

5.20 AUSTEL then continued to work with Telecom and the *original COT Cases* to facilitate agreement -

- on the terms upon which assessment of Mrs Garms' and Mrs Gillan's claims might take place
- the person who might be appointed to make the assessment.

5.21 Extensive negotiation took place during which Mrs Gillan reached an initial '*settlement*' with Telecom in May 1993.

5.22 This left only Mrs Garms in a position of not having reached a settlement. Telecom had agreed that it would be bound by the independent assessor's findings of fact but it would insist upon the right to seek court intervention on any matter of law of concern to it. AUSTEL recommended that the draft terms of reference which had been produced at this time be accepted but Mrs Garms, having regard to independent legal advice, was not prepared to agree. Mrs Garms then commenced to negotiate directly with Telecom and an offer was made to her with a two week period for acceptance.

5.23 At this time Telecom found in its possession certain monitoring data which Mrs Garms had long sought to help in estimating the incidence of fault and the consequent financial impact. While the material was made available to her it was at a very late stage in the claim/negotiation period and AUSTEL wrote to Telecom stating that it would be reasonable to give Mrs Garms the opportunity to revise her claim. Before Telecom responded, AUSTEL was informed that a "*settlement*" had been reached between Telecom and Mrs Garms. This was in June 1993.

THE INITIAL SETTLEMENTS

5.24 As observed above, four of the *original COT Cases* pursuing compensation for inadequate service engaged in a process of negotiation with Telecom with AUSTEL acting as an *honest broker*.

Mr Smith, Cape Bridgewater Holiday Camp

5.25 Mr Smith was the first of the *original COT Cases* to reach an initial '*settlement*' with Telecom. It is understood that he -

- identified the type of faults which his business had experienced

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- indicated the incidence of the faults by way of -
 - statements by individuals who had sought unsuccessfully to contact him
 - demonstrating a reduced effectiveness of advertising he had undertaken.

Telecom had a knowledge of at least some of the faults impacting on Mr Smith's business as well as having access to relevant fault records and monitoring data. It was also aware of the extent of problems and difficulties at its local exchange servicing his business.

5.26 At the end of the process (December 1992) a *settlement* figure was agreed. It was a condition of the settlement that the amount paid by way of settlement was to remain confidential - a condition that applies in the other cases. Although the details of the settlement are confidential, Mr Smith has informed AUSTEL that his major concern and stipulated condition at the time of the '*settlement*' was that his service should operate, and continue to operate, at normal network standards.

Ms Hawkins, the Society Restaurant

5.27 In the case of Ms Hawkins, '*settlement*' was reached in January 1993. One of the conditions is understood to be that the business was to receive its telephone service via a modern digital exchange. The business has since been sold.

Mrs Garms and Mrs Gillan

5.28 The initial '*settlement*' process involving Mrs Gillan and Mrs Garms is outlined above. It is relevant to mention here that as a result of Telecom's stance that settlement would only be made once the service was being supplied at normal network standards, both Mrs Gillan and Mrs Garms informed AUSTEL that they ceased reporting faults in order to hasten the settlement process.

Mr Schorer, Golden Messenger

5.29 The fifth of the *original COT Cases*, Mr Schorer, had particular concerns about Telecom's limited liability and the impact that the limitation was likely to have on any claim he might make for compensation arising from an inadequate telephone service. Instead of seeking compensation in those terms, he pursued a

claim in the courts under the *Trade Practices Act 1974*. In simple terms, Mr Schorer claimed that Telecom had -

- sold him a particular type of customer equipment which was unable to meet his needs (which were known to Telecom)
- made claims for the equipment which the equipment was not able to deliver.

While Telecom defended the action, it did make a *payment into court* with a denial of liability. The effect of the *payment into court* was that Mr Schorer had to decide whether to accept that amount or fight on in the knowledge that even if he was successful in his claim against Telecom, in the event that his claim was assessed at less than the *payment into court* he would have had to bear not only his own costs, but also those incurred by Telecom from the time it made the *payment into court*. On the advice of his solicitors, Mr Schorer concluded that he could not afford to fund continuation of the case and he decided to accept the *payment into court*.

CONTINUING FAULTS

5.30 Understandably the *original COT Cases*, having reached an initial 'settlement' involving -

- compensation for past losses
- restoration of an adequate telephone service

expected that they might be able to resume their business activities afresh.

5.31 Unfortunately that did not prove to be the case. Soon after his initial 'settlement' Mr Smith reported continuing problems to AUSTEL. Even prior to her settlement, Mrs Garms reported continuing faults to AUSTEL. The decision by Mrs Garms and Mrs Gillan not to report faults to Telecom in order to hasten a financial settlement is noted above. Mr Schorer continued to report faults to AUSTEL throughout the period.

5.32 The fact that faults continued to impact upon the businesses in the period following the settlement shows a weakness in the procedures employed. That is, a standard of service should have been established and *signed off* by each party. It is a necessary procedure of which all parties are now fully conscious and is dealt with elsewhere in this report. Its omission as far as the initial 'settlement' of the *original COT Cases* were concerned meant that there was continued dissatisfaction with the service provided without any steps being taken to rectify

it. This inevitably led to a dissatisfaction with the initial '*settlement*' and to further demands for compensation. To avoid this sort of problem in the future, AUSTEL is, in consultation with Telecom, developing -

- a standard of service against which Telecom's performance may be effectively measured
- a relevant service quality verification test.

AUSTEL'S ESCALATION OF ITS INVOLVEMENT

5.33 AUSTEL was concerned not only about the continuing complaints from the *original COT Cases* but also over the emergence of additional cases displaying characteristics similar to those of the *original COT Cases*. In the circumstances AUSTEL took the view that it must establish, by collecting *hard information* precisely how the telephone service supplied to the *original COT Cases* was performing. Accordingly, on 30 June 1993 it requested Telecom to institute monitoring and testing to measure the extent and nature of the faults about which the *original COT Cases* complained. AUSTEL also sought from Telecom a range of fault data, details of exchange standards and performance together with exchange maintenance details.

5.34 Telecom was reluctant to comply with AUSTEL's request and to provide the data and detail sought by AUSTEL. It suggested that the monitoring and testing was resource intensive and that it lacked the necessary testing equipment. Some six weeks after AUSTEL's request Telecom had not instituted any monitoring. Moreover, there was no indication that Telecom had or was about to adopt a more co-operative or constructive attitude on the matter and supply the information sought.

AUSTEL's direction

5.35 Accordingly, on 12 August 1993, AUSTEL issued Telecom with a direction under section 46 of the *Telecommunications Act 1991* relying on its function expressed in section 38 of the Act to protect consumers. The direction required Telecom to institute a range of monitoring and testing procedures in relation to the three *original COT Cases* who were still carrying on business (Mr Schorer, Mr Smith and Mrs Garms) as well as five other businesses whose situation was then being considered by AUSTEL. AUSTEL also exercised its powers under section 400 of the *Telecommunications Act 1991* to require Telecom to supply all relevant documentation relating to the eight businesses and their terminating exchanges as well as details of exchange performance standards, actual performance, maintenance and fault records for 100 numbers adjoining those of each of the businesses.