

## UK NCP RESPONSE TO REQUEST FOR REVIEW

### NCP procedure reviewed: Initial Assessment leading to rejection of complaint

**Requestor: Reprieve (complainant)**

**Complaint against: BT Group**

#### Request

1. The NCP understands the complainant to have requested a review on the grounds that the NCP failed to follow its proper procedures by:
  - i. failing to consider public statements made by the company about the extent of its due diligence and other information in the public domain about the company's activities; and
  - ii. failing to "draw out" from the company more information about the nature and use of the service that is the subject of the complaint.

#### Response

i. NCP's failure to consider public statements made by BT about its due diligence and other information in the public domain.

2. The Steering Board has previously confirmed that the Initial Assessment stage of a complaint is a desk-based analysis to determine whether there is enough information to warrant further examination. NCP procedures note that in the Initial Assessment the NCP will consider "*the stated grounds of the complaint and the information it has received about the complaint*". In response to a previous review request in 2012<sup>1</sup>, the Steering Board confirmed that "*nothing in the Procedures requires the NCP to undertake independent research in considering a complaint.*"

3. The NCP did consider all the information, including public information and "public statements of the company", submitted to it. On the complainants' side, they included two written exchanges with the company. On the company's side, they included two reports outlining the company's policies and business practices, including those relating to human rights, and indicating the key risks the company believed were relevant in these areas.

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<sup>1</sup> October 2012 review of the complaint from an individual in India. See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/34660/12-1230-specific-instance-oecd-guidelines-multinational-enterprises-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34660/12-1230-specific-instance-oecd-guidelines-multinational-enterprises-review.pdf)

4. The public statement referred to by the complainants in the review request has not previously been submitted to the NCP. As submitted here, it appears to be a second-hand reference in the form of a quotation attributed to an unnamed representative of the company in a blog entry discussing the complaint.

5. Procedures allow that the NCP may receive additional information in the course of meetings with parties during the Initial Assessment process. The NCP offered a meeting to each party, but neither took up the offer.

ii). NCP's failure to draw out information on the nature and use of the service referred to in the complaint

6. On receipt of the complaint, the NCP asked the complainants to clarify whether they alleged that the service provided was for the purpose of supporting drone strikes, specialised for that use, or provided for more general purposes. The complainants' response on 29<sup>th</sup> July was that *"based on the contract information available, the infrastructure provided...is highly likely to be used in support of drone strikes. Due to BT's refusal to explain the background to the contract, we are not in a position to say whether the equipment is specially designed for this purpose or is for more general purposes. We do not consider, however, that this is material to the complaint."*

7. In its response, the company did provide details of the nature of the service provided. Paragraphs 3.1 to 3.10 of the company's response to the complaint set out that it is *"an industry-standard fibre-optic communications interface"*, which *"allows content to be transmitted between two points via an existing network of cables"*, which is *"used to present a high capacity telecommunications circuit via an existing cable system in a standardised way"*, which can be used *"for all types of communications including both voice and content transmission"*, and which is typically sold by the company to *"multinational and wholesale customers"*.

8. The company noted that its ability to provide information on the use of the service was limited by the fact that it cannot monitor the content carried or the end use to which this content is put (the company also notes that commercial confidentiality applying to terms of the contract limits its ability to provide information on this aspect). According to the information before the NCP, therefore, neither party considered that it could provide more information about the use of the service.

9. The complainants' contention is that regardless of the nature of the service, the customer and the location to which it was provided substantiated a direct link to the adverse impacts. After reviewing the information provided, the NCP did not accept that this alone substantiated a link. The NCP agrees that it did, therefore, have a responsibility to consider whether information on the "nature and use" of the service established a link; however the NCP considers that it remained the responsibility of the complainants rather than the NCP to provide this information.

10. If the NCP had considered that there was a substantiated issue requiring further examination of the company's due diligence, the NCP would have accepted the complaint, and (if there was no mediated agreement) made further enquiries about the company's due diligence. By saying that the NCP should have "drawn out" this information, it appears to the NCP that the complainants are effectively saying that the NCP should have accepted the complaint for further examination – and seeking to overturn the NCP's decision rather than challenging its procedure.

#### NCP advice on review process

11. Documents the reviewers may wish to consider are identified in the annex following this statement. The draft Initial Assessment is included in these and the procedural steps followed by the NCP in the case are recorded in paragraphs 7-8 of this.

12. Two external Steering Board Members have informed the NCP of previous links to the complainants. These links are not of a nature that would disqualify the members from taking part in the review or qualify as an "active interest" in the complaint (referring to Section 5. of the review procedures, which deals with this issue).

13. Under published review procedure, the NCP can at any time recommend that the Steering Board refuses a review request as frivolous, vexatious or ineligible. This recommendation becomes final unless three or more Steering Board members raise an objection. The NCP is not recommending that the Steering Board dismisses the review request at this point. We consider it is important for the credibility of the NCP process that the complainants are assured that their concerns have been fully considered by a Review Committee of the Board. We also consider that the review raises important issues about the information required to trigger a company's obligations under the Guidelines with regard to its links to an impact. The NCP notes that the OECD's ongoing work on the application of the Guidelines to the financial sector includes consideration of similar issues with regard to the links between companies and impacts.

## **ANNEX: ADDITIONAL SOURCES THE STEERING BOARD MAY FIND HELPFUL IN CONSIDERING THE NCP RESPONSE**

### **Procedure documents**

OECD Procedural Guidance to NCPs – pages 71 onwards of the 2011 Guidelines at:

<http://www.oecd.org/investment/guidelinesformultinationalenterprises/48004323.pdf>

UK NCP published complaints procedures and review procedures at:

<http://www.bis.gov.uk/policies/business-sectors/green-economy/sustainable-development/corporate-responsibility/uk-ncp-oecd-guidelines/complaints-procedures>

### **Complaint documents** [attached under separate cover]

1. Complaint
2. Complainants' clarification
3. Response
4. NCP's draft initial assessment
5. Review request