



COMPLAINT IN A MATTER REGARDING COMPLIANCE WITH OECD GUIDELINES

INITIAL ASSESSMENT

Parties

Complainant

Haidir Hussen

Company involved

Kone Oyj, Kone Middle East

Key substance of the Complaint

Demands

The Complainant demands that the circumstances as a result of which the Complainant's career was ruined and he became unemployed should be investigated. The Complainant claims compensation for this damage.

Paragraphs of the OECD Guidelines invoked in the Complaint

According to the Complaint, Kone Oyj, hereinafter *Kone*, has violated the OECD Guidelines for Multinational Enterprises, hereinafter *the OECD Guidelines*, or *the Guidelines*¹.

The alleged violations concern the following paragraphs of the OECD Guidelines:

- Chapter II. General Policies: Paragraphs A.2 and A.7
- Chapter V. Employment and industrial relations: Paragraphs 1.e), 4.a), 4.c) and 6; and
- Chapter VII.

Justification

The Complainant claims to have worked for Kone since 2005. In 2009, he took up employment with Kone's authorised distributor in Iraq, but his employment relationship was later discontinued.

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

Kone Middle East asked the Complainant to carry on in Iraq and sign a contract with Kone's distributor in Jordan. The Complainant, however, had already set up his own company in Iraq and had recruited staff for it. KONE's distributor in Jordan charged a large commission on the Complainant's fees. After the Complainant had contacted Kone Middle East, KONE's distributor in Jordan no longer made offers to the Complainant. The Complainant has had contact with Kone's head office in Finland in this matter.

In 2014, Kone established a new distributor in North Iraq, but did not offer the agency to the Complainant despite the fact that they were actually taking care of the installations and deliveries in Iraq.

During the time that the Complainant worked for Kone, his health declined seriously as a result of stress, among other reasons.

The evidence presented in the attachments to the Complaint includes email correspondence between the Complainant and the different units of Kone.

Processing complaints on violation of OECD Guidelines

The OECD Guidelines for Multinational Enterprises 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.

When a complaint arrives at the Ministry, the NCP will first determine whether it merits further consideration, by making an initial assessment.

Solution regarding the initial assessment

The considerations to be examined

In accordance with the Commentary on the Procedural Guidance to the OECD Guidance (p. 83) and the national description of the procedure for submitting and processing complaints regarding the OECD Guidelines, the initial assessment should examine the following:

- Is the Finnish NCP the appropriate grievance mechanism to process the complaint;

- Who is the party involved and what are its interests in the matter in question;
- Whether the issue is material and substantiated;
- Whether there appears to be a link between the company's activities and the matter raised;
- Whether the applicable legislation and procedures, including court decisions, are related to the matter;
- How similar matters are being or have been handled in other Finnish or international bodies; and
- Whether the processing of the specific instance would serve the purpose and effective implementation of the OECD Guidelines.

Assessment of the above considerations

Is the Finnish NCP the appropriate grievance mechanism to process the Complaint

The OECD Guidelines do not define more closely how the competence of NCPs is determined in specific instances. It is stated on p. 82 of the Guidelines that generally issues will be dealt with by the NCP of the country in which the issues have arisen. While the developments described in the present Complaint took place in the Middle East, notably in Iraq, the head office of the company involved is located in Finland. Under the OECD Guidelines, the NCPs may in such circumstances collaborate to resolve the issue.

Seen that the Complaint targets a Finnish company, the Finnish NCP regards itself as the appropriate forum.

Who is the party involved and what are its interests in the matter in question

Kone Oyj and its subsidiary Kone Middle East are named as the other party to the Complaint.

According to the Complaint, the Complainant has been the owner and director of a company which has provided services for Kone in Iraq as a contractor. Kone Middle East has made contract arrangements under which the Complainant's company, in some cases at least, suffered losses because contract offers had also been made to other contractors.

The Complainant now claims financial compensation, and the purpose of his Complaint is to investigate the circumstances as a result of which the Complainant's career was ruined and he became unemployed.

Whether the issue is material and substantiated

The NCP holds it plausible that the Complainant's company operated as a contractor for Kone in Iraq, and furthermore that the Complainant was interested in delivering to Kone a greater number of services through his company than he had been given the opportunity to do.

According to the NCP, it appears from the Complaint that the issue seems to be about business disagreements between the Complainant and Kone. This view is moreover supported by the email correspondence presented by the Complainant in the attachments to his Complaint.

Whether there appears to be a link between the company's activities and the matter raised

The NCP considers that the issues invoked do in themselves target action taken by Kone and its Middle Eastern subsidiary.

Whether the applicable legislation and procedures, including court decisions, are related to the matter

Applicable paragraphs of the OECD Guidelines

The Complainant has specified that the company involved has allegedly violated the following paragraphs of the OECD Guidelines:

- Chapter II. General Policies: Paragraphs A.2 and A.7

Enterprises should take fully into account established policies in the countries in which they operate and consider the views of other stakeholders. In this regard, enterprises should:

A.2 Respect the internationally recognised human rights of those affected by their activities.

A.7 Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.

- Chapter V. Employment and industrial relations: Paragraphs 1.e), 4.a), 4.c) and 6

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1.e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

4.a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.

4.c) Take adequate steps to ensure occupational health and safety in their operations.

6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and cooperate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior

to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

- VII. Combating Bribery, Bribe Solicitation and Extortion

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

1. Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates.

2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical location and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery. Such individual circumstances and bribery risks should be regularly monitored and reassessed as necessary to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.

3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.

4. Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.

5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to hon-

our these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and cooperation with the fight against bribery, bribe solicitation and extortion.

6. Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.

7. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management.

Assessment

According to the Complaint, Kone has used the Complainant and his company, Abayab com, as a contractor in Iraq. The NCP's reading of the Complaint is that the claims of violations of the General Policies of the OECD Guidelines seem to be founded on the fact that Kone did not agree to grant an authorised distributor status to the Complainant's company. Furthermore, the Complainant claims that the alleged violations of the OECD Guidelines regarding industrial relations result from discrimination against the Complainant, Kone having operated in this matter with KONE's distributor in Jordan, instead of the Complainant, who therefore remained unemployed. The Complainant has moreover invoked contract pricing practices between Kone Middle East and its other contractors.

It emerges from the Complaint that the issue seems to concern disagreements between the Complainant and the company involved because the Complainant was not offered projects in all the cases he would have desired.

The NCP considers that the paragraphs of the OECD Guidelines invoked in the Complaint do not concern situations in which contractual partners are selected on commercial grounds.

How similar matters are being or have been handled in other Finnish or international bodies

The issues invoked are related to business relations between companies, and any disagreements concerning such issues are normally heard by courts or by other dispute settlement mechanisms, including arbitration.

Whether the processing of the specific instance would serve the purpose and effective implementation of the OECD Guidelines

In making an initial assessment, NCPs will need to determine whether the issues are material, whether they have been raised in bona fide and whether they are relevant to the implementation of the Guidelines; in other words, whether they come within the scope of the Guidelines.

Considering issues that are unrelated to the OECD Guidelines does not fall within the competence of an NCP. Commercial conflicts between companies are among the issues not covered by the Guidelines.²

The NCP considers that it transpires from the account presented by the Complainant that the matter is about a civil law dispute related to the commercial relations between the Complainant's company, Abayab com, and Kone. It is therefore not possible to consider this matter on the basis of the OECD Guidelines.

Kone has not been asked to provide a separate account because it appears from the Complaint that the matter remains outside the scope of the OECD Guidelines.

Outcome

The NCP will not accept the Complaint for further examination.

Tuula Haatainen
Minister of Employment

Sami Teräväinen
Senior Officer for Legal Affairs

² OECD (2019): Guide for National Contacts Points on the Initial Assessment of Specific Instances, <http://mneguide-lines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>, p. 11.