

GOLDEN MESSENGER

- 1 Golden Messenger is a courier delivery service based in North Melbourne, its proprietor is Mr Graham Schorer.

GENERAL OUTLINE

- 2 Golden Messenger is served by the North Melbourne Exchange. The North Melbourne Exchange is equipped with digital (AXE) and analogue (ARE) switching equipment. All numbers with a 329 prefix are serviced by ARE switching equipment.
- 3 Until 1 January 1994 Golden Messenger was supplied with the following telephone services -
 - 329 0055 (PABX Number) for bookings, plus nineteen auxiliary numbers
 - 329 7133 (PABX Number) for Major Customers, plus five auxiliary numbers
 - 329 7255 (PABX Number) for Sales, plus one auxiliary number
 - 329 7355 (PABX Number) for Accounts and Administration, plus five auxiliary numbers.

- 329 7422 (PABX Number) for Enquiries/Operations Supervisor, plus two auxiliary numbers

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- 329 7099.

- 4 On 1 January 1994 Golden Messenger was provided with an ISDN (Integrated Services Digital Network) telephone service. This ISDN service provides a primary rate access link which can simultaneously accommodate 30 voice channels plus associated control signalling. Golden Messenger has also been allocated four hundred telephone numbers and has full discretion over how these numbers are configured.
- 5 Golden Messenger currently operates both sets of services, and is phasing out the numbers served by analogue switching equipment (numbers with 329 prefix).
- 6 The files made available by Telecom in response to AUSTEL's direction of 12 August 1993 do not provide a comprehensive history of the problems reported, dealings with the customer or of testing undertaken. Of particular note is the limited number of, and information in, exchange files relating to the North Melbourne Exchange (and any other exchange having involvement with this case).
The exchange files provided by Telecom contained limited information on a relatively small number of interactions with the customer along with some records of testing undertaken. In view of other relevant papers which have come to hand, the length of time that the customer has reported problems, the level of testing and customer interaction

over the past eight years and the high profile that this case has had it seems surprising that there was such a limited volume of exchange files and information.

7 The absence of a structured or systematic set of records in the files provided by Telecom not only precludes the construction of a comprehensive outline of the history of this case, but also provides little evidence to suggest that Telecom adopted a systematic and methodical approach to tracing and rectifying faults, or identifying and considering alternative options for service delivery whilst problems persisted over the eight year duration of this case.

8 The files provided by Telecom do, however, contain sufficient information concerning a number of significant events and interactions between Telecom and Golden Messenger to enable an assessment against some of the allegations of improper behaviour and also to identify salient features of this case.

COMPLAINT OF SERVICE

9 Golden Messenger has claimed a history, spanning the past eight years, of unsatisfactory service which has impacted on its business operations causing business losses.

10 Golden Messenger has regularly reported faults, many of which were/are of a recurring nature. Golden Messenger initially reported faults to the designated Telecom contact point; however, by early 1986 it decided to elevate its problems to Telecom Senior Regional

Management and has since continued to report faults experienced to the designated reporting point as well as making frequent representations to senior management.

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11 Essentially Golden Messenger has complained of the following problems -

- No Ring Received
- Busy when Free
- Calls Dropping Off
- No Dial Tone
- Recorded Voice Announcements.

12 Golden Messenger also alleges, that following advice from a Telecom technician in January 1987 that the problems being experienced were related to malfunctioning of a multiphone system rented from Telecom, Golden Messenger purchased a new telephone system (Flexitel) recommended by Telecom as being most appropriate to meeting its then current and future needs. Almost immediately after installation of the replacement telephone system Golden Messenger began to complain about the inadequacy of the system and of continuing problems with the level of service.

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13 Documentation made available by Telecom falls into three distinguishable categories -

- pre 1991
- 1991 - August 1992
- post August 1992.

Pre 1991

14 Considerable documentation was made available relating to interactions between Golden Messenger and Telecom on the Flexitel and continuing service problems, however, limited exchange files or information were provided.

15 The key issues identified in this documentation were -

- Golden Messenger claimed that it -

- suffered from unsatisfactory service caused by unidentified network problems
- followed Telecom's advice and purchase a Flexitel system which was subsequently found to not meet its operating requirements and that these problems caused business losses.
- Telecom maintained that the network and the Flexitel system were working satisfactorily despite having internal information that there were problems with the network and that the Flexitel system did not meet Golden Messenger's business needs.

January 1991 - August 1992

- 16 Whilst there is limited documentation provided relating to this category, the documentation revealed that Golden Messenger continued to report problems with its telephone service, and that it considered moving to an ISDN service in an effort to improve the quality of its service.

Post August 1992

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- 17 Considerable documentation was provided in relation to this category, however, this related predominantly to correspondence between Telecom and Golden Messenger with limited exchange or testing records being made available.
- 18 The documentation revealed that Golden Messenger continued to report recurring problems with its level of service and that Telecom, whilst finding and rectifying a number of significant problems within the network, adopted the approach that as its testing did not identify any faults that would give rise to the range and level of faults claimed by Golden Messenger, it had no evidence to suggest that the network was working unsatisfactorily.
- 19 The following six common themes appeared throughout the three categories -
- service faults were reported with many being of a recurring nature
 - Golden Messenger advised Telecom of other network users in the area experiencing similar problems
 - Telecom conducted testing and rectified faults as they were found; however, it maintained that the results of the testing demonstrated that the network was performing satisfactorily

- Telecom advised of the testing conducted and the results of that testing, ie test calls generated by other exchanges to the North Melbourne Exchange, but did not explain how the testing related to the faults being reported and, in particular, explained the testing regime in light of the views by Golden Messenger that the problems stemmed from -

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- being connected to ARE switching equipment
- network congestion
- difficulties in integrating differing technologies

which, Golden Messenger claimed, by their nature may only present themselves on an intermittent basis and at any stage in the transmission process

- Telecom has employed its statutory immunity prior to July 1991 as a negotiating instrument in its dealings with Golden Messenger
- Telecom has adopted the approach that the network and the Flexitel system were operating satisfactorily despite having internal information that significant problems did exist with each of them.

COMPLIANTS ON CUSTOMER HANDLING

MISLEADING AND DECEPTIVE BEHAVIOUR

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- 20 Telecom records (file note of conversation with G Schorer on 1 February, 1988) indicate that Golden Messenger was reporting problems since mid 1986 and various file notes also indicate that during the period 1986-1988 frequent representations were being made by Golden Messenger to report continuing problems. The problems being reported were primarily -
- clients sometimes obtaining ring tone but not getting through
 - calls dropping off when answered.
- 21 Telecom file notes also reveal that on 1 February 1988, Golden Messenger advised of concerns at network faults causing lost business.
- 22 Telecom records quite early in this case reveal that it was aware that network problems did exist with the North Melbourne exchange. Three such records are -
- (i) Telecom Minute of 30 June 1986 from Network Investigations Unit, NSW, to Network Investigation Section, Victoria.
- As previously discussed, during network investigations in the Canberra area it was observed that congestion was being experienced to 03 codes and that this was a significant component of the Canberra congestion. In most instances the*

congestion (A3 + B4) signal was being returned from the terminating Melbourne Main Switching Centre which suggests that the congestion is in the Melbourne network.

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The attached list indicates the Melbourne (03) codes that fall into the above category and it would be appreciated if your Section could examine the codes and indicate whether they correspond to known congested routes in the Melbourne network

A list of Melbourne 03 codes experiencing congestion was attached to the minute and showed that 55.22% of total congestion was attributed to the North Melbourne exchange.

- (ii) *Telecom file note of 14 April 1988, incorporates the following extract -*

Following assurances from Footscray District Staff that there was no congestion causing concern to Golden Messenger, Manager, State Business Sales, agreed to arrange connection of a number which the customer previously had in the 329 7000 group. When the request was placed to connect the number, the exchange advised that no more numbers could be connected in the 329 7000 group due to CONGESTION. Golden Messengers had \$1,500.00 worth of stationery printed. Manager, State Business Sales has agreed to provide compensation to the customer.

- (iii) Telecom minute of 31 October 1988 from Network Investigations Section, Victoria to Manager - BCS (North) incorporated the following extracts -

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Regarding the service received by customers off North Melbourne exchange, the following information is provided.

At the last meeting between Telecom and Golden Messenger (G.M.) resolved that Network Investigations would assist with problems where customers could not reach G.M., and that G.M. would provide a list of such customers.

We have only ever obtained one list of customers names and numbers on the 27/7/88. This highlighted that 10 of the 12 customers were served by AXE exchanges, the remaining 2 by ARE. All customers reported that they had experienced "engaged tone" with 11 of the 12 reporting the cases on or before 6/7/88. It is presumed by NI that this may be busy tone or congestion tone as customers can generally not discern the difference.

It was found that at or before this time there were changes made in the trunking of IDN originated traffic to North Melbourne, and Footscray DSC realising that the IDN exit route from Footscray Node to North Melbourne was severely congested initiated action to increase the number of circuits. This route has subsequently been increased from 37 circuits to 57 at 5/7/88 and then to 81 approximately one week later.

No further complaints have been received by this office from G.M. since that time.

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More recently the route has been increased to a total of 111 circuits. Metro Network Engineering advise that this route is designed to be 180 circuits for the 8th AXE Bulk Order. Current traffic readings show that the 111 circuits are carrying a TCBH traffic of 86 Erlangs which means it would be offering a grade of service of better than the designed level of 0.002. However the traffic is increasing and discussions between this section and MNE have resolved that the route will be increased by a further 10 to 15 circuits, depending on GV inlets and MUX availability at North Melbourne.

This time however it was revealed that between 5 and 14% congestion was being experienced. In observing the calls it was noticed that there were two cases where congestion was being received. The first was congestion almost as soon as dialling was completed. This was assumed to be route or equipment congestion. The second case was congestion tone approximately 30 seconds after dialling was completed which would then go to Line Lock Out. This case was assumed to be a device timing out due to an equipment or signalling fault.

Test calls were also made from Exhibition tandem and Footscray Node, but the level of congestion was much lower.

Further testing from Footscray node revealed that the number of CL blocks (used for call supervision and clearing) were

inadequate and these were subsequently increased. Insufficient CL's resulted in the immediate congestion tone case mentioned above.

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The tests from Footscray also revealed a particular FIR at North Melbourne were experiencing repeated failures. North Melbourne Exchange staff traced this to a held up switch train from that FIR to an indial FUR-CX. This resulted in revertive signalling failures causing a timeout and thus the delayed Congestion tone.

23 The network service difficulties reported by Golden Messenger appear to have been compounded by the purchase and installation of a Telecom supplied and serviced PABX. The PABX, a Flexitel system, was purchased on the recommendation of Telecom and was installed in July 1987, Telecom records indicate that very soon after installation Golden Messenger reported problems with the system and the following documents reveal that Telecom was aware, early in the case, of problems with the Flexitel -

- Telecom letter of 14 January 1988 from Regional Sales Manager to Golden Messenger which acknowledged some of the reported deficiencies of the system and suggested action to overcome the non-compliance with the terms of contract.
- Telecom minute of 27 January 1988 from Regional Business Sales Manager - North to Manager, State Business Sales advised of the following decisions that were arrived at during the course of a meeting between Telecom and Golden Messenger -

*As a result of that meeting it was decided that Golden
Messengers would not keep their Flexitel system as they could 14
not hold more than two calls on each station. and
.....were not able to offer any technical solution to this
problem . (names deleted)*

Golden Messenger has stated that they want Telecom to pay for a system that will do what they expected the Flexitel system to do. They have also stated that if they have to take litigation against Telecom they will also seek damages for lost business.

- Telecom minute of 29 January 1988 from Manager, State Customer Liaison Unit to Public Relations Manager, Victoria states -

It appears sold equipment which failed to meet his needs.

- Telecom letter of 3 February 1988 from Manager, State Business Sales to Golden Messenger proposed two options to overcome the operational deficiencies of the Flexitel System -

- Option 1 - by providing additional equipment and modification to the system

- Option 2 - replace with a Phillips D1200 PABX.

- Telecom letter of 10 March 1988 from Manager, State Business Sales advised Golden Messenger that Option 1 caused the system to be slowed to such an extent that it could not then cater for an expansion to cover the company's administration section. Telecom suggested that another Flexitel system be installed and linked to the first system with tie lines. This was accepted by Golden Messenger and the additional system was installed on 9 and 10 April 1988.

- Telecom minute of 30 March 1988 from Regional Business Sales Manager-North to Manager, State Business Sales 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 April 1988 and 5 January 1992.

- Network Investigation Section progress report of 17 May 1988 on its investigation into Golden Messenger stated -

The major problem still appears to be the slow response time of the Flexitel. This combined with high call through put resulted in operators misusing the system resulting in adverse service to their customers.

- Telecom Minute of 23 May 1988 from Commercial Engineering Section - Customer Terminals to State Business Sales - HQ advised of the following -

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.

- 24 Despite having internal advice that network problems were being experienced at the North Melbourne exchange and that there were problems with the Flexitel system, on 11 October 1988, Telecom advised Golden Messenger as follows -

I refer to the Flexitel System ordered by Golden Messenger and the continuing complaints by Golden Messenger that deficiencies in the public switched telephone network have resulted in Golden Messenger suffering damages due to loss of business.

As you are aware extensive investigations, reports and discussions, I confirm that Telecom cannot accept your

allegations and claims. In Telecom's view, all reasonable efforts to inquire into your complaints have been unable to substantiate the allegations and claims.

25 On 17 November 1989 Network Investigation Section issued the Golden Messenger - FINAL REPORT. Findings within this report related to both Flexitel and network issues. Some of the key findings were -

- *Congestion existed on the IDN exit route from Footscray Node to North Melbourne due to IDN changes and traffic growth*
- *Under dimensioned CL and PD individuals at Footscray Node were causing congestion*
- *Faults were also found with various exchanges in the network which affected the Grade of Service (GOS) received by G.M.*
- *The response time of the Flexitel was excessive causing misoperation by the operators. Whilst the Flexitel was configured in accordance with design rules, it was the 'sluggish' response to station keystrokes that was its worst characteristic.*
- *The inability to meet the customers requirements for call queing was also a weakness and had to be overcome by the appendage to the Flexitel main equipment of call sequencers.*
- *Customers cited by G.M. were investigated and although they experienced similar symptoms of COS and BWF, they were in*

*the main caused by conditions unrelated to those of the G.M.s
Flexitel.*

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- 26 No record was found of Telecom advising Golden Messenger of the findings contained within the report. The findings of the report appear to confirm the views expressed by G Schorer, at the time, that Golden Messenger was affected by exchange problems and network congestion.
- 27 The only direct references within Telecom documentation to other customers experiencing similar problems to Golden Messenger appear in the Progress Report 2 of 17 May 1988 and the Final Report dated 17 November 1989 issued by Network Investigation Section. These reports conclude that the customers cited by Golden Messenger as having similar problems, were affected by network problems specific to themselves. However, the significant network problems found related to network congestion and the integration of new technology, and would have impacted on all customers connected to the exchange.
- 28 No documentation was found where Telecom acknowledged that the customers cited as having problems similar to Golden Messenger did actually experience customer specific as well as network-wide faults.
- 29 On 19 June 1990, Golden Messenger wrote to Telecom advising of continuing problems with the level of service and problems with the Flexitel system, and of business losses suffered as a result. The letter was Golden Messenger's last attempt before litigation to obtain a solution to problems experienced with the Flexitel system. Golden Messenger was also seeking compensation for business losses.

30 The following extracts from Telecom correspondence, which were prepared in response to the Golden Messenger letter of 19 June 1990, indicate a continuation of the situation where Telecom maintained that the Flexitel system and the network were operating satisfactorily whilst having internal information that problems did exist.

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- Telecom minute of 29 June 1990 from Telecom Business Service (North Victoria Region) to Corporate Secretary -

Some further information regarding the draft response to representation from Mr Graham Schorer of Golden Messenger. You need to be aware that I have had some sixty hours in face to face negotiations with Mr Schorer on this matter as well as other complaints about the Network. The whole issue is a complex one. Despite our position on the issue of compensation, the Flexitel product has been a difficult product to market, install and maintain and we have already removed many from service due to service difficulties. However it is our view that the Flexitel provided for Golden Messenger is operating satisfactorily.

It is also clear that the Network has not been kind to Mr Schorer as there was period of about six months when the congestion on North Melbourne Exchange was such as it could have adversely effected his courier service.

- Telecom response of 6 July 1990 to Golden Messenger -

I refer to your letter of 19 June 1990 to the Managing Director about difficulties experienced with your company's Flexitel telephone system.

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.

31 As noted at paragraphs 6 and 7 earlier in this paper, limited exchange files were provided by Telecom. The relatively small number of exchange files along with the limited information contained in these files is surprising given the level of customer interaction over the past eight years. The information in these files did contain a number of summaries of various customer interactions and showed that for the time period covered by the summaries regular contact was made by Golden Messenger reporting problems such as -

- Busy when free
- Call dropout

- Recorded voice message
- Clients being connected to wrong numbers
- Receiving wrong numbers.

32 The following two extracts from Telecom Minutes -

- Minute of 11 September 1992 from General Manager, Telecom Commercial Vic/Tas to Fault Management and Diagnostics and National Products Sections -

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Thank you for your reports on Golden Messenger and other customers. I need you to do some further investigation in to the Golden Messenger case. Mr Graeme Schorer of Golden Messenger is reported to have told a Telecom representative that he is still losing 50 calls per day and that there was some improvement in May 1992, coincident with a change in dial tone. This is the sort of claim we normally treat seriously. It is the first I have heard of it. Could you please re-open your investigation and even instigate some additional tests if necessary? Am I correct in the belief that Graeme Schorer refused testing as recently as last March? Please check file details.

- Minute of 14 September 1992 from General Manager, Telecom Commercial Vic/Tas to Group Managing Director -

Golden Messenger - Graeme Schorer. Graeme's claim that he is losing 50 calls a day staggered us. I have re-opened the technical investigation as a result.

indicate that Telecom was aware that Golden Messenger may have been experiencing service problems in line with the faults being reported, and also indicate a commitment to investigate these

problems. However, the view that Golden Messenger's claims regarding lost calls were being taken seriously and the subsequent re-opening of the technical investigation were not advised to Golden Messenger, and the results of the re-opened technical investigation were not included or referred to in any of the documentation provided by Telecom.

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- 33 In its response of 23 September 1992 to a letter from G Schorer (in his capacity as spokesperson for the COT Group, comprising Golden Messenger, Tivoli Restaurant, Japanese Spare Parts and Cape Bridgewater Holiday Camp), Telecom did not acknowledge the re-opening of the investigation when it advised -

At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards.

- 34 Telecom fault records for the period 15 April 1993 to 28 June 1993 reveal considerable interaction between Regional Technical staff and Golden Messenger in trying to identify the cause of faults being reported during this period. Of note is the claim by G Schorer of 4 June 1993 that the intermittent problem (rectified on 27 April 1993) regarding the SL marker switches controlling the 0 thousands number group was identified by Honeywell whilst testing the PABX. He further stated that Telecom testing failed to reveal the cause of the problem. Telecom fault reports show a high level of testing and problems being reported by the customer and also indicate that the PABX Maintainer did identify a problem with an incoming exchange line, however, the

reports make no mention of the PABX Maintainer contributing to the identification of the marker switch fault.

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- 35 The letter of 29 April 1993 from Telecom which advised Golden Messenger of the above situation stated -

The effect of this fault was to occasionally present "Busy Tone" to calls when the line was idle.

- 36 It is AUSTEL's view that this advice does not provide a full outline of the possible impact of this fault on Golden Messenger's service. This problem with the SL Marker Switch controlling even numbers could have impacted on the bookings directory number line along with 10 out of 19 auxiliary lines. Therefore, depending on where in the switching system the fault occurred, the impact could have ranged from all "bookings" calls receiving busy tone to a total of 11 out of 20 lines being affected with this problem. The Telecom letter also states that -

Telecom had no knowledge of the existence of this fault condition until your trouble report was received when the situation was rectified.

however, there is no advice of how long this intermittent fault may have remained undetected.

ARROGANT AND BULLYING BEHAVIOUR

- 37 Findings under the previous section - Misleading and Deceptive Behaviour indicate that Telecom has maintained the position that the

Flexitel system and the network were operating within acceptable standards despite having information, obtained from internal investigations and technical staff, that problems did exist and that these problems did impact on the level of service provided to Golden Messenger.

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Customer Equipment

- 38 The documentation reviewed indicates that Telecom has had access to information from internal technical and legal experts regarding the Flexitel system which confirmed claims made by Golden Messenger that problems were being experienced. Documentation reviewed indicates that Telecom did not only not share information available to it, but also provided advice which contradicted its own internal information, and in doing so took advantage of its privileged position of being the system supplier, technical expert and network service provider in dealing with Golden Messenger.

- 39 Golden Messenger has claimed that in September 1988 a senior Telecom Management person implied that only when Golden Messenger was prepared to issue a writ would Telecom would be in a position to respond to demands for relocation to another exchange and for compensation for business losses. Golden Messenger further claims that Telecom strongly inferred that when a writ was issued, it would place Telecom in a position of authority to be able to resolve all outstanding matters without creating a precedent, and that Telecom would assist in ensuring that the matter was brought to a speedy trial to eliminate unnecessary loss of time and expense.
- 40 Golden Messenger issued a writ in June 1990 in the Federal Court of Australia under the Trade Practices Act 1974 and the Fair Trades Practices Act 1974 regarding the Flexitel system. Golden Messenger claims that despite having estimates of business losses audited by two independent companies, KPMG Peat Marwick and Hall Chadwick, Telecom extended the negotiation process. Golden Messenger has advised that the effect of this extended negotiation process was -
- Golden's legal adviser advised Golden to fold the court case as Golden could not afford to run the case for the length of time Telecom were planning to expand the time the case was going to be heard.*
- .41 Golden Messenger provided the following advice on reasons for eventually accepting a settlement of less than 10 percent of claimed losses -

Golden's solicitor advised Golden of the potential cost of a daily appearance in the Federal Court stating the 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.

Golden has taken the \$200,000 paid into court, placed it in a separate bank account, in readiness to pay it back to the appropriate authorities when Golden has been able to demonstrate the validity of reopening this case on the basis of Telecom knowingly withheld information directly relating to this case.

42 Whilst the documentation revealed no evidence to confirm the views expressed by Golden Messenger that Telecom extended the settlement process, the course of the negotiation process, and in particular, where Telecom maintained that the Flexitel was operating satisfactorily despite having -

- Internal technical advice that problems did exist with the Flexitel
- Internal legal advice that Golden Messenger appeared to have a case and that it should negotiate a settlement to prevent legal action proceeding (paragraph 23 refers)

is not inconsistent with Golden Messenger's claims.

Network Service

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43 Documentation reviewed indicates that Golden Messenger has reported problems with the level of service provided to it since mid 1986, however, whilst Telecom has had access to information from internal sources which advised that network problems did exist and would have impacted on Golden Messenger, it maintained the position that the network has performed within acceptable standards.

44 The following views put forward by Telecom Regional Technical staff and Senior Management indicate that Telecom, at various levels within that organisation, had formed the view that as its testing had not identified the source/s of recurring faults being reported, that there was no evidence to suggest that the network was performing unsatisfactorily -

- Telecom letter of 23 September 1992 -

The key problem is that discussion on possible settlement cannot proceed until the reported faults are positively identified and the performance of your members' services is agreed to be normal. As I explained at our meeting, we cannot move to settlement discussions or arbitration while we are unable to identify faults which are affecting these services. At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards. Until we have an understanding of these continuing and possibly unique faults, we have no basis for negotiation or settlement.

The proposed testing regime is also a necessary prelude to the suggestion that your members be moved to different exchanges. Without an understanding of the causes of your problems, moving exchanges may merely compound them and for both Telecom and your members this would only be costly, time consuming and eventually futile. If the testing shows that problems outside normal performance are related to the exchange equipment to which your members are attached, we will quickly and at our expense move your members to another exchange under the terms and conditions discussed. Settlement discussions would also immediately commence.

- Telecom minute of 28 October 1992 from General Manager, Commercial Vic/Tas to Group Managing Director, Commercial and Consumer -

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Discussions with the technical experts who have drawn up the schedule and those involved in previous testing have raised serious concerns about this next series of testing and I promised them that I would convey these to you. These people believe that extensive testing has already been performed and that all indications other than the customers own comments are that the telephone services are performing satisfactorily.

- 45 This approach has essentially placed Golden Messenger in a catch 22 situation, where Telecom maintain that the results of their testing indicate a network working to an acceptable standard, but offering further such testing as means of assessing the customers claims that the network is not working to an acceptable standard as a pre-condition to relocation to another exchange and/or commencing settlement discussions. The above referred letter of 28 October 1992 also illustrates that Telecom's internal technical experts raised serious concerns on Telecom's insistence on further testing.
- 46 Whilst it is evident from records reviewed that Telecom technical staff have provided oral advice to Golden Messenger of what testing had taken place and of the results of that testing, typically the advice has been "X" number of test calls have been conducted with no, or a very small number of, failures and the results are within network performance standards. What is not evident in the documentation reviewed is whether Golden Messenger was advised how the testing

addressed the faults being reported on a continuing basis or how the testing would isolate and thereby identify the causes of the faults being reported.

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- 47 This issue of Telecom claiming that its testing showed that the network was operating satisfactorily, has been of particular concern to Golden Messenger as the level of service actually experienced did not correspond with claimed test results.
- 48 By their nature some of the faults reported during the duration of this case may have occurred anywhere in the network and would have required more than one type of testing, coupled with careful analysis of data obtained during such testing, to locate the causes of these faults. Whilst Telecom claimed that testing showed a network working satisfactorily, Golden Messenger was not advised whether the testing covered the full network, ie end to end testing, or whether the testing was primarily restricted to a series of programs, each of which only tested section(s) of the overall network. No documentation was found to indicate that Telecom explained how the various types of testing were being employed, their limitations, what their findings were and how these findings were being interpreted to detect the cause(s) of faults reported.

49 The following three behaviours exhibited by Telecom -

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- providing external advice not in line with internal information
- relying on its testing to refute claimed service problems over an extended period of time without explaining how the testing would identify the causes of the problems being reported
- insisting on further testing as a pre-condition to relocation to another exchange and/or settlement action
 - despite serious concerns expressed by its own technical experts on the further testing
 - without explaining how such testing would differ from the previous eight years testing

indicates that Telecom has taken advantage of its particular position in the telecommunications industry as service provider and technical expert.

50 Given the absence of detailed information from Telecom on how past testing could locate claimed faults, the insistence on further testing prior to any settlement or relocation to AXE switching equipment without explanation on how the further testing would differ from past testing, does not seem to be a positive contribution to problem resolution or settlement.

- 51 Similarly Telecom's insistence that relocation and settlement action could not proceed until faults were identified and services agreed to as normal, is also not seen as a positive contribution to problem resolution or settlement. Golden Messenger has claimed that it has repeatedly requested, in years 1980, 1989, 1990 and 1991 to be reconnected to different exchange equipment. Telecom documentation makes no reference to these requests, but does show that for a significant period of time, Telecom did not pursue the options of relocating Golden Messenger to AXE switching equipment. It is noted that on 15 September 1992, during discussions between G Schorer and Telecom, G Schorer suggested the transfer to AXE exchange. Whilst Telecom confirmed this on 16 September 1992 as an option even if only to try an action different to what had been tried before, it subsequently withdrew this option on 23 September 1992 (relevant extract previously referred to at paragraph 45).

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INAPPROPRIATE BRIEFINGS

- 52 On 9 August 1993 the Minister for Telecommunications wrote to Telecom advising of serious complaints raised by customers known generally as COT (Casualties of Telecom).
- 53 On 17 August 1993 Telecom provided a brief on the COT customers, including Golden Messenger, to the Minister for Telecommunications on progress that had been made with the customers. It is AUSTEL's view that this brief should have provided balanced and accurate advice to ensure that the Minister was fully informed and in a position to make sound judgements on issues at hand. It is AUSTEL's view that the brief provided by Telecom to the Minister does not provide a balanced

and full outline of the situation at hand and therefore created a situation whereby the Minister may have formed the wrong impression due to having a less than comprehensive understanding of the issues .

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- 54 A number of statements have been extracted from this brief and comments, in terms of the findings against the other allegations, are provided. These comments form the basis of AUSTEL's view that the briefing to the Minister was not a balanced or full representation of the situation at hand.

Extract

- 55 *Financial settlements have been reached with each of the original five customers although with two exceptions (Japanese Spare Parts, Society Restaurant) the customers continue to express dissatisfaction with their service and one customer in particular (Cape Bridgewater) is seeking to re-open the issue of compensation. It would be fair to say that even those customers that are no longer active in the COT arena will remain dissatisfied customers of Telecom.*

Comments

- Telecom did not convey to the Minister the impact of Telecom's statutory immunity from losses/problems prior to July 1991 and that Telecom had advised the COTs of this in their dealings regarding settlement matters.
- By July 1991 the COTs were claiming that due to continued inadequate service they had suffered business losses and that

their customer bases had been eroded to such an extent that they were in financial difficulties.

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- A balanced brief would have advised of the capability of the COTs to fund proceedings in the Federal Court.
- This statement does not advise that the two COTs no longer complaining of unsatisfactory service had ceased operating.
- This statement does not advise that settlement with Golden Messenger related to legal action under the Trade Practices Act 1984 and the Fair Trading Act 1985.

Extract

56 *The settlements reached to date have been, in Telecom's opinion, very generous and have contained a not insignificant component beyond that which could be supported by objective analysis of the factual evidence. This business judgement was made in the interests of settling the claims in a manner that clearly addressed the customer's perceived problems in the expectation that such settlement would avoid ongoing debate (with associated costs) and alleviate the acrimony that had developed over an extended period. This approach has obviously not been successful.*

Comments

- There is sufficient evidence to suggest that Golden Messenger has experienced problems with the network and that these

problems impacted on its business operations. A balanced brief would have acknowledged that network problems were found, and whilst every effort was made to repair such faults, they would have impacted on the customer.

37

- Telecom's reliance on its statutory immunity prior to July 1991 and insistence that as its testing regime could not locate the cause of the claimed ongoing problems it found no evidence that the network was operating unsatisfactorily, were two key items in the negotiation processes. These do not support Telecom's claims that the claims were settled in a manner that addressed the customers perceived problems.
- In view of internal information confirming network problems and advice of other network users that had difficulty in reaching Golden Messenger or experienced similar problems, Telecom's reference to customers problems as perceived problems is not considered a balanced approach.

Extract

57 *The businesses involved in these disputes have all received very fair treatment of their cases - some would argue that the settlements reached have, in fact, been excessively generous given the factual evidence. Telecom's testing (whilst identifying some faults from time to time) has repeatedly demonstrated the integrity of the network and ample evidence exists to support this contention. Only one of the customers (Golden Messenger) involved has been prepared to take court action against Telecom and this action did not relate to network*

issues. Telecom would welcome the opportunity to present its case in court but there is not accepted mechanism for it to initiate court proceedings on these matters. Hence Telecom must continue to bear the brunt of negative media activity despite its attempts to resolve these cases.

38

Comments

- Golden Messenger has advised that its decision to accept a settlement and not proceed with legal action was made on the basis that it was not in a position to fund the legal action in the Federal Court. It should be noted that for five years prior to the settlement, that is for the entire duration of the dispute period, Telecom maintained that the Flexitel System was satisfactory whilst internal correspondence from technical and legal staff acknowledged that -
 - the system did not meet Golden Messenger operational requirements (paragraphs 23,24 and 25 refer)
 - Golden Messenger was likely to be successful in establishing that Telecom engaged in misleading and deceptive behaviour (Legal Briefing Paper, dated 1 July 1992, prepared by Principal Legal Officer).

The above findings do not support Telecom's claim of COT receiving fair treatment.

- Comments offered against the previous extract regarding Telecom's statutory immunity and non-finding of faults as evidence that the network is performing satisfactorily are also applicable to Telecom's claim that COT received fair treatment.
- The statement regarding only one customer being prepared to take court action and this did not relate to network issues does not reflect the difficulties faced by the COT in dealing with Telecom's statutory immunity prior to July 1991 or the inability of COT to sustain extended court action.

39

It should also be noted that Golden Messenger commenced legal action regarding customer equipment sold and installed by Telecom in June 1990, and that at that time it was the only course of legal action available to Golden Messenger.

- Telecom testing has revealed problems with the network, and whilst this led to action to overcome the problems found, there is sufficient evidence to suggest that these problems have impacted on the level of service to and business operations of Golden Messenger.
- The comment regarding testing demonstrating the integrity of the network is not seen as balanced. Telecom have found major and minor faults in many components of the overall network and whilst Telecom may choose to deal with these as individual situations, it would appear that the cumulative and ongoing effect on the customer is one of claimed ongoing unsatisfactory service. This is best summed up by a statement

contained within a Network Investigation Report of August 1991
of another COT case (Lovey's Restaurant - see Appendix F) -

40

Over a period of several weeks, a number of faults were identified in different parts of the network. These faults would not cause major difficulties individually, but compounded to form a complicated sequence of events that appeared as continuous service difficulty for the customers in the area.

58 Golden Messenger has claimed that Telecom advised that there were no problems with the network and that Golden Messenger's problems would be overcome with the purchase and installation of improved customer equipment. The customer equipment recommended by Telecom as most appropriate for meeting Golden Messenger's then current and foreseeable needs was the Flexitel System.

41

59 Documentation reviewed does not provide direct evidence to support Golden Messengers claim that Telecom advised that problems being experienced would be overcome with the installation of new customer equipment. However, the following extracts from the Telecom quotation for the design and installation of the Flexitel System -

The equipment Telecom has offered is the Flexitel and meets the service requirements of your company. It is Telecom's opinion that the system is the best and most advanced presently available to Australian users.

Telecom selected the Flexitel only after intensive evaluation, and proving to our own satisfaction the superior facilities, reliability and flexibility of the system.

along with the frequency of problems and deficiencies reported and statements made by technical and legal staff within Telecom internal correspondence (examples of which are provided within the Misleading and Deceptive Behaviour Section), indicates that Telecom assessed and subsequently installed a system that did not meet these

requirements. Furthermore, whilst having internal expert advice that problems did exist with the Flexitel system, Telecom maintained the position that the system was working satisfactorily.