



National Contact Point for the OECD Guidelines

Specific instance submitted to the Italian NCP on the 13th September 2017 by

International Federation for Human Rights (FIDH), REDRESS and Justice for Iran (JFI)

versus Italtel S.p.A.

INITIAL ASSESSMENT

1. This document contains the initial assessment made by the Italian National Contact Point (hereinafter also "NCP") on the specific instance submitted on 13th September 2017 by the NGOs International Federation for Human Rights - FIDH, REDRESS and Justice for Iran – JFI (hereinafter also "the Complainants" or "the NGOs"), against the Italian enterprise Italtel S.p.A. (hereinafter also "Italtel" or "the Company").

The OECD Guidelines and the NCP tasks

2. A specific instance is a request to the NCP to offer its good offices to contribute to the shared resolution of issues relating to the implementation of the OECD Guidelines for Multinational Enterprises (hereinafter the "Guidelines") in specific cases.
3. The Guidelines are recommendations of responsible business conduct addressed by adhering Governments to the multinational enterprises operating in or from their territories.
4. To disseminate the Guidelines, each adhering Government is bound to establish a National Contact Point that has the task to manage a non-judicial mechanism for settling disputes between a company and a stakeholder arising from an alleged breach of the Guidelines.
5. Through the offer of good offices by the NCP, this mechanism is aimed at finding a concrete solution to the case, compliant with the Guidelines and agreed by the parties.
6. The Initial Assessment is the preliminary examination that the NCP carries out to determine whether the issue, raised in a specific instance, merits further examination. Whereas the case merits further examination, the NCP offer its good offices, to help the interested parties to solve the issues, in accordance with the Guidelines and the applicable laws. Whereas the case doesn't merit further examination, the NCP communicates it to the parties, publishes its conclusion and, therefore, concludes the procedure.
7. The effectiveness of the specific instances' procedure depends on the behaviour in good faith of all parties involved.

Submission of the specific instance – Alleged violations of the Guidelines

8. The specific instance is submitted against Italtel S.p.A.¹, an Italian company dealing with designing, developing and manufacturing products and solutions for new generation telecommunications networks and services in Italy and in many countries around the world.

¹ The specific instance had been submitted against "Italtel Group S.p.A.", but it has been clarified afterwards that the proper respondent should be "Italtel S.p.A.", the operational company controlled by the former.

9. The Complainants allege that Italtel has breached the OECD Guidelines by entering a Memorandum of Understanding (hereinafter “MoU”) with Telecommunications Company of Iran (TCI) on 13th April 2016, aimed at developing and modernizing TCI’s telecom network.
10. The Complainants ascribe to Italtel the violation of the following recommendations of the (2011) Guidelines:
- Chapter II, General Policies (A.10; A11, A12; B1) and Commentary on Chapter II (14);
 - Chapter III, Disclosure and Commentary on Chapter III²;
 - Chapter IV, Human Rights (1; 2; 3; 4; 5) and Commentary on Chapter IV (42; 45).

The Initial Assessment phase

11. As part of the specific instance’s procedure, the initial assessment is intended to determine whether the issue raised in the specific instance merits further examination. Namely, the NCP must determine whether the issue raised is *bona fide* and relevant to the implementation of the Guidelines on the basis of the following criteria, set forth in the Guidelines³:
- the identity of the party concerned and its interest in the matter;
 - whether the issue is material and substantiated;
 - whether there seems to be a link between the enterprise’s activities and the issue raised in the specific instance;
 - the relevance of applicable law and procedures, including court rulings;
 - how similar issues have been, or are being, treated in other domestic or international proceedings;
 - whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.
12. The NCP, by letter dated 6th October 2017, informed the parties that, having the issues arisen in a country non-adhering to the Guidelines (Iran), a longer time would have been necessary to accomplish a proper Initial Assessment, as set forth also in the Guidelines⁴.
13. Moreover, given that the proceeding for export authorisation of dual-use goods and technologies related to the project⁵ was still ongoing, the NCP, by a letter dated 27th November 2017, warned the parties that it would finalise the initial assessment subject to the conclusion of the aforementioned process of authorisation.
14. In compliance with its duty to strike a balance between transparency and confidentiality⁶, the NCP engaged with the Company to share pre-contractual information relevant to the decision by the NCP on the IA, despite the need of the Company to keep confidentiality in this preliminary commercial phase.

2 There are several imprecisions in the Complainants’ quotation, but reference is clearly made to this Chapter and its Commentary.

³ Commentary of the Implementation Procedures of the OECD Guidelines, § 25.

⁴ Commentary of the Implementation Procedures of the OECD Guidelines, § 39, 41.

⁵ Authorizations of the Dual-Use Goods Division, Commercial Embargoes and Chemical Weapons at the Italian Ministry of Economic Development – General Directorate for International Trade Policy, concerning the compliance with Council Regulation (EC) No. 428/2009 of some components of Italtel IMS for export to Iran.

⁶ Commentary of the Implementation Procedures of the OECD Guidelines, § 38.

15. The Company presented to the NCP its first written “Brief reply” on the 9th October 2017. After a request of clarification by the NCP on the 16th November 2017 the Company sent a “Supplementary reply” on the 15th December 2017; both documents were sent to the Complainants by the NCP on the 19th December 2017. The Complainants responded on the 16th February 2018 and the Company submitted its “Observations to the counter-reply of Justice for Iran” on the 7th March 2018 and sent it directly to the Complainants. The NCP informed the parties that this forward was considered as a submission. On the 16th May 2018 the Complainants sent to the NCP additional information regarding the recent changes within the Board of Directors of TCI.
16. All the replies and counter-replies were shared among the parties.
17. Indeed, the company consented to share most of the information with the submitter, with the exception of information considered to be confidential for commercial reasons. The NCP accepted the justification (see below).
18. The NCP did not use the information received on a confidential basis by the company as a basis for its decision.
19. The NCP met the parties separately: the Company on the 17th November 2017 and the Complainants on the 6th April 2017 (in conference call).
20. The information acquired enabled the NCP to make the initial assessment.
21. Given the complexity of the case, the NCP considered to be appropriate to ask for the legal advice of some experts in international law of ISGI - Institute for International Legal Studies of the Italian National Research Council (CNR).
22. To complete this phase, a draft Initial Assessment was submitted to the NCP Committee and to the parties.
23. On the 7th May 2018 - the NCP Committee⁷ expressed its favourable opinion on the draft Initial Assessment.
24. On 7th May 2018, the draft Final Statement was transmitted to the parties giving them the possibility to send their comments. Both parties submitted their replies.
25. The Company, on the 15th May 2018, communicated that it had no comments to make on the draft initial assessment.
26. The Complainants, on the 21st May 2018, sent their comments and informed that they disagreed with the decision taken by the NCP.
27. It is within the NCP’s discretion to decide whether to change the draft initial assessment in response to comments from the parties. The NCP confirmed its conclusions and revised the draft initial assessment to further clarify its position.
28. On the 6th June 2018 - the NCP Committee expressed its favourable opinion on the revised draft Initial Assessment.
29. The NCP adopted this Initial Assessment.

Position of the Complainants

30. The Complainants allege that Italtel breached the OECD Guidelines by entering a MoU with TCI to develop and modernize TCI’s telecom network.

⁷ The NCP Committee is composed of institutions and stakeholders, including representatives from Government, trade unions and civil society organisations.



31. The Complainants affirm that TCI is currently controlled by a consortium led by the Islamic Revolutionary Guard Corps (IRGC) which took over the company in 2009.
32. They declare that “[t]hrough the MoU, Italtel aims to equip TCI with more sophisticated means to monitor and control telecommunications and cyberspace. In particular, the infrastructure, services and technologies to be provided by TCI will allow the Islamic Republic’s Ministry of Intelligence as well as the IRGC to more closely monitor, and, if deemed necessary, to shut down Internet traffic with increased efficiency. In other words, the MoU will further facilitate censorship, surveillance, and Internet shutdowns to quash dissenting voices in Iran⁸.[...]The Italtel-TCI MoU lays the ground for ‘cooperation on the development of the Iranian telecommunications sector’ between ‘Italtel and TCI’. Although the specific services and/or products covered under the MoU have not been disclosed, [...] [u]nder the MoU, Italtel is committed to providing the equipment and implementing the Iranian telecom network on the basis of the plans designated by TCI within an 18-month period”. The Complainants report that, “[...] According to TCI, the MoU covers IP-NOC and IP-BB projects”⁹.
33. The NGOs report that the IRGC has been Iran’s most powerful military and security entity since its establishment in 1979 and that it has played a crucial role in crushing political dissent and civil liberties throughout the country and more recently in cyberspace.
34. In light of the above, the Complainants assume that there is a risk of violation of the right to freedom of information and expression and the right to privacy of the Iranian people as guaranteed by the international human rights standards¹⁰.
35. The Complainants allege that Italtel’s conduct breaches multiple principles of the OECD Guidelines. In detail, they denounce the following breaches:
- A. failure to conduct risk-based human rights due diligence;
 - B. failure to identify the full scope and severity of potential adverse human rights impacts;
 - C. failure to disclose information, including social reporting;
 - D. failure to promote internet freedom through respect of freedom of expression online;
 - E. other potential breaches: if Italtel enters (or has already entered) into an operative contract with TCI, it risks breaching General Policies Chapter II, Paragraph A.11 and A.12 and Human Rights Chapter IV, Paragraphs 1-4.
36. The Complainants also express their willingness to assist Italtel, where necessary, in conducting a proper risk and impact assessment and in elaborating a due diligence plan prior to engaging in further negotiations with the TCI, under the auspices of the Italian NCP.

Position of the Company

⁸ Complaint, p. 8-9

⁹ The Complainants give a general explanation of what is an IP Network Operations Center (IP-NOC) and what is an Internet Backbone (IP-BB). “[...] IP-NOC is a centralized location where administrators can directly supervise, monitor, and maintain a telecommunications network. It contains visualizations of the network that is being monitored, workstations at which the detailed status of the network can be seen, and the necessary software to manage the network. The main task of the IP-NOC is then to keep a watchful eye over all monitored endpoints [...]. The IP-BB project, also known as “Internet Backbone” or ‘International Gateway’, refers to the infrastructure that provides connectivity between a country and the global Internet. What makes this project a matter of concern is that state-directed implementation of national content filtering schemes and blocking technologies may be carried out at the backbone level, affecting Internet access throughout an entire country”.

¹⁰ Namely, the Complainants say that: “the nature and subject of the MoU is such that in the context of Iran, a country with one of the worst records on Internet freedom in the world, it would inevitably contribute to more violations of human rights, particularly freedom of expression and privacy rights, through increased restrictions on telecommunication and Internet freedom”. This concept is reiterated in other parts of the complaint.

37. Italtel affirms that it is “actively engaged in the international debate on human rights”, its compliance with the principles of CSR (it has been awarded “Silver Recognition” by EcoVadis and has achieved a positive evaluation through ACESIA platform in 2016)¹¹ and underlines its adherence to the UN Global Compact and to the commitments contained in its Code of Conduct which is in line with the OECD Guidelines.
38. As to the Complainants’ allegations, the Company is of the opinion that no violation of the Guidelines is attributable to it on the following grounds:
- A. the MoU is not binding and has the same legal value of a letter of intent;
 - B. the MoU was signed under the aegis of the Italian Government, with the purpose to provide the people of Iran with improved telecommunication technology, indispensable for enhancing the quality of life in the country;
 - C. the MoU has not been executed yet and no contract has been signed;
 - D. the Company, given the recent turnover in the management of TCI and having regard to the general political and legal environment, is currently proceeding to a new assessment of the technical and commercial terms of the project;
 - E. the prospective project involving Italtel has a limited scope within the context of the telecommunication system of Iran: the Company would not perform any activity, or deliver any system related to the IP backbone network (no mobile services or data services are included in the perimeter of the project). It would contribute to the performance of the fixed voice services by TCI which would be implemented in compliance with Council Regulation (EU) no. 359/2011, and set out adequate risk mitigation to prevent any possibility of human rights violation;
 - F. From the beginning of the project Italtel was well aware of the risks connected to the violation of human rights and carried out all the necessary due diligence activities;
 - G. As explained by¹² the Company since its “Supplementary Reply” (that was transmitted by the NCP to the complainants on the 19th December 2017) the main risk mitigation introduced in order to prevent any violation of human rights related to the project consists of the physical removal of all hardware, software and configuration interfaces which would allow access to the telecommunication data for interception (known in the industry as Lawful Interception Management (LIM)), namely:
 - i. physically removing all hardware and software uniquely suited to implement interception; and
 - ii. physically removing from the other elements of the communication system all files containing user’s type definitions relevant to interception configuration and operation and, as a result, systematically preventing users from engaging certain system functions, namely the interception function.
 - H. Italtel acquired two legal advices (opinion *pro veritate*) in order to perform an overall assessment of the prospected activities in Iran in light of the applicable EU and U.S. restrictions, established to prevent human rights violations in Iran¹³.

¹¹ Both documents have been submitted by Italtel to the NCP.

¹² See Italtel’s “Supplementary Reply”, p. 4.

¹³ The two legal opinions were provided by Studio Legale Padovan on compliance aspects related to national and EU legislation; Arent Fox LLP on compliance aspects related to US laws. The abovementioned assessment included a Know Your Customer (KYC) due diligence on TCI, to check whether any sanctions and/or restrictions in general (such as, for instance, the freezing of funds or of economic resources) apply to the said Iranian company.

- I. With a letter (prot. n. 0052789) dated 20th September 2017, the Ministry of Economic Development – General Directorate for International Trade Policy, taking note that the technical interventions on the system that Italtel intended to provide to TCI were effectively able to inhibit the functionality of interception and that this functionality is in no way restorable, agreed with the view that the system did not fall within the restrictions set out in Reg. (EU) 359/2011 and subsequent amendments.¹⁴
- J. On 22nd January 2018, the Company obtained the authorizations of the Dual-Use Goods Division, Commercial Embargoes and Chemical Weapons at the Italian Ministry of Economic Development – General Directorate for International Trade Policy, concerning the compliance with Council Regulation (EC) No. 428/2009 of some components of Italtel IMS for export to Iran.

The identity of the party concerned and its interest in the matter

39. The International Federation of Human Rights (FIDH) is a federation of 184 member organizations, some of which dealing with the protection of human rights in Iran such as Justice for Iran (JFI). The NGO repeatedly addresses appeals and open letters to the relevant human rights bodies on violations of human rights in Iran and it is frequently heard by international and regional organizations to expose the situation of the human rights protection in Iran.
40. The mission of REDRESS is focused on the contrast to torture and arbitrary detention. It has submitted to international human rights bodies several cases on arbitrary detention in Iran.
41. Justice for Iran (JFI) works for the eradication of human rights violations and for raising public awareness and participates in human rights advocacy through the UN and the EU.¹⁵
42. In its Brief Reply to the specific instance, Italtel highlights that “the NGOs did not produce evidence of adequate “contact” and “link” with the community whose interest they are allegedly protecting”, contesting that simply claiming to be human rights organizations is not sufficient.
43. In line with the principle of accessibility, the following elements, derived from NCPs practices, are considered relevant for the Italian NCP: 1) the identity of the NGO in terms of NGO mission and activities showing an established interest in the issue; 2) the NGO’s ability to provide information about the issues raised; 3) the nature of the NGO’s interest.
44. **All the above considered, there are elements to affirm that the complainants have a valid interest in the issues raised in the complaint.**

Whether the issue is material and substantiated - Whether there seems to be a link between the enterprise’s activities and the issue raised in the specific instance

45. In the present case, indeed, we are dealing with the initial phase of a business relationship; nevertheless, the simple fact of entering into a MoU is not an evidence *per se* of a risk of breaching the OECD Guidelines.
46. Some of the information regarding the MoU were not disclosed to the Complainants to protect confidentiality, which is typical of the pre-contractual steps of any activity.

¹⁴ Italtel’s Brief Reply to Specific Instance - Exhibit “C”.

¹⁵ In March 2017, along with other NGOs, JFI submitted a letter to Permanent Representatives of Member States of the Human Rights Council, claiming, *inter alia*, the severe restriction by the Iranian authorities of the freedom of expression through the pervasive censorship of the press and internet.

47. The changes to the project over time are linked to the natural course of business relations when the process is in its initial phase and depends from internal (the business) and external (the context) factors.
48. The present IA procedure has highlighted that no contract with TCI has been signed by Italtel after the MoU; thus, at present, the contents and the details of the prospective contract are not finalized and they may change over the period. This inevitably implies that the current business relationship cannot be assessed as an actual or potential breach of the OECD Guidelines.
49. However, the ongoing pre-contractual discussions were assessed during the phase of the preventive due diligence.
50. Against this background, it is necessary to assess, first of all, which is the exact scope of the current business relationship together with its implications on the extent of the potential negative impact. Secondly, it is necessary to explore whether a preventive due diligence has been performed by the Company, according to the context and considering that the nature and extent of due diligence depend on the circumstances of a particular situation¹⁶.
51. The project involving Italtel has a limited scope within the context of the telecommunication system of Iran. The project concerns the fixed voice services by TCI; the project is not related to the entire Iranian territory but only refers to one third of the Iranian regions¹⁷.
52. Contrary to what the Complainants allege, the system is not related to the IP backbone network; thus, there is no link between the prospective project and the risk of a potential impact on internet freedom.
53. All the relevant information on the contents of the prospective project were disclosed to the Complainants on the occasion of the forwarding of the “Supplementary reply to the specific instance” and, in greater detail, in the document “Observations to the counter-reply of Justice for Iran”.
54. The Complainants made no comments regarding the relevant information submitted by the Company which changed entirely the context described in the specific instance. No other additional elements or evidence were submitted by the Complainants with regards to the potential impact of the prospective project.
55. This is a crucial point since the concrete commercial project scope is much more focused and limited, thus reducing dramatically the risks of impacts on human rights of the Company’s activity in Iran.
56. Furthermore, the Company, given the recent turnover in the management of TCI and having regard to the general political and legal environment, is currently proceeding to a new assessment of the technical and commercial terms of the project.
57. In this scenario and taking specifically into account the awareness of the potential risks linked to operations in Iran, the Company started a preventive due diligence process, identified the risks connected with operations in Iran and decided to seek to prevent adverse impacts¹⁸.
58. This preventive due diligence consisted in assessing whether the prospective project was of such a nature as to prevent the risks of a potential distorted use of the communication tools offered to the TCI, also taking into account the requirements set forth in the EU and US Regulations.
59. As a consequence of this process, adequate risk mitigation measures have been taken by the Company namely the aforementioned inhibition of the interception function in the ICT system

¹⁶ OECD Guidelines, Chapter II General Policies, par. 10.

¹⁷ This information was provided by the Company in its “Observations to counter-reply of Justice of Iran”.



which avoids any possibility for TCI to use the technology which could be provided by Italtel to intercept voice communications eliminating, in this way, the risks of breaches of the freedom of expression and of other related human rights.

60. As it is well known, business operations in Iran are regulated by a series of legal requirements both at EU level and at US level specifically pertaining to the risk of adverse impacts on human rights. Indeed, these regulations, through the prescription of severe requirements, show the attention given to the prevention of the risk of human rights violations in Iran (see also below the par. on the “relevance of applicable law (...”).
61. The fact that there are compulsory regulations embedding the concept of preventive actions to avoid adverse impacts reinforces the importance of the above-mentioned preventive action, since there are rules and procedures that, if breached by the company, imply sanctions.
62. In this scenario, Italtel put in place preventive due diligence activities which were performed in compliance with applicable legislation as recognized also by the Italian authorities (see the following par.).
63. **In light of the above, the specific allegations of the complaint do not show any evidence of a link between the prospective project and potential human rights violations.**
64. **Therefore, at present, the issue is not material and not sufficiently substantiated and there is no link between the project of Italtel and any potential future negative impact on the freedom of expression (and other connected freedoms and rights) in Iran.**

The relevance of applicable law and procedures, including court rulings

65. The rights to freedom of opinion and expression and the right to privacy are protected under international human rights treaties both at universal and regional level¹⁹:
66. The Constitution of the Islamic Republic of Iran contains provisions on the freedom of expression²⁰.
67. International rulings and practice show an increasing interest by courts in assessing and identifying the violations of the freedom of expression by ICT companies. Nevertheless, national and international practice is mainly addressed at stigmatising express and current violations of the above-mentioned freedoms and rights only in cases dealing with an explicit support by companies to non democratic regimes in order to suppress revolutionary activities.
68. Private companies also adhere to voluntary international collaborative initiatives on ICT.²¹
69. Indeed, the EU has adopted a very strict attitude on export activities to Iran in many commercial domains, including ICT: the Council Regulation (EC) No. 428/2009 of 5th May 2009 (known as Dual Use Regulation as amended by Delegated Regulation (EU) No. 2016/1969 of the European Commission of 12th September 2016) that provides rules for the control of exports, transfer, brokering and transit of dual-use items; the Council Regulation (EU) No 267/2012 of 23rd March 2012 concerning restrictive measures against Iran (also known as Iran regulation repealing Regulation (EU) No 961/2010 as subsequently amended and supplemented) and the

¹⁸ OECD Guidelines, Chapter II General Policies, par. 12.

¹⁹ Article 12 of the Universal Declaration of Human Rights (UDHR) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR) that protect the right to privacy, and Article 19 of both the UDHR and the ICCPR protecting the right to freedom of opinion and expression.

²⁰ Iranian Constitution (1979) Articles 3, 23-25, 175.

²¹ For example [the Global Network Initiative](https://www.globalnetworkinitiative.org/news/global-network-initiative-adds-seven-companies-milestone-expansion-freedom-expression-) (<https://www.globalnetworkinitiative.org/news/global-network-initiative-adds-seven-companies-milestone-expansion-freedom-expression->).



Council Regulation (EU) No 359/2011 of 12th April 2011, concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (as subsequently amended and supplemented). The latter Regulation provides that “*the restrictive measures should target persons complicit in or responsible for directing or implementing grave human rights violations in the repression of peaceful demonstrators, journalists, human rights defenders, students or other persons who speak up in defence of their legitimate rights, including freedom of expression*” (recital 2 of the preamble).

70. The actions of the Company ensured full compliance with the requirements of Regulation (EU) no. 359/2011²². This evidence is acknowledged by the Office of the Italian Ministry of Economic Development, which authorizes specific commercial activities in Iran and certifies their compliance with the requirements of Regulation (EU) no. 359/2011. The Office took note that the technical interventions on the system that Italtel intended to provide to TCI were effectively able to inhibit the functionality of interception and that this functionality is in no way restorable.
71. In addition, on 22nd January 2018 the Company obtained the authorizations of the Dual-Use Goods Division, Commercial Embargoes and Chemical Weapons at the Italian Ministry of Economic Development – General Directorate for International Trade Policy, concerning the compliance with Council Regulation (EC) No. 428/2009 of some of the components of Italtel IMS for export to Iran.
72. **As already said, EU regulations are very relevant for Iran since they are aimed, among other things, to prevent the business contribution to the breach of human rights and to safeguard the freedom of expression in Iran.**
73. **The Company is compliant with EU and US regulations whose specific aim is, among others, to prevent the violation of human rights and fundamental freedoms while doing business with Iran.**

How similar issues have been, or are being, treated in other domestic or international proceedings

74. By analysing how other NCPs have acted in specific instances dealing with similar issues it is important to underline that it appears that NCPs reached different conclusions while addressing different specific cases. Even more, most of the cases examined by the Italian NCP refer to the supply of ICT tools specifically devised for control and surveillance purposes, thus implying very different starting points from the ones regarding this specific case.
75. In the case *Etiennne Lacroix – Altesex in Bahrain (specific instance 4 July 2016)*, the French National Contact Point, after accepting the specific instance, concluded in its Final Statement that the French Company had carried out the due diligence recommended by the OECD and, “by complying with the government’s regulations, the enterprise was, *ipso facto*, in compliance with the requirements of responsible business conduct concerning human rights.”²³. According to the French NCP, even though the Company had not formally declared that it had taken risk-

²² See also the Abstract of the *pro veritate* technical-legal opinion of the Padovan law firm.

²³ In the same direction of considering the compliance with applicable rules as a process of due diligence, see the case *NGO vs. US MNE operating in Liberia*, the US NCP found that the conduct in question was effectively addressed through other appropriate means including implementation of the UN Security Council Resolution 1408, and therefore concluded the specific instance.



based due diligence measures, this was arguable from the fact that it was in compliance with the national regulations (in this case the NCP recalls Chapter II point 10 of the Guidelines).

76. In the case *Privacy International v 6 Telecoms Companies* (2013), where the companies were involved in enabling access by UK government agencies to fibre optic cables, allowing mass interception, the NCP rejected the instance finding that the relevant link was not substantiated by the press report cited by the complainants.
77. In the cases *Privacy International et al. vs. Gamma International* (2013) and *Privacy International et al. vs. Trovicor* (2013), submitted respectively to the UK NCP and to the German NCP, the same activities of Trovicor, allegedly exporting intrusive surveillance technology and training to Bahrain, received different treatment by the two NCPs.
78. In the former case the UK NCP, even after having decided that the case should be further examined “*while neither party ha[s][d] provided direct evidence about a supply by Gamma to Bahrain*”, confirmed in its Final Statement that no direct evidence for the business with Bahrain was provided since it was impossible to prove that the software products were a factor in the human rights violations committed by Bahrain government agents.
79. In the case *Privacy International et al. vs. Trovicor* (2013), the German NCP accepted only part of the complaint as far as it referred to the company’s risk management procedures. While, the NCP rejected the allegations that Trovicor was partly responsible for the violations of human rights. The complainants contested to the NCP the partial rejection of the case and decided not to take part in the proceedings, which were consequently terminated by the NCP.
80. **From the analysis of other NCPs’ cases it emerges that they are different and start from different assumptions if compared to this specific case.**
81. **In general terms, the NCPs’ practice seems favourable to the closure of the instance when there is no evidence of the link between the enterprise activity and a distorted use of ICT tools and systems by clients which could lead to the violation of human rights, such as the right to freedom of opinion and expression²⁴.**

Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

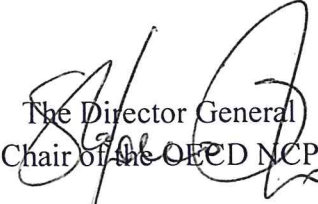
82. **The NCP believes that the consideration of the specific issue would not contribute to the purposes and effectiveness of the Guidelines.**
83. The NCP favoured the exchange of information between the parties and during the process the NCP found a positive attitude of the Company in sharing information.
84. If the commercial project were to develop in the next future, it is highly advisable that the parties show a positive attitude to dialogue in a spirit of transparency and stakeholder engagement, in compliance with the Guidelines.

Conclusions

85. **Based on the above the NCP believes that the issue raised does not merit further examination.**

²⁴ In the case *Reprieve vs. British Telecommunications plc* (2014), the telecommunication services provided to a United States military communications base in the UK were allegedly used to enable communications between the UK base and another US military base in the Republic of Djibouti and to support mass surveillance operations by drones therein. The UK NCP rejected the instance since there was no evidence of a specific link between the communication services provided and the impacts of drone operations.

86. More specifically, the NCP considers that there is no evidence of the link between the perspective project of Italtel and the violations alleged by the Complainants.
87. This Initial Assessment closes the procedure opened by the submission of the specific instance on 13th September 2017.


The Director General
Chair of the OECD NCP



