Disqualification Requests for NCP Members and Comments to Final Statement Draft

To	**Ms. Linda Piirto, Finnish OECD National Contact Point;** linda.piirto@tem.fi; ncp-finland@tem.fi.
Cc:	Ms. Christine Kaufmann, Chair, OECD Working Party on Responsible Business Conduct christine.kaufmann@uzh.ch Mr. Nicolas Hachez, NCP Coordinator, OECD RBC Unit, Nicolas.HACHEZ@oecd.org Mr. Joseph Wilde, OECD Watch, J.wilde@somo.nl; Ms. Marian Ingrams, OECD Watch; M.Ingrams@somo.nl.
Matter:	Complaint concerning alleged non-observance of the OECD Guidelines for Multinational Enterprises
Complainants:	Diego Becker, Argentina Gustavo Borrajo, Argentina Av. Corrientes, 386, 9th floor, CABA, Argentina Phone +54 911 6551 5158 email comptelnokiafraud@protonmail.com
Company:	Nokia Corporation, Finland
Counsel for the Company and contact information:	Attorney-at-law Petri Taivalkoski Attorney-at-law Minna Vammeljoki Roschier Attorneys, Ltd. Kasarmikatu 21 A, 00130 Helsinki, Finland Phone +358 20 506 6000, fax +358 20 506 6100 email: petri.taivalkoski@roschier.com minna.valmmeljoki@roschier.com
	September 11th, 2020

ÍNDEX

EXECUTIVE SUMMARY

1. Almost two years after our first contact with the Finnish NCP, we were asked to provide our comments to a final statement draft (the "Final Statement Draft"), as per Point 36 of the OECD Guidelines for Multinational Enterprises (the "OECD Guidelines").

2. We filed our complaint with a complete trust in the OECD system and the Finnish institutions. We made diligent work to illustrate the NCP with the facts of the case and provided a degree of evidence that exceeds the most demanding expectations anyone could think of. How many times has an NCP seen a fraud denounce supported by independent tax and legal memoranda addressed to the company alerting the fraud for years? How many times has a General Counsel of the denounced Company been recorded while he instructed the fraud to continue? Or how many times have the claimants provided emails from legal and compliance officers informing the General Counsel they had visited a facility that the company denies it existed?

3. However, we started losing our trust when we saw Nokia, in addition to refusing to participate in any mediation, filed short and barely grounded answers, without a single piece of evidence. In the end, the Final Statement Draft we received revealed why Nokia was so confident: **The whole NCP system in Finland is co-opted by Nokia's direct influence, as we shall see below**.

4. As a result, each paragraph of the Final Statement Draft seems addressed to defend Nokia's position, regardless of the evidence we may submit or whether Nokia may have any grounds for its defenses or not. No difficult questions are asked to Nokia and no evidence is requested, its sole word is enough as irrefutable evidence, while for the Claimants no evidence is enough, such as in other cases in which NCPs have been found to act with no impartiality[1]. As we explain below, the Draft assumes as the storyline conducting each of its paragraphs that the Claimants are the "bad guys", even when the only evidence submitted shows the opposite. Procedural flaws are also astonishing.

5. In Chapter I we first describe some of the conflict of interest situations between the Finnish NCP and Nokia that we have found based solely on public information. Their amount, however, is so high that the ones outlined below may be just a sample that we reserve the right to expand.

6. Those conflict of interest situations include, among many others:

a. The Chair of the Social Corporate Responsibility Committee closing, as board member of a credit agency, a EU 96 million deal with Nokia in the territory and for Nokia's clients referred to in our claim, during the course of this procedure.

b. Our NCP contact person chairing an institution -which is also a member of the NCP- that provides, on a paid basis, compliance support to Nokia and awarded compliance prizes to Nokia that directly contradict our claim.

[1] See our comment below to the United Mongolian Movement of Rivers and Lakes (UMMRL), Oyu Tolgoi Watch (OT Watch), and MiningWatch Canada in regard to Centerra Gold Inc., in which the NCP rejected the claims "relying largely on counter statements made by the company".

c. Two people participating in the NCP that have worked for Nokia as CEO and as Head of Compliance, and attribute to themselves the drafting of Nokia's Code of Conduct.

7. Chapter II addresses the predictable consequences of such a massive conflict of interest situation by enumerating the OECD Guidelines interpretation principles and procedural rules that can be extracted from the Final Statement Draft. It is outlined in this way in order to provide OECD, and the community in general, a visual understanding of how a co-opted NCP works and what can be expected from it in this and future cases.

8. Among those principles enumerated in Chapter II are the following:

a. Disguised labor relationships under Chapter V of OECD Guidelines and their Commentaries can never be recognized by an NCP

b. A company acts diligently if it performs a due diligence *after* the acquisition of another company and instructs compliance breaches to continue during the "integration period" (i.e. one year)

c. To provide a significant amount of evidence as whistleblower or claimant transfers an unfair burden of proof to the company that entitles it not to provide any evidence to the contrary. It is a valid defense for the company to say "it made a mistake" when signing documents that contradict its defenses

d. When even the highest possible standard of proof is met by the claimants, the NCP may opt to act out of the law of reason: it can acknowledge the claimants proved a certain fact, but can never be certain it actually existed

e. It does not matter if a company lies to the NCP (no questions asked to the company), but a claimant acts in bad faith if it denounces and proves the lie

f. Retaliations against claimants who file complaints before NCP are not investigated (again, not even a single question). Instead, the NCP accuses those claimants because, when denouncing the retaliation, they are changing the claim

g. It is considered irrelevant for the NCP to prove that the company committed the same conduct in prior cases, creating a pattern of similar compliance frauds

h. Companies can pretend they have denounce channels handled by independent third parties while they control denounces behind the scenes

i. Under the OECD Guidelines, Companies are not obliged to reveal relevant information to antitrust agencies when applying for merger clearance, such as the existence of vertical relationships between the parties as per existing contracts

j. Tax fraud structures cannot be identified by the NCPs under the OECD Guidelines since they cannot determine how much taxes were actually evaded

9. In Chapter III we make case specific comments to the Draft NCP which in no way pretend to be final. As you may understand, unless the NCP makes a 180º change in its attitude towards our case that is translated into a completely different Final Statement, we will rather make use of our right to have our own final statement published together with the NCP's one.

10. Chapters IV and VI, finally, draw some conclusions and list our petitions to the NCP.

I. LACK OF IMPARTIALITY AND CONFLICT OF INTEREST CONCERNS

11. When a claim is rejected in full, as in the case of the Draft, accepting the company's arguments even to a further extent than what the company has actually argued, and not even considering dozens of specific claims presented by the Claimants, impartiality doubts arise: "*Unfortunately, some NCPs may issue determinations inequitably, only* ***when they find a company has complied with the Guidelines***"[2].

12. As described below, there have been similar cases of lack of impartiality by NCPs[3], in which they set the bar so high to concede a breach by the company that they make it impossible for claimants to reach it. This is the case, for example, of the rejection of labor-related cases by the Canadian NCP arguing that the determination of a labor relationship had to be decided by local courts, just like the Final Statement Draft does, even though that the evidence supporting the labor relationship in our case is overwhelming. We further refer to the Candian case below and how, in a similar way, the NCP in our case is throwing the employment Chapter of the Guidelines to the schreder.

13. It must be noted that lack of impartiality is a serious concern whether it is actual or perceived: "*NCPs are expected to act impartially in the resolution of each complaint, meaning that they should not show bias towards either party to a case, and should be capable of acting and making decisions independently from any outside influence.* ***The perception of impartiality can be just as critical to an NCP's success as actual impartiality****, and can impact an NCP's credibility, the level of trust that stakeholders have in the system, and the likelihood that potential complainants will use the system*"[4].

14. In fact, the Danish NCP, for example, has specific rules for assessing legal disqualification "when there are concrete circumstances that may be of a nature that can **give rise to doubt** concerning the impartiality of the person concerned"[5].

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[2] OECD Watch, The State of Remedy under the OECD Guidelines Understanding NCP cases concluded in 2017 through the lens of remedy, available at https://media.business-humanrights.org/media/documents/files/documents/State_of_Remedy_2018-06-15_final.pdf

[3] See, i.e., the request to the Korean NCP to restore lost confidence based on lack of impartiality: https://www.oecdwatch.org/2018/05/09/oecd-watch-calls-for-reforms-to-korean-ncp-to-restore-stakeholder-confidence/

[4]OCDE Watch, Remedy Remains Rare An analysis of 15 years of NCP cases and their contribution to improve access to remedy for victims of corporate misconduct, https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/OECDWATCH_RRR_04-1.pdf, page 32.

[5] The Mediation and Complaints-Handling Institution for Responsible Business Conduct (2012), "Rules of Procedure", November 2012, para. 6.3

15. We will present our concerns regarding impartiality and conflict of interest divided into the NCP, Ministry and Finnish Government levels. As explained below, in some cases the disqualification of specific persons or institutions is required, and in other cases -such as the Finnish Government's own conflict of interest- the concerns require the adoption of specific measures that can safeguard an objective procedure and final decision.

A. Concerns at the NCP members level

i. The Chair of the Committee on Social Corporate Responsibility, Antti Neimala, is also a board member of FINNVERA, who closed a EU96 million business with Nokia concerning sales to Argentina during the procedure

a. ***Mr. Neimala's dual position as chair of the NCP and member of FINNVERA's board***

16. The Committee on Social Corporate Responsibility acts as the Finnish National Contact Point for the effective implementation of the OECD Guidelines for Multinational Enterprises together with the Ministry of Economic Affairs and Employment. The Chair of the Committee is Mr. **Antti Neimala**, Director-General, Ministry of Economic Affairs and Employment.

First Vice Chairman

Antti Neimala

(1963), LL.M. with court training, Director General of the Employment and Well-functioning Markets Department of the Ministry of Economic Affairs and Employment

Antti Neimala has been a member of Finnvera's Board of Directors and a member of the Board's Remuneration Committee since 29 March 2019. Neimala has worked as Director General of the Employment and Well-functioning Markets Department of the Ministry of Economic Affairs and Employment since August 2018. Before that, he worked as Director General of the Finnish Competition and Consumer Authority and as Consumer Ombudsman. Neimala held the position of Vice Managing Director and in other executive posts at the Federation of Finnish Enterprises in 2001–2004 and 2007–2017 and worked as Director of the SME Unit at the Confederation of Finnish Industries in 2010 and as Project Manager at the Ministry of Trade and Industry in 2004–2007.

17. Antii Neimala is also a board member of FINNVERA[6] since March 29, 2019, i.e., 8 days after the NCP answered our emails for the first time. FINNVERA is a Finnish credit agency, which, by providing financing, influences the competitiveness of Finnish enterprises – their opportunities to operate and grow in Finland and to enter international markets[7].

Board of Directors on 31 December 2019

Finnvera's Board of Directors has seven members. The Audit Committee elected after the Annual General Meeting of 2019 consists of Ritva Laukkanen (Chair), Terhi Järvikare, Pekka Nuuttila and Pirkko Rantanen-Kervinen. The Remuneration Committee elected after the Annual General Meeting consists of Pentti Hakkarainen (Chair), Antti Neimala and Antti Zitting.

The fees paid to the Board members comply with the policy issued by the Government on fees paid to the governing bodies of State-owned companies. The fees paid in 2019 totalled EUR 145,800.

18. As a board member in FINNVERA, Mr. Neimala collected fees, which in 2019 totalled EUR 145,800 for the 7 board members[8].

b. ***During this NCP process, FINNVERA closed a EU 96 million deal with Nokia concerning sales to the Argentine company Telecom, just like in our complaint***

19. On June 13, 2019, while the NCP was reviewing our case, Finnvera's subsidiary Finnish Export Credit Ltd granted a loan and Finnvera provided a Buyer Credit Guarantee for Euro 96 million, to finance an export from Nokia to the Argentine company Telecom. It is worthy to mention that the fraud denounced in this case took place in Argentina and was perpetrated through sales from Comptel/Nokia to Telecom (among others) (see our Complaint 2, parr. 15.ii and Telecom contract attached as Annex 20).

[6] FINNVERA Annual Report 2019, page 31.
[7] FINNVERA Annual Report 2019, page 3.
[8] FINNVERA Annual Report 2019, page 31.

FINNVERA Start Growth Export Products Finnvera FAQ Contact Us

Finnvera's subsidiary Finnish Export Credit Ltd acts as the lender and Finnvera provides a Buyer Credit Guarantee for the 96 million euro loan. Finnvera's guarantee coverage is 95%.

Exporter: Nokia Corporation and / or its subsidiaries
Guarantee Holder: JPMorgan Chase Bank, N.A. London Branch
Lender: Finnish Export Credit Ltd
Arranger: Banco Santander, S.A. and JPMorgan Chase Bank, N.A., London Branch
Buyer: Telecom Argentina S.A.
Export transaction/Goods: telecommunications equipment and services
Country of Export transaction: Argentina
Guaranteed amount: USD 96 million
Credit period: 7 years
Environmental and social classification: C
Information published: 13 June 2019

20. The loan was significant news in Finland and in Argentina as well.

iProfesional | Negocios | Por u$s96 millones

Telecom recibe millonario préstamo para financiar negocios con Nokia

Un pool de bancos internacionales le otorgó los fondos para que la operadora abone la compra de infraestructura que selló con el grupo finlandés

IMPULSO ROSARIO REGIÓN POLÍTICA ECONOMÍA ACTUALIDAD TECNO DEPORTES OCIO TURIS

13 DE MAYO DE 2019 | ACTUALIDAD

Telecom acordó crédito millonario

TELECOM

Por **Agustín Dadamio** | Seguir en

El monto de la financiación asciende a los 96 millones de dólares y será empleado para incrementar y potenciar la infraestructura de la compañía.

La empresa nacional **Telecom acordó un crédito por 96 millones de dólares**. La línea de financiación está respaldada por la compañía financiera estatal de Finlandia, Finnvera.

FINNVERA Start Growth Export Products Finnvera FAQ Contact Us

VIEW ALL GUARANTEED TRANSACTIONS

Nokia delivers telecom networks to Argentina - financing plays a significant role in closing the deal

Finnish company Nokia Solutions and Networks Oy is delivering telecommunications equipment and services for a major Argentinian mobile operator Telecom Argentina. Telecom Argentina is one of the biggest private sector companies in Argentina and has operations in both Argentina and Paraguay. Nokia's 3G and LTE networks will bring an improvement in both coverage and quality for the telecommunication network in Argentina.

21. As in any loan and guarantee granted by a credit export agency like FINNVERA, there is a due diligence prior to the closing and there is a permanent compliance monitoring after closing as well: "*Once the loan agreement has been signed, the*

actual monitoring of the transaction begins. The consultant visits the site at agreed intervals and ensures that the level required by Finnvera is reached. If the transaction has particularly high risks, the consultant monitors operations throughout the loan repayment period. If problems emerge, the primary means to address them is negotiations. ***The loan agreement has an immediate repayment option if terms and conditions are not complied with***"[9].

22. Among the compliance principles required by FINNVERA to be complied with in its export financing transactions are "*the UN Guiding Principles on Business and Human Rights; the* ***ILO Declaration on Fundamental Principles and Rights at Work****; (...)* ***and the OECD Guidelines for Multinational Enterprises***"[10].

23. The NCP concludes in the Final Statement Draft that the **ILO Declaration on Fundamental Principles and Rights at Work** and the **OECD Guidelines for Multinational Enterprises** were not breached by Nokia (page 16).

24. As if all the above was not enough, Mr. Neimala has also worked as Director of the SME Unit at the Confederation of Finnish Industries EK in 2010, an institution conducted by Nokia (as explained below).

c. ***For the above mentioned reasons, we formally request Mrs. Neimala disqualification from the case as per the provisions of the Administrative Procedures Act***

25. Taking the above facts into consideration, **a conflict of interest born by Mr. Antti Neimala is indisputable**. **If the NCP conducted by Mr. Neimala as chair of the Social Corporate Responsibility Committee raised the concern that there might be compliance breaches by Nokia, in sales to the Argentine borrower Telecom, the closing of the Euro 96 million loan granted and guaranteed by FINNVERA (also conducted by Mr. Neimala as board member) may have been frustrated. In addition, if after the course of the procedure the NCP Final Statement concludes that such a breach by Nokia existed, FINNVERA may struggle to approve the permanent monitoring of the project until Nokia's breaches in Argentina are cured.**

26. Furthermore, as indicated above, **Mr. Neimala collects fees from FINNVERA, who in term profited from a EU 96 million deal with Nokia charging guarantee fees and financing interests**, among others deals between FINNVERA and Nokia. FINNVERA may have been (and can still be) dramatically affected if the NCP raised any of our claims' concerns.

27. According to Section 28 of the Finnish Administrative Procedures Act, a public official is disqualified if:

> "***4) he or she is employed by, or, in relation to the matter under consideration, works on the commission of, a party or a person who can be expected to experience a particular gain or loss from the decision on the matter****;*
> ***5) he or she or a person close to him or her as referred to in subsection 2, paragraph 1 is a member of the board of directors, board of administration or a comparable body, or is the managing***

[9] FINNVERA Annual Report 2019, page 52.
[10] https://www.finnvera.fi/eng/export/export-credit-guarantee-operations

director or holds an equivalent position, in a corporation, foundation, unincorporated state enterprise or public body which is a party or can be expected to experience a particular gain or loss from the decision on the matter"

28. The facts outlined in the precedent pages need no explanation to fit into the above descriptions of the Administrative Procedures Act. As per Section 29 of the Administrative Procedures Act, the disqualification in a multi-member body has to be decided by the body, excluding those other members of the body whose independence is also compromised, whether mentioned in this brief or not.

29. Notwithstanding the foregoing, regardless of the specific decision on the disqualification to be taken by the NCP, the doubts raised concerning Mr. Neimala's independent role in this case deprive the procedure from any possible legitimacy.

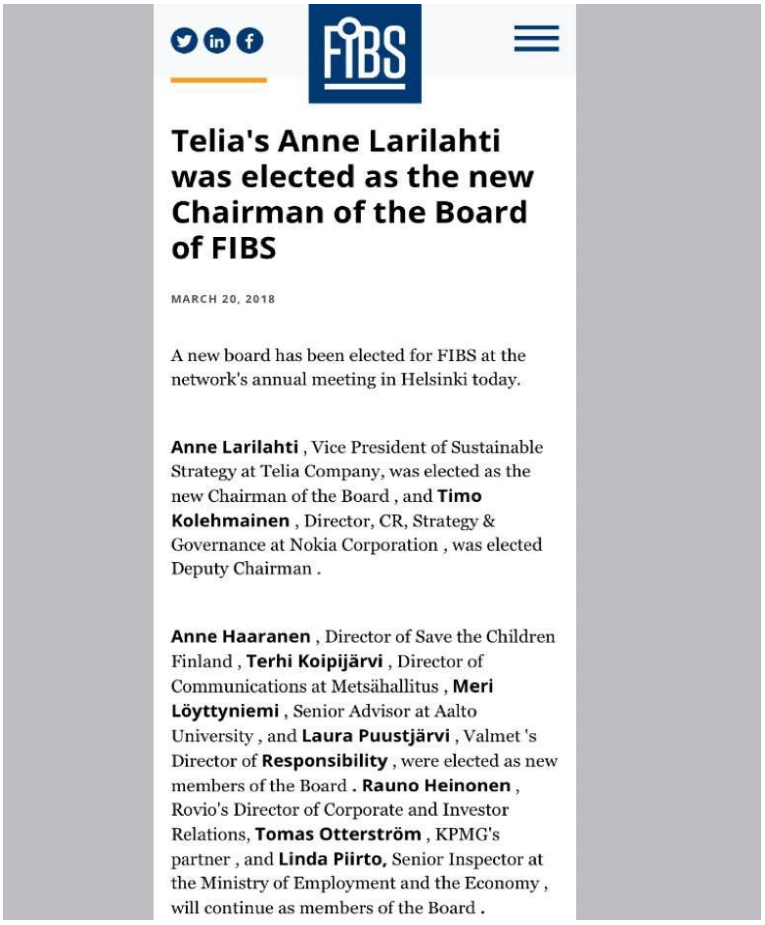
ii. Linda Piirto, NCP's main responsible for the procedure and contact point for the parties

a. Mrs. Piirto, together with Nokia, conducted an entity that provided compliance support to Nokia, on a paid basis, during the years the facts and our first contacts with the NCP took place

30. When the facts of our case were still taking place, in 2017, our NCP contact person, Linda Piirto, head of Finland's NCP[11] and the person who we trusted at the NCP to share all our concerns, was appointed as a board member at FIBS, in a board of only 3 members. Out of the other two members of the 2017 board, one was Timo Kolehmainen, Director, CR, Strategy & Governance from Nokia, who conducted FIBS until this year[12] and has worked at Nokia for almost 18 years.

FINLAND	Ms Linda Piirto Generic e-mail	linda.piirto@tem.fi ncp-finland@tem.fi

[11] https://mneguidelines.oecd.org/National-Contact-Points-Website-Contact-Details.pdf
[12] https://twitter.com/routtim/status/844914391325782017?s=20 ; https://www.fibsry.fi/ajankohtaista/telian-anne-larilahti-valittiin-fibsin-hallituksen-uudeksi-puheenjohtajaksi/ ; https://www.linkedin.com/in/timo-kolehmainen-b42a512/?originalSubdomain=fi



FIBS

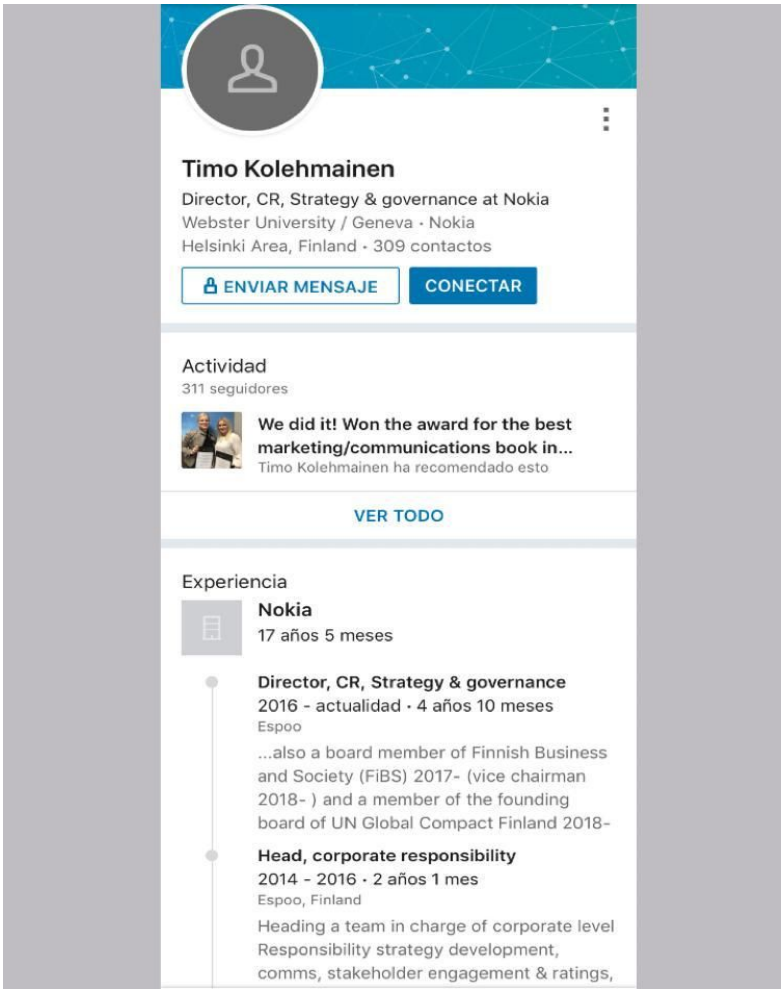
Telia's Anne Larilahti was elected as the new Chairman of the Board of FIBS

MARCH 20, 2018

A new board has been elected for FIBS at the network's annual meeting in Helsinki today.

Anne Larilahti , Vice President of Sustainable Strategy at Telia Company, was elected as the new Chairman of the Board , and **Timo Kolehmainen** , Director, CR, Strategy & Governance at Nokia Corporation , was elected Deputy Chairman .

Anne Haaranen , Director of Save the Children Finland , **Terhi Koipijärvi** , Director of Communications at Metsähallitus , **Meri Löyttyniemi** , Senior Advisor at Aalto University , and **Laura Puustjärvi** , Valmet 's Director of **Responsibility** , were elected as new members of the Board . **Rauno Heinonen** , Rovio's Director of Corporate and Investor Relations, **Tomas Otterström** , KPMG's partner , and **Linda Piirto,** Senior Inspector at the Ministry of Employment and the Economy , will continue as members of the Board .



31. FIBS (https://www.fibsry.fi/), which is itself another NCP member, defines itself as the largest corporate responsibility Network in Finland and in the Nordic countries, and the leading promoter of sustainable business and developer of expertise, offering to certain members (like Nokia) "FIBS Pro Service" which is *"aimed at companies wanting to deepen responsibility expertise within the entire organization, join a unique sparring and peer support network, and raise responsibility management rapidly and cost-effectively to the next level"*.

32. **FIBS' CEO** until a few days ago, Mr. Mikko Routti, **is its representative at the NCP** and used to work as **compliance director in Nokia,** (we will refer to him below).

33. **This means that FIBS, an NCP member, conducted by a board composed by Mrs. Piirto from the NCP and Mr. Kolehmainen from Nokia, managed by someone who was a former Nokia's compliance director as CEO until June 2020, and who is now the current representative at the NCP, provided to Nokia during the period in which the facts of the case took place, and continues to provide, in a "cost-effective manner", compliance related services, such as training, coaching, support, etc. Nokia, in turn, has been paying for those services (*in an effective manner, as the site says*)**[13].

[13] https://www.fibsry.fi/ajankohtaista/how-fibs-helps-businesses-develop-responsibility-expertise/ ; https://www.fibsry.fi/jasenyys/fibs-pro/

How FIBS helps businesses develop responsibility expertise

30 KESÄKUUTA 2020

In addition to being the largest corporate responsibility network in Finland and in the Nordic countries, FIBS is also the leading promoter of sustainable business and developer of expertise. Since each company has different needs and goals in terms of responsibility, **our members can choose a service package that best suits their needs: either FIBS Basic or FIBS Pro.**

FIBS Pro – Deepen your expertise

The FIBS Pro service is aimed at companies wanting to deepen responsibility expertise within the entire organization, join a unique sparring and peer support network, and raise responsibility management rapidly and cost-effectively to the next level. In addition to all the above-mentioned FIBS Basic services, the FIBS Pro service includes i.a. training sessions and a senior management discussion forum:

FIBS Pro has already selected more than 50 companies and organizations:

The FIBS Pro service includes all FIBS services - information on 2020 services and membership benefits can be found below. You can find the events included in the FIBS Pro service in our **online calendar** . Information on FIBS Pro membership fees and membership policies can **be found here** .

34. According to FIBS fees chart, **we assume Nokia pays EU 7,000 a year** for its FIBS Pro membership[14].

35. During 2018 Linda Piirto was still a member of FIBS' Board at the same time she was the NCP's direct contact. In 2018 the Complainants contacted the NCP, while **Linda Piirto kept on performing both charges**.

b. The NCP only answered our emails 2 days after Mrs. Piirto left the FIBS board and 6 months after our initial contact

36. Linda Piirto, who is the NCP's official contact[15], **took more than half a year to answer our emails to the NCP**. Considering that our first mail with a thorough description of the case facts was sent on **September 19th, 2018**, after which we insisted several times, and the **response only arrived on March 21st, 2019, arguing "technical issues"** with the mailbox. Surprisingly, **Linda Piirto left the FIBS board on March 19th, 2019, only 2 days before answering our emails** for the first time.

37. The above-described situation raises reasonable doubts concerning impartiality such as: (i) is it possible that Mrs. Piirto, being aware of the incompatibility of dealing with our case while holding the position at FIBS waited half a year until her term ended to answer our emails?; (ii) considering she was part of FIBS board and that FIBS is an NCP member, did she discuss the case with Nokia's representative at FIBS board? Is it possible they may have discussed a course of action?

c. Under Mrs. Piirto conduction, FIBS granted Nokia an award for the best reporting company, while our claim concerns violations of reporting obligations by Nokia during the same period

38. In 2018, during Mrs. Piirto's administration at FIBS, and while the other NCP member Mr. Mikko Routti was FIBS CEO, FIBS granted Nokia an award as "Best Responsibility Reporter".

[14] https://www.fibsry.fi/jasenyys/jasenmaksut/
[15] https://mneguidelines.oecd.org/National-Contact-Points-Website-Contact-Details.pdf

Home / Newsroom / Nokia wins 2018 reporting competition

Nokia wins 2018 reporting competition

NOVEMBER 6, 2018

Nokia was awarded Best Responsibility Reporter in 2018. In addition to the overall competition, Nokia won the UN Sustainable Development Goals Series and the Investor Selection Series. The wins in the other competition series went to the K-Group, Neste, Stora Enso and UPM-Kymmene. Elisa, Fortum, Metso Corporation, Tieto and Valmet were also among the top ten reporters. The 2018 responsibility reporting competition culminated in the award ceremony at the Helsinki Stock Exchange on 6 November.


nokia.com

2.2 Sustainability highlights and challenges in 2018

Sustainability highlights in 2018

- The challenges posed by climate change grew ever more pressing with the release of The Intergovernmental Panel on Climate Change (IPCC) report on global warming at 1.5°C, and we are pushing even more strongly ahead with our environmental programs and activities. In early 2019 we announced the first commercial liquid cooled base station site with the Finnish telecom operator Elisa. The solution can reduce CO_2 emissions by up to 80 percent and recapture wasted heat to feed into the heating system for the apartment building. This work is just one way to reach our science based long-term targets. Read more in the **Protecting the environment** section.
- We were again recognised by a number of independent organisations for our work in sustainability. At a time when calls for greater integrity and ethical business behaviour are growing, we were again recognized by the Ethisphere Institute as one of 2019's World's Most Ethical Companies based on our activities in 2018. In November 2018, we were also acknowledged by the independent annual sustainability report review, commissioned by FIBS, Finland's leading non-profit corporate responsibility network for our reporting in 3 categories including winning Finland's report of the year for the first time. See more of our recognitions at **www.nokia.com/about-us/who-we-are/our-awards**.
- [illegible] part of our carbon footprint and we again helped customers around the world to reduce that footprint. In 2018, we delivered zero emission products to over 140 customers globally and the customer base-station sites we modernized used on average 43% less energy (44% in 2017) than those where our customers did not modernize. Read more in the **Protecting the environment** section.
- From the time we began to calculate the impact of modernization on energy use (around 3–4years ago), we have

Nokia People & Planet Report 2018 | Nokia today | Our approach | Connectivity | Environment | Integrity

39. Our claim, in turn, has several allegations that Nokia breached its reporting obligations in violation of the OECD Guidelines. For this reason, out of the final report Draft's 3 main chapters, one concerns the analysis of Nokia's reporting obligations during 2017 and 2018. Not surprisingly, the Draft concludes with regards to Nokia's reporting obligations for 2018 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*".

40. It seems clear in this case that the lack of independence is beyond any reasonable doubt. **How can the same people that granted an award to "the best reporter" judge a claim that directly contradicts the award they have granted**?

d. During the course of the procedure Mrs. Piirto kept providing lectures at FIBS on subjects directly related to the case and addressed to FIBS' Pro members such as Nokia

41. After leaving the FIBS board and being fully involved in our case, Mrs. Piirto's relationship with FIBS and Nokia continued. On June 4th, 2019, FIBS organized the event "*OECD Due Diligence in a Nutshell*", in which one of the speakers was Linda Piirto and the guests to such event were FIBS Pro members, such as Nokia. Furthermore, during 2020, **while the NCP was drafting the final resolution**, and as of today, FIBS continues offering seminars including Linda Piirto among the speakers

(https://www.fibsry.fi/ajankohtaista/ota-kayttoosi-fibsin-webinaari-ja-seminaaritallenteet/), concerning matters directly related to our claim.

e. For the above mentioned reasons, we formally request Mrs. Piirto disqualification from the case as per the provisions of the Administrative Procedures Act

42. According to Section 28 of the Administrative Procedures Act, a public official is disqualified if:

> *1) he or she or a person close to him or her is a party to the matter;*
> *2) he or she or a person close to him or her serves as counsel for or represents a party or a person who can be expected to experience a particular gain or loss from the decision on the matter;*
> *3) he or she or a person close to him or her as referred to in subsection 2, paragraph 1 can be expected to experience a particular gain or loss from the decision on the matter;*
> ***4) he or she is employed by, or, in relation to the matter under consideration, works on the commission of, a party or a person who can be expected to experience a particular gain or loss from the decision on the matter****;*
> ***5) he or she or a person close to him or her as referred to in subsection 2, paragraph 1 is a member of the board of directors, board of administration or a comparable body, or is the managing director or holds an equivalent position, in a corporation, foundation, unincorporated state enterprise or public body which is a party or can be expected to experience a particular gain or loss from the decision on the matter****;*
> *6) he or she or a person close to him or her as referred to in subsection 2, paragraph 1 is a member of the board of management or a comparable body of an agency or public body and the matter in question relates to the guidance or supervision of the agency or public body; or*
> *7) confidence in his or her impartiality is endangered for another particular reason [...].*

43. The facts outlined in the precedent pages need no explanation to fit into the above descriptions. Among other considerations, Mrs. Piirto, who is a public servant, when acting as a FIBS' board member was "employed" or "worked on the commission of" FIBS, who charged Nokia for providing compliance support, as provided in subsections 4) and 5) above. As per Section 29 of the Administrative Procedures Act, the disqualification in a multi-member body has to be decided by the body, excluding those other members of the body whose independence is also compromised, whether mentioned in this brief or not.

44. Notwithstanding the foregoing, regardless of the specific decision on the disqualification to be taken by the NCP, the doubts raised concerning Mrs. Piirto's independent role in this case deprive the procedure from any possible legitimacy.

iii. Nokia is part of the NCP through Finnish Business and Society

45. The foregoing concerns provide certainty that in no way FIBS can participate at the NCP when dealing with our case against Nokia.

46. As explained above: (i) FIBS is governed by Nokia as a permanent board member along the years relevant to our case, (ii) FIBS provides compliance support services to Nokia in matters pertaining to our claim; (iii) Nokia is a FIBS Pro member; (iv) Nokia pays regular fees to FIBS; (v) FIBS granted Nokia an award to the "Best Responsibility Reporter", which contradicts the denounces made in our claims; (vi) FIBS CEO is a former Nokia's Head of Compliance, as described below.

47. For these reasons, we require FIBS to be disqualified from the NCP and that the procedure is declared null and void and conducted again without FIBS participation.

iv. Mikko Routti, FIBS representative at the NCP, former Nokia's head of compliance and FIBS' CEO

48. Mikko Routti has been related to Nokia for at least 23 years. He worked for Nokia from 1997 to 2007 and was FIBS' Chief Executive from 2009 to August, 2020, when he changed his role to Senior Advisor[16].

[16] https://www.linkedin.com/in/mikko-routti-a836426/?originalSubdomain=fi
https://www.fibsry.fi/ajankohtaista/uusia-rooleja-ja-muita-henkilostomuutoksia-fibsissa/

Mikko Routti

Chief Executive at FIBS

Law School of Helsinki University · FIBS

Helsinki Area, Finland · Más de 500 contactos

ENVIAR MENSAJE | CONECTAR

An experienced Finnish executive with strong emphasis on value-based leadership. Strong ...más

Actividad

1.437 seguidores

NCC ja Tractr kehittävät Konepajalla tilojen joustavaa jakamista ja parempaa...

Mikko Routti ha recomendado esto

VER TODO

Experiencia

FIBS

10 años 11 meses

Senior Advisor

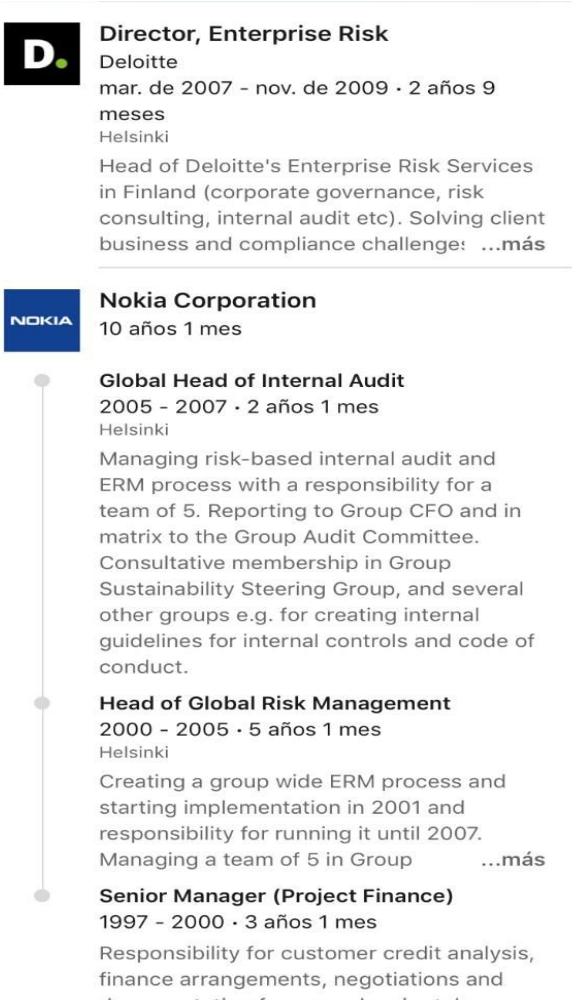
ago. de 2020 - actualidad · 2 meses

Chief Executive

nov. de 2009 - ago. de 2020 · 10 años 10 meses

Helsinki, Finland

Managing and growing FIBS operations with emphasis on promoting financially, socially and ecologically sustainable business in Finland. Multiplied corporate membe ...más



Director, Enterprise Risk
Deloitte
mar. de 2007 - nov. de 2009 · 2 años 9 meses
Helsinki
Head of Deloitte's Enterprise Risk Services in Finland (corporate governance, risk consulting, internal audit etc). Solving client business and compliance challenges ...más

Nokia Corporation
10 años 1 mes

Global Head of Internal Audit
2005 - 2007 · 2 años 1 mes
Helsinki
Managing risk-based internal audit and ERM process with a responsibility for a team of 5. Reporting to Group CFO and in matrix to the Group Audit Committee. Consultative membership in Group Sustainability Steering Group, and several other groups e.g. for creating internal guidelines for internal controls and code of conduct.

Head of Global Risk Management
2000 - 2005 · 5 años 1 mes
Helsinki
Creating a group wide ERM process and starting implementation in 2001 and responsibility for running it until 2007. Managing a team of 5 in Group ...más

Senior Manager (Project Finance)
1997 - 2000 · 3 años 1 mes
Responsibility for customer credit analysis, finance arrangements, negotiations and

49. According to Mr. Routti's Linkedin profile, he was the Global Head of Internal Audit at Nokia and **was one of the authors of Nokia's *"internal guidelines for internal controls and code of conduct"***.

50. It is noteworthy that Nokia did not provide a single piece of evidence with the exception of a couple of contracts we had already submitted and the **Code of Conduct drafted by Mr. Routti**. Such evidence -the Code of Conduct, since Nokia provided no other evidence-, was considered enough by the NCP to demonstrate that Nokia never violated the OECD Guidelines.

51. Also, it is the denounce channel under such Code of Conduct that we denounced to be flawed. **How can we have any** reasonable expectation **to receive fair treatment if the decision on whether there are flaws in Nokia's compliance system is made by the ones who created it -i.e. Mikko Routti and Risto Siilasmaa (see below)-? The NCP's arbitrary way of rejecting this allegation, as described below, is in line with the evident truth that no fair treatment can be expected.**

52. In addition, it must be noted that when FIBS awarded Nokia as "Best Responsibility Reporter" in 2018, **Mikko Routti took the opportunity to congratulate Nokia publicly on *Twitter***, which made Nokia inform the world that *"Our work continues to bring about a more sustainable, socially, responsible world"*.

53. Can anyone think it is possible that Mr. Routti, CEO of FIBS, who awarded Nokia the prize for "Best Responsibility Reporter" and publicly congratulated Nokia on twitter, will be objective when deciding about our denounce that Nokia violated its reporting obligations?

v. Nokia is part of the NCP through the Confederation of Finnish Industries EK

54. The *Confederation of Finnish Enterprises EK* is another member of the NCP. This institution is chaired by Nokia's CEO, Mr. **Pekka Lundmark**[17]. This means that, in practice, **Nokia is an active member of the NCP**.

55. It is astonishing that facing such an obscene conflict of interest, we saw no clarification by the NCP that measures have been adopted to exclude the Confederation of Finnish Enterprises from the case.

56. Furthermore, during the period in which the facts of the case took place and when the case was being analyzed by the NCP, the Confederation's Vice President was Risto Siilasmaa, Chairman of Nokia since 2012[18]. Among other things, Mr. Siilasmaa was responsible for the Alcatel-Lucent scandal. In our claim, we argued that our case was part of a conduct pattern already evidenced in the Alcatel-Lucent case, only that in our case the conduct was worse. Not surprisingly, the Draft prepared by the NCP with Mr. Siilasmaa's participation as the Confederation's Vice-President concluded that "*It is the understanding of the NCP that the references made by the Complainants to Nokia's conduct in the context of*

[17] https://ek.fi/en/about-us/board-of-directors/
[18] https://www.linkedin.com/in/siilasmaa/?challengeId=AQHwijGcvF1eTgAAAXR43O7lX90wOC15ei84ky9sGkM3ddFYHaAmSJHz85QOylaDPkGqdY0fc5mqFZE99WYJ4qHx6r_8VRCTPw&submissionId=8ae0ab1e-3979-3316-861a-7c5f60134a00 ;
https://ek.fi/ajankohtaista/tiedotteet/2017/11/21/veli-matti-mattila-jatkaa-ekn-puheenjohtajana/

the Alcatel-Lucent acquisition, for example, are in no way linked to the processing of the instance at hand".

Risto Siilasmaa

Chairman of F-Secure, former chairman of Nokia
Aalto University · F-Secure Corporation
Helsinki Area, Finland · Más de 500 contactos

ENVIAR MENSAJE CONECTAR

I founded F-Secure in 1988 and continued to run the company as CEO until November 2006. Since then I have served as chairman.

I served as chairman of Elisa Corporation between 2008-2012. I had to step down from the Elisa board when I was appointed chairman of Nokia in mid-2012. Nokia was in a very difficult situation at that time and I and the board had to make significant changes to ensure Nokia's survival. I led a negotiation process that resulted in a deal to sell the Nokia handset business to Microsoft. During that process we also acquired the half of NSN that we did not already own from Siemens.

When we announced the Microsoft deal, I took the Interim CEO role and led the company until the closing of the deal eight months later. During that period we created a new vision for Nokia, built a strategic plan, designed a new organizational model, appointed a new management team and a new CEO.

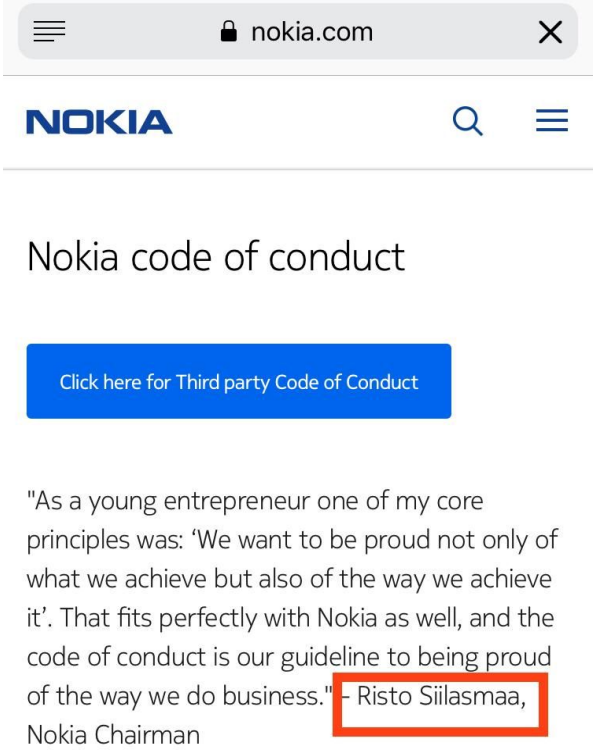
During that period we also started a dialogue with Alcatel-Lucent that culminated in an MOU to acquire all of Alcatel-Lucent. The deal was announced in April 2015.

As a result of the first two deals, and the new strategy, Nokia's enterprise value increased roughly 15 fold from a low of 1,5B to over 20B during the first two years of my tenure.

I am currently focused on serving on a number of boards, promoting entrepreneurship, investing in young high growth companies, supporting the CEOs of my portfolio companies and working on various international projects.

57. Can anyone disagree that, beyond any reasonable doubt, an NCP including a Confederation chaired by Nokia's CEO and, in particular, by the CEO responsible for the Alcatel-Lucent scandal, will be objective when analyzing our claim against Nokia on that specific issue or any other issue?

58. The same happens with one of our core claims concerning the failures of Nokia's compliance denounce channel, rejected by the NCP under two different reasons that hardly make any sense, as described below. **One of the first things you see when you reach the denounce channel is Mr. Siilasmaa's name, in a sort of digital bronze plate**.



59. **<u>Would it be fair to ask the Claimants to trust that Mr. Risto Siilasmaa, as Vice President of an NCP member, may have permitted the NCP to accept that the compliance denounce channel bearing his name is flawed? Or that such flaws may have caused retaliation against the Claimants?</u>**

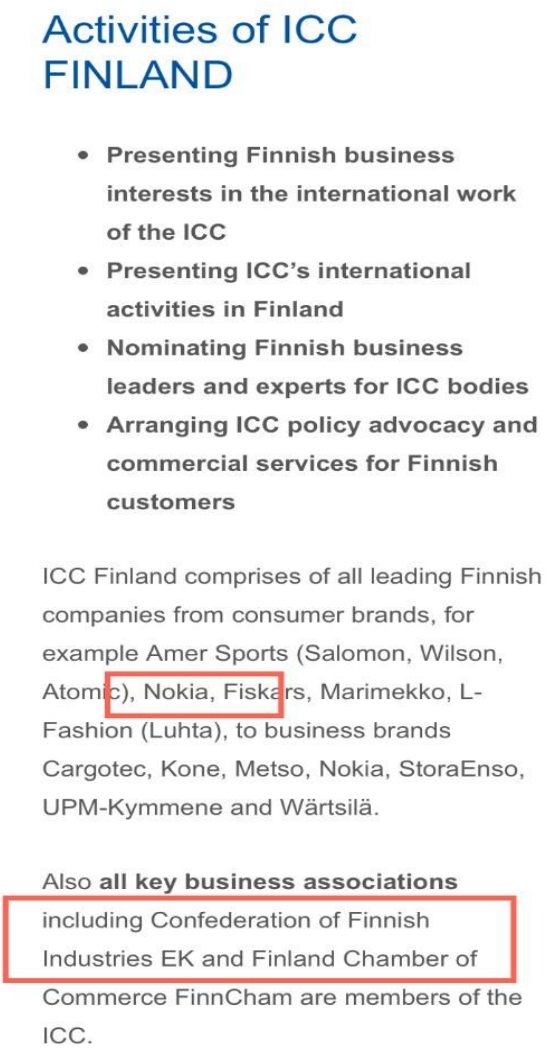
60. Additionally, just as in the case of Mr. Routti, It is noteworthy that Nokia did not provide a single piece of evidence with the exception of a couple of contracts we had already submitted and the **Code of Conduct drafted by Mr. Siilasmaa**. Such evidence -the Code of Conduct, since Nokia provided no other evidence-, was considered enough by the NCP to demonstrate that Nokia never violated the OECD Guidelines.

61. A similar issue concerning the participation of industry associations at NCPs and the consequent lack of impartiality was raised in other cases[19].

[19] "*..we wish to put on record again, our concerns regarding the conflict of interest present in the decision-making structures of the Belgian NCP as a result of the positions and influence of the represented employers' federations, namely the Federation of Enterprises of Belgium ("FEB") and Comeos. This conflict of interest is not only an impediment to the core criteria of accountability, but it is also a breach of the OECD Guidelines on Conflicts of Interest, to which NCPs, as bodies acting in*

vi. Nokia is also an active member of the NCP through the International Chamber of Commerce Finland office ("ICC Finland")

62. The ICC Finland, represented by Timo Vuori -its Chief Executive-, is another NCP member, but the following concerns spread strong doubts over the way in which this institution can take part of the NCP decisions when dealing with our case against Nokia: (i) Nokia and the Confederation of Finnish Industries (where Nokia is the chair member, as explained above) are both members of the ICC Finland[20]; and (ii) Nokia's CEO Pekko Lundmark is also a member of the ICC Business Council[21].



Activities of ICC FINLAND

- **Presenting Finnish business interests in the international work of the ICC**
- **Presenting ICC's international activities in Finland**
- **Nominating Finnish business leaders and experts for ICC bodies**
- **Arranging ICC policy advocacy and commercial services for Finnish customers**

ICC Finland comprises of all leading Finnish companies from consumer brands, for example Amer Sports (Salomon, Wilson, Atomic), Nokia, Fiskars, Marimekko, L-Fashion (Luhta), to business brands Cargotec, Kone, Metso, Nokia, StoraEnso, UPM-Kymmene and Wärtsilä.

Also **all key business associations** including Confederation of Finnish Industries EK and Finland Chamber of Commerce FinnCham are members of the ICC.

the public service, are bound".
https://www.opensecrets.org.za/site/wp-content/uploads/Letter-NCPs-CALS-OS_20190411.pdf

[20] https://www.icc.fi/icc-finland-nutshell/

[21] https://www.icc.fi/henkilot-key-people/

CEO **Kaius Juuranto** , Lejos Oy
Managing Director **Piia-Noora Kauppi** , financial sector
Chairman of the Board of Directors **Pertti Korhonen** , Business Finland
Deputy CEO **Ari-Pekka Saari** , Steveco
Director **Jouni Hakala** , EK
Managing Director **Pasi Laine** , Valmet Corporation
President and CEO **Timo Lappalainen** , Orion Corporation
President and CEO **Vesa Luhtanen** , L - Fashion Group Oy
President and CEO **Pekka Lundmark** , Nokia Corporation
President and CEO **Jyri Luomakoski** , Uponor Corporation

63. Furthermore, Nokia's external counsel in this case, Petri Taivalkoski, represents the ICC Arbitration Court, *"the most widely used private dispute resolution service in the world"* in Finland[22].

The ICC Arbitration Court appoints several hundred **arbitrators** each year to resolve mainly trade disputes between companies, but also some investment disputes between states and companies. The appointed arbitrators will deal with the case and issue a settlement proposal, which will then be further reviewed and confirmed by the ICC Arbitration Court. This quality assurance is an internationally unique service

At present, Finland is represented by **Petri Taivalkoski** , a lawyer, and **Anna-Maria Tamminen, a** lawyer, as a deputy in the ICC Arbitration Court .

[22] https://www.icc.fi/icc-arbiration-vuosi-2019/
https://www.linkedin.com/in/petri-taivalkoski-4a8b1765/

64. Among other things, Mr. Timo Vuori, ICC Finland's representative at the NPC and Mr. Petri Taivalkoski, Nokia's counsel in this case, chair a committee that nominates the Finnish arbitrators for the ICC[23]:

Kansainvälinen kauppakamari ICC Suomi / Tiedote 1 | 2019

AJANKOHTAISTA

yli 20 yritys-
inkohtaisista
a. EU:n toi-
ksen sääntе-
virinnyt kes-
in tarpeesta
isesti yritys-
uksista han-
herättänyt
ritysten mu-
sallisen lain
litteisesti ja
ään yrityk-

aloittamisesta Maailman talous-foorumissa tammikuussa 2019. Neuvottelujen aloittamista varten WTO:ssa käytiin valmistelevia keskusteluja vuoden 2018 aikana. Keskustelujen tavoitteena oli kartoittaa mahdollisia neuvotteluaiheita. EU esitti keskustelujen puitteissa kaksi temaattista paperia; toisen mahdollisista neuvotteluaiheista ja toisen televiestintää koskevan referenssipaperin päivittämisestä.

set tekijänoikeusmuutokset. Katsaus on toimitettu ICC Commission on IPR -jäsenille. Asiasta kiinnostuneet ICC Suomen jäsenorganisaatioiden edustajat voivat tiedustella katsausta sähköisesti: icc@icc.fi.

Markkinointi ja mainonta

PELISÄÄNNÖT. ICC on uudistanut mainonnan ja markkinoinnin kansainväliset säännöt, jotka ovat maailmaalaajuisesti alan itsesääntelyn perustana. Uusissa säännöissä keskeiset muutokset koskevat digitalisuutta osana markkinointia ja mainontaa. ICC Advertising and Marketing Communications Codes on käännetty myös suomeksi ja otetaan osaksi kansallista itsesääntelyä keväällä 2019. Uusien sääntöjen esittelytilaisuus pidettiin 2.4.2019 Helsingissä, jossa asiasta alustivat Mainonnan eettisen neuvoston pääsihteeri **Paula Paloranta**, Mainonnan neuvottelukunnan puheenjohtaja **Jari Perko** sekä kuluttaja-asiamies **Katri Väänänen**. Asiantuntijat korostivat modernin itsesääntelyn tärkeyttä kansallista sääntelyä täydentävänä ja tukevana välineenä.

Riitojenratkaisu

SUOMI-RYHMÄT. Uudistunut ICC Arbitration -seurantaryhmä aloitti maaliskuussa työskentelynsä uuden puheenjohtajan, asianajaja **Marko Hentusen** (Castren & Snellman) johdolla. Kokouksessa valmisteltiin Suomen kannat ICC:n ajankohtaisiin kv. hankkeisiin sekä sovittiin kansallisista jatkotoimista. Tavoitteena kerran vuodessa pitää laajempi ICC Arbitration Round-table -keskustelu sekä mahdollinen Young Arbitrators -tilaisuus. Suomelle tulevat ICC-välimiesten nimeämispyynnöt valmistellaan erillisessä nimitysryhmässä, jossa mukana puheenjohtajana **Timo Vuori** sekä jäseniä ICC Court-jäsen **Petri Taivalkoski** sekä FAI:n pääsihteeri **Heidi Merikalla-Teir**.

Marko Hentunen

65. For the above reasons, we understand the need to disqualify the ICC Finland and, in particular, Mr. Timo Vuori from the NCP based on their lack of impartiality are beyond any reasonable doubt.

B. Concerns at the NCP Ministry's level

66. The same Ministry where the NCP belongs asked for financial support from the EU for Nokia's labor crisis at the time the denounced labor, social security and tax frauds took place[24]. Would it affect the Ministry if the NCP now decided that Nokia was at that very same time part of a massive, world-wide labor fraud?

[23] https://www.icc.fi/wp-content/uploads/ICC-BusinessWorld-2019_1_web.pdf
[24](https://www.europarl.europa.eu/news/en/press-room/20170508IPR73758/eu-job-search-aid-EU2-6-million-for-821-former-nokia-workers-in-finland

67. We do not sustain that this circumstance necessarily precludes the Ministry from hosting the NCP, but in any event the necessary measures to ensure impartiality must be adopted, which does seem to be the case.

68. Furthermore, the Ministry also published joint works with FIBS (chaired and financed by Nokia, as explained above) interpreting the Guidelines on the matters affected by the claim at the time those events took place. *"[...]The document aims to raise readers on various human rights issues, such as health and safety at work, employment discrimination, forced labor, adequate pay, excessive working hours, land rights and freedom of association in countries where human rights legislation or implementation is deficient"*[25].

69. Concerns regarding NCP's incardinated in Ministries dealing with the investigated company have been strongly raised[26].

C. Concerns at country level

70. There is plenty of literature explaining how Finland *is* Nokia. It is indeed the most emblematic company and one of the most relevant employers of the country. The government is one of the largest shareholders.

71. In fact, in early 2018, right after the denounced facts took place, the Finnish Government acquired an additional 3.3% in Nokia for almost EU 844 million, bringing its participation in the company to almost 5%.

72. This sole fact constitutes a conflict of interest by itself, since a determination of a massive fraud by Nokia could take the share price down and affect the Government's latest investment and its overall shareholding in Nokia. We cannot request, however, to disqualify the Finnish government, but we do ask that the necessary measures are taken so that the process is conducted by a completely independent body.

73. This situation is not new to OECD Watch, which has already raised concerns about actual or perceived lack of impartiality when a country has invested in a project or has a vested interest[27].

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[25] https://translate.google.com/translate?hl=es&sl=fi&tl=en&u=https%3A%2F%2Ftem.fi%2Fartikkeli%2F-%2Fasset_publisher%2Fkaytannon-keinoja-yritysten-ihmisoikeusvaikutusten-huomioimiseen&prev=search

[26] *"..if a complaint is brought against a company that is a government contractor, or the government is pursuing certain foreign policy aims or industry growth, this could lead to a conflict of interest in the specific instances process. Steps could be taken in each OECD country to ensure that NCPs operate in a way that reduces these conflicts of interest without losing the benefits of government support and authority"*, OECD National Contact Points, Better Navigating Conflict to Provide Remedy to Vulnerable Communities, Dr Shelley Marshall MONASH UNIVERSITY, https://static1.squarespace.com/static/57e140116a4963b5a1ad9780/t/580d7b7bb3db2b51a441a6e8/1477278601503/NJM16_OECD.pdf, page 5,

[27] "*One key OECD Watch recommendation related to the governance of future Proactive Agenda projects is that chairmanship of the project should not be held by the governments that have provided financial support for the project or that have any other clear vested interest. This creates an unnecessary potential for a (perceived) conflict of interest and is not conducive to an effective and impartial process. Ideally, chairs should be appointed from impartial member countries or organisations or the OECD secretariat*", Assessment of NCP Performance in the 2013-2014 Implementation Cycle,

II. ARBITRARY INTERPRETATION OF THE OECD GUIDELINES AND PROCEDURAL PRINCIPLES DERIVED FROM THE DRAFT

74. The Final Statement Draft under analysis provides remarkable principles of interpretation of the OECD Guidelines and of the applicable procedure that exceed the boundaries of this case and enlighten us on how the Finnish NCP will interpret the OECD Guidelines in future cases and the procedure it will follow.

75. Those principles of interpretation of the Guidelines and of the applicable procedure are arbitrary to such an extreme extent that we can only think they are forced by the lack of independence and conflicts of interests raised above.

A. By dismissing the claim, the Final Statement Draft deprives Chapter V of OECD Guidelines and their Commentaries concerning the existence of disguised labor relationship from all value

76. Commentaries to this Chapter V of the OECD Guidelines refer in point 49 to "*disguised employment relationships*" which are defined as those in which "*an employer treats an individual as other than an employee in a manner that **hides his or her true legal status***". In other words, this provision refers to those situations in which there is an employment relationship, but the employer does not recognize it and tries to hide it by, for example, treating the employees as "independent contractors" or "independent service providers". This is exactly what happened here.

77. When in Chapter "***3. Issues pertaining to employment relationships*"** the NCP listed the "Relevant Paragraphs of the OECD Guidelines", it deliberately omitted to mention the Commentaries to this Chapter V, which covers this case.

78. Surprisingly, the NCP concedes that there is plenty of evidence that the defendants treated the Claimants as employees (see Annex 29, in which there is an email from Rajeev Suri (Nokia's CEO) dated on January 9, 2018, to all Comptel employees: *"**Welcome to Nokia** [...] I am thrilled that this month Comptel will begin working as a fully integrated part of our Nokia team [...] I am honored to welcome each of you to the Nokia family".* Also you can see Annex 27, Annex 28, Annex 30, Annex 31, Annex 32, Annex 33, among others) but affirmed that it can not analyze if there is, or not, a labor relationship, but only in the terms of a formalized one. As a result, in the NCP's criteria there is no room for disguised labor relationships at all:

> *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 [...].*
> *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*

https://www.responsiblebusiness.no/files/2014/06/OECD-Watch-2013-2014-Review-of-NCPs_draft.pdf, page 25.

> *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*.

79. There is probably no precedent with more evidence about disguised labor relationships than this one, which includes, among many other documents, letters from Comptel and even from Nokia itself to the Complainants referring to them as "key employees". Nokia's defense was that it "made a mistake" when sending those letters.

80. This NCP's conclusion might be the most astounding one of them all. Where on earth would someone doubt (or at least bear a reasonable doubt) an employment relationship exists when the employer: (i) has expressly acknowledged that situation several times (referring to them as "key employees" and offering them a retention bonus); (ii) has been paying a "salary" on a monthly basis; (iii) offered vacations in a written agreement; (iv) offered laptops and cell phones; (v) received exclusive services from the employee?

81. It is in fact surprising that in the balance between the above-mentioned evidence and Nokia's argument that the relationship was that of subcontracting agreements, the NCP gives equal value to both positions and precludes itself from reaching a conclusion regarding the existence of the labor relationship, precisely when subcontracting agreements are the typical way to *disguise* labor relationships and should be interpreted on a restrictive manner from the compliance viewpoint[28].

82. This exact same situation occurred in another case concerning a Finnish company with other NCPs that deferred the assessment of the labor relationship to local courts and dismissed the claim, leading to the conclusion they were not acting impartially: "***Effectively, the Canadian NCP has consigned the entire labour relations sections of the Guidelines to the shredder. The argument that labour relations is under provincial jurisdiction and therefore that the OECD guidelines cannot be discussed in relation to them make one wonder why Canada signed them in the first place (…) … Granted that the OECD Guidelines do not give the NCPs judicial powers, neither do they require the NCPs to do NOTHING***..."[29].

83. What is the purpose of the Guidelines when condemning "disguised labor relationships" if the NCP can not determine if a labor relationship was ornot disguised? When are they supposed to apply if not in a case in which all the evidence shows the Claimants were employees but the company argues they were subcontractors?

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[28] See Richard L. Cassin, *At Large: Are agents ever 'legal' under the FCPA?*, August 6, 2020; https://fcpablog.com/2020/08/06/at-large-are-agents-ever-legal-under-the-fcpa/.

[29] https://miningwatch.ca/sites/default/files/miningwatchcanadasubmissiontoncppeerreviewjanuary2018.pdf, page 32, comment concerning the case Communications Energy and Paper Workers Union of Canada (CEP) in regard to UPM Kymmene in Canada.

B. Under the OECD Guidelines no due diligence is needed to buy a company: no worries, after the acquisition the buyer acts diligently if it hires a lawyer to analyze applicable legislation and instructs the target company to continue committing compliance breaches until it decides the "integration process" has concluded

84. The NCP in "***The considerations to be examined***" affirmed:

> *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.*

85. In fact, the NCP elaborated this particular timeframe:

> *- Nokia's offer for Comptel was published on 23 February 2017;*
> *- The acquisition was finalised on 29 June 2017;*
> *- Comptel continued its operations as an independent company up to 31 December 2017, and it 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.*

86. Then, in Chapter "***2. Responsibility for obligations on tax and social security payments***" the NCP affirmed:

> *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 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.*
> *[...]*
> *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.*

87. The Final Statement Draft acknowledges, in line with Nokia's defense, that **there were "irregularities" after the acquisition and during the "integration process", but Nokia acted diligently by retaining, after the acquisition, local firms that provided advice to assess its obligations under Argentine law.**

88. This understanding raises the question of why and how companies spend so much time and resources on due diligences **before** M&As. The NCP's solution is more practical: **under the OECD Guidelines, you can buy a company without due diligence, regardless of the contingencies it may bear, and "*act diligently, by examining the content of [Argentinian or other] legislation through a local law firm and a local***

***auditing firm*" after the acquisition**. You can take your time to do the due diligence until you decide to finalize the integration process and meanwhile instruct the acquired firm to continue business as usual.

89. Under the criteria used in the Final Statement Draft, if company A acquires company B and then finds out company B launders money or is in the drug trafficking business, it can let company B continue with those activities as an "independent company" until it decides to conclude the integration.

90. Our view is widely different: Nokia failed to perform a proper due diligence before buying Comptel and then it profited from the fraud scheme assembled by Comptel for about one year. It is not true that "*Comptel continued its operations as an independent company up to 31 December 2017*". Nokia was involved in every important decision, as shown in Annex 35.

91. The NCP can not undertake an interpretation of the OECD Guidelines allowing a company of Nokia's size, with access to the best law firms in the world (it has used two international law firms to deal with our denounce!) to buy a company without due diligence under the argument that "*integrating operations take some time*". Due diligences are performed in order to detect the irregularities BEFORE (not after) acquisitions. If the due diligence missed such a huge contingency, it is still Nokia's responsibility, which in turn should ask its advisors in the acquisition how they could miss it.

C. If a whistleblower provides evidence, it puts the company in an unfair position

92. We provided around 100 documents clearly evidencing the alleged violations. There are not many compliance fraud cases with this level of supporting documentation, including dozens of emails, recording of conversations, formal letters by the company, etc. However, the NCP understands that a company of Nokia's size, with two international law firms acting in this case (Roschier and Baker & McKenzie) is put in an unfair situation by two whistleblowers who appeared before the NCP with no legal representation and no presence in Finland at all, and therefore Nokia was not able to provide a single piece of evidence in all the procedure (it only attached a copy of its code of conduct and two contracts we had already submitted).

93. The NCP Final Statement Draft states it as follows:

> *[...] 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.*

94. How can the burden of proof be transferred to Nokia if we, the complainants, are the ones who provided all the evidence?

95. Further, the NCP sustains that "*the Complainants claim are not supported by evidence*", when we provided among many other things, recorded conversations in which

Nokia's General Counsel instructed to continue with the illegal practices after the acquisition of Comptel, legal memoranda addressed to the company evidencing the fraud, dozens of emails, contracts that were hidden to antitrust authorities, etc., and even an email from a Nokia's compliance officer reporting to Nokia's General Counsel that he had visited an office that both Nokia and the NCP deny existed.

96. The "burden of proof" was never transferred. The Complainants provided evidence that supported their claim and Nokia did not provide any evidence that supported their position. The burden of proof would have been "transferred" if the Complainants only alleged violations but did not provide evidence, which is not the case here. The Complainants complied with their burden of proof. Nokia did not.

97. Under such criteria there is no need for a company to provide evidence at all because, from the NCP standpoint, the company is always telling the truth. On the other hand, when the Complainants file plenty of evidence supporting their allegations, the NCP would never consider it enough.

98. The Final Statement Draft takes so seriously the weird allegation that we are "transferring the burden of proof" to Nokia that it uses a different criteria when analyzing the allegations made by the parties. For example, the Complainants filed a lot of documents showing that they were treated as employees by Nokia and Comptel, however, **it does not seem to be enough to determine whether a labor relationship existed**. In the same vein, the Complainants filed memoranda in which legal and auditing firms explained that the structure is illegal, but **the NCP considers that it is not clear enough**. The NCP even said that the Complainants denounces -supported by almost 100 documents- "merely rests on the Complainant's claims". On the contrary, Nokia simply affirming that they believed Comptel was paying taxes for their sales in Argentina, with no evidence supporting such allegation, was enough for the NCP to claim that Nokia was telling the truth. Following the same line of argument, Nokia affirmed they had memoranda according to which they did not have to report any irregularity to the authorities, but has the NCP reviewed those memoranda? Or is it just believing in Nokia's words? We did not receive any copy of such documents, so we doubt the NCP has them.

99. Another example is in Chapter "***2. Responsibility for obligations on tax and social security payments***" when the NCP affirmed: "*Nokia also carried out a due diligence into Comptel's similar arrangements, but no similar omissions were detected*". Why does the NCP believe in a mere declaration by Nokia and does not believe in the evidence provided by the Complainants supporting that Nokia did find the same situation in other countries??

100. As indicated above, this way of proceeding by NCPs has been considered as **evidence of its lack of impartiality**: "*The NCP found that none of the issues raised by the Notifiers, three of which were deemed material, were substantiated.* ***The NCPs grounds for these findings were dubious, relying largely on counter statements made by the company*".** Furthermore, "**In each of these cases the NCPs determination was based on statements made by the company - "Centerra contends," "The company has indicated," "The company states" - not on independent investigation by the NCP.** For example, the notifiers provided visual evidence (video and photographs) to show that the company was operating in an area after the date it had received a letter from the Minister of Mineral Resources and Energy stating that operations should not proceed in that area. The

issue was deemed "material" by the NCP but dismissed as "unsubstantiated" solely by referring to the company's assertion that it was not operating in that area on the dates in question."[30].

101. The same situation was observed in a case involving a company also bearing Nokia's name: "*The German NCP has rejected the (major) part of the complaint regarding the responsibility of the company for the human rights abuses in Bahrain on the grounds that the complaint did not provide sufficient evidence for the company's contribution to the abuses. The complainants' accusation however was sufficiently substantiated. Involvement in Bahrain was admitted by a spokesman for Trovicor's predecessor Nokia Siemens Networks in 2009, has been confirmed by employees in 2011, and has never been denied by Trovicor. With this decision,* ***the NCP follows a clear trend: According to the findings of the organization OECD Watch, more and more NCPs seem to reject complaints on the grounds of lacking evidence. In many cases however, this is in contradiction to the purpose of the OECD Guidelines as well as to the NCP´s procedural guidance in the specific countries***"[31].

102. The above cited precedents r**eflect exactly our case, in which the whole Final Statement Draft is based merely on Nokia's allegations since it has not provided any evidence at all**. In fact, just like in the previous case in which the NCP believed in the company's allegations over **videos showing the existence of an operation on certain dates, in our case we showed emails from Nokia's compliance officer saying he had visited Comptel's office in Argentina by the end of 2017 and withdrew Comptel's (Nokia's) assets, and yet the NCP still believes Nokia's statement that such office did not exist at that time.**

103. A similar situation (out of dozens) can be appreciated in t**he recording of a conversation in which Nokia's Head of Legal and Compliance requests the Claimants to continue operating the entities and paying salaries of Comptel/Nokia's employees in Argentina through Segen and Relval**, while the NCP believes Nokia was not involved at all in Comptel's operations during 2017 until it finalized the integration and that it were the Claimants the ones who wanted to continue with Segen and Relval operations.

104. As a matter of fact, **against the OECD Watch recommendations**, the Final Statement Draft is imposing the Claimants **a standard of proof higher than what civil litigation would require in the most sophisticated country, even though this is a non binding procedure**[32].

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30 https://miningwatch.ca/sites/default/files/miningwatchcanadasubmissiontoncppeerreviewjanuary2018.pdf, page 35, concerning the comment on the case United Mongolian Movement of Rivers and Lakes (UMMRL), Oyu Tolgoi Watch (OT Watch), and MiningWatch Canada in regard to Centerra Gold Inc.

31 Assessment of NCP Performance in the 2013-2014 Implementation Cycle, https://www.responsiblebusiness.no/files/2014/06/OECD-Watch-2013-2014-Review-of-NCPs_draft.pdf, page 33.

32 "*It is appropriate to request more flexible standards on the burden of proof than in court procedures. First, the OECD process is a soft law mechanism with voluntary participation and without sanctions; its main aim is mediation. Secondly, for many cases of human rights violations by companies, hard evidence is often very difficult to obtain. This is especially the case in a field such as surveillance technology, where the countries and companies involved apply the highest levels of confidentiality and secrecy to their work. In this situation, those affected by serious human rights violations cannot*

105. As the counsel in one of the above-referred cases expressed, "*...**the burden and standard of proof of the underlying facts should be very dramatically lower than in a judicial setting (...)** The burden and standard of proof imposed by the Canadian NCP in this matter was basically no different than what a judge in a "most developed" country such as the U.S. would require in order to conclusively establish facts in civil litigation. While I disagree wholeheartedly with the NCP's evaluation of the "evidence" we presented (even under a judicial standard, I believe we established by a preponderance of the evidence the truth and accuracy of what we claimed), that's not the issue. The issue is whether we presented in good faith enough material supporting our claims to merit discussion with the other side under the auspices of the NCP. The answer to that question is a resounding yes"* [33].

D. The NCP may accept the evidence there was an animal with four legs, that moved the tail, barked and looked like a dog, but that does not mean a dog existed

106. The Final Statement Draft affirmed in one paragraph that Comptel had *permanent operations* for almost 10 years (for the Double Tax Treaty an office or the provision of services for longer than 6 months results in a permanent establishment) and in the next one it says there is no evidence of a permanent establishment.

107. In that connection, in Chapter "***1. Reporting obligations***" the NCP affirmed:

> *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 [...].*
> *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.*

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be denied access to the complaint mechanism on the grounds that they could not deliver the full chain of evidence. Again, this is reflected in the OECD complaints procedure with its less stringent requirements", Assessment of NCP Performance in the 2013-2014 Implementation Cycle, https://www.responsiblebusiness.no/files/2014/06/OECD-Watch-2013-2014-Review-of-NCPs_draft.pdf, page 34. In the same vein, OECD Watch has warned that "*One of the most common frustrations that complainants face when bringing NCP cases is the application of an unreasonably high burden of proof at the initial assessment phase. NCPs have rejected 43 of the 250 (17%) cases filed by communities, individuals and NGOs because the NCP did not consider that the complainants had provided sufficient evidence of a breach of the Guidelines. The Procedural Guidance directs NCPs to determine whether a complaint raises a bona fide issue and to consider whether the issue is "material and substantiated." The Procedural Guidance does not define "substantiated," which has led to widely varying interpretations by different NCPs. While many NCPs apply an interpretation that leads them to accept complaints that raise credible claims, others have used this language to require a level of certainty that is inappropriate and often impossible for complainants to meet*", Remedy Remains Rare An analysis of 15 years of NCP cases and their contribution to improve access to remedy for victims of corporate misconduct, https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/OECDWATCH_RRR_04-1.pdf, page 24.

[33] https://miningwatch.ca/sites/default/files/miningwatchcanadasubmissiontoncppeerreviewjanuary2018.pdf, page 35, concerning the comment on the case United Mongolian Movement of Rivers and Lakes (UMMRL), Oyu Tolgoi Watch (OT Watch), and MiningWatch Canada in regard to Centerra Gold Inc.

108. If the NCP conceded that Comptel had a "**permanent activity**" between 2008 and 2016, **how can it also affirm that there is no enough evidence to estimate (or at least doubt) if a permanent establishment existed?**

109. According to the Double Tax Treaty between Finland and Argentina (Annex 14), "***Permanent Establishment***" includes:

i. **an "office"** (Article 5, Section 2.c):
   a. which **Comptel claimed to have in Argentina** in its Annual Reports from 2009 (attached as Exhibit VI of the Complaint) until the last one in 2016 (attached as Annex 15),
   b. which was mentioned as a representation by Comptel in dozens of contracts, including many of them closed after Nokia's acquisition and even in contracts and invoices between Comptel and Nokia, as explained before (see, i.e., Annex 16 and Annex 17), and
   c. such Comptel's office was visited by Nokia's legal and compliance personnel after the acquisition (see Annex 18), and Nokia personnel grabbed the assets in such office and took them to Nokia's facilities (see Annex 19).

ii. the **furnishing of services, including consultancy services** (see as Annex 20 samples of Comptel's consultancy agreements for the provision of technical & commercial support services with Telefónica, Telecom, Claro, **Nokia**, etc.), by an enterprise **through employees or other personnel** engaged by the enterprise for such purpose, **for a period of more than 6 months** (Article 5, Section 3.b), evidencing that **the tax breach of not registering the Permanent Establishment occurred regardless of the fact that Segen or Relval were contractors or Comptel employees** as the Complainants argue.

110. Furthermore, the Double Tax Treaty also establishes that "*An enterprise of a Contracting State shall not be deemed to have a permanent establishment in other Contracting State merely because it carries on a business in that other State through a broker, general commission agent or any other agent of independent status, provided that such persons are acting in the ordinary course of their business. However, **when the activities of such agents are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph***" (Article 5.6). In this connection, Comptel imposed **exclusivity** to Relval and Segen, as a result of which their activities were devoted wholly to Comptel, **resulting in a Permanent Establishment according to the Treaty**, **even if Nokia was right that such entities were independent contractors, as it sustained in its answer to the NCP** -which they were not- (see Relval and Segen consultancy agreements in Annex 21 and Annex 22 , Section 5).

111. This exclusivity and wholly devotion from both Segen & Relval towards Comptel and Nokia seemed to concern the NCP, given that one of the first questions or

clarifications it directed to the Complainants aimed at this issue. Unfortunately, that question turned out to be just part of the NCP's "*mise-en-scène"*.

112. It is really unbelievable that the NCP, after recognizing there had been proven "permanent activity" for almost 10 years, affirmed that "*the evidence produced does not allow to estimate whether a permanent tax establishment had been constituted for Comptel in Argentina"*. It is worth remembering that, apart from all the above mentioned evidence and considerations which prove that activity did take place (and indeed the NCP recognized), there were legal and auditing memos (see Annex 1 and Annex 57) in which Comptel's external legal and accountant counsels (and not the Complainant's) explained that the structure was illegal and a permanent establishment existed.

113. The NCP knew that accepting the existence of the permanent establishment meant recognizing the Claimants won the case, since everything would fall apart after that conclusion: employment relationship, unpaid taxes, etc. So it opted to act out of the law of reason: it has four legs, looks like a dog, moves its tail, barks, but still… it is not a dog.

E. If you present evidence that a conduct existed for more than 10 years, it does not mean that in the last minute it still existed

114. One of the core discussions of the case is whether Comptel had an office in Argentina from which it sold software and provided services to all Latin America. We were able to find websites deleted by Nokia proving that Comptel listed the office in its website from at least 2008 and reported such office in its Financial Statements. When Nokia filed for clearance of Comptel's acquisition before the Argentine Antitrust Authority, it hid the existence of that office. The NCP, however, accepts that the office existed but states that its existence was only demonstrated until 2016 (although Nokia never proved it ceased to exist) and therefore concludes nothing was hidden to the Antitrust Authorities:

> *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.*

115. We struggle to understand how it is possible that proving the continuity of the illegal conduct for more than 10 years played against us. But in any event, in paragraphs 66 to 119 of the Complaint 2 there is plenty of evidence that the office continued to exist even AFTER Nokia filed the request to the Antitrust Authority in 2017, including the testimony of Nokia's own compliance officer who visited the office and many contracts up to 2018 mentioning such office. **How come the NCP does not even mention this evidence?**

F. It does not matter if a company lies to the NCP, but a claimant acts in bad faith if it denounces and proves the lie

116. The NCP made a direct question to Nokia of whether it had found the same fraud situation in parts of the world other than the ones where the claimants worked (i.e. Latin America). Nokia's answer was "no". However, the claimants found evidence that

seemed impossible for any other than Nokia to know about, proving that in fact Nokia found exactly the same issues and applied the same ilegal solutions in many other parts of the world (see paragraphs 47 to 54, and 190-191 of the Complaint 2). The NCP accused the claimants of bad faith for saying that Nokia was "lying" instead of at least casting doubt on the truthfulness about Nokia's statement.

117. The NCP Final Statement Draft states it as follows:

> *[...] 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*.

118. Has the NCP ever questioned Nokia in connection with the new evidence and whether its prior statements were true or false? Obviously not. Truth never mattered.

G. If a company retaliates against a whistleblower that made a denounce before the NCP, do not tell it to the NCP because it will consider you are changing your claim

119. The first denounce was originally submitted to the NCP on September 18, 2018, while the NCP's first answer only took place on March 21, 2019 (may be because Linda Piirto did not want to accept the claim while she was still sharing the board seat with Nokia at FIBS). After such initial denounce, severe retaliation was adopted due to Nokia's flawed compliance system, including having one of the claimants fired from his work at a different company. This new fact was subsequently denounced in the March 13, 2020 brief (referred to in the Final Statement Draft as Complaint 2), where the Claimants asked the NCP "*To recommend Nokia to adopt measures in order to prevent future retaliation against the Complainants in the job market and/or agree with them in how to compensate such retaliation if at this point it cannot be reversed*" (paragraph 234-VI).

120. However, the NCP never even asked about the retaliation caused by having blown the whistle and filing the denounce with the NCP, but instead it blamed the Complainants for changing the claim:

> 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)**.

121. This is exactly the opposite direction of what the NCP has been asked to do: "*We call upon NCPs to implement the following on recommendations in order to improve their effectiveness in promoting adherence to the Guidelines and in providing access to*

remedy:... Assessing and, to the extent possible, ***mitigating the risk of reprisals*** *and other security risks for complainants*"[34].

122. This position does not only conflict with NCP's mission, but also goes against global trends on compliance matters, since the world has been paying special attention and supporting whistleblowers, trying to protect them from any retaliation or reprisal that might occur, and which have been more than extreme in some cases[35].

H. It is a valid defense for a company to say "*it made a mistake*" when it recognized a labor relationship it now wishes to deny

123. The Final Statement Draft acknowledges there is plenty of evidence demonstrating the Claimants were in fact employed by Comptel, but there is no evidence that its successor, Nokia, also treated the Complainants as employees.

124. Since documents where Nokia treats the Claimants as employees were indeed submitted with our claim, the only way the NCP could reach such a conclusion is **to accept Nokia's poor defense that "*it made a mistake*" when its CEO signed those documents**. As a matter of fact, in answer 4 of Nokia's response to the claim it argues that: "*Nokia did consider retaining his services and co authored the retention letter [...] which* ***mistakenly*** *refers to '****your continued employment****' and '****continue your employment with Nokia****'*".

125. The "mistake defense" is fully accepted by the Final Statement Draft. In Chapter "***3. Issues pertaining to employment relationships***" the NCP said:

> *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****[...].*
> *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.*

126. Based on such "mistake defense", the NCP disregards plenty of evidence demonstrating Nokia also treated the Complainants as employees. They received documents not only with Comptel's logo, but also with Nokia's. They were referred to as "employees" by Comptel's higher officers and by Nokia's as well. The evidence of Nokia referring to the Complainants as employees is overwhelming, since:

- Part 1, Chapter II, B of the Complaint 2, entitled *"The Complainants were Comptel-Nokia´s employees and not independent contractors".*

[34] OECD Watch, Remedy Remains Rare An analysis of 15 years of NCP cases and their contribution to improve access to remedy for victims of corporate misconduct, https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/OECDWATCH_RRR_04-1.pdf, page 5.
[35] https://fcpablog.com/2020/07/15/uk-imposes-first-magnitsky-sanctions-heres-the-list/.

- Exhibit III: Nokia´s retention award in which Nokia refers to Mr. Borrajo's "continued **employment**"(pg. 9).
- Annex 27: email that Nokia's Latam Compliance Department (lat.compliance@nokia.com) sent to the Complainants in which they referred to *"All **employees** in Latin America" .*
- Annex 28: Nokia IT Connected **Employee** Team refers to Mr. Borrajo as: *"Dear colleague, thank you for joining the first Connected Employee Live Session".*
- Annex 29: Rajeev Suri (Nokia's CEO) in an email dated on January 9, 2018, to all Comptel **employees** (including the Complainants): *"Welcome to Nokia [...] Iam thrilled that this month Comptel will begin working as a fully integrated part of our Nokia team [...] I am honored to welcome each of you to the Nokia family".*
- Annex 32: email from Nokia to all Comptel **employees** -including Mr. Borrajo- in order to access Nokia Internal Job Market. The email says: *"As a reminder the IJM cannot be accessed by contractors due to legal restrictions".*
- Annex 33 and Annex 40: emails from Nokia to former Comptel **employees**, including Mr. Borrajo, to choose some of their future working tools (i.e. computers and phones).

I. The final statement must be construed over a storyline maximizing the company's position, regardless of the evidence of the case

127. It is hard to believe that the Final Statement Draft invents a storyline perfect for the company, puts it in writing and uses it as a basis to make all the decisions:

> *On the basis of the evidence produced to the NCP* [we wonder which one, since Nokia did not provide any]*, **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*.

128. The NCP is basically repeating Nokia's version, with no evidence supporting it. On the contrary, the evidence shows exactly the opposite.

129. As an example, the claimants did not want to continue with the subcontracting arrangements, but Nokia did. Also, the Complainants did not invent they were employees after they saw the subcontracting agreements were terminated, instead, they raised the issue from the outset.

130. This is evidenced, among many other documents, in Annex 35: a conversation held on November 3rd, 2017 among Juhani Hintikka (former Comptel's CEO),

Ana-Leena Tapio (former Comptel's Human Resources Consultant), Alexis Mendoza (General Counsel of Nokia's division absorbing Comptel), and the Complainants. Mr. Hintikka acknowledges the Complainants are key employees (minute 40), Mr. Mendoza acknowledges he has studied the issue (minute 18) and **finally Mr. Mendoza, from Nokia, instructs and almost begs the Complainants to continue paying Comptel/Nokia's employees salaries for the upcoming months (minute 52) through the offshore structures**. Moreover, please see Annex 50, in which there is a chat dated October, 2017, between Mr. Borrajo and Juhani Hintikka, where Mr. Hintikka was totally aware of the Complainant´s employee status and their concern about possible termination.

131. A similar approach is adopted by the NCP in the following paragraph, where it assumes the Claimants are the "bad guys", in spite of the evidence showing the whole structure was assembled by Comptel and continued by Nokia:

> *The NCP further notes that the irregularities at the background of the matter concerning the manner in which the [Claimant's] companies have managed their obligations may have relevance for the legal assessment of the obligation to offer an employment relationship.*

132. The NCP does not even care to analyze the evidence which indisputably shows that the "*manner in which the companies have managed their obligations*" was deliberately imposed by Comptel and continued by Nokia in Argentina, the Americas and many other places in the world (including México, Brazil, New Zeland &, Paquistán, among others, as shown in Annex 8, Annex 9, Annex 34, and Paragraphs 51-54 of the Complaint 2), as warned by the tax and legal memoranda provided to Comptel. This is also represented in many emails evidencing Comptel officers required the use of those "umbrellas" (see for example Annex 51).

J. Fraudulent conduct patterns by companies do not matter

133. In paragraphs 171 to 187 of Complaint 2 we explained the coincidences of this case with a similar fraud committed by Nokia in the Alcatel Lucent acquisition, only that our case is worse. There is even a chart comparing item by item of both cases and exposing the pattern. The NCP, however, accuses us of bringing up the conduct pattern instead of their finding out if it actually exists:

> *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.*

134. As indicated above, this unreasonable criterion may be driven by the fact that Nokia's CEO responsible for the Alcatel-Lucent scandal is part of the NCP that drafted the final statement as chair of the Confederation of Finnish Industries.

K. Under OECD Guidelines, companies can have simulated compliance denounce channels

135. One of the core claims in our denounce was that Nokia pretends to have a compliance denounce channel operated by an independent third party[36] while, in our own experience, Nokia is always behind the scenes handling denounces at discretion (see paragraphs 137-145 and Exhibit VII and Annex 47 of our Complaint 2). That flawed denounce channel puts whistleblowers at risk of retaliation, which we also denounced (see Part 3, Chapter VIII, of our Complaint 2). The NCP did not even find it worth asking about it, but instead complained that it implied changes in our denounce.

136. The Final Statement Draft had two extremely odd ways of addressing such a key issue to dismiss it. It may be because, as stated above, two of the NCP members worked on the drafting of Nokia's Code of Conduct, Mr. Mikko Routti (FIBS representative at the NCP) and Risto Siilasmaa (Vice President of the Confederation of Finnish Industries), so, perhaps, each of them had a different view on how to reject a claim directed to Nokia's compliance core.

137. The first reason is that, according to the NCP, the Claimants were not recognized by Nokia as "employees" and therefore were not entitled to use the compliance denounce channel: "*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*"[37].

138. As explained above, Nokia did recognize the Claimants as employees (although it then said to the NCP that it was a mistake). However, we struggle to understand why the NCP would state that it is required to be an employee to use the compliance denounce channel. In fact, Nokia's website clarifies that employees have *additional channels* [38], but not that the allegedly "independent" compliance denounce channel is exclusive for employees.

139. The other argument used by the NCP not to address this relevant issue is to say that we asked Nokia to "*introduce an internal appeal mechanism, put in place by a third party*". **That is incorrect.** We just requested to "*recommend Nokia to adopt measures in order to ensure that the compliance denounce channel is managed by a third independent party*". In other words, the NCP needs to tell Nokia to comply with the commitment adopted in its own website[39], where it guarantees whistleblowers that said channel is managed by a third party, which is simply not true.

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[36] "*The Nokia business ethics helpline is operated by a third-party company, Navex and can be accessed 24 hours a day and 7 days a week. Conversations are entirely confidential and you may remain anonymous if you wish*", https://www.nokia.com/about-us/investors/corporate-governance/code-of-conduct/

[37] Page 17 of the Draft.

[38] "*Employee concerns can also be raised with line managers, Ombuds leaders, or compliance leaders*", https://www.nokia.com/about-us/investors/corporate-governance/code-of-conduct/ .

[39] https://www.nokia.com/about-us/investors/corporate-governance/code-of-conduct/

L. The NCP does not need to address all the violations that were denounced

140. In Paragraph 162 of the Complaint 2 there is a list of more than 20 breaches to the Guidelines that are explained along the brief, yet the NCP only analyzes a few, without even mentioning and analyzing most of them. We will expand on this in the following chapters.

M. Tax fraud structures cannot be identified by the NCPs under the OECD Guidelines since they cannot determine how much taxes were actually evaded

141. The NCP is not required to determine how much taxes Comptel/Nokia evaded. The NCP is only required to determine if there is a reasonable doubt about compliance with tax regulations.

142. However, in Chapter "***2. Responsibility for obligations on tax and social security payments***" the NCP stated:

> *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[...].*
> *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. <u>The NCP considers that it is not possible for it to investigate the legal issues related to possible tax debt</u>.*

143. Section 12 of the double tax treaty has nothing to do with Income Tax, Gross Turnover Tax, VAT, and social security obligations.

144. But in any event, the Complainants are not asking the NCP to determine a debt. The Complainants are just explaining that a permanent establishment existed, which taxes should have been paid as a consequence of it and why the lack of payment of them is illegal. It is not up to the NCP to decide if one structure is more expensive than the other, but it can clearly recognize that a permanent establishment under the treaty existed. In fact, the NCP recognized that Comptel had permanent activity for almost 10 years!. If the NCP still feels it cannot acknowledge the existence of the permanent establishment, for the avoidance of doubt and in order to ensure transparency, we request the NCP to recommend Nokia to submit a formal consultation to the Tax Authority.

N. It is ok to hide contracts and vertical relationships in filings to antitrust authorities under Chapter X of the Guidelines

145. We explained above how cinical the Final Statement Draft is with regards to the omission to inform the existence of a local office to the antitrust authorities at the time of requesting clearance for the Comptel-Nokia merger. The NCP sustains that we proved the office existed for 10 years but not necessarily at the time of the filing, even though we proved that one of Nokia's legal and compliance officers visited the office and withdrew Comptel's assets after the filing with the antitrust authorities.

146. Furthermore, we also submitted contracts evidencing the existence of vertical relationships between Comptel & Nokia before the acquisition and which were also hidden to the Antitrust Authority, although they should have been informed according to the Argentine Antitrust Law.

147. This fact is completely omitted by the Final Statement Draft, although it concluded that reporting obligations towards the antitrust authorities had been perfectly fulfilled by Nokia (it won the "Best Reporter" award, how could it be otherwise!). The NCP even forgot (or deliberately omitted) to mention, in its "Key substance of the grounds put forward", that we had denounced Nokia breached the dispositions of this Chapter.

148. The only possible conclusion is that for the NCP it is ok, under the guidelines, to hide contracts and vertical relationships between two entities merging one into the other from the relevant antitrust authority.

III. SOME SPECIFIC COMMENTS TO THE DRAFT

149. Based on the above considerations, we do not estimate we can be fairly required to submit further comments to the Final Statement Draft until every and all of the above issues have been properly addressed. Notwithstanding the foregoing, below are some specific considerations regarding the Final Statement Draft. We reserve the right to modify and expand them once the concerns discussed above are completely cleared.

A. If there were irregularities in Relval and Segen's labor obligations, then Nokia is responsible for them as a consequence of the merger

150. In Chapter "***3. Issues pertaining to employment relationships***" the NCP said:

> *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.

151. As we explained in the Complaint 2:

- If Segen and Relval's Argentine operations were completely independent from Comptel, Nokia acquired Segen and Relval's **ongoing concern**. There was in fact a transfer of an ongoing concern because Nokia hired **all** of those companies' personnel, except for the owners (i.e. the Complainants); such personnel continued working with the **same clients and projects** they were working on with their former employer, and Nokia also acquired all of those companies **assets**, as evidenced with Nokia's instructions to carry all assets from Segen and Relval's office to Nokia's offices, because "*they now belong to Nokia*" " (see Annex 19). Under Argentine law (Act 11,867), as well as in any other place, the transfer of clients, personnel and assets of one entity to another entity constitutes the transfer of an ongoing concern, and if the person/entity that acquires an ongoing concern does not follow a proceeding that includes a notice to the tax authorities, publications in the Official Gazette, among others, such person/entity is fully responsible for all previous commercial, labor and tax debts of the business.
- Section 82 of the Argentine Corporations' Act No. 19,550 is clear in this point: the company that acquires another company is responsible for all the illegal activities, irregularities, acts and omissions executed by the later.
- Section 228 of the Argentine Labor Act No. 20,744 also provides that the company that acquires the other is also responsible before the employees for all the labor obligations that existed at the moment of the transfer of the business.
- The Finnish Limited Liability Companies Act contemplates the same principles. In Part V ("Changes in company structure and the dissolution of the company"), Chapter 16, Section 16, it provides that: "*The assets and liabilities of the merging company shall be transferred to the acquiring company without liquidation once the implementation of the merger has been registered*".

152. This means that when the NCP accepts Nokia's argument that there were irregularities in Segen and Relval, the only consequence of such recognition is that those contingencies were transferred to Nokia, but they were neither reported nor cured. Hiring the employees is NOT the way in which those breaches are cured. There is a debt in tax and social security obligations that has not been paid, there is a debt in Income Tax, Gross Revenue Tax and VAT that has not been paid, and there is relevant information to the Antitrust Agency that has not been provided.

B. The Final Statement Draft shows a concerning lack of understanding of one of the main issues: Comptel/Nokia were not only selling software from Argentina, they were also rendering services

153. The NCP includes within the "***Key substance of the grounds put forward***" of the Complaint that:

> *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*.

154. Also in Chapter "***2. Responsibility for obligations on tax and social security payments***" the NCP affirmed:

> *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[...].*
> *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.*

155. One of the main facts that needs to be fully understood in order to reach a reasonable conclusion is that Comptel/Nokia were not only "*selling software licenses in Latin America*" through an office in Argentina nor "*paying taxes for the sales*". They had people (hidden employees) performing those sales and they were also **rendering services** from that office, located in Argentina, but everything was invoiced from Finland.

156. This is a very important issue that should be addressed by the NCP since the provision of services for more than 6 months and having an office (the NCP conceded that we demonstrated that Comptel had a permanent activity in Argentina for almost 10 years, in the office they declared as its own) causes a Permanent Establishment according to the Double Tax Treaty.

157. In addition, it is surprising that the NCP simply believes what Nokia says, with no evidence at all. "Nokia believes that Comptel has paid tax in Argentina". If they said so, it must be true? Which evidence supports such statement? None.

C. The Final Statement Draft omitted the Argentine Tax Authority among the authorities to which Nokia should have reported the situation

158. The NCP mentioned in the "***Key substance of the grounds put forward***" of the Complaint that:

> *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.*

159. In the same vein, in Chapter "***1. Reporting obligations***" the NCP said:

> *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.*

160. There is no reference at all to the Argentine Tax Authority, which is one of the authorities that has more interest in the case.

D. The Argentine Tax Authority is NOT aware of the role that Nokia/Comptel played in the structure, as the NCP affirmed

161. In Chapter "***2. Responsibility for obligations on tax and social security payments***" the NCP stated:

> *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[...].*
>
> *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. [...]. 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.*

162. Even though we have explained this issue many times, the NCP seems to misunderstand it. Once again: the Argentine Tax Authority is NOT aware of Comptel/Nokia's fraud, so WE ASK AGAIN THAT THE NCP RECOMMENDS NOKIA TO INFORM IT. The

Tax Authority does not know that Nokia/Comptel had an office in Argentina in which Nokia/Comptel had non-registered employees selling their software and rendering services on their behalf, etc.

163. The basis for the NCP to understand the Tax Authority is aware of the fraud are flawed:

a. Firstly, as we have already detailed in our 3rd Submission, the Complainants had declared the ownership of those entities in the 2016 tax amnesty, and just the ownership, but **they did not, and by no means had to, declare Comptel/Nokia's unpaid labor, social security and tax obligations for the money they collected in Finland (which never went through Segen or Relval). Nokia and Comptel were the ones who should have disclosed such information and payed those contributions**.

b. Second, the communications referred by Nokia concerning the labor relationship are just part of a formal and compulsory procedure consisting in informing the authorities that an employee has been dismissed. That is the only information provided in the letter, which goes to an employment office receiving thousands of similar letters informing dismissals. In other words, the NCP assumes the tax authorities are aware of Nokia/Comptel's mega fraud because they received a letter referring to one dismissal?.

164. In addition, where is the legal analysis Nokia claimed to have? Has the NCP reviewed its content? **Why does the NCP fail to make any reference to the memoranda submitted by the Complainants in which it is crystal clear that the structure was completely illegal and that a permanent establishment existed and, instead, trusts in an alleged advice received by the Company that has not been presented as evidence?**

E. The NCP assumed that the employees transferred to Nokia were personeel of Segen and Relval, which is not the case: they were employees of Comptel/Nokia hiden before the figure of third party contractors, but they were never under Segen or Relval's labor relationship

165. Once again, in the "***Key substance of the grounds put forward***" of the Complaint the NCP said:

> *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.*

166. The same reasoning is included in the "***Key substance of the grounds put forward***" of the Reply when the NCP said:

> *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 moreover undertook investigations to find out whether any subcontracting arrangements similar to those employed in South America had been used 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 actively supplying services for Comptel at the time of the acquisition.*

167. Then, in "***The considerations to be examined***" the NCP affirmed:

> *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.*

168. The personeel belonged to Nokia/Comptel. They received orders from Nokia/Comptel but they were not registered as employees, which is one of the main issues of the Complaint. They were not "*personeel of the subcontracting companies*".

169. This shows that the NCP did not perform a serious analysis of the case. **There are around 20 people that were not registered as employees neither in Comptel/Nokia, nor in Segen/Relval, but had their @comptel emails, personal comptel cards, vacations paid by Comptel which also approved their salaries, etc. and, most importantly, were transferred to Nokia after Comptel's acquisition. Why does the NCP assume they were Segen/Relval employees?**

170. Those people were selling software and rendering services for Comptel/Nokia in an office that Comptel declared as its own, for almost 10 years. All of them have an @comptel email. They did not sell software nor render services for any other company. They received their payments through a structure in which Comptel paid Segen/Relval so they can pay such exact amounts to the employees (**no tax withheld was made -and even less kept by- Segen or Relval**, as mistakenly affirmed by the NCP).

171. In fact, Comptel/Nokia expressly asked the Complainants to keep paying the personeel after the acquisition. If they were independent personeel (or even, as affirmed by Nokia and the NCP, Segen/Relval's personeel), why should Comptel/Nokia ask the Complainants to keep paying their "salaries" or fees? Is it a common practice that a client requires their service providers to pay their employees? The explanation is obvious: Comptel/Nokia were worried about those people because they were their own employees.

172. Since those people were not formally under any labor relationship with any company, the main discussion here is to define who was the actual employer. In this connection, we have provided substantial evidence that they were Comptel/Nokia's employees, which is confirmed by the fact that Nokia transferred them to its payroll even paying a higher salary range. Segen and Relval never declined their responsibility, they paid all the corresponding taxes. They did not pay social security contributions simply because those people were not their employees.

173. However, suddenly, with no reason at all, the NCP affirms that they were "*personeel of the subcontracting companies*".

F. The Final Statement Draft mistakenly assumes Segen and Relval were "local subcontractors", in spite of the fact they were both offshore entities

174. In relation to the above issue about who the employer of Comptel/Nokia's operation in Argentina was, the Final Statement Draft mistakenly assumes that Segen and Relval were local entities based in Argentina.

175. In the "***Key substance of the grounds put forward***" of the Reply the NCP said:

> *Nokia claims that it 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.*

176. However, Segen was incorporated in Panama and Relval was incorporated in Uruguay. In turn, the ones who had a local operation in Argentina were Comptel and Nokia, through their disguised employees and their office. Segen and Relval, instead, had no local operation in Argentina.

G. The NCP mistakenly affirmed that Relval was not actively rendering services at the time of the acquisition

177. The NCP mentioned in the "***Key substance of the grounds put forward***" of the Reply that:

> *Nokia moreover undertook investigations to find out whether any subcontracting arrangements similar to those employed in South America had been used 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 actively supplying services for Comptel at the time of the acquisition.*

178. That is simply not true. Relval kept rendering services for Comptel for almost seven months after the acquisition, as explained in Part II of the Complaint 2, as expressly requested by Nokia (see Annex 35: recording of a conversation in which Nokia's Head of Legal and Compliance requests the Claimants to continue operating the entities and paying salaries of Comptel/Nokia's employees in Argentina through Segen and Relval until December 31, 2017).

H. The NCP is not analyzing many breaches denounced by the Complainants and limited the denounce to 3 points

179. The NCP in "***The considerations to be examined***" affirmed:

> *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.*

180. In Paragraph 162 of the Complaint there is a list of more than 20 breaches to the Guidelines that are explained along the brief, yet the NCP only analyzes a few, without even mentioning and analyzing most of them.

181. The NCP does not even consider all the Guidelines the Complainants referred to in their denounce. In fact, the NCP states that:

> "*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)*".

182. The Complainants have also referred to the following paragraphs:

- **Chapter II:** Par. A.6; A.7; A.10; A.12; & A.13 were not mentioned by the NCP;
- **Chapter III**: Par. 4 was not mentioned by the NCP;
- **Chapter V**: Par. 1.E was not mentioned by the NCP;
- **Chapter X**: the NCP does not even mention this Chapter.

183. To that end, next follows a graph in order to show a summary of all the Complainants' allegations, the corresponding evidence filed at the NCP that supports those allegations, and a brief conclusion on NCP's considerations over each matter (or their lack of analysis):

Allegation	Evidence	NCP
Comptel set up offshore structures to provide services in several countries, to evade and breach labour and tax obligations.	Annex 7-9, 51-56.	Although initially the NCP seemed to be interested on this issue, now it intends to deny its importance by merely stating that "*the Final Statement shall not examine Comptel's conduct in the present matter independently*", as if such conduct could be kept appart from Nokia, who acquired Comptel.
Comptel had an unregistered permanent establishment in Argentina, through which it avoided paying several taxes.	Annex 3-5, Annex 10.	Same as above, the NCP intends to excuse from considering this allegations stating that "*the Final Statement shall not examine Comptel's conduct in the present matter independently*". The NCP has then admitted that Comptel had a permanent activity in Argentina for almost 10 years, in the office they declared as its own.

Comptel hid employees under contractor agreements, omitting labor registration.	Annex 2, Annex 21-22, Annex 24-26.	Same as above, the NCP intends to excuse from considering this allegations stating that "*the Final Statement shall not examine Comptel's conduct in the present matter independently*". Again, the NCP conceded this happened, but intends to blame the Complainants, even when the evidence has shown Comptel was behind this set up.
Comptel also evaded paying social security contributions	Annex 24-26, Annex 55.	Same as above, the NCP intends to excuse from considering this allegations stating that "*the Final Statement shall not examine Comptel's conduct in the present matter independently*".
Comptel was informed (twice) by its accountants in Argentina that they should have incorporated a local company and pay the corresponding taxes,	Annex 1 and Annex 57.	Same as above, the NCP intends to excuse from considering this allegations stating that "*the Final Statement shall not examine Comptel's conduct in the present matter independently*", and then affirmed those memoranda were not "clear enough".
Comptel constantly refered to the claimants as "key employees".	Exhibit III, Annex 35.	Same as above, the NCP intends to excuse from considering this allegations stating that "*the Final Statement shall not examine Comptel's conduct in the present matter independently*".
Comptel (& later Nokia) contracted Relval & Segen to provide them exclusive services	Annex 2, Annex 21-22.	Same as above, the NCP intends to excuse from considering this allegations stating that "*the Final Statement shall not examine Comptel's conduct in the present matter independently*".
Comptel submitted incomplete financial reports, directly supressing their reference to Comptel's presence in Argentina since, at least, 2016.	Annex 15 and Annex 44.	Surprisingly, NCP´s criteria is the following: If the Complainants demonstrated that Comptel had permanent activity and an office from 2008-2016, the Complainants were also obliged to demonstrate that a few months later -when Nokia filed the clearance before the Antitrust Agency- the permanent activity and office remained the same (which in any event the Complainants demonstrated with an email in which, after the acquisition, Nokia's employees recognized they

		have visited the office). Isn't Nokia the one who should, instead, demonstrate that the permanent activity for almost 10 years suddenly ceased, and the office had dissapeared when they filed the forms before the Antitrust Agency?
Comptel omitted reporting related party transactions, considering the agreements with Segen and Relval, who contracted ALL of Comptel's key personnel	Annex 15.	The NCP did not even mention or analyzed this breach.
Comptel committed stock market fraud.	Exhibit I, Annex 15, Annex 44, Annex 45.	Once more, the NCP´s criteria is absurd: If the Complainants demonstrated that Comptel had permanent activity and an office from 2008-2016, the Complainants were also obliged to demonstrate that a few months later -when Nokia filed the clearance before the Antitrust Agency- the permanent activity and office remained the same (which in any event the Complainants demonstrated with an email in which, after the acquisition, Nokia's employees recognized they have visited the office). Isn't Nokia the one who should, instead, demonstrate that the permanent activity for almost 10 years suddenly ceased, and the office had dissapeared when they filed the forms before the Antitrust Agency?
Nokia's legal counsels and compliance officers were aware of those compliance violations since July 2017, but deliberately decided to continue using those structures.	Exhibit VIII, Annex 18-19 and Annex 35.	Although the NCP does not directly attend this allegation, and even when we attached many e-mails in which we shown Nokia employees and legal counsels still referred to "Comptel's Office (in Buenos Aires)" during 2017 and 2018, unbelivably the NCP states: "The NCP observes that, as such, **the materials presented give the impression that Comptel had permanent operations in Argentina at least up to 2016 [...]. In the NCP's view, the said materials do not allow to draw any conclusions on the states of affairs prevailing at the time when the acquisition was closed in 2017**". Has the NCP even looked at the evidence we filed?

Nokia detected the existence of other subontracting structures worldwide & decided to dismantle them.	Annex 7-9, 34, 51-56.	The NCP did not even mention or analyzed this breach
Nokia also omitted reporting stock market fraud once it became aware of this situation.	Annex 6, Annex 35-38.	The NCP only states that "the neglect of reporting duties merely rests on the Complainants claims, which are not supported by evidence", even when we attached sufficent evidence to prove, at least that: Nokia knew Comptel had Office's in Buenos Aires and ommitted to report it, and also ommitted reporting the agreements which shown their vertical relations. But once more, the NCP´s criteria is absurd: If the Complainants demonstrated that Comptel had permanent activity and an office from 2008-2016, the Complainants were also obliged to demonstrate that a few months later -when Nokia filed the clearance before the Antitrust Agency- the permanent activity and office remained the same (which in any event the Complainants demonstrated with an email in which, after the acquisition, Nokia's employees recognized they have visited the office). Isn't Nokia the one who should, instead, demonstrate that the permanent activity for almost 10 years suddenly ceased, and the office had dissapeared when they filed the forms before the Antitrust Agency?
Nokia commited itself a new fraud in the antitrust clearance of the merger to cover both Nokia & Comptel's wrongdoings. In particular, Nokia did not report the existance of vertical relations between Comptel and Nokia, which should have been attached to the clearance.	Annex 10-12 and Annex 39.	The NCP did not even mention or analyzed this breach, but only intended to excuse Nokia's responsibility as if they didn't know Comptel's Office in Argentina existed (although they expressly acknowlegded that on their e-mails) and also as if they did not know they had been contracting with Comptel from a long time ago.

Between 2017 & 2018, Nokia invoiced more than USD 13MM directly from Finland for sales made by Comptel/Nokia's Argentine office	Attached at Paragraph 64 (2nd Submission).	The NCP states 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*", but we did not estimate but attached the accounting of all the invoices from sales made by Comptel/Nokia's Argentine Office during 2017 & 2018, plus two memoranda from specialist which alerted the tax and social security fraud, and still asked the NCP to request an independent expert opinion if necessary. But while the evidence we filed is considered as "estimations", Nokia has "taken appropriate measures", just because it says it has consulted local law & auditing firms but does not even file a single evidence of those conclusions.
Nokia also referred directly to the complainants as employees.	Annex 28-29, 32-33, 40.	The NCP did not even mention or analyze this breach.
Nokia´s "independent" compliance system is only a mask.	Exhibit VII and Annex 47.	According to the NCP, the Claimants were not recognized by Nokia as "employees" and therefore were not entitled to use the compliance denounce channel: *"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"*. As explained above in the graph, Nokia did recognize the Claimants as employees. Moreover, to use the compliance denounce channel there is no need to be an employee (please see Nokia's website: https://www.nokia.com/about-us/investors/corporate-governance/code-of-conduct/, which clarifies that employees have additional channels, but not that the allegedly "independent" compliance denounce channel is exclusive for employees.

Nokia's intended to use claimants as "scapegoats", requiring them to undertake full responsibility for the offshore structure, in exchange for their work continuity.	Annex 48-50.	The NCP states 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 Complainant's claims*", even though we attached as evidence many e-mails and even a recorded conversation with both Nokia Officers & Legal Counsel, all of them reflecting that situation.
Nokia finally took retaliation measures against the claimants, firing them while keeping all the other Comptel's office in Argentina employees.	Attached at Paragraphs 150 & 154 (2nd Submission).	Instead of investigating the retaliation, the NCP accused the Claimants of changing their claim
Nokia lied to the NCP and Nokia´s unwillingness to cooperate with the NCP process	Annex 1, 6-10, 12-13, 15, 18, 19 21-36, 38-40, 55.	Even more atonishing, in this case the NCP states 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 on the situation*". We don't have different views, for every single allegation we made we have attached enough evidence to sustain it, while Nokia has constantly lied and denied. And once we even proved Nokia was lying, the NCP considers we have acted with bad faith. Simply incredible.

I. The NCP misunderstood the problem of not reporting the office

184. In Chapter "***1. Reporting obligations***" the NCP explained that:

> *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.*

185. The NCP seems to believe that the problem of having an office in Argentina is that it should have been reported to the SEC, the Antitrust Agency, the Argentine Tax Authority, among others. The real problem is deliberately omitting that such office existed in their filings. The problem is deleting the information of their office in their filing before the SEC. The problem is affirming there is no local presence to the Antitrust Agency when

Comptel had permanent activity in the country. The problem is that, by hiding the existence of that office, several taxes that should have been paid as a consequence of having a permanent establishment were evaded.

J. The Final Statement Draft does not reflect how the subcontracting structure worked

186. Within Chapter "***2. Responsibility for obligations on tax and social security payments***" the NCP affirmed:

> *Subcontracting arrangements are a common way of organising things within multinational enterprises. Nokia claims to have carried out an extensive and thorough due diligence. In the due diligence that took place 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.*

187. Segen and Relval were not obliged to register any contractor with the Argentinian Tax Authority, since those contractors were not Segen and Relval employees. Therefore, no social security contributions were due by Segen or Relval.

188. They were Comptel's employees. They should have been registered by Comptel, and Comptel should have paid the social security contributions, since they were rendering services and selling software just for them, in the office that Comptel included as their "Buenos Aires' office".

K. The NCP did not mention Comptel had similar arrangements in many other countries

189. Also in Chapter "***2. Responsibility for obligations on tax and social security payments***" the NCP affirmed: "*Nokia also carried out a due diligence into Comptel's similar arrangements, but no similar omissions were detected*". Why is the NCP believing a mere declaration by Nokia and is not believing in the evidence provided by the Complainants? This is a pattern repeated many times along the Final Statement Draft, where it accuses the complainants of basing their claims in mere allegations but is believing everything Nokia says with no evidence at all (i.e. that it consulted lawyers and accountants who validated its course of action when they detected their own fraud).

190. The Complainants demonstrated in Part I, Chapter III of the Complaint 2 that similar structures were deployed in Mexico, Brasil, Australia, Pakistan, among others.

IV. CONCLUSIONS

191. In the above pages we have provided substantial reasons that justify disqualifying several members of the NCP and declaring the process null and void.

192. We are also impressed by the NCP's conviction that nothing happened. We are certain that there is plenty of evidence that demonstrates the fraud, but even if the NCP

is not convinced, it can, for the sake of transparency, recommend Nokia to submit consultations to the relevant authorities.

193. Notwithstanding the foregoing, what shocked us the most is that this proceeding was conducted by people - such as Antti Neimala & Linda Piirto- who have a clear conflict of interest. This proceeding needs to be conducted again by someone who dares to ask Nokia the proper questions and to seek for the truth beyond Nokia's mere allegations.

194. We therefore ask you that before issuing the final statement you provide us an answer to our lack of independence and conflict of interest concerns, and that you take the appropriate measures to ensure absolute independence of the NCP from Nokia's influence, including the removal from this case of those people and entities that form part of the NCP and are or are under the doubt of being affected by such conflict of interest. We also request that the current procedure is declared null and void and conducted again by an NCP with the proper independence guarantees.

V. **REQUESTS**

195. As a consequence of the above, we request the NCP:

a. To disqualify all members subject to reasonable doubt of conflict of interests and lack of independence and, in the case of public servants such as Antti Neimala and Linda Piirto, to follow the administrative procedure for disqualification.

b. To declare the process null and void and start over a new process handled by NCP members ensuring full independence from Nokia's influence.

c. To provide an answer to the Claimants regarding the above requests before moving forward with the final statement.

d. To draft a new final statement once the new process has been conducted by an impartial NCP, and to provide it to the parties for comments.

e. In case the NCP understands a certain claim is not sufficiently evidenced, to have Nokia ask the opinion of the relevant authority (i.e. Antitrust Agency, Tax Authority, etc).

f. In any event, if the NCP decided to use the Final Statement Draft as its final statement, to amend it in accordance with the comments submitted in this filing.

g. In case the NCP does not accept our comments to the Final Statement Draft as stated above, to publish our own final statement along with NOKIA/NCP's one. For this purpose, we ask you to provide us your final version before publication so that we provide you with our final statement.