

Final Statement

TECNET (EZENTIS GROUP) & TECNET'S UNION AND CUT (2020)

Non-official English translation

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CHILE'S NATIONAL CONTACT POINT | RESPONSIBLE BUSINESS CONDUCT DIVISION |
UNDERSECRETARIAT OF INTERNATIONAL ECONOMIC AFFAIRS

FINAL STATEMENT

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Content

I. Introduction	2
II. Parties	2
a) Identification of the submitter	2
b) Identification of the company	2
III. Issues raised	2
a) Summary of the specific instance request	2
b) Summary of the company's response	3
IV. NCP evaluation of the specific instance	3
a) Preliminary issues	3
b) Initial assessment	3
V. Conclusion	4
a) NCP Observations and Recommendations	4

I. Introduction

1. Chile's National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (Guidelines), located in the Responsible Business Conduct Division of the Undersecretariat of International Economic Affairs, issues this Final Statement.
2. The Final Statement describes the process and the results of the analysis of the specific instance to which it refers. It is based on information received from the parties and the steps taken by the NCP. If there was confidential information submitted to the NCP in the course of the procedure, it has not been disclosed in this statement. According to the NCP's rules of procedure, the NCP will always issue a Final Statement, which is public, whether or not it has been preceded by an Initial Statement or good offices.
3. The Final Statement marks the closure of the NCP procedure, without prejudice to the possibility of a follow-up stage.

II. Parties

a) Identification of the submitter

4. The submitter is the National Trade Union of Tecnet (SINATEC), a union formally established in 2004, in accordance with Chilean legal framework, and the Unified Workers' Centre of Chile (CUT).

b) Identification of the company

5. Tecnet S.A., the Chilean subsidiary of Ezentis, a Spanish business group with a presence in various countries. Ezentis focuses its business on the operation and maintenance of telecommunications and energy networks.

III. Issues raised

a) Summary of the specific instance request

6. On 16 October 2020, the submitter submitted a specific instance request to the NCP, identifying alleged violations of the Guidelines by the company.
7. According to the information provided by the submitter, these violations would refer to anti-union practices and the non-payment of health and social security contributions, as well as social credit payments, which were deducted by the company but the submitter also claims to have been unable to establish a genuine dialogue-based labour relationship with the company or engage in effective collective bargaining; nor was she able to access effective information regarding the company's activities and results. Additionally, the submitter reports a historical debt of the company related to the non-payment of wages for the time workers spend changing clothes for hygiene and safety reasons, which is against Chilean labour regulations.
8. The submitter identifies alleged breaches by the company of the following chapters of the Guidelines:
 1. Chapter II. General Policies.
 2. Chapter IV. Human Rights.
 3. Chapter V. Employment and Industrial Relations.

9. The expected outcome by the submitter through the NCP procures is as follows:

1. That the company resolve the violations reported in the specific instance request and respond to the Union.
2. 2. That the company address the complaints made against it in various instances in Chile, in agreement with the Union.
3. 3. That the company implement due diligence processes.

b) Summary of the company's response

10. In a letter dated 22 December 2020, the company stated that the SINATEC union had taken legal action in the labour courts, with ongoing processes at that time, and whose outcomes would be binding for the parties. It added that, due to the existence of pending litigation for the same facts and between the same parties, the company would refrain, for the time being, from participating in the NCP process in order not to affect the ongoing legal case.
11. In a letter dated 31 March 2022, the company stated that it would not participate in the specific instance. It also mentioned that a nullity appeal against the ruling in the case (S-62-2020 of the 1st Labour Court of Santiago) was being discussed in the Honourable Court of Appeals of Santiago, in which Tecnet S.A. was sentenced for having committed serious violations of SINATEC's freedom of association during the collective bargaining process.
12. In that ruling, Tecnet S.A. was sentenced to pay compensation and fines, and was also ordered to provide a training course for the company's executives on trade union legislation, collective bargaining, strikes, and respect for freedom of association.
13. On 26 April 2022, the nullity appeal filed by the company was declared abandoned by the Court of Appeals of Santiago, rendering the ruling final and enforceable.

IV. NCP evaluation of the specific instance

a) Preliminary issues

14. The preliminary issue is whether the NCP has jurisdiction to hear the case.
15. For this, two requirements must be verified: (1) the requested company must be a multinational enterprise, and (2) the events must have occurred in Chilean territory or, if they occurred in a foreign country without an NCP, the multinational enterprise must be Chilean.
16. Regarding the first requirement, the requested company is multinational in nature because it has entities in different countries and can coordinate its activities in all of them. Therefore, the first requirement is met.
17. As to the second requirement, the events occurred on Chilean territory. Thus, the second requirement is fulfilled and, as a result, the NCP is competent to hear the case.

b) Initial assessment

18. In determining whether the issue raised merits further consideration, the NCP must establish whether the issue is bona fide and whether it relates to the Guidelines. In this context, the NCP takes into account the following criteria:

1. The identity of the party concerned and its interest in the instance.
2. Whether the issue raised in the specific instance request is material and justified.
3. Whether the company's activities are linked to the issues raised in the specific instance.
4. The relevance of concurrent legislation and procedures to the case, including court decisions.
5. How similar or the same issues have been, or are being, addressed in other local or international processes.
6. Whether the review of the specific instance will contribute to the purpose and effectiveness of the Guidelines.

19. On 31 March 2022, the company informed its decision not to participate in the specific instance. Therefore, there are no grounds to give further consideration to the issue raised.

V. Conclusion

20. In light of the above, the NCP issues this Final Statement, concluding the specific instance and making recommendations to the parties, based on the circumstances and available information.

a) NCP Observations and Recommendations

21. Recommendations for the company:

- Be rigorous in fulfilling its obligation to respect national laws and other legal regulations (Paragraph 2, Chapter I, 2023 Guidelines), as well as the international treaties in force in Chile and judicial decisions applicable to the company, including in labour matters.
- Be rigorous in fulfilling its obligation to respect human rights, including fundamental rights at work (Paragraph 1, Chapter IV, 2023 Guidelines).
- Maintain a publicly available policy commitment to respect human rights (Paragraph 4, Chapter IV, 2023 Guidelines), approved at the highest level of company leadership, communicated both internally and externally, and reflected in the policies and operations necessary to embed the commitment throughout the Enterprise.
- Respect the right of workers to establish or join trade unions and representative organisations of their own choosing (Paragraph 1 a, Chapter V, 2023 Guidelines).
- Respect the right of workers to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives, with a view to reaching agreements on terms and conditions of employment (Paragraph 1 b, Chapter V, 2023 Guidelines).
- Provide timely information to workers' representatives when necessary for meaningful negotiations on conditions of employment (Paragraph 2 b, Chapter V, 2023 Guidelines).

- Provide workers and their representatives with information that enables them to obtain an accurate and fair understanding of the company's performance or, where appropriate, that of the enterprise as a whole (Paragraph 2 c, Chapter V, 2023 Guidelines).
- Promote consultation and cooperation between the company and workers and their representatives, through legitimate processes, structures, or mechanisms, on matters of mutual interest (Paragraph 3, Chapter V, 2023 Guidelines).
- Maintain the highest standards of health and safety in the workplace (Paragraph 4 c, Chapter V, 2023 Guidelines).
- Implement risk-based due diligence processes in accordance with the Guidelines (particularly Chapters IV and V) and the OECD Due Diligence Guidance for Responsible Business Conduct. These are ongoing processes that involve identifying, preventing or mitigating the actual or potential negative impacts of the company's activities and business relationships, and communicating how such impacts are being addressed (Paragraphs 11, 12 and 13, Chapter II; Paragraph 5, Chapter IV; 2023 Guidelines).
- Encourage, where possible, their business partners and value chain to apply responsible business conduct standards and implement risk-based due diligence processes in line with the Guidelines, particularly with regard to Chapters IV and V.
- Maintain meaningful engagement with stakeholders, particularly with trade unions and workers, in accordance with the OECD Due Diligence Guidance for Responsible Business Conduct, which states that such engagement should be in good faith, ongoing, two-way, and responsive (Question 9, Annex to the Guidance).

If the NCP offers its good offices or, in its Final Statement, makes recommendations to the company, this should in no way be interpreted as an assertion that the requested multinational has failed to comply with the Guidelines.

The Guidelines state that confidentiality of the proceedings shall be maintained throughout its duration. Information and opinions provided during the proceedings shall be kept confidential, unless the party concerned consents to the disclosure of such information or opinions or where non-disclosure would be contrary to the provisions of national law.

In accordance with the principle of transparency that governs the functions of the NCP, the final statements are published on the NCP's website and are translated into English and sent to the OECD Working Party on Responsible Business Conduct.

Before the Final Statement is issued, the parties are given the opportunity to comment on the draft statement, bearing in mind that the drafting of the statement is always the responsibility of the NCP, which will define the final version of the document. In this particular case, the draft could not be shared with representatives of the company, as it is believed to be in the process of liquidation since 2022.

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Non-official English translation¹

¹ In case of discrepancy, the Spanish version of this Final Statement shall prevail.