

Final Statement

TELECOMMUNICATIONS COMPANY & NATURAL PERSON (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

Telecommunications company & Natural person

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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 for International Economic Affairs (SUBREI), 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. An individual who purchased a mobile device from the company (the submitter), which was not delivered in a timely manner.

b) Identification of the company

5. Telecommunications company engaged in providing mobile phone and internet services, as well as selling mobile devices (the company).

III. Issues raised

a) Summary of the specific instance request

6. On 16 November 2020, the submitter submitted a specific instance request to the NCP, identifying alleged breaches of the Guidelines, specifically Chapter VIII on Consumer Interests. According to the information provided by the submitter, the alleged breaches relate to the delay in refunding the payment due to a delay in the delivery of the product. The submitter states that the company, through its representatives, repeatedly changed its response regarding the refund timeline. Two complaints were filed with the National Consumer Service (SERNAC) and one with the Undersecretariat of Telecommunications (SUBTEL), with the submitter's claim being upheld. Despite the company acknowledging the deadlines established by these institutions for the refund, they were not met.
7. In addition, the submitter repeatedly followed up through various channels to expedite the resolution of their case with the company. These channels included: SUBTEL, SERNAC, the Local Police Court (JPL) of Casablanca, Twitter, WhatsApp, and LinkedIn.
8. The submitter identifies alleged breaches by the company of the following chapters of the Guidelines:

Chapter VIII. Consumer Interests.

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

1. Refund of the payment and compensation for moral damages, for all the inconvenience caused and time lost.

2. Regulation of the customer service policy, as it does not allow for fluid communication with the company.
 3. Accountability and resolution of all complaint cases reported through Twitter, SERNAC, and SUBTEL.
10. Following the submission of the request, the NCP maintained communication with the submitter and SERNAC. On 29 January 2021, the submitter informed the NCP that they had received the refund from the company.

b) Summary of the company's response

11. The company was not notified, as the refund was issued, satisfying the submitter's main interest.

IV. NCP evaluation of the specific instance

a) Preliminary issues

12. The preliminary issue is whether the NCP has jurisdiction to hear the case. For this, two requirements must be verified: (1) the requested company must be a multinational enterprise, and (2) that the alleged breaches occurred in Chilean territory or, if they occurred in a foreign country without an NCP, the multinational enterprise must be Chilean.
13. 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.
14. As to the second requirement, the alleged breaches of the Guidelines occurred in Chilean territory. Thus, the second requirement is fulfilled and, as a result, the NCP is competent to hear the case.

b) Initial assessment

15. 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 matter.
 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.

16. Regarding the first criterion, the submitter's main interest was to obtain a refund of the payment, which has been confirmed according to the information provided by the submitter. Therefore, the submitter no longer has an interest in the specific instance, and this first admissibility criterion is not met.
17. As for the second criterion, the issue raised does not appear to be significant. This is because the case concerns a personal matter of the submitter and does not necessarily reflect a widespread practice affecting all or a substantial portion of the company's consumers. Therefore, this case falls more appropriately within the remit of institutions such as SERNAC or SUBTEL. As such, the second admissibility criterion is not met.
18. Regarding the sixth criterion, it is considered that reviewing the issue raised would not contribute to the purpose and effectiveness of the Guidelines. This is because the submitter has already obtained a solution to the issue and because it concerns an individual case rather than a group of consumers. Consequently, this sixth admissibility criterion is also not met.

V. Conclusion

19. In light of the above, the NCP concludes that there are no grounds to give further consideration to the issue raised. Consequently, this Final Statement is issued, bringing the specific instance to a close and making a recommendation to companies in the sector.

a) NCP Observations and Recommendations

20. The NCP recommends that mobile phone companies operating in Chile facilitate consumer access to non-judicial dispute resolution mechanisms and to remedies that are easy to use, timely, and effective, without unnecessary costs or burden (Recommendation No. 3, Chapter VIII. Consumer Interests of the Guidelines).

According to the Guidelines, if the NCP considers that, based on the results of its initial assessment, it would be unfair to publicly identify a party in a statement regarding its decision, it may draft the statement in a way that protects the identity of the party.

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.

Felipe Henríquez Palma

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Non-official English translation¹

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