



**Decision**

8.8.2024

VN/8582/2024  
VN/8582/2024-TEM-3

# Complaint in a matter regarding compliance with OECD Guidelines; Initial Assessment

## Parties

### Complainant

Min Byung-kook Tour, Inc. (hereinafter referred to as “the Complainant”)

### Company involved

Finnair Oyj (hereinafter referred to as “Finnair”)

## Key substance of the Complaint

According to the Complainant, Finnair has violated the OECD Guidelines for Multinational Enterprises. The alleged violation concerns Chapter VIII (Consumer Interests), paragraphs 3 and 4, of the OECD Guidelines.

According to Chapter VIII, paragraph 3 of the OECD Guidelines, companies should provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden.

According to Chapter VIII, paragraph 4 of the Guidelines, companies should not make representations or omissions, nor engage in any other practices that are deceptive, misleading, fraudulent or unfair or that otherwise subvert consumer choice in ways that harm consumers or competition.

The Complainant is a South Korean travel agency, which had organised a trip that included a Finnair flight from Incheon to Helsinki (AY42) on 5 September 2023. Finnair cancelled the flight due to a technical problem. As a result of the

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cancellation, the travellers were delayed for their trip in Iceland. This caused them additional costs in Iceland with regard to hotel accommodation and transport arrangements, which the Complainant had to pay.

In the Complaint, the Complainant refers to Finnair's conditions of carriage, where paragraph 15.1.2(d) states that Finnair is liable only for damages for proven direct losses. Unless otherwise provided in mandatory legislation, Finnair is not liable for indirect or consequential damage.

An email sent on 5 September in connection with the Finnair flight cancellation states the following: "If you need hotel accommodation due to your flight's re-booking and you have already started your journey, we do our best to arrange it for you. If you are at the airport, please contact Finnair representative for the arrangements. Alternatively, if we cannot offer you the accommodation or you are not at the airport, you can book the hotel yourself and apply for compensation of reasonable hotel and ground transport costs afterwards from us. Please keep the receipts for the claim. You can apply for compensation at [finnair.com/customer-service](https://finnair.com/customer-service)."

The Complainant contacted Finnair and applied for compensation for the costs. Finnair, however, refused to pay compensation other than EUR 600 per passenger under aviation legislation due to the cancellation of the flight.

In the Complainant's view, Finnair must compensate, in addition to the EUR 600 per passenger, the hotel and transport costs incurred by the Complainant as a result of the delay totalling EUR 3,248.

According to the Complainant, Finnair requires that only the feedback form on its website can be used to apply for compensation and that the company cannot be contacted in any other way. Finnair's feedback system is slow and it is not possible to contact the responsible persons through it. The Complainant contacted Finnair more than 10 times, but the airline refused to compensate the direct damage.

The Complainant presented the following documents in support of the Complaint:

- Invoice for bus costs, SBA Nordurleid, EUR 2,000
- Hotel cancellation costs, Hanyong Tours, EUR 1,248
- An email message from Finnair
- An excerpt of conversation with Finnair's feedback system

## **Main contents of the reply**

Finnair considers that it has not violated the OECD Guidelines but has acted in accordance with the applicable legislation and its own guidelines (Finnair's General Conditions of Carriage for Passengers and Baggage). Finnair is not liable for indirect costs incurred by passengers as a result of a contractual relationship with a third party.

The Complainant's queries have been responded to through Finnair's feedback system. Finnair aims to process the feedback within seven days. The Complainant sent feedback on 25 October 2023 and Finnair responded to it on 1 November 2023.

The passengers were sent messages about the disruption and links to information concerning passenger rights. The documents also include the contact details of local consumer bodies in case the passengers are not satisfied with Finnair's response.

Passengers have been paid for costs caused by the delayed flight in accordance with EU Regulation (EC) 261/2004.

The Montreal Convention (Convention for the Unification of Certain Rules for International Carriage by Air) is applied to costs caused by a delay.

The costs incurred by the Complainant must be considered indirect costs, because they arose from a contractual relationship with third parties and do not relate to the contract of carriage with Finnair. Finnair has taken all possible measures to minimise delays and damage to passengers.

According to 15.1.1(c) of Finnair's conditions of carriage (Finnair's General Conditions of Carriage for Passengers and Baggage), Finnair is not liable for damages caused by delayed carriage if it has taken all reasonable measures to avoid the damage or it has been impossible for it to take such measures. Finnair's liability for delayed carriage is limited to SDR 5,346.

According to paragraph 15.1.2(d) of the conditions of carriage, Finnair is only liable for damages for proven direct losses of the passenger. Unless otherwise provided in mandatory legislation, Finnair is not liable for indirect or consequential damage.

According to Finnair, the message concerning the disruption referred to by the Complainant means the airline's duty of care during the interrupted trip. The costs claimed by the passengers were not incurred as a result of this disruption.

Finnair presented the following documents in support of its response:

- Finnair Passenger Rights
- Finnair's General Conditions for Passengers and Baggage
- EU Regulation 261/2004
- Montreal Convention

## **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 a mechanism of National Contact Points (NCPs), bodies established by adhering governments. These 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 (Government Decree 591/2008) as the Finnish NCP. At the Ministry's request, the Committee will provide a statement on whether the company has adhered to the Guidelines or not.

When the Ministry has received a complaint, the NCP will carry out an initial assessment to determine whether the complaint warrants further examination.

## **Decision regarding the initial assessment**

## Considerations to be examined

In accordance with paragraph 33 of the Commentaries on the Implementation Procedures of the OECD Guidelines (p. 70) and the national description of the procedure for submitting and processing complaints regarding the OECD Guidelines, the initial assessment will take into account the following:

- whether Finnish NCP the appropriate party to process the complaint;
- the identity of the party concerned and its interest in the matter
- whether the issue is material (i.e. relevant to the implementation of the Guidelines) and substantiated (i.e. supported by sufficient and credible information);
- whether the company is covered by the Guidelines;
- whether there seems to be a link between the company's activities and the issue raised;
- the extent to which applicable law and/or parallel proceedings limit the NCP's ability to contribute to the resolution of the issue and/or the implementation of the Guidelines, in light of paragraph 35 (p. 70) of the Commentaries on the Implementation Procedures of the OECD Guidelines and;
- whether the examination of the complaint would contribute to the purposes and effectiveness the OECD Guidelines.

## Assessment of the above considerations

The complaint was originally submitted to the NCP of South Korea, which referred the matter to the NCP of Finland. The Finnish NCP can be considered the appropriate body to process a complaint concerning a Finnish company, Finnair. The Complaint is processed in cooperation with the South Korean NCP. After beginning the processing of the Complaint, the Finnish NCP has requested the Complainant to supplement its Complaint about the conversation it had with Finnair in Finnair's feedback system. Subsequently, Finnair was requested to provide a reply to the Complaint.

According to the Complainant, the company has violated the OECD Guidelines for Multinational Enterprises. The alleged violation concerns Chapter VIII (Consumer Interests), paragraphs 3 and 4 of the OECD Guidelines.

According to Chapter VIII, paragraph 3 of the OECD Guidelines, companies should provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden.

According to Chapter VIII, paragraph 4 of the Guidelines, companies should not make representations or omissions, nor engage in any other practices that are deceptive, misleading, fraudulent or unfair or that otherwise subvert consumer choice in ways that harm consumers or competition.

In its reply, Finnair stated that it had acted in accordance with the applicable legislation, EU Regulation (EC) 261/2004 and the Montreal Convention, and also complied with its own guidelines on carriage of passengers.

The NCP interprets the Complaint as follows: The Complainant finds it has incurred costs due to the cancellation of the Finnair flight and, in the situation, the Complainant has understood the message concerning the disruption sent by Finnair by email to mean that compensation could be applied also for costs caused by the delay incurred in the destination of the flight. The Complainant has been dissatisfied with the slowness of Finnair's feedback system and the fact that the system does not provide access to responsible persons or telephone contacts. On that basis, the Complainant has considered the conduct of the company to be against Chapter VIII, paragraphs 3 and 4 of the OECD Guidelines and claims financial compensation for the costs incurred by it.

The Complainant is an economic operator (Min Byung-kook Tour, Inc.) and the essential content of the Complaint is a financial claim against another company, Finnair, for compensation of costs. The NCP states that, in its view, the matter concerns a commercial dispute between economic operators.

The NCP notes that, in general, the fact that a complaint involves a relationship between companies (B2B) is not as such a justification for not accepting the complaint for further consideration. However, according to the NCP, this Complaint concerns an individual economic dispute and the purpose of the Complaint is not to assess Finnair's conduct in relation to the OECD Guidelines more broadly. The Complaint also cannot be interpreted as representing consumers in the matter. Airline passengers had the right to receive the compensation due to them under the international aviation legislation applicable in the matter, and the question of this liability for compensation was not raised.

Taking these points into account, the NCP considers that the Complaint is not relevant for the implementation of the OECD Guidelines. In light of the assessment criteria, the matter is therefore not material and substantiated in a way that would require a closer examination of the questions raised.

The NCP considers that a more detailed assessment of the Complaint would also not contribute to the purposes and effectiveness the OECD Guidelines.

#### Outcome

The NCP will not accept the Complaint for further examination.

Minister of Employment

Arto Satonen

Senior Specialist for Legal Affairs

Sami Teräväinen