA loss | 2,741 | 13,176 | 12,368 | 8,252 | 33,797 | 36,538 | 19,703 | 56,241 |
| % of understatement of | | | | | | | | |
| flash reports' EBITDA | | | | | | | | |
| loss | (3%) | (172%) | (338%) | (1523%) | (313%) | (33%) | (6590%) | (50%) |
| | | | |) | | |) | |

The monthly flash reports sent to directors of One.Tel during the period from 1 January 2001 to 30 April 2001 misstated that trading profits had been made by the digital and fixed wire business unit of the Australian operations, which business unit accounted for about 80% of the revenue of the Australian operations during the ten months to 30 April 2001, when in fact trading losses had been suffered by that business unit in each of the months of January, February, March and April 2001, even without making the adjustments to recognise an adequate provision for doubtful debts and to correctly recognise the operating expenses of the Australian operations referred to in S41 above.

Particulars

| | Jan 2001 | Feb 2001 | Mar 2001 | Apr 2001 |
|---------------------|----------|----------|----------|----------|
| | \$000 | \$000 | \$000 | \$000 |
| Revenue | | | | |
| Flash reports | 49,904 | 44,931 | 45,174 | 40,361 |
| Management accounts | 39,633 | 35,870 | 37,900 | 31,571 |
| Difference | 10,271 | 9,061 | 7,274 | 8,790 |
| % Flash reports | | | | |
| overstated | 21% | 20% | 16% | 22% |
| Gross margin | | | | |
| Flash reports | 12,340 | 12,637 | 12,044 | 11,642 |
| Management accounts | 6,659 | 3,760 | 8,080 | 5,152 |
| Difference | 5,681 | 8,877 | 3,964 | 6,490 |
| % Flash reports | | | | |
| overstated | 46% | 70% | 33% | 56% |
| EBITDA | | | | |
| Flash reports | 1,925 | 2,002 | 1,133 | 267 |
| Management accounts | (3,991) | (8,271) | (5,499) | (12,512) |
| Difference | 5,916 | 10,273 | 6,632 | 12,779 |
| % Flash reports | | | | |
| overstated | 307% | 513% | 585% | 4786% |

- S45. The flash reports sent to directors of One.Tel from 1 January 2001 to 30 April 2001 did not disclose that the figures reported for the Australian (ex-Next Generation) operations were drawn, with respect to the digital and fixed wire businesses of the Australian operations of the One.Tel Group (which businesses contributed 80% of the total revenue of the Australian (ex Next Generation) operations), from modified budget data for this business unit and did not reflect the actual financial performance of the unit, even before making the adjustments to recognise an adequate provision for doubtful debts and to correctly recognise the operating expenses of the Australian operations referred to in S41 above.
- S46A. The monthly flash reports sent to directors of One.Tel relating to the period from 1 January 2001 to 30 April 2001 were drawn from EBITDA calculations which misstated the trading results of each of the business units in the One.Tel Group, even without making the adjustments to recognise an adequate provision for doubtful debts and to correctly recognise the operating expenses of the Australian operations referred to in S41 above.

Particulars

| | Jan 2001 | Feb 2001 | Mar 2001 | Apr 2001 |
|---|----------|----------|----------|----------|
| | \$000 | \$000 | \$000 | \$000 |
| <u>Difference between flash reports and management accounts in EBITDA</u> | | | | |
| Australian operations | | | | |
| - Digital and fixed wire | 5,916 | 10,273 | 6,632 | 12,779 |
| - One.Net | 492 | 807 | 1,242 | 810 |
| - One.Card | 88 | 237 | (69) | (73) |
| - Next Generation | 717 | (27) | 755 | (853) |
| Total Australian operations | 7,213 | 11,290 | 8,560 | 12,663 |
| International operations | | | | |
| - Fixed wire | 4,957 | 441 | (449) | 5,229 |
| - ISP | 404 | 34 | (127) | 1,155 |
| - GWUK | 603 | 603 | 268 | 656 |
| - Other business units | n/a | n/a | n/a | n/a |
| Total international operations | 5,963 | 1,078 | (308) | 7,040 |
| Overstatement of EBITDA for the Group | 13,176 | 12,368 | 8,252 | 19,703 |

The March Board Papers were false and misleading

S46. The Board Papers sent to the directors of One.Tel in or around the last week of March 2001 for the meeting of directors of One.Tel to be held on 30 March 2001 (the "March Board Papers") misstated (at page 8) the actual EBITDA performance of the Group for January and February 2001, even without making the adjustments to recognise an adequate provision for doubtful debts and to correctly recognise the operating expenses of the Australian operations referred to in S41 above.

Particulars

| | Jan-01 | Feb-01 |
|---|---------------|---------------|
| | \$000 | \$000 |
| March Board Papers EBITDA Profit/(loss) | (8,251) | (3,677) |
| Management accounts' EBITDA Profit/(loss) | (20,869) | (16,032) |
| Understatement of March Board Papers EBITDA loss | 12,618 | 12,355 |
| % of understatement of March Board Papers EBITDA loss | 153% | 336% |

S47. The March Board Papers (at pages 8-10) misstated the actual EBITDA performance of each of the business units of the Group for January and February 2001, even without making the adjustments to recognise an adequate provision for doubtful debts and to correctly recognise the operating expenses of the Australian operations referred to in S41 above, including by:

- (a) misstating an EBITDA positive performance by the digital and fixed wire business unit of the Australian operations for January and February 2001, when in fact the EBITDA performance of that business unit was EBTDA negative for both January and February 2001;
- (b) misstating an EBITDA positive performance by the Australian (ex Next Generation) operations of the Group for January and February 2001, when in fact the EBITDA performance of those operations for January and February 2001 was negative;

- (c) misstating an EBITDA positive performance by the Group's International operations for February 2001, when in fact the EBITDA performance of those operations for February 2001 was negative.

Particulars

| | Jan 2001 | Feb 2001 |
|---|----------|----------|
| | \$000 | \$000 |
| Differences between EBITDA in March | | |
| Board Papers and management accounts | | |
| Australian Operations | | |
| - Digital and fixed wire | 5,916 | 10,274 |
| - One.Net | 492 | 807 |
| Total Australian operations (ex Next Generation)* | 6,495* | 11,318* |
| Next Generation | (74) | (41) |
| Total Australian operations | 6,422 | 11,277 |
| Total international operations | 6,196 | 1,078 |
| Overstatement of EBITDA for the Group | 12,618 | 12,355 |

* including One.Card which is not shown separately in March Board Papers (at pages 8-10).

S48. The March Board Papers did not disclose that the following of the EBITDA results reported at pages 8-10 of the March Board Papers and referred to in paragraph S47 above were taken directly from the January and February flash reports or working papers thereto as are listed below, and did not reflect the actual financial performance of the relevant unit or operations:

- (a) the January and February 2001 EBITDA results of the digital and fixed wire business, and also of the One.Net business, of the Australian operations of the One.Tel Group were taken directly from the working papers which directly

formed the basis of the January and February 2001 flash reports for the Australian operations;

- (b) the January and February 2001 EBITDA results of the Australian (ex Next Generation) operations were taken directly from the results reported in the January and February 2001 flash reports for the Australian operations;
- (c) the February 2001 EBITDA results for the total International operations prior to the adjustments which was made purportedly for "Additional Unbudgeted Prepaid Marketing" was taken directly from the result reported in the flash report for the February 2001 operations.

S49. The March Board Papers, in the "Finance Report" at page 29, even before making the adjustments to recognise an adequate provision for doubtful debts and to correctly recognise the operating expenses of the Australian operations referred to in S41 above:

- (a) misstated that the digital and fixed wire business unit of the Australian operations had an "actual" positive EBITDA result for the combined months of January and February 2001, when that unit had a negative EBITDA result in both January and February 2001;
- (b) misstated the "actual" EBITDA results of the One.Card business unit, and of the International operations of the One.Tel Group for the combined months of January and February 2001; and
- (c) misstated the "actual" EBITDA results of the One.Tel Group as a whole for the combined months of January and February 2001.

Particulars

Jan-Feb 2001

\$000

Overstatement of EBITDA in March Board

Papers, page 29 compared with January and

February management accounts**Australian Operations**

| | |
|---------------------------------------|--------|
| - Digital and fixed wire | 16,190 |
| - One.Card | 325 |
| Total international operations | 7,041 |
| Overstatement of EBITDA for the Group | 23,624 |

S50. The March Board Papers, at page 28:

- (a) represented that management had concluded on reasonable grounds that the provision for doubtful debts as at 31 March 2001 of \$54 million for the Australian operations was "adequate" whereas:
 - (i) the provision of \$54 million in fact constituted a significant under-provision; and
 - (ii) there was no reasonable basis upon which to represent that the provision was adequate; and
- (b) did not disclose to the Board readily available information which would have enabled the Board to assess for itself at least to a reasonable degree of approximation the adequacy of the provision, and to conclude that it was a significant under-provision.

Particulars

1. As at 30 March 2001, the Debtor Profile for the Australian operations of the One.Tel Group, which was readily accessible by management, revealed that the debtors balance total was (in round figures) \$152 million, of which:
 - (a) \$84 million was greater than 90 days;
 - (b) \$61 million was greater than 180 days so that the balance of debtors outstanding for over 180 days alone was higher than the \$54 million provision for the entire balance; and
 - (c) \$48 million was greater than 330 days.

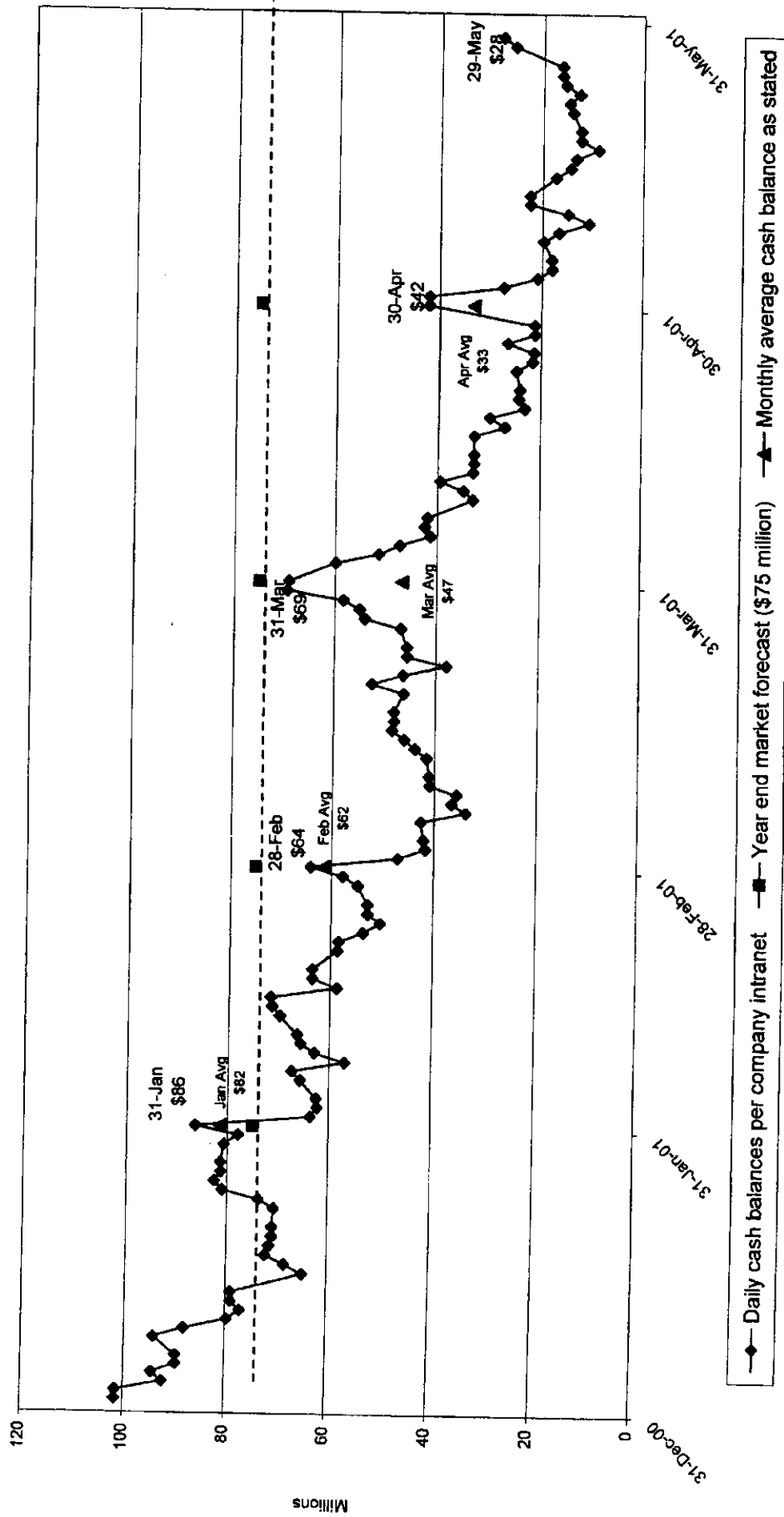
2. Further particulars of the readily available information referred to in S51(b) are set out in paragraph 311 of the Report of Mr Paul Carter dated 31 May 2002.

Summary Table

Annexure F contains a table setting out a summary of certain material facts and matters referred to in paragraphs S1 to S50 above to this Schedule.

Annexure A

Analysis of One.Tel's group cash balance from 1 January to 29 May 2001 against market forecast, showing impact of selective deferment of payments to creditors



Annexure B

List of significant trade creditor amounts past due and owing for the Australian operations and available cash balances for each month end from January to April 2001

| Month ended | 31-Jan-01 \$ | 28-Feb-01 \$ | 31-Mar-01 \$ | 30-Apr-01 \$ (a) |
|--|--------------------|---------------------|---------------------|------------------------|
| Trade creditors past due > \$1 million | | | | |
| AAP Telecommunications | 1,041,592 | - | - | - |
| Global One Communications | 2,515,666 | 2,359,082 | 2,893,884 | 3,354,819 |
| Lucent Technologies | 1,379,454 | 1,379,454 | 1,399,055 | 1,399,055 |
| Open Telecommunication | - | - | - | - |
| Optus | 10,559,878 | 8,725,666 | 16,745,796 | 11,782,499 |
| Roadhound Electronic | - | - | - | 1,550,808 |
| Sun Microsystems | 1,847,592 | 1,847,592 | - | - |
| Telstra | 1,316,656 | 2,211,506 | 10,581,190 | 20,297,214 |
| Toronto Dominion | - | - | - | 1,206,001 |
| Subtotal | 18,660,838 | 16,523,510 | 31,619,725 | 39,590,397 |
| Other Australian trade creditors past due | 5,759,856 | 12,747,057 | 18,141,361 | 14,680,307 |
| Total Australian trade creditors past due | 24,420,694 | 29,270,567 | 49,761,086 | 54,270,704 |
| Current Australian trade creditors | 22,341,130 | 25,627,303 | 14,342,752 | 11,517,822 |
| Total Australian trade creditors | 46,761,824 | 54,897,870 | 64,103,838 | 65,788,526 |
| Australian cash available [as per trial balance] | 22,085,537 | (558,301) | 15,539,662 | (2,714,794) |
| Australian cash surplus / (shortfall) to pay remaining liabilities incurred | (2,335,157) | (29,828,868) | (34,221,424) | (56,985,498) |
| Group cash available | 70,608,577 | 47,861,865 | 57,980,722 | 20,619,859 |
| Group cash surplus / (shortfall) to pay remaining liabilities incurred | 46,187,883 | 18,591,298 | 8,219,636 | (33,650,845) |

Notes:

- (a) Certain creditors recorded in the 31 May 2001 creditor listing should have been but were not recorded in the 30 April 2001 creditor listing, thereby understating the creditor balance as at 30 April 2001.
- (b) On 28 February 2001, the UK operations transferred \$26 million to the Australian operations which was deposited on 1 March 2001.

Annexure C

Summary of Australian operations' liquidity position

| | 28-Feb-01 | 31-Mar-01 | 30-Apr-01 |
|---|---------------------|---------------------|---------------------|
| | \$ | \$ | \$ |
| <u>Australian operations</u> | | | |
| Cash | (558,301) | 15,539,662 | (2,714,794) |
| Debtors | 146,574,396 | 153,876,901 | 146,500,029 |
| Accrued income | 60,154,121 | 41,395,379 | 49,844,045 |
| Carrier claims | 9,166,856 | 8,960,566 | 8,960,566 |
| Provision for doubtful debts (adjusted) | (94,312,000) | (97,506,000) | (101,010,000) |
| Creditors and accruals | 121,025,071 | 122,266,509 | 101,579,846 |
| | (142,933,779) | (139,893,557) | (155,210,502) |
| Net liquidity position | (21,908,707) | (17,627,048) | (53,630,656) |

Annexure D

Threats to supply - International operations

| Creditor | Date of threat to supply | Date of withdrawal of services |
|--------------------------------|---------------------------------|---|
| WorldCom UK Limited | on or before 10 May 2001 | on or before 10 May 2001 ⁽¹⁾ |
| Global Tele Systems UK Limited | on or about 26 March 2001 | - |
| Vodafone | on or about 10 May 2001 | - |
| Speedport | on or about 24 April 2001 | - |

Note:

(1) Services to One.Tel's Switzerland, Germany and United Kingdom operations ceased

Annexure E

Comparison of EBITDA between the flash reports, adjusted management accounts, budget and market forecast

| Notes | Dec-00 6 months YTD H1 \$000 | Jan-01 | Feb-01 | Mar-01 | Jan - Mar 3 months Q3 \$000 | Jul - Mar 9 months YTD \$000 | Apr-01 | May-01 | Jun-01 | Apr - Jun To date Q4 \$000 | Jan - Jun To date H2 \$000 | Jul - Jun YTD Full year \$000 |
|--|--|----------|----------|----------|--------------------------------------|---------------------------------------|----------|--------|--------|-------------------------------------|-------------------------------------|--|
| GROUP OPERATIONS | | | | | | | | | | | | |
| Flash reports | | | | | | | | | | | | |
| EBITDA | (100,647) | (7,693) | (3,664) | 542 | (10,815) | (111,362) | (299) | na | na | (299) | (11,114) | (111,661) |
| Management accounts | | | | | | | | | | | | |
| EBITDA | (103,288) | (20,869) | (15,032) | (7,710) | (44,812) | (147,900) | (20,002) | na | na | (20,002) | (64,814) | (187,902) |
| Adjustment to provision for doubtful debts | (35,789) | (4,134) | (3,438) | (3,194) | (10,766) | (47,535) | (3,503) | na | na | (3,503) | (14,269) | (81,036) |
| Adjusted EBITDA | 80 | (780) | (975) | (1,516) | (3,271) | (3,221) | (1,493) | na | na | (1,493) | (4,764) | (4,714) |
| Budget / Market forecast | (140,007) | (25,784) | (20,444) | (12,421) | (68,648) | (198,656) | (24,998) | na | na | (24,998) | (83,847) | (223,654) |
| Budget EBITDA (as per September 2000 Business Plan) | (81,139) | 1,677 | 3,006 | (2,092) | 2,591 | (66,547) | 1,217 | 8,802 | 3,752 | 13,771 | 16,362 | (44,776) |
| Market forecast full year EBITDA | | | | | | | | | | | | (91,000) |
| Australian digital and fixed wire business unit | | | | | | | | | | | | |
| Flash reports | | | | | | | | | | | | |
| EBITDA | (3,707) | 1,925 | 2,002 | 1,133 | 5,060 | 1,363 | 267 | na | na | 267 | 5,327 | 1,820 |
| Management accounts | | | | | | | | | | | | |
| EBITDA | (3,512) | (3,991) | (8,271) | (5,499) | (17,761) | (21,273) | (12,512) | na | na | (12,512) | (30,273) | (33,786) |
| Adjustment to provision for doubtful debts | (30,809) | (2,851) | (2,267) | (2,149) | (7,266) | (38,074) | (2,335) | na | na | (2,335) | (9,601) | (40,409) |
| Adjusted EBITDA | (34,320) | (6,842) | (10,538) | (7,647) | (25,027) | (59,347) | (14,847) | na | na | (14,847) | (39,874) | (74,194) |
| Budget | | | | | | | | | | | | |
| EBITDA (as per September 2000 Business Plan) | 1,602 | 2,222 | 2,005 | 1,694 | 5,921 | 7,523 | 2,636 | 2,259 | 1,793 | 6,686 | 12,609 | 14,411 |
| Australian One.Net business unit | | | | | | | | | | | | |
| Flash reports | | | | | | | | | | | | |
| EBITDA | 4,850 | 1,342 | 768 | 920 | 3,030 | 7,860 | 964 | na | na | 964 | 3,994 | 8,644 |
| Management accounts | | | | | | | | | | | | |
| EBITDA | 4,753 | 850 | (39) | (322) | 489 | 5,242 | 154 | na | na | 154 | 843 | 5,396 |
| Adjustment to provision for doubtful debts | (2,832) | (811) | (206) | (178) | (1,195) | (4,027) | (220) | na | na | (220) | (1,415) | (4,247) |
| Adjusted EBITDA | 1,921 | 38 | (245) | (500) | (706) | 1,215 | (66) | na | na | (66) | (772) | 1,149 |
| Budget | | | | | | | | | | | | |
| EBITDA (as per September 2000 Business Plan) | 5,403 | 2,049 | 1,724 | 1,921 | 5,694 | 11,097 | 2,737 | 2,163 | 2,253 | 7,173 | 12,867 | 18,270 |

Annexure E

Comparison of EBITDA between the flash reports, adjusted management accounts, budget and market forecast

| Notes | Dec-00 6 months YTD H1 \$000 | Jan-01 | Feb-01 | Mar-01 | Jan - Mar 3 months Q3 \$000 | Jul - Mar 9 months YTD \$000 | Apr-01 | May-01 | Jun-01 | Apr - Jun To date Q4 \$000 | Jan - Jun To date H2 \$000 | Jul - Jun YTD Full year \$000 |
|---|--|---------|----------|---------|--------------------------------------|---------------------------------------|----------|--------|--------|-------------------------------------|-------------------------------------|--|
| Australian One Card business unit | | | | | | | | | | | | |
| Flash reports | | | | | | | | | | | | |
| EBITDA | (216) | (42) | (17) | (15) | (74) | (280) | (15) | na | na | (15) | (89) | (306) |
| Management accounts | | | | | | | | | | | | |
| EBITDA | (481) | (130) | (254) | 54 | (330) | (811) | 58 | na | na | 58 | (272) | (753) |
| Adjustment to provision for doubtful debts | (230) | (64) | (27) | 6 | (85) | (315) | (17) | na | na | (17) | (102) | (332) |
| Adjusted EBITDA | (711) | (194) | (281) | 60 | (415) | (1,126) | 41 | na | na | 41 | (374) | (1,085) |
| Budget | | | | | | | | | | | | |
| EBITDA (as per September 2000 Business Plan) | (216) | (24) | (17) | (15) | (56) | (272) | (15) | (12) | (11) | (38) | (94) | (310) |
| Australian (ex Next Generation) operations | | | | | | | | | | | | |
| Flash reports | | | | | | | | | | | | |
| EBITDA | 927 | 3,225 | 2,753 | 2,038 | 8,016 | 8,943 | 1,218 | na | na | 1,216 | 9,232 | 10,159 |
| Management accounts | | | | | | | | | | | | |
| EBITDA | 750 | (3,271) | (8,564) | (5,767) | (17,602) | (18,842) | (12,300) | na | na | (12,300) | (29,902) | (29,142) |
| Adjustment to provision for doubtful debts | (33,870) | (3,726) | (2,500) | (2,320) | (8,546) | (42,416) | (2,572) | na | na | (2,572) | (11,118) | (44,888) |
| Adjusted EBITDA | (33,110) | (6,997) | (11,064) | (9,087) | (26,148) | (59,258) | (14,872) | na | na | (14,872) | (41,020) | (74,130) |
| Budget | | | | | | | | | | | | |
| EBITDA (as per September 2000 Business Plan) | 6,789 | 4,247 | 3,712 | 3,600 | 11,559 | 19,348 | 5,558 | 4,430 | 4,035 | 14,023 | 25,562 | 32,371 |

Annexure E

Comparison of EBITDA between the flash reports, adjusted management accounts, budget and market forecast

| | Notes | Dec-00 8 months YTD | Jan-01 | Feb-01 | Mar-01 | Jan - Mar 3 months Q3 | Jul - Mar 9 months YTD | Apr-01 | May-01 | Jun-01 | Apr - Jun To date Q4 | Jan - Jun To date H2 | Jul - Jun YTD Full year |
|--|-------|---------------------------|---------|---------|----------|-----------------------------|------------------------------|----------|---------|----------|----------------------------|----------------------------|-------------------------------|
| | | \$000 | \$000 | \$000 | \$000 | \$000 | \$000 | \$000 | \$000 | \$000 | \$000 | \$000 | \$000 |
| Australian Next Generation operations | | | | | | | | | | | | | |
| Flash reports | | | | | | | | | | | | | |
| EBITDA | | (57,426) | (7,835) | (7,405) | (7,753) | (22,993) | (80,418) | (8,833) | na | na | (8,833) | (31,826) | (89,262) |
| Management accounts | | | | | | | | | | | | | |
| EBITDA | | (56,306) | (6,552) | (7,378) | (6,503) | (24,438) | (80,746) | (7,980) | na | na | (7,980) | (32,418) | (86,726) |
| Adjustment to provision for doubtful debts | (a) | (2,899) | (408) | (938) | (874) | (2,220) | (5,119) | (931) | na | na | (931) | (3,151) | (6,060) |
| Adjustment for operating expense charge | (b) | 50 | (780) | (875) | (1,516) | (3,271) | (3,221) | (1,493) | na | na | (1,493) | (4,764) | (4,714) |
| Adjusted EBITDA | | (59,157) | (9,740) | (9,291) | (10,898) | (29,929) | (89,086) | (10,404) | na | na | (10,404) | (40,333) | (99,490) |
| Budget | | | | | | | | | | | | | |
| EBITDA (as per September 2000 Business Plan) | | (54,618) | (7,625) | (5,523) | (9,195) | (22,343) | (76,961) | (10,530) | (5,596) | (12,861) | (28,987) | (51,330) | (105,848) |
| International operations | | | | | | | | | | | | | |
| Flash reports | | | | | | | | | | | | | |
| EBITDA | | (44,048) | (3,083) | 988 | 6,257 | 4,182 | (39,886) | 7,318 | na | na | 7,318 | 11,480 | (32,889) |
| Management accounts | | | | | | | | | | | | | |
| EBITDA | | (47,740) | (9,046) | (90) | 6,565 | (2,572) | (50,312) | 278 | na | na | 278 | (2,294) | (50,034) |
| Budget | | | | | | | | | | | | | |
| EBITDA (as per September 2000 Business Plan) | | (43,309) | 5,055 | 4,917 | 3,503 | 13,375 | 66 | 6,169 | 9,968 | 12,578 | 28,735 | 42,110 | 28,801 |

Notes:

- The reasonably required provision for doubtful debts is apportioned across the Australian operations based on revenue.
- The Australian digital and fixed wire operations charged a higher amount of operating expenses to Next Generation than Next Generation recorded. As a result, the management accounts of Next Generation and the One.Tel Group operations understated operating expenses. This was substantially corrected in statutory accounts to 31 December 2000, however the practice continued to 29 May 2001.

Annexure F

Summary of the Group's cash balance, cash and creditor position and EBITDA for the months January to April 2001

| | 31-Jan-01 \$ million | 28-Feb-01 \$ million | 31-Mar-01 \$ million | 30-Apr-01 \$ million |
|---|-------------------------|-------------------------|-------------------------|-------------------------|
| Cash balance | | | | |
| Cash balance as per intranet | 86 | 64 | 69 | 42 |
| Less: Pledge | (8) | (8) | (8) | (8) |
| Less: Unpresented cheques | (7) | (8) | (3) | (13) |
| Cash balance of the Group | 71 | 48 | 58 | 21 |
| Forecast | | | | |
| As per 28 September 2000 Board papers | 123 | 114 | 112 | 106 |
| As per 24 November 2000 Board papers | 100 | 87 | 92 | 93 |
| As per 25 January 2001 Board papers | 85 | 82 | 97 | 88 |
| As per 30 March 2001 Board papers | na | na | 61 | 53 |
| Cash and creditor position | | | | |
| Australian overdue creditors | (24) | (29) | (50) | (54) |
| International overdue creditors | | | | |
| - UK overdue liabilities | (50) | (56) | (82) | (83) |
| Other creditor details: | | | | |
| Australian current trade creditors | | | | |
| Australian other creditors and accruals | (22) | (26) | (14) | (12) |
| - Operational accruals | (26) | (25) | (36) | (39) |
| - Carrier accruals | (48) | (46) | (41) | (50) |
| International creditors | | | | |
| - Current UK liabilities | (12) | (25) | (19) | (8) |

Annexure F

Summary of the Group's cash balance, cash and creditor position and EBITDA for the months January to April 2001

| | 31-Jan-01 \$ million | 28-Feb-01 \$ million | 31-Mar-01 \$ million | 30-Apr-01 \$ million |
|---------------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Cash usage | | | | |
| Australia (ex Next Generation) | | | | |
| Actual | 6 | (7) | 2 | na |
| Forecast | | | | |
| As per 28 September 2000 Board papers | (1) | 1 | 5 | 6 |
| As per 24 November 2000 Board papers | 6 | 1 | 5 | 6 |
| As per 25 January 2001 Board papers | 6 | 13 | 10 | 5 |
| As per 30 March 2001 Board papers | | | 2 | 8 |
| Next Generation | | | | |
| Actual | (15) | (27) | (12) | na |
| Forecast | | | | |
| As per 28 September 2000 Board papers | (12) | (13) | (13) | (16) |
| As per 24 November 2000 Board papers | (18) | (11) | (9) | (10) |
| As per 25 January 2001 Board papers | (15) | (11) | (4) | (19) |
| As per 30 March 2001 Board papers | | | (12) | (21) |
| Group | | | | |
| Actual | (14) | (26) | (3) | na |
| Forecast | | | | |
| As per 28 September 2000 Board papers | (14) | (9) | (2) | (6) |
| As per 24 November 2000 Board papers | (17) | (13) | 5 | 1 |
| As per 25 January 2001 Board papers | (16) | (3) | 15 | (9) |
| As per 30 March 2001 Board papers | | | (3) | (8) |

Annexure F

Summary of the Group's cash balance, cash and creditor position and EBITDA for the months January to April 2001

| | 31-Jan-01 \$ million | 28-Feb-01 \$ million | 31-Mar-01 \$ million | 30-Apr-01 \$ million |
|---|-------------------------|-------------------------|-------------------------|-------------------------|
| Earnings | | | | |
| Monthly actual EBITDA as per management accounts adjusted for required provision for doubtful debts and adjustment for operating expenses | | | | |
| Australia (ex Next Generation) | (7) | (11) | (8) | (15) |
| Next Generation | (10) | (9) | (11) | (10) |
| International | (9) | (0) | 7 | (0) |
| Group | (26) | (20) | (12) | (25) |
| YTD for the Group operations | | | | |
| Actual EBITDA | (166) | (186) | (199) | (224) |
| Budget EBITDA (as per September 2000 Business Plan) | (59) | (56) | (59) | (57) |
| Full year market forecast EBITDA for the Group operations | (91) | (91) | (91) | (91) |

SCHEDULE C**Statement of Contrition**

Mr Greaves expresses his contrition and regret for what he acknowledges was a failure to effectively discharge his responsibilities as a non executive chairman and non executive director of One.Tel Ltd in the last three months before he resigned his office as a director of the company on 30 March 2001.

For its part, ASIC acknowledges that it has never been part of its case against Mr Greaves that he acted in any way dishonestly in relation to the performance of his duties as a non executive director and non executive chairman of the company.

As a non-executive director, Mr Greaves relied on the financial information provided to him by the executive directors and officers of the company. Based on the information that was provided to him, he believed that the financial position of the company was secure when he resigned on 30 March 2001.

SCHEDULE D

BETWEEN:

JOHN HUYSHE GREAVES

AND

[TRUSTEE]

DEED OF ARRANGEMENT

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DX 530
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THIS DEED OF ARRANGEMENT is made the day of 2004 in pursuance of the provisions of Part X of the Bankruptcy Act, 1966 ("the Act")

BETWEEN: **JOHN HUYSHE GREAVES** of 8 Redan Street, Mosman in the State of New South Wales ("**the Debtor**");

AND: [**TRUSTEE**] of [**ADDRESS**] Registered Trustee ("**the Trustee**").

WHEREAS:

- A. A meeting of creditors of the Debtor called pursuant to an authority under section 188 of the Act was held on [**date**] 2004 being a date within the time specified in Section 194 of the Act and being not more than twenty-one days prior to the date hereof (which meeting of creditors is hereinafter called "the proposal meeting").
- B. The proposal meeting was held in accordance with the provisions of the said Section 194 of the Act.
- C. By Special Resolution the Creditors resolved that the Debtor be required to execute a Deed of Arrangement under Part X of the Act.
- D. The Trustee was nominated by the proposal meeting to be the Trustee of such Deed of Arrangement.

NOW THIS DEED WITNESSETH as follows:

- 1. In the interpretation of this Deed unless inconsistent with the context or subject matter:
 - (a) "The Trustee" means the said [**NAME OF TRUSTEE**] and every other person appointed to the office of Trustee by this Deed or appointed to act as such Trustee for the time being.
 - (b) "The Creditors" means the creditors of the Debtors on the date hereof.
 - (d) "Persons" includes firm, company and corporation.

- (e) Any reference to provisions of the Act and of the Regulations or of either the Act or the Regulations means a reference to the Bankruptcy Act 1966 and the Bankruptcy Regulations 1966 or either of them as amended and in force at the date hereof provided that if any amendment to the Act or the Regulations after such date is expressed to be retrospective or to apply to Deeds of Arrangement executed before such amendment or if any such amendment affects the order of distribution or property a reference herein to the provisions of the Act and the Regulations or either of them shall include a reference to any such amendment.
 - (f) This Deed and any provisions or provision hereof shall be construed subject to the provisions of the Act and in particular to Part X hereof and the provisions of the Act incorporated hereby or by reference thereto and insofar as this Deed or any provision or provisions hereof does or do not comply with the Act or any provision thereof then to that extent only this Deed or the particular provision or provisions thereof which does or do not comply as aforesaid shall be void and of no effect.
2. The Debtor covenants to convey, transfer or assign or cause to be conveyed, transferred or assigned to the Trustee all the property more particularly described in Schedule A hereto on trust to be dealt with by the Trustee in accordance with this Deed of Arrangement.
 3. The Trustee accepts appointment as Trustee of this Deed and the conveyance and assignment of the said property upon the trusts hereinafter set out.
 4. The Trustee shall get in and realise the assets set out in the said paragraph 2 hereto as soon as reasonably practicable provided that he shall have the power to postpone the sale of any part thereof as he in his discretion considers expedient.
 5. The Trustee shall apply any amount received by him under the CGU Directors and Officers Liability Insurance Policy No. 01 DO 0298798 and the Gerling Excess Directors & Officers Liability Policy 0012.001 in payment of any liability that Mr Greaves may have to the Australian Securities & Investments Commission and One.Tel Limited (In Liquidation).

6. Subject to clause 5, the Trustee shall apply any moneys received by him pursuant to this Deed in making payments in the order described by Section 108 to 114 inclusive of the Act as modified by Section 237(2) thereof.
7. Immediately after the Debtor has in all respects complied with his obligations under this Deed and the Act the Trustee shall certify that the Debtor has complied with the Deed. Notice that such certificate has been executed shall be given by the Trustee to the Debtor and the Creditors.
8. The Debtor shall on the execution of the said certificate be absolutely released and discharged from all provable debts owed by him to each of his creditors respectively and from all claims, actions, suits, demands and other proceedings by each of the Creditors in respect of or on account of those debts except from any liability in respect of any compensation order or costs order made in proceedings 5934 of 2001 in the New South Wales Supreme Court Equity Division ("the ASIC Proceedings") and from any liability in respect of any judgment that may be entered against the Debtor in proceedings 50207 of 2002 in the New South Wales Supreme Court Equity Division ("the Bonus Proceedings")
9. Immediately after the Trustee:
 - I. completes or settles any claim for the realisation of assets being rights under the CGU Directors and Officers Liability Insurance Policy No. 01 DO 0298798 and/or the Gerling Excess Directors & Officers Liability Policy O012.001 including the pursuit to judgment or settlement of any claim under these policies; or
 - II. makes a decision not to pursue a claim under the CGU Directors and Officers Liability Insurance Policy No. 01 DO 0298798 and/or the Gerling Excess Directors & Officers Liability Policy O012.001,

the Trustee will issue a certificate to the effect that he has completed the realisation of assets being rights under the CGU Directors and Officers Liability Insurance Policy No. 01 DO 0298798 and/or the Gerling Excess Directors & Officers Liability Policy O012.001 or to the effect that the Trustee does not intend to pursue a claim

against CGU Insurance Limited and/or Gerling Australia Insurance Pty Ltd under those two policies. Notice that such certificate has been executed shall be given by the Trustee to the Debtor and the Creditors.

10. The Debtor shall upon execution of the said certificate by the Trustee be absolutely released and discharged from all liability in respect of any compensation and costs order made in the ASIC Proceedings and any judgment in the Bonus Proceedings.
11. Prior to the execution of the certificate referred to in clause 9, neither the Trustee nor any creditor will take any steps to enforce against the Debtor any compensation order and any costs order made in the ASIC Proceedings and any judgment in the Bonus Proceedings other than to seek recovery pursuant to the arrangement constituted by this Deed.
12. The Trustee shall call a meeting of creditors if requested in writing to do so by creditors whose debts at the date of such request amount collectively to not less than one-fourth of the total value of the provable debts of the Debtor or at any time when it may be necessary or when he considers it desirable to do so. Any meeting of the Creditors shall be held no earlier than seven (7) days after notice thereof has been given by the Trustee to each of the Creditors. Subject to the provisions of clause 12 hereof notice shall be delivered or sent and the meeting shall be held in accordance with the provisions of Section 223 and 223A of Part X of the Act and the Regulations with such adaptations, modifications and omissions as are necessary. Any questions concerning the right of a person to

vote shall be determined by the Trustee and in the event that the Trustee is not also the chairman of the meeting, the chairman shall if so requested by the Trustee adjourn the meeting for a period not exceeding fourteen (14) days to enable the Trustee to investigate the matter. Save where this Deed requires that any question, decision or matter shall be determined or any power shall be exercised by or pursuant to a special resolution any resolution passed at a meeting of the Creditors voting in accordance with Section 64ZB of the Act shall be valid and binding upon the Trustee and each of the Creditors.

13. This Deed shall bind the secured creditors of the Debtor as well as the unsecured creditors PROVIDED HOWEVER that nothing herein contained shall affect the right of secured creditors to realise or otherwise deal with their security.
14. For the purpose of exercising his powers under this Deed the Trustee may act in the name of the Debtor as his lawful attorney to exercise those powers and the Debtor hereby appoints the Trustee his attorney for the carrying out of all acts including the execution of documents and the taking of legal proceedings which he shall in his absolute discretion require for perfecting his title to the goods and/or choses in action to which he is entitled or which are assigned to him or which come under his control or for gaining possession of the same or for or in connection with the enforcement of any of his rights and powers under this Deed.
15. Where any notice is required by this Deed to be given it shall be sufficiently delivered and sent if it is delivered personally to the person to whom the notice is to be given or posted by prepaid post to the person's business or residential address as known to the Trustee or to that person's solicitors or (where such person is a firm, company or corporation) to the registered office of such person.
16. The Trustee may for all or any of the purposes of the Deed:
 - (a) at any time from time to time employ or authorise the employment of any legal practitioner, accountant, auctioneer, stock and share broker, estate agent or valuer, as he may consider necessary and proper;
 - (b) obtain such advice or assistance as he considers desirable relating to the conduct and management of the business or the realisation of the estate or to the conduct of the affairs of the Debtor;
 - (c) pay and charge against the expenses of the administration of this Deed all proper fees and charges of any legal practitioner, accountant, auctioneer, stock and share broker, estate agent or valuer.
17. This Deed shall terminate on the earliest date on which any of the following events occur:

- (a) one of the events specified in Section 235 (c) or (d) of the Act; or
- (b) the execution of by the Trustee of a certificate pursuant to clause 9 hereof and compliance by the Trustee with his obligations in clause 5 hereof; or
- (c) three years from the date of execution of this Deed of Arrangement by the Debtor unless the Creditors resolve to extend the operation of this Deed of Arrangement beyond three years for the purposes of the Trustee finalising any claim for the realisation of rights under the CGU Directors and Officers Liability Insurance Policy No. 01 DO 0298798 and/or the Gerling Excess Directors & Officers Liability Policy O012.001.

SCHEDULE A

- (i) Payment of \$600,000 by Mr Greaves or others;
- (ii) 41 shares in The WAM Communications Group Pty Limited (ACN 050 100 920);
- (iii) 450 shares in Inteq Limited (ACN 055 971 232);
- (iv) 20 shares in Sauvage Pty Limited (ACN 089 145 335);
- (v) Mr Greaves' rights under or in relation to the CGU Directors and Officers Liability Insurance Policy No. 01 DO 0298798 and the Gerling Excess Directors & Officers Liability Policy O012.001 including any rights to damages in respect thereof;
- (vi) The benefit of all costs orders in favour of Mr Greaves in proceedings number 50096 of 2002 in the Equity Division of the Supreme Court of New South Wales, including the orders of McClellan J made on 15 February 2003 and Bergin J made on 5 September 2003 and on 12 December 2003.

EXECUTED as a Deed

SIGNED SEALED AND DELIVERED)

by the said JOHN HUYSHE GREAVES)

in the presence of)

.....

J H Greaves

.....

SIGNED SEALED AND DELIVERED)

by the said [TRUSTEE])

in the presence of)

.....

[TRUSTEE]