



AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

93/596(6)

5 October 1993

Mr Ian Campbell
Managing Director, Commercial
Telecom

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Dear Mr Campbell

COT CASES SETTLEMENT PROPOSAL

AUSTEL has been asked by the *COT Cases* to facilitate their agreeing with Telecom the terms of the proposal they have put to it on how their claims against it may be settled.

2. I understand from the terms of the letter, dated 29 September 1993, from your Corporate Secretary, Mr Holmes, to Mr Schorer, Spokesperson for the *COT Cases*, that Telecom agrees with AUSTEL's intervention as a facilitator.

Starting point

3. I am taking as my starting point the "*Settlement Proposal*" at Attachment 'A' which was prepared by Telecom for the purposes of clarifying its understanding of the nature of the proposal put by the *COT Cases*.

The *Settlement Proposal* in context

4. The *Settlement Proposal* is to apply to the following four *COT Cases* -

- G Schorer: Golden Messenger (Spokesperson)
- A Garms: Tivoli Restaurant
- M Gillan: Japanese Spare Parts
- A Smith: Cape Bridgewater Holiday Camp.

5. The *COT Cases* put their proposal against a background of -

- long standing disputes between each of the *COT Cases* and Telecom involving, amongst other things, allegations of poor quality of service provided by Telecom and shortcomings in customer equipment supplied by it
- the effect of the matters in dispute on their businesses

- dissatisfaction with Telecom's responses to their complaints
- prior payments made by Telecom to each of the *COT Cases* in connection with their disputes.

6. When there is agreement between Telecom and the *COT Cases* as to the nature of their proposal, Telecom's Executive Council will consider it and Telecom will inform the *COT Cases* whether Telecom will adopt it.

Comments by the *COT Cases* on the *Settlement Proposal* at Attachment 'A'

7. The *COT Cases* have indicated to AUSTEL that the *Settlement Proposal* at Attachment 'A' does not accurately reflect their proposal because it does not include an opportunity for Telecom to proceed without reference to the proposed Circuit Breaker. That is, the Circuit Breaker is seen by the *COT Cases* as a last resort mechanism that would operate only if -

- a direct offer by Telecom were unacceptable
- Telecom chose not to make an offer.

8. While there may be merit in an opportunity for Telecom in the first instance to negotiate directly with the *COT Cases* and to have the Circuit Breaker as a fall back position, the history of the matter suggest to me that direct negotiations between Telecom and the *COT Cases* would not provide a resolution of the matters more quickly than an immediate move to a Circuit Breaker and I understand that the *COT Cases* do not press for that part of their proposal to be recorded in the *Settlement Proposal*.

Clauses 1-4

- "1. Both Telecom and the four remaining active *COT Cases* are seeking a final settlement of the outstanding matters between them if that is possible.
2. A final settlement is one that will be absolutely binding and, once entered into, has no chance of becoming unstuck.
3. The settlement process envisaged requires a "Circuit Breaker" that is a person accepted by all parties as an honest broker who will investigate the claims of the *COT members* and propose terms for commercial settlement.
4. The "Circuit Breaker" will be a person of clear independence and integrity who will have had experience in commercial assessment, mediation and arbitration."

9. I understand that the *COT Cases* agree with Clauses 1-4 of the *Settlement Proposal*.