



## FINAL STATEMENT

### Parties

#### Complainants

Diego Becker, Argentina  
Gustavo Borrajo, Argentina

#### Company involved

Nokia Corporation, Finland  
c/o  
Minna Vammeljoki, attorney at law  
Roschier Attorneys Ltd.

### Introduction

The OECD Guidelines for Multinational Enterprises, hereinafter the OECD Guidelines<sup>1</sup>, are recommendations addressed by governments to multinational enterprises. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. Finland is committed to promoting compliance with the OECD Guidelines. The Guidelines are supported by National Contact Points (NCPs), established by adhering governments. The NCPs promote and implement the Guidelines. They also serve as a forum for mediation and settlement of disputes regarding the application of the Guidelines.

A party may submit a complaint (known as a 'specific instance') regarding the Guidelines when it wants to establish whether a multinational company has adhered to the Guidelines. Such a complaint will be processed by the Ministry of Economic Affairs and Employment together with the Committee on Corporate Social Responsibility as the NCP (Government Decree 591/2008). At the Ministry's request, the Committee will provide a statement on whether the company involved has adhered to the Guidelines or not.

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<sup>1</sup> OECD Guidelines for Multinational Enterprises (2011), <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

A complaint concerning violation of the OECD Guidelines by Nokia Corporation Finland, hereinafter Nokia, was received by the Finnish NCP on 5 August 2019 (Complaint 1). The NCP asked Nokia to submit a reply, which was received on 19 September 2019 (Reply 1).

In its initial assessment of 5 November 2019, the NCP decided to accept the Complaint for further examination. The decision was based on an overall assessment of the issues examined in the initial assessment. The NCP found that further examination of the specific instance at hand would serve the purpose and effective implementation of the OECD Guidelines. On that occasion, the NCP held that considering the justifications presented by the Complainants, the paragraphs of the OECD Guidelines invoked in the Complaint and the allegations of potential infringing practices, it was not possible to rule out that the company involved might have acted contrary to the OECD Guidelines. The Complaint could not be considered as unfounded on the grounds that the company involved denied having violated the Guidelines, or on the grounds that the same course of events might simultaneously be pending in other bodies.

In accordance with Paragraph 29 of the OECD Guidelines' Commentary on the Implementation Procedures (p. 84), the NCP offered the parties involved an opportunity for conciliation. Nokia, however, refused conciliation on 10 December 2019, because in Nokia's view there was no prerequisite for conciliation.

At the request of the NCP, Nokia provided supplementary replies on 10 January 2020 (Reply 2), 12 February 2020 (Reply 3), 15 April 2020 (Reply 4) and 29 May 2020 (Reply 5) respectively. As requested by the NCP, the Complainants supplemented their Complaint on 20 February 2020 (Complaint 2), and it also provided further information on 11 May 2020 (Complaint 3). The materials of the opposing parties were notified to the parties involved by the NCP, which also gave them an opportunity to express their views in response to the materials.

Before issuing its Final Statement, the NCP has, in observance of Paragraph 36 of the OECD Guidelines' Commentary on the Implementation Procedures (p. 85), sent a draft Final Statement to the parties for comment.

## Complaint

### Demands

The Complainants demand that the NCP state that Nokia has breached the OECD Guidelines (Complaint 1, p. 4).

The Complainants also demand (Complaint 2, p. 111–112) that the NCP recommend that Nokia should:

- submit its arrangements for assessment in an independent tax audit;
- submit its arrangements for assessment by the Argentinian tax authorities;
- submit its arrangements for assessment by the Argentinian employment authorities;
- make payment of its liabilities, should the aforementioned deem that the issue concerned evasion of legislation;
- provide truthful data to the Argentine Antitrust Agency;
- prevent reprisals against the Complainants or, if not feasible, compensate for such action;

- introduce an internal appeal mechanism, put in place by a third party;
- request an independent expert opinion on the alleged breach of labour law against the Complainants and the other employees;
- comply with the above expert opinion;
- participate in good faith in the conciliation process at hand;
- refrain from using the designation “the most ethical company in the world” until the issues described above have been resolved.

#### Key substance of the grounds put forward

The Complaint alleges that Nokia has breached the following paragraphs of the OECD Guidelines: Paragraphs A.5 and A.9 of Chapter II (General Policies); Paragraphs 1 and 2 (subparagraphs f and g) of Chapter III (Disclosure); Paragraphs 4 and 6 of Chapter V (Employment and industrial relations); and Chapter XI (Taxation).

Comptel Corporation, hereinafter Comptel, had an office in Argentina, selling software licences in Latin America. The employees of that office had not been registered by Comptel and they worked under a subcontracting arrangement. This arrangement made Comptel appear more efficient in relation to its competitors.

The above arrangement has been used to evade tax and social security legislation. Nokia became aware of this arrangement as it acquired Comptel. Nokia, however, omitted to report it to Nasdaq, the Finnish Financial Supervisory Authority (FIN-FSA), the Argentine Antitrust Agency and the US Securities and Exchange Commission, even though it would have been liable to do so, as alleged in the Complaint. The responsibility over tax and social security obligations also lies with Nokia.

According to the Complaint, Nokia continued to profit from the situation for about a year, following which it transferred the majority of the personnel of the subcontracting companies under the control of its Argentinian subsidiary.

The Complaint alleges that Nokia offered to continue the duties of some former Comptel employees on condition that they sign a document by which they agree to take charge of the arrangements under which labour and social security contributions and taxes were evaded. When the employees refused to sign, Nokia terminated their employment.

#### Reply

##### Position on the demands

In Nokia’s view, it has complied with the OECD Guidelines in this matter.

#### Key substance of the grounds put forward

Nokia acquired Comptel in 2017 and integrated Comptel’s operations into its own organisation after the acquisition. Comptel had no operations of its own in Argentina. Instead, it had two local contractors: Segen Services S.A., hereinafter Segen, and Relval Trade S.A., hereinafter Relval. Of the Complainants, Gustavo Borrajo owned Segen, while Diego Becker was the owner of Relval.

In a due diligence review, Nokia discovered that Relval and Segen neither had registered their employees with the Argentinian tax authorities, nor

had they made payment for the tax withheld on their employees' remuneration or paid their social security contributions. Under the Services and Consulting Agreements between Comptel and Relval and between Comptel and Segen respectively, Segen and Relval were in charge of compliance with statutory obligations. After declining this responsibility, the Complainants have made demands to Nokia.

Nokia undertook investigations to find out whether any subcontracting arrangements similar to those employed in South America were noticeable in Comptel's other operations. Nokia made employment offers to the contracting companies' employees, except for Gustavo Borrajo, who had failed to adequately account for Segen's omissions and comply with Nokia's ethical standards, and except for Diego Becker, whose company Relval was not anymore actively supplying services for Comptel at the time of the acquisition.

Nokia claims to have met its statutory reporting obligations.

Nokia finds that the matter is concerned with the Complainants' personal claims which are pending in Argentina and that those instances should not be addressed on the basis of the OECD Guidelines.

## Other evidence produced by the parties

### Complainants

#### Complaint 1

Exhibit I: Estimated revenue per employee

- theme: the purpose is to show that employees were kept secret

Exhibit II: Declaration of insider holdings / basic declaration

- theme: the Complainants were Comptel's employees and they were offered various bonuses

Exhibit III: Retention bonus

- theme: the Complainants were Comptel's employees and they were offered various bonuses

Exhibit IV: Begin forwarded message, 16 February 2018.

- theme: the Complainants were Comptel's employees and they were offered various bonuses

Exhibit V: Key personnel long-term incentive program 2012

- theme: the Complainants were Comptel's employees and they were offered various bonuses

Exhibit VI: Comptel 2008

- theme: Comptel's presence in Argentina in 2009

Exhibit VII: Forwarded message, 27 August 2018

- theme: Nokia's internal audit mechanism does not work

Exhibit VIII: Email Tiina Sarhimaa, 4 October 2017.

- Nokia profited from the subcontracting arrangement following acquisition of Comptel

Exhibit IX: Actualizacion notarial.

- Nokia's leaders knew of the situation but did not take the Complainants seriously.

#### Complaint 2

Annex 1: Comptel, Actividades desarrolladas en Argentina Análisis Impositivo

Annex 2: Services and Consulting Agreement, 23 June 2016. Supply of services and consulting for Comptel Communications by Segen SA

Annex 3: Comptel invoice 90016097

Annex 4: Comptel invoice 90018144

Annex 5: Comptel invoice 8000011958  
Annex 6: Gustavo Borrajo e-mail lunes 23 de marzo 2015  
Annex 7: Begin forwarded message, 2 December 2015  
Annex 8: Statement of services and prices  
Annex 9: Statement of services and prices, 2 January 2015  
Annex 10: Comptel Support Services for Nokia Siemens Networks (I)  
Annex 11: Comptel Support Services for Nokia Siemens Networks (II)  
Annex 12: Nokia reseller agreement 5387  
Annex 13: Local amendment to frame agreement  
Annex 14: Acuerdo entre la republica argentina y la republica de finlandia para evitar la doble imposicion en materia de impuestos sobre la renta y sobre el patrimonio.  
Annex 15: Comptel Annual report 2016  
Annex 16: Nota Pedido Abierta Nro: 4600049623  
Annex 17: Certificado de servicios, soportes, mantenimientos pagados por adelantado  
annex 18: Gustavo Borrajo inbox, 27 November 2017  
Annex 19: Gustavo Borrajo inbox, 2 January 2018  
Annex 20: Personal Telecom Personal Argentina  
Annex 21: Services and Consulting Agreement, 23 June 2016. Supply of services and consulting for Compel Communications by Segen SA  
Annex 22 Services and Consulting Agreement 29.6.2016. Supply of services and consulting for Compel Communications by Relval Trade SA  
Annex 23: Gustavo Borrajo inbox, January 2, 2018, 6:49 PM  
Annex 24: RE: update contact renewals  
Annex 25: Diego Becker inbox December 3, 2015  
Annex 26: Gustavo Borrajo inbox June 23, 2017  
Annex 27: Don't let this happen to you  
Annex 28: Gustavo Borrajo inbox, December 5, 2017  
Annex 29 Gustavo Borrajo inbox martes 9 de enero 2018  
Annex 30 Comptel award, 30 October 2017  
Annex 31 Comptel history, 30 October 2017  
Annex 32: Integration connections 6 de septiembre 2017  
Annex 33: Gustavo Borrajo inbox October 30, 2017  
Annex 34: Gustavo Borrajo inbox December 28, 2017  
Annex 35: 35m4a  
Annex 36: Gustavo Borrajo inbox 2 July 2017  
Annex 37: Nota de Pedido Nro: 4500026671  
Annex 38: Nokia Annual report on form 20F2017  
Annex 39: Dictamen firma conjunta, ciudad de Buenos aires 26 de enero 2018  
Annex 40: Gustavo Borrajo inbox August 14, 2017  
Annex 41: CNDC: Formulario F1 para la notificación de concentraciones económicas  
Annex 42: Gustavo Borrajo inbox December 17, 2015  
Annex 43: Direct approach to NCN customer  
Annex 44: Securities and exchange commission form 6 k  
Annex 45: United States district court southern district of New York: Case 1:19-cv-03509-ALC Document 1 Filed 04/19/19  
Annex 46: Nokia Corp form 20 F  
Annex 47: 47 eml  
Annex 48: Gustavo Borrajo inbox, December 18, 2017  
Annex 49: Gustavo Borrajo inbox, December 21, 2017  
Annex 50: txt  
Annex 51: Gustavo Borrajo inbox March 8, 2012  
Annex 52: Diego Becket inbox March 24, 2016  
Annex 53: Rnv: Support Team; 29 de enero de 2016,  
Annex 54: Gustavo Borrajo inbox, May 25, 2016

Annex 55: Contracts for new contractors 26 November 2015  
 Annex 56: Diego Becker inbox, December 30, 2015

Complaint 3:

- Local entity in AR Memo dated 2006

The company involved

Appendix 1: Nokia Code of conduct 2015  
 Appendix 2: Nokia Code of conduct 2018  
 Appendix 3: Nokia Code of conduct 2019  
 Appendix 4: Services and Consulting Agreement between Comptel Communications Oy and Segen, dated 23 June 2016  
 Appendix 5: Services and Consulting Agreement between Comptel Communications Oy and Relval, dated 29 June 2016

Justification

The considerations to be examined

The NCP notes that the Complaint targets Nokia's conduct. The issue is about Nokia's action in the context of its acquisition of Comptel and thereafter. While several points raised in the Complaint appear to concern Comptel's activities, the Final Statement shall not examine Comptel's conduct in the present matter independently.

On the basis of the information received, the issue relates to sub-contract agreements employed by Comptel in Argentina, which Nokia did not continue after its integration of Comptel's operations. The employees of the subcontracting companies had not been registered, and their tax and/or social security payments were neglected. Following the acquisition, Nokia offered employment contracts to at least part of the employees of the subcontracting companies. The Complainants have also raised the issue of Nokia's tax liabilities in Argentina.

The NCP finds that, on the basis of the information produced, the examination of the alleged breach of the Guidelines can be broken down into the following sets of issues:

1. Reporting obligations
2. Responsibility for obligations on tax and social security payments
3. Issues pertaining to employment relationships.

While noting that the Complaint is about whether Nokia has observed the OECD Guidelines, the NCP finds that it transpires from the information submitted by the Parties that the events took place within the following timeframe:

- Nokia's Public Tender Offer for Comptel was published on 23 February 2017;
- The acquisition was finalised on 29 June 2017;
- Comptel continued its operations as a separate business unit up to 31 December 2017, and was integrated into Nokia in its entirety as of 1 January 2018;
- The operations of Comptel, and Relval and Segen respectively, were closed on 31 December 2017.

## Assessment of the considerations to be examined

### 1. Reporting obligations

#### *The points raised in the Complaint and in the Reply*

It is repeatedly pointed out in the Complaint that Nokia neglected its obligation to report to at least Nasdaq, the Finnish Financial Supervisory Authority (FIN-FSA), the Argentine Antitrust Agency and the US Securities and Exchange Commission, and/or that it supplied them with untruthful information.

The Complainants argue that, in reality, Comptel itself had produced services in Argentina, disguising them under its subcontracting arrangements. Comptel had not registered its contractors' personnel in its own name, which made Comptel appear more efficient than its competitors. The NCP moreover interprets that the Complaint is founded on the argument that, on the basis of the audits, Nokia should have noticed that Comptel actually had an office in Argentina and, further, that Nokia should have reported it to the aforesaid authorities as appropriate.

The Complaint alleges that Nokia not only failed to take charge of Comptel's activities but also continued to profit from the arrangement. The Complainants argue that Nokia's responsibility is moreover shown by the fact that once it had identified irregularities in Comptel's subcontracting arrangements, it initiated a world-wide internal audit of Comptel's activities.

Nokia argues that the reporting obligations in its charge have not been neglected.

Nokia notes in the information it has provided that it is subject to the rules set out in instruments such as the Finnish Securities Markets Act (746/2012); Directive 2003/6/EC of the European Parliament and Council; Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC; and the rules and regulations on trading at Nasdaq Helsinki. Nokia has complied with those rules and regulations, and, after the acquisition, it has not discovered any Comptel activities that would fall under its reporting obligation. Nokia has also complied with the international standards on financial reporting, as well as accounting legislation and audit obligations.

Nokia holds unfounded the claims relating to submission of untruthful information to the Argentine Antitrust Agency, noting that it has followed Argentinian legislation in this matter.

#### *Relevant Paragraphs of the OECD Guidelines*

Under Paragraph 1 of Part III (Disclosure) of the OECD Guidelines, enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises

should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns. It is further set out in Paragraph 2 subparagraphs f and g that the disclosure policies of enterprises should include material information on foreseeable risk issues regarding workers and other stakeholders.

Under Paragraph 1 of Part X (Competition) of the OECD Guidelines, enterprises should carry out their activities in a manner consistent with all applicable competition laws and regulations, taking into account the competition laws of all jurisdictions in which the activities may have anticompetitive effects. Under Paragraph 4 of Part X, enterprises should regularly promote employee awareness of the importance of compliance with all applicable competition laws and regulations, and, in particular, train senior management of the enterprise in relation to competition issues.

### *Appraisal of the issue*

The NCP notes that the Complainants put forward claims concerning breach of the paragraphs of the OECD Guidelines regarding disclosure obligations. When processing the Complaint, the NCP asked the Complainants to supplement their Complaint in terms of the grounds for and possible evidence on Nokia's alleged neglect of its reporting obligation.

For example, the Complainants make reference to the fact that Nokia has submitted untruthful information to the Argentine Antitrust Agency, as a result of which the latter made wrong assumptions of Comptel's operations in Argentina. The NCP observes that the Complainants chiefly substantiate their case by describing the content of Argentinian competition law and by alluding that Nokia has been lying. Yet the NCP observes that the contact details for Comptel in Buenos Aires are recorded in the evidence presented with the Complaint (Exhibit VI, p. 17) and that the same material (p. 1) suggests that the document dates back to 2008. The same appears from the materials presented by the Complainants (Annex 15, p. 98), reflecting the situation in 2016. The piece in Spanish, Annex 10, which according to the NCP appears to concern the years 2015 and 2016, is also intended to prove that Comptel has held an office in Argentina. With Exhibits II–V, the Complainants further intend to show that the issue is about keeping employees secret, while they in reality had been employees of Comptel, by presenting, among other things, an account of the bonuses offered to the Complainants.

The NCP notes that it shall assess Comptel's subcontracting arrangements only in so far as they have an interface with Nokia's activities after the acquisition, i.e. from June 2017 onwards.

The NCP observes that, as such, the materials presented give the impression that Comptel had permanent operations in Argentina at least up to 2016, whereas the materials submitted by the Complainants only extend, in this respect, to the period until 2016. In the NCP's view, the said materials do not allow to draw any conclusions on the state of affairs prevailing at the time when the acquisition was closed in 2017. According to Nokia, Comptel did not have a registered office in Argentina when Nokia acquired Comptel. The NCP also notes that the evidence produced does not allow to estimate whether a permanent tax establishment had been constituted for Comptel in Argentina, and consideration of the possibly ensuing reporting obligations has therefore not been feasible.



The NCP finds that the materials produced do not allow to conclude that, under the OECD Guidelines, Nokia might have been subject to other reporting obligations beyond the reports it claims to have submitted. On the basis of the materials presented, it is not possible to take a stand on the correctness of the information reported by Nokia, seen that the neglect of reporting duties merely rests on the Complainants claims, which are not supported by evidence.

The NCP concludes that it does not appear from the evidence produced that Nokia would have breached Paragraph 1 of Chapter III (Disclosure), Paragraph 1 of Chapter X (Competition), or Paragraph 4 of Part X.

## 2. Responsibility for obligations on tax and social security payments

### *The points raised in the Complaint and in the Reply*

The Complainants base their view on the claim that Comptel made use of subcontracting arrangements for the purpose of evading taxes and other statutory responsibilities and that Nokia later profited from the situation.

Two separate claims are distinguishable in the Complaint:

First, the Complaint alleges that it is ultimately Nokia who should be in charge of the obligations of its contractors Relval and Segen in respect of tax and social security laws, because its due diligence review failed. The Complainants argue that, under Argentinian law, the responsibility lies with Nokia. The evidence they have produced in this matter includes email messages which deal with the reorganisation of operations following the acquisition.

Second, the Complainants argue that although the permanent establishment constituted for Comptel in Argentina should have paid income tax, value added tax and turnover tax, the sales made from Argentina were invoiced by Comptel and Nokia directly from Finland. Additionally, the Complainants allege that in 2017 Nokia realised, through its contracting companies, sales worth 13 million US dollars free of tax. In 2018, the amount allegedly was USD one million.

As for the first claim of the Complainants, Nokia argues that it is not against the law to make use of sub-contract agreements and that the responsibility of Comptel's subcontractors for complying with tax and social security laws did not concern it. Nokia had not been involved in Comptel's operations prior to the acquisition. The deal was finalised on 29 June 2017, but Comptel carried on with its operations until 31 December 2017. In the context of acquisitions, integrating operations normally takes time and cannot be realised immediately.

Subcontracting arrangements are a common way of organising things within multinational enterprises. Nokia claims to have carried out during the acquisition an extensive and thorough due diligence, where Comptel's use of subcontractors was noticed. In July 2017, Nokia found out that the contractors Relval and Segen had not been registered with the Argentinian tax authorities and their social security contributions had been left unpaid. Following that, Nokia also carried out a due diligence into Comptel's similar arrangements, but no similar omissions were detected. According to Nokia, Relval and Segen have not previously presented the view that the responsibility for complying with tax and social security laws would not rest with the two companies.

Nokia and the Complainants have provided for the NCP the agreements of June 2016, signed between Comptel and Segen, and Comptel and Relval respectively. Point 8.6 of the General Terms and Conditions annexed to the agreements states as follows:

“The Company [Relval/Segen] shall comply with all applicable tax, employment and other legislation and shall be responsible for taxes based upon its income or income of Consultants or its personnel and all other employer's payments under such legislation.”

In Nokia's view, the above clause means that the Complainants were responsible for the said obligations.

Nokia finds that the Complainants' second claim is unfounded and that the Complainants have not explained what the amounts cited in the Complaint are based on.

According to Nokia, it realised, between summer 2017 and 2018, payments worth USD 4.3 million from Comptel's former customers in Argentina. On that amount, USD 500,000 was withheld for Argentinian corporation tax, in addition to what is required by the double taxation agreement between Argentina and Finland.

In its Reply 5, Nokia also makes reference to the Agreement on the Avoidance of Double Taxation of income and property taxes between the Republic of Finland and the Republic of Argentina (84/1996), hereinafter the Taxation Agreement. It is Nokia's understanding that the arrangement between Comptel and its Argentinian customers was that Finland had, under Article 7 of the Taxation Agreement, the primary power of taxation on Comptel's profits from Finnish software products. Argentina, however, withheld tax at source on Comptel's sales in accordance with Article 12 of the Taxation Agreement. Nokia moreover observes that the tax at source paid by Comptel to Argentina under Article 12 of the Taxation Agreement was considerably higher than what it would have been if tax had been imposed, under Article 7 of the same agreement, on a permanent establishment constituted in Argentina.

Nokia claims that after the acquisition it diligently saw to it that the integration of Comptel followed Nokia's own procedural policies and, in cases where Comptel pursued business activities on its own account, also local laws and practices. In Argentina, attention was drawn to the arrangements of Relval and Segen. As part of the integration process, Nokia had consulted a local law firm and a local auditing firm for the purpose of meeting all its local obligations, including those related to disclosure. The consultation showed that Argentinian law did not obligate Nokia to report to the Argentinian tax authorities the omissions related to social security payments and tax withholding under the agreement between Comptel and its contractors Relval and Segen. Nokia, however, took measures to wind down those sub-contract agreements.

Nokia also observes that, in 2016, the Complainants had informed the Argentinian tax authorities that they were owners of Relval and Segen. Having applied for tax concessions, they also had paid (abated) taxes. Nokia moreover points out that, by the end of 2017, the Argentinian tax authorities were aware of the situation faced by Relval and Segen because of the communications they had received from the Complainants

(including Complainant Borrajo's application for tax concessions, 18 December 2017; a copy of the demands regarding the Complainants' employment relationships, 20 February 2018 and 5 March 2018 respectively; and a copy of a letter to Nokia's CEO, 12 September 2018).

Nokia underlines that it is prepared to respond to inquiries by the Argentinian tax authorities, but no such inquiries have yet been made, even though the Complainants have been informing the said authorities for two years already.

### *Relevant Paragraphs of the OECD Guidelines*

The Complainants have invoked the following paragraphs of the OECD Guidelines:

According to Paragraph 1 of Part XI (Taxation) of the OECD Guidelines, it is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

According to Paragraph 2 of Part XI (Taxation) of the OECD Guidelines, enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.

According to Paragraph A.5 of Part II of the OECD Guidelines, enterprises should refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.

The NCP considers that the following general principles of the OECD Guidelines concerning the due diligence obligation of companies also have relevance for the assessment of the present issue:

According to Paragraph 11 of Part II (General Policies) of the OECD Guidelines (p. 20), enterprises should avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

Under Paragraph 12 (p. 20), enterprises should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship. (p. 20)

## *Appraisal of the issue*

The assessment of the present instance should be concerned with the diligence of Nokia's conduct in relation to the OECD Guidelines.

It is stated in Paragraph 100 of the OECD Guidelines' Commentary on Taxation (p. 60) that corporate citizenship in the area of taxation implies that enterprises should comply with both the letter and the spirit of the tax laws and regulations in all countries in which they operate, co-operate with authorities and make information that is relevant or required by law available to them. An enterprise complies with the spirit of the tax laws and regulations if it takes reasonable steps to determine the intention of the legislature and interprets those tax rules consistent with that intention in light of the statutory language and relevant, contemporaneous legislative history.

Under Paragraph 101 of the Commentary (p. 61), tax compliance also entails co-operation with tax authorities and provision of the information they require to ensure an effective and equitable application of the tax laws. Such co-operation should include responding in a timely and complete manner to requests for information made by a competent authority pursuant to the provisions of a tax treaty or exchange of information agreement. However, this commitment to provide information is not without limitation. In particular, the Guidelines make a link between the information that should be provided and its relevance to the enforcement of applicable tax laws. This recognises the need to balance the burden on business in complying with applicable tax laws and the need for tax authorities to have the complete, timely and accurate information to enable them to enforce their tax laws.

It is further stated in Paragraph 14 of the Commentary on General Policies (p. 23) that for the purposes of the Guidelines, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. Due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself, to include the risks of adverse impacts related to matters covered by the Guidelines. Potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation. The Guidelines concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship, as described in paragraphs A.11 and A.12. Due diligence can help enterprises avoid the risk of such adverse impacts. For the purposes of this recommendation, 'contributing to' an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact and does not include minor or trivial contributions. (p. 23)

According to Paragraph 22 of the Commentary (p. 25), appropriate responses with regard to the business relationship may include continuation of the relationship with a supplier throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. The

enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage. (p. 25)

The NCP observes that the Complainants' claim regarding Nokia's tax debt is based on their own estimates, and it appears from the evidence received that the figures have not been confirmed by competent authorities. Nokia, in turn, argues that the Taxation Agreement between Finland and Argentina has been complied with in this matter. The NCP considers that it is not possible for it to investigate the legal issues related to possible tax debt.

As for compliance with the OECD Guidelines, it is fundamental to estimate the steps Nokia has taken in this case and how it has sought to investigate the matter. The NCP finds that consideration of the issue should be based on how Nokia has been acting in this case since June 2017.

The evidence produced by Nokia shows that it has made efforts to act diligently, by examining the content of Argentinian legislation through a local law firm and a local auditing firm. It appeared from the consulting received by Nokia that it was under no obligation to make report to the Argentinian tax authorities on the arrangements Comptel had with its contractors. The NCP also observes Nokia's claim that the information supplied by the Complainants themselves had allowed the Argentinian tax authorities to have knowledge about the situation faced by Relval and Segen. It should also be noted that while Nokia did not continue Comptel's subcontracting arrangements, it offered employment contracts to the employees involved in those arrangements, with the exception of the Complainants.

On the basis of the evidence received, the NCP considers that Nokia has taken appropriate measures, attempting to find out about its pertinent obligations as required by the OECD Guidelines. The solution also takes account of the fact that, as Nokia declares, it believes that Comptel has paid tax at source in Argentina for the sales.

On the basis of the evidence received, Nokia has not acted in violation of Paragraph 1 of Part XI (Taxation), Paragraph 2 of Part XI and Paragraph A.5 of Part II.

### 3. Issues pertaining to employment relationships

#### *The points raised in the Complaint and in the Reply*

The Complaint is based on the allegation that Nokia has violated the OECD Guidelines because it did not recognise the Complainants as Comptel's employees and, further, did not offer to continue their employment relationships following acquisition of Comptel. The Complainants claim that they were Comptel's employees who had not been duly registered, and that Nokia had offered to extend the employment relationships of Relval's and Segen's other employees. The Complaint further alleges that as the Complainants had reported on the irregularities in the context of the arrangements, they had been obligated to take on the responsibility for the subcontracting arrangements of Relval and Segen. The Complainants sought to have their case considered by Nokia's internal appeal mechanism, but Nokia had refused to admit the case.

The Complainants have produced evidence in an attempt to prove to the NCP, following the themes presented to it, that Nokia has profited from

the arrangements and that the Complainants were employed by Comptel. The evidence produced by Complainants includes email messages inviting them to work as Comptel's employees (see Annexes 27–29), and offering them tools (Annex 32, Annex 33 and Annex 40) and stock options, normally offered to key personnel (Exhibit III, Annexes 30 and 31).

In Nokia's view, it has not acted against the OECD Guidelines in this matter, which was about Comptel's subcontracting arrangements with the companies Relval and Segen, owned by the Complainants. The matter escalated between Nokia and the Complainants when, after integrating the operations of Comptel, Nokia no longer had a need for subcontracting arrangements. Nokia had nevertheless considered offering Complainant Gustavo Borrajo an employment contract, but it was estimated that there were no grounds for that because he had failed to account adequately for the irregularities related to the payment of taxes by his company Segen. Offering an employment contract to the other Complainant, Diego Becker, was not considered. According to Nokia, he had not even shown any interest, because his company Relval had not been actively supplying services for Comptel at the time of the acquisition.

#### *Relevant Paragraphs of the OECD Guidelines*

It is stated in Paragraph 4 of Chapter V (Employment and industrial relations) of the OECD Guidelines that enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

- a) observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
- b) when multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families;
- c) take adequate steps to ensure occupational health and safety in their operations.

According to Paragraph A.9 of Chapter II of the OECD Guidelines, enterprises should refrain from discriminatory or disciplinary action against workers who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.

#### *Appraisal of the issue*

The NCP notes that, on the one hand, evidence has been produced on the subcontracting relationship between Comptel and the companies Relval and Segen respectively. On the other hand, written evidence has been produced, including distributions of emails addressing the recipients as 'employees', and documents with Comptel's logo discussing the bonuses offered to key personnel, including the Complainants.

The NCP notes that as the definition of an employment relationship is about applying the provisions of labour law, related disputes can best be

considered by courts that apply such local provisions. In fact, the materials received by the NCP reveal that actions brought by both Complainants are pending in Argentina in this issue.

The provisions of the OECD Guidelines on employment relationships concern the terms of an employment relationship rather than its existence. The NCP further notes that international norms on employment relationship are impacted by the tripartite conventions of ILO and the recommendations given under them. The ILO system contains a mechanism by which complaints can be filed against states whose legislation fails to conform to ILO conventions.

On the basis of the material submitted to the NCP, it is not possible to carry out a legal assessment of whether the constituent elements of an employment relationship are present and, further, whether under Argentinian law or ILO conventions there might have existed between the Complainants and Comptel an employment relationship that could have obligated Nokia to engage the Complainants in an employment relationship. The NCP further notes that the irregularities at the background of the matter concerning the manner in which the companies Segen and Relval have managed their obligations may have relevance for the legal assessment of the obligation to offer an employment relationship.

The NCP moreover observes that the assessment of the issues related to a possible employment relationship is linked to the legal assessment on Comptel's permanent establishment and its tax obligations, discussed in the above paragraphs.

On the basis of the evidence produced to the NCP, the relevant course of events can be understood as follows: After the acquisition, Nokia no longer had a need for subcontracting arrangements, because it integrated the operations concerned as part of its Argentinian subsidiary. Nokia had business reasons for this arrangement. Furthermore, Nokia detected irregularities in Relval's and Segen's management of their obligations, which is one of the reasons why Nokia declined to offer the Complainants an employment relationship. The Complainants have profited from the subcontracting arrangements during the activity of Comptel, and the decision to terminate the Services and Consulting Agreements was not in their interests. Once Nokia terminated the subcontracting arrangements, the Complainants pleaded that they were employees.

The matter at hand is about whether Nokia has been complying with the OECD Guidelines since June 2017, when it acquired Comptel.

The NCP finds that the evidence produced by Nokia shows that it undertook to investigate the situation of the subcontracting companies after June 2017 and it subsequently determined to whom it could offer employment contracts from 2018 on. The NCP considers that, on the basis of the materials presented, Nokia's conduct has not violated Paragraph 4 of Part V (Employment and industrial relations) of the OECD Guidelines.

The NCP likewise considers that the argument that the Complainants would have been obligated to take charge of the subcontracting arrangements of Relval and Segen after the latter had reported on the irregularities in the context of the arrangements, merely rests on the Complainants' claims.

The NCP further finds that the wording of Paragraph A.9 of Chapter II of the OECD Guidelines refers to employees. It appears from the materials presented that the Complainants were not employed by Nokia, and the NCP shall therefore not consider the operation of Nokia's internal appeal mechanism in the case of the Complainants.

### Observations of the NCP

It is stated in Paragraph 35 of the OECD Guidelines' Commentary on the Procedural Guidance for NCPs (p. 85) that if the parties involved fail to reach agreement on the issues raised or if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for. The statement should identify the parties concerned, the issues involved, the date on which the issues were raised with the NCP, any recommendations by the NCP, and any observations the NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement.

In its Statement, the NCP brings forth the following observations:

### *Proceedings*

The NCP finds that the purpose of issuing of a statement is to assess the conduct of the company involved in relation to the OECD Guidelines, and the NCP statement should therefore be based on specific paragraphs of the said Guidelines, to be identified in the statement.

According to Paragraph 21 of the OECD Guidelines' Commentary on the Procedural Guidance for NCPs (p. 81), the effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines.

Paragraph 28 of the OECD Guidelines' Commentary on the Procedural Guidance for NCPs (p. 83) further states that where the issues raised merit further consideration, the NCP would discuss the issue further with parties involved and offer "good offices" in an effort to contribute informally to the resolution of issues. Where relevant, NCPs will follow the procedures set out in paragraph C-2a) through C-2d). This could include seeking the advice of relevant authorities, as well as representatives of the business community, labour organisations, other non-governmental organisations, and experts. Consultations with NCPs in other countries, or seeking guidance on issues related to the interpretation of the Guidelines may also help to resolve the issue.

The NCP finds that the examination of the matter has been complicated by the lack of dialogue between the parties, for the Complainants and the company involved have widely differing views the situation. That is also why the criteria for a conciliation could not have been met. For example, the Complainants commented in several sections of their Complaint



(Complaints 2 and 3) that Nokia had lied to the NCP. Taking into account what is stated in Paragraph 21 of the OECD Guidelines' Commentary on the Procedural Guidance for NCPs, the NCP finds that the goal set in the Guidelines is to reach a constructive settlement, and substantiated arguments should be presented by the parties in support of their views.

The Complaint covers a wide variety of arguments which are partly overlapping. In addition, the parties have produced a considerable number of Annexes to the Complaint, which include excerpts from various email messages.

The OECD Guidelines do not carry provisions on considering questions of evidence or on the burden of proof. The NCP nevertheless finds that an assessment of compliance with the OECD Guidelines in specific instances surely cannot mean that the burden of proof would be transferred directly to the company as a result of the claims put forward by the Complainants. The Complainants should, as a minimum, substantiate their arguments in a plausible manner that would support the alleged course of events, following which the burden of proof could be transferred to the company involved.

When investigating the case, the NCP asked both parties for additional information, which was received within the deadlines set. The NCP specifically asked the Complainants to clarify on what grounds they allege that Nokia's conduct has violated the OECD Guidelines and, further, what the Complainants wish to prove with the evidence they have produced.

Despite the requests to supplement the Complaint, the NCP has not been able to establish in all aspects a clear picture of exactly what the Complainants are attempting to prove with their complaint materials. It is the understanding of the NCP that the references made by the Complainants to Nokia's conduct in the context of the Alcatel-Lucent acquisition, for example, are in no way linked to the processing of the instance at hand. All things considered, the claims and evidence presented make up an incoherent and fragmented whole which does not allow to establish an adequately reliable picture of the course of action involved. The NCP notes that it appears from the materials produced that the justification for the Complaint rests on the loose claims of the Complainants, and it was therefore not possible to adequately assess the conduct of the company involved on the basis of those claims.

#### *Connection with parallel proceedings*

According to Paragraph 26 of the OECD Guidelines' Commentary on the Procedural Guidance for NCPs (p. 83), when assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned.

It seems clear to the NCP that the Complainants also have other claims pending against Nokia in Argentina.

For an assessment of the case it seems essential to receive an adequately reliable account of the course of events, which is why the NCP accepted to take the matter for further examination. In the further examination, however, the NCP was not presented with information that actually

would make it possible to assess whether the conduct in question is consistent with the OECD Guidelines. Instead, the Complainants have further extended their complaint with new claims and, in part, with claims that differ from the initial complaint, Complaint 1, and moreover make reference to pecuniary compensation for damage (Complaint 2).

As in the solution regarding the initial assessment (5 November 2019), the NCP further underlines that the purpose of the OECD Guidelines is not to make it possible for a party to pursue its pecuniary claims before some other appellate organ on the basis of allegations concerning breach of the said Guidelines.

The NCP finds that assessment of the claims put forward in the present matter should be based, above all, on how the legislation associated with those claims, in most cases Argentinian law, should be applied to a credibly presented course of events. In the situation at hand, in which the parties disagree on the issue, obtaining such evidence would appear to be more feasible with the tools available to courts than in the context of examining a specific instance in accordance with the OECD Guidelines, based on voluntary cooperation by the parties.

## Conclusions

The evidence presented to the NCP did not bring to light any circumstances that would warrant the conclusion that the company involved has violated the OECD Guidelines.

The NCP shall therefore not address any recommendations to the company on compliance with the OECD Guidelines.

The Complaint moreover lists more specific demands on the kinds of recommendations that should be made to the company involved, including possible compensation in the event that Nokia were found to have neglected its duties (see Complaint 2, p. 111–112). As for the above demands, the NCP concludes that it only has competence to estimate whether the company involved has complied with the OECD Guidelines in the present matter and, further, to issue recommendations on compliance with those Guidelines. Examining any other demands therefore does not fall within the NCP's competence.

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