

GOLDEN MESSENGER**FINDINGS - ALLEGATION (III)**

Findings at Allegation (ii) are also relevant to this Allegation. Telecom have maintained the position that network service was within acceptable standards despite having considerable information, obtained from internal investigations, that major problems did exist with the network and that these problems did impact on the level of service provided to the customer.

The following extracts from views put forward by Telecom Regional Technical staff and Senior Management -

- Telecom Minute from General Manager, Telecom Commercial Vic/Tas to Group General Manager, Consumer and Commercial of 28 October 1993 which advised of serious concerns that the technical experts had in conducting further testing, and their view that extensive testing has already been performed and that all indicators other than the customers own comments are that the telephone services are performing satisfactorily.
- Telecom letter from D Campbell to G Schorer of 23 September 1992 which advised that "At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside of normal performance standards."

indicate that Telecom has formed the view that as its testing had not identified the source/s of the recurring faults being frequently reported, that there was no evidence to suggest that the network was performing unsatisfactorily.

However, whilst maintaining this view Telecom had -

- been receiving fault reports frequently, with many of the faults being reported on a recurring basis
- been informed of other network users that had experienced difficulties in contacting Golden Messenger or experienced similar problems
- located and rectified significant faults within the network.

The key issue is again the extent to which the testing regime is capable of identifying the problems that occurred, and in particular, testing the network as a whole.

"As you are aware we are having real problems with this system. We appear to have the speed up to what we hope is an acceptable level by the dodgy expedient of removing some of the DSS modules. this may or may not be acceptable to the customer (bless him) in the longer term.

The most pressing problem now is the intermittent failure of the station displays. The displays do not fail completely, remaining able to show "unobtainable" at the correct times as required, but nothing else. No CDR card is fitted. We intend to try and fit one but this may not be possible given the large size of the system."

On 11/10/88 Telecom wrote to Golden Messenger advising that after extensive investigation, reports and discussions that claims of problems with the system were not able to be substantiated.

The Final Report dated 17/11/89 on Golden Messenger advises of significant problems with the Flexitel System.

On 19/6/90 Golden Messenger advised Telecom of continuing problems and frustrations in obtaining appropriate action from Telecom and of business losses suffered as a result of such continuing problems, and enclosed a statement of claim to be filed in the Federal Court.

on 6/7/90 Telecom advised -

My enquiries have revealed that following the installation of the Flexitel system in July 1987 a number of difficulties were experienced with the operation of the system. These were due either to incorrect operation of equipment by your staff or incorrect programming and dimensioning of the system. In order to overcome these difficulties Telecom provided customer training and upgraded the facilities of the Flexitel system.

In the circumstances, Telecom considers that it has met its obligations in regard to the provision and maintenance of the Flexitel system and accordingly does not believe that compensation is warranted.

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Telecom Minute of 29/1/88 states that it appears customer sold equipment which failed to meet his needs.

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Telecom Minute of 30/3/88 states that advice from Legal and Policy Headquarters indicate that Golden Messenger appeared to have a case against us and that we should negotiate a settlement to prevent legal action proceeding. This advice was also contained in Telecom Minutes of 27/4/88 and 5/1/92.

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Telecom Minute of 22/9/92 states that the Australian Government Solicitor had advised Telecom that Golden Messenger is likely to be successful in establishing that Telecom engaged in misleading and deceptive conduct contrary to the Trade Practices Act and that the consequence of lost calls or

calls not getting through was likely to lead to an immediate loss of business in relation to that call and potential loss of future business from the customer.

Documentation reviewed did not provide evidence of misleading advice to take legal action which was then unreasonably extended. Letter of 10/8/93 from Golden Messenger states that -

Golden's solicitor advised Golden of the potential cost of daily appearance in the Federal Court stating new rules required Golden to pay all council fees in advance, and as he was aware of Golden's current financial position he couldn't in all conscience advise Golden to continue with the action when he knew Golden would have to borrow the full amount from their bankers to fund the Federal Court Action.

What is evident from the above findings is that immediately after the installation of the system, Telecom knew of major deficiencies with the system and that the system's deficiencies were confirmed by Telecom's technical staff. Telecom was also aware from 29/1/88 that the Flexitel System would not meet the customers operational requirements and that internal legal advice of 30/3/88 confirmed that the customer had a case against Telecom. Despite all this information available within Telecom, Telecom maintained that the system was working satisfactorily and adopted this approach in dealings on this settlement issue.