

Final Evaluation Report¹

CUT-SITENDEL-PLADES Specific Instance / “Telefónica del Perú” Group

This Final Evaluation Report is prepared in relation to the specific instance presented by the Central Union of Peruvian Workers (*Central Unitaria de Trabajadores del Perú*, CUT as per its initials in Spanish), the Worker’s Union of Telefónica Enterprises in Peru and those of the Telecommunications sector – (SITENDEL as per its initials in Spanish) and the Labor Development Program – (PLADES as per its initials in Spanish), for alleged breaches of the Guidelines of the Organisation for Economic Co-operation and Development (OECD) for Multinational Enterprises, by the Telefónica Economic Group in Peru.

I. RECITALS:

1. Since July 26, 2008, Peru has signed the Declaration on International Investment and Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD) and participates in the activities of the OECD’s Investments Committee. Likewise, in accordance with the Steering Council Agreement of the Private Investment Promotion Agency (PROINVERSION) of July 1st, 2009, this entity has been appointed as the National Contact Point of the OECD in Peru (NCP Peru) and has to disseminate and implement the OECD Guidelines for Multinational Enterprises (Guidelines).
2. On November 17, 2010, the NCP Peru received a specific instance raised by the Central Union of Peruvian Workers (CUT), the Union of Workers of *Telefónica* Enterprises in Peru and of the Telecommunications Sector (SITENDEL), and the Labor Development Program (PLADES), of alleged breach of the Guidelines, by the *Telefónica* Economic Group in Peru, specifically by the enterprises that are part of the *Telefónica* Group² and collaborating enterprises of the Group³ (Specific Instance). Subsequently, the representatives of the complaining entities requested to hold a meeting to explain their claim in more detail.
3. On December 9, 2010, the NCP Peru representatives received the representatives from CUT and PLADES so that they could explain their claim in more detail.
4. On January 3, 2011, through Official Letter No. 05-2011 - DFPI / PROINVERSIÓN, the NCP Peru informed to TELEFÓNICA DEL PERÚ S.A.A. on the Specific Instance filed by CUT, SITENDEL and PLADES, for the alleged breach of Guidelines by the Telefónica Economic Group in Peru. In this regard, the NCP Peru convened a meeting with TELEFÓNICA DEL PERÚ S.A.A. so that they can explain their position in relation to the Specific Instance raised.

¹ This is an unofficial translation. In case of divergence between the English and Spanish text, the Spanish text shall prevail

² According to the document presented, these enterprises would be: Teleatento del Perú S.A.C., Telefónica Móviles S.A., Telefónica Multimedia S.A.C., Telefónica Centros de Cobro S.A.C. and Telefónica Servicios Comerciales S.A.C.

³ According to the document submitted, the claimants refer to the enterprises: Emerson Network Power Perú S.A.C., Cobra Perú S.A., Avanzit Perú S.A.C., Consorcio Antonio Lari Mantto, Instalaciones y Tendidos Telefónicos del Perú S.A. and Mantto S.A.C. e Integrado YC S.A.C.

5. On January 20, 2011, the NCP Peru representatives met with the Labor Relations Manager of TELEFÓNICA DEL PERÚ S.A.A., who explained the Telefónica Group's objectives in terms of people management and union relations, pointing out their position regarding the specific instance raised.
6. On February 3rd, 2011, the Labor Relations Manager of TELEFÓNICA DEL PERÚ S.A.A. (Telefónica) sent to the NCP Peru, the Letter No. REC-440-A-112-2011 explaining their position regarding the Specific Instance presented.
7. On February 15th, 2011, the NCP Peru representatives met with the Vice Minister of Labor of the Ministry of Labor and Employment Promotion (MTPE), in order to explain the complaint filed against and to consult who would be the officials to subsequent contact for full understanding of the Specific Instance taking into consideration the competence of the MTPE in labor matters.
8. Following the coordination of the meeting of February 15, 2011 with the MTPE, on March 23rd, 2011, the NCP Peru representatives met with representatives of the General Office of Cooperation and International Affairs of the MTPE.
9. Subsequently, on May 9th and July 15th, 2011 by means of Official Letter No. 30-2011-DSI / PROINVERSIÓN and Official Letter No. 221-2011-DSI / PROINVERSIÓN, NCP Peru, requested the General Office for Cooperation and International Affairs of the MTPE to acquit some queries regarding the Specific Instance raised. These consultations were acquitted by Official Letter No. 714-2011-MTPE / 4/10 of August 31st, 2011.
10. On February 29th, 2012, representatives of the NCP Perú met with the Head of the Office of Cooperation and International Affairs of the MTPE to follow-up on the criteria used by the MTPE in the administrative processes raised by workers and employers related to processes of collective bargaining of working conditions.
11. Following the meeting of February 29th, 2012, on March 28th, 2012, through Official Letter No. 291-2011 / PROINVERSIÓN / DSI, the NCP Peru requested the General Office for Cooperation and International Affairs of the MTPE to acquit some consultations related to the criteria used by the MTPE in the administrative processes raised by workers and employers related to collective bargaining processes. These consultations were acquitted by Official Letter N° 2357-2012-MTPE / 4 dated on September 19th, 2012. By this Official Letter, the Report No. 921-2012-MTPE / 4/8 of the General Office of Legal Advice of said Ministry was forwarded to the NCP Peru.
12. On December 4th, 2015, pursuant to Executive Directorate's Resolution No. 161-2015, PROINVERSIÓN approved the Directive No. 003-2015-PROINVERSIÓN, for the "*Attention to Specific Instances Concerning the Implementation of the OECD Guidelines*"(Directive). Is important to mention that, although communications received by the parties involved in this Specific Instance, as well as the actions of the NCP Peru, are dated prior to the issuance of the Directive, it was considered

appropriate to elaborate a Final Evaluation Report for this Specific Instance, in accordance with the procedures established in the Directive.

II. The Specific Instance –Allegations and facts stated by CUT / SITENDEL/PLADES

1. Based on the document submitted on November 17th, 2010; firstly, SITENDEL is one of the interested parties that subscribe the Specific Instance, an active trade union that represents the workers who provide services to the enterprises of Telefónica in Peru and in the Telecommunications sector. Along with this union, the specific Instance is filed by the Central Union of Peruvian Workers – CUT, the national central trade union of Peru, and the Labor Development Program - PLADES, a specialized institution in labor issues in Peru and Latin America.
2. On the other hand, the claimants alleged that the Telefónica Economic Group in Peru is part of the corporation led by the multinational Telefónica S.A. of Spanish origin. The main activity of Telefónica Group in Peru is to provide telecommunications services, holding a solid position in the Peruvian market.
3. According to the claimants in the document filed on November 2010, the enterprises that are part of the Telefónica del Perú Economic Group, both subsidiaries and collaborators, would have breached the OCDE Guidelines for their repeated conducts, which are against the rights of workers to freedom of association and to participate in collective bargaining. The Specific Instance and attached Annexes make specific reference to the following Telefónica Group Enterprises in Peru: Teleatento del Peru S.A.C., Telefónica Móviles S.A., Telefónica Multimedia S.A.C., Telefónica Centros de Cobro S.A.C., Telefónica Servicios Comerciales S.A.C. Likewise, reference is made to the following collaborating enterprises in the Telefónica Group: Emerson Network Power Peru S.A.C., Cobra Perú S.A., Avanzit Perú S.A.C., Consorcio Antonio Lari Mantto, Instalaciones y Tendidos Telefónicos del Perú S.A. and Manto S.A.C. e Integrado YC S.A.C. (Collaborating Enterprises).
4. As stated in the Specific Instance, the Economic Group Telefónica in Peru would have breached the Guidelines in the following sections:
 - a) General principles, which state that enterprises must take into account the policies set by the countries in which they operate and take into account the opinions of the other parties involved. Accordingly, Number 2) of Letter A) states that enterprises must respect the human rights of people affected by their activities.
 - b) Employment and Industrial Relations (Paragraph 1A) which states the obligation to respect the right of their workers to be represented by trade unions and other legitimate workers' representatives, as well as to participate in constructive negotiations, both individually or through business associations with these representatives with the intention of reaching agreements on working conditions.

According to the foregoing, the claimants request the NCP Peru to be informed of the proceedings, to file a process of investigation and intervention with regard to the actions of the enterprises belonging to the Telefónica Group and Collaborating Enterprises and to order to that group of enterprises to enter into collective bargaining with their workers with no kind of restrictions or conditionings.

5. As stated by CUT-SITENEL-PLADES, the facts were developed as follows: :

a) SITENEL and the Telefónica Group enterprises in Peru:

- As agreed on the Extraordinary Session Minutes Act dated on June 19th, 20th, and 21st, 2007, SITENEL delegates upon the Federation of Telefónica del Perú Workers - FETRATEL (as per its initials in Spanish) to file the terms of claims in order to initiate collective bargaining with the companies of the Telefónica Group.
- On October 31st, 2008, FETRATEL requested to the Administrative Labor Authority to initiate a collective bargaining with the following Group enterprises: Telefónica Centros de Cobro S.A.C., Teleatento del Perú S.A.C., Telefónica Servicios Comerciales S.A.C., Telefónica Multimedia S.A.C. and Telefónica Móviles S.A. However, the five enterprises of the Group objected to initiate the collective bargaining, claiming that, as a trade union by branch of activity, FETRATEL has to negotiate in such area.
- In this regard, both the Directorate of Prevention and Resolution of Conflicts of the Regional Directorate of Labor and Employment Promotion of Lima - Callao and the Regional Directorate of Labor and Employment Promotion of Lima - Callao ratified the legitimacy of the union to negotiate at company level and declared groundless the oppositions alleged by the Enterprises of the Telefónica Group.
- However, Telefónica Group enterprises submitted an administrative appeal of revision against the Directorial Resolutions that declared groundless the oppositions filed. In this regard, on September 5th and 17th, and October 1st, 2008, through National Directorial Resolutions, the National Directorate of Directorial Resolutions declared founded the review remedies filed by the companies of the Telefónica Group, thus revoking previous favorable resolutions to the union organization.
- On December 2nd, 2008, the CUT filed a Complaint with the Committee on Freedom of Association of the International Labor Organization (ILO as per its initials in English) against the Peruvian State for violation of the obligations arising from the ratification of the Agreement on the Right to Unionize and Collective Bargaining, Convention No. 98. The Complaint was intended to invalidate the National Board Resolutions that dismissed the legitimacy of FETRATEL to Collective Bargaining at company level.
- On December 5th, 2008 and March 2nd, 2009, through Vice- Ministerial Resolutions, the Vice-Ministry of Labor declared the nullity of the resolutions objected by SITENEL through FETRATEL and CUT. Likewise, the review appeals filed by the

companies were declared groundless. On the other hand, the ILO Committee on Freedom of Association considered that, having resolved the problem, the case did not require further examination.

- Subsequently, the aforementioned companies filed a contentious administrative dispute rejecting such decisions, alleging that the administrative proceedings had been exhausted in the third and last instance with the resolutions of the National Directorate of Board Resolutions.

b) SITENEL and the Telefónica Group Collaborating Enterprises in Peru:

Pleadings 2007/2008

- On October 31st, 2007, SITENEL submitted a term of claims belonging to the period 2007 - 2008 to the following enterprises: Emerson Network Power Perú S.A.C., Cobra Perú S.A., Avanzit Perú S.A.C. and Consorcio Antonio Lari Mantto. The kind of negotiation proposed was negotiation by enterprise.
- However, Emerson Network Power Peru S.A.C., Cobra Peru S.A. and Consorcio Antonio Lari Mantto filed opposition appeals at the beginning of collective bargaining, arguing that SITENEL had no legitimacy to negotiate because the activities of the companies were not linked to telecommunications and because SITENEL was a trade union of branch of activity and has to negotiate in that level. In the case of Avanzit Peru S.A.C. The negotiation is formally opened but without assistance of the company, thus no advance is obtained.
- In June 2008, the MTPE's Directorate of Prevention and Resolution of Conflicts declared founded the company's objections. SITENEL filed administrative appeals in each case. However, the Regional Directorate of Labor and Promotion of Employment of the MTPE declared these appeals unfounded. The negotiation was paralyzed.

Pleadings 2008/2009

- On October 31st, 2008, SITENEL submitted a term of claims belonging to the 2008 - 2009 period to the following Telefónica Group collaborating enterprises: Emerson Network Power Peru SAC, Cobra Peru SA, Avanzit Peru SAC, Consorcio Antonio Lari Mantto and Instalaciones y Tendidos Telefónicos del Perú S.A. - ITETE. Once again, four of the enterprises, except for Avanzit Peru S.A.C., filed objections to collective bargaining. The same arguments used the previous year were filed.
- SITENEL requests the MTPE to carry out labor inspections in Cobra Perú S.A. and Emerson Network Power Peru S.A.C. These inspections took place in April 2009. Subsequently, the MTPE declared unfounded the objections filed and ordered the start of collective bargaining. The companies appealed. After MTPE declared unfounded the appeals, the companies resorted to file an administrative appeal of revision. Finally, in September and November 2009, the MTPE declared founded the revision filed by the Telefónica Group's collaborating enterprises.
- SITENEL filed Protective Action (Amparo) before the Judiciary, requesting to declare void the resolutions issued by the MTPE.

Pleadings 2009/2010

On October 31st, 2009, SITENEL submitted a terms of claims belonging to the 2009 - 2010 period to the same Telefónica Group enterprises to which the lists were submitted in the year 2008. In these terms of claims, it was proposed to negotiate by company. However, once again the companies filed objections to the negotiations with the same arguments. Accordingly, in the administrative procedure performed before the MTPE the negotiations were unsuccessful.

6. Based on the claimants' arguments, the Telefónica Group enterprises and Collaborating Enterprises on the grounds of the trade union organizations were not entitled to negotiate have rejected all of the above-mentioned terms of claims submitted by SITENEL and FETRATEL. In addition, these enterprises have used several remedies intended to delay procedures in order not to initiate collective bargaining. In this regard, the claimants state that this confirm the companies of the Telefónica Group and collaborators are not willing to develop collective bargaining.
7. In this regard, the claimants state that the discussion draws on the interpretation that must be given to Article 47 of the Supreme Decree No. 010-2003-TR. In this Decree is sanctioned the Consolidated Amended Text of the Act for Collective Bargaining Labor Relations, wherein it is set forth on Subparagraph s): *"They shall be entitled to bargain collectively in representation of workers: a) In collective bargaining agreements, the respective trade union or, in the absence thereof the representatives expressly elected by straight majority of workers. (...)"* As set forth by the claimants when referring to the "respective union", it shall not mean that it is limited to the representation capacity of a single type of union organization, such as an organization by company. The claimants state that making a restrictive interpretation of this article would be to ignore the rights to organize trade unions, collective bargaining and right to strike set forth in the Political Constitution of Peru and in international instruments recognized by Peru.
8. The claimants also state that, according to the contracts signed by the collaborating enterprises with Telefónica Group enterprises and the services they provide, it is clear that they are engaged in activities related to telecommunications; and therefore, the legitimacy of SITENEL to negotiate collective agreements with these companies cannot be denied.

III. Arguments of TELEFÓNICA in Peru

1. Because of the presentation of the Specific Instance by CUT-SITENEL-PLADES, on January 20th, 2011, the NCP Peru representatives met with the Labor Relations Manager of Telefónica del Perú S.A.A., so that he may answer to the charges regarding the claim raised. At that meeting, the company representative explained his position regarding the Specific Instance filed and the Telefónica Group's objectives in terms of people management and union relations. Likewise, he stated that the companies that currently are part of the Telefónica Group, such as Telefónica del Perú S.A.A, Telefónica Móviles S.A.C. and Telefónica Servicios Comerciales S.A. are found within the top companies,

wherein the workers are more satisfied with respect to the work environment.

2. On February 3, 2011, the Labor Relations Manager of TELEFÓNICA DEL PERÚ S.A.A. sent to NCP Peru the Letter No. REC-440-A-112-2011, wherein it is formally stated its position with regard to the Specific Instance presented.
3. According to the meeting of January 20 and the communication of February 3, 2011, the representative of Telefónica stated the following:
 - The Telefónica Group enterprises have good communication with the unions and proved good faith in the collective bargaining set forth according to the law. Accordingly, it is showed as an example the collective bargaining agreements recently entered into by Telefónica del Perú S.AA., Telefónica Móviles SAC, Telefónica Multimedia SAC and Teleatento del Perú S.A.C. with other unions. As mentioned in the submitted document, these facts are very important since they demonstrate the willingness of companies to respect freedom of association, freedom to negotiate and their commitment to provide economic and labor benefits through the instruments proposed by the unions.
 - Regarding the terms of claims filed by FETRATEL in 2008 to the enterprises that are part of the Telefónica Group, the company indicates that the CUT lacks of representation to present the Specific Instance, since FETRATEL is not part of CUT. Notwithstanding the foregoing, the company states that it has been the MTPE that determined FETRATEL is responsible for negotiating by branch of activity and not individually by each company.
 - With regard to the terms of claims filed by SITENEL, these terms of claim are referred to the contracting enterprises or collaborators of the Telefónica Group, so the enterprises that are part of the Telefónica Group are not involved with this complaint. As expressed by the enterprise, it is not true that these collaborating enterprises depend on Telefónica with regard work and administrative issues. These enterprises are independent institutions, with a varied client's portfolio. The relation with Telefónica is only commercial.

4. Procedure followed and Scope of Action of the NCP Peru

1. As set out in the Guidelines, these Guidelines contain non-binding principles and standards for responsible business conduct consistent with applicable laws and internationally recognized standards⁴. In this case, NCP Peru reviewed the Specific Instance, which deals with non-compliance with the Guidelines on matters of human rights and labor rights, specifically regarding freedom of collective bargaining with Telefónica Group and collaborating enterprises.

⁴ Guidelines of the OCDE. Preface, Number 1)

2. On the other hand, the Specific Instance was filed by CUT, SINTENEL and PLADES. In this regard, it should be noted that the Guidelines only mention that the people who have interest in the case can file specific instances. In 2010, the NCP Peru lacked still of formal procedures to deal with specific instances, thus it was understood that taking into considering the nature of the complaining entities, the three of them could have interest in resolving this alleged labor dispute. In addition, the NCP Peru understood that this conclusion would not adversely affect the procedure of the Specific Instance, since, in case the parties decided to establish a dialogue, they could determine at this stage of the procedure, which entities would be the ideal to participate effectively in the dialogue and make an effort to find a solution to the conflict.

3. The claimants state that the enterprises that are part of the Telefónica Group and collaborating enterprises would not have complied with the Guidelines. In this regard, it should be mentioned although Guidelines do not include an exact definition of multinational enterprise, the Guidelines state that: "*These in general are enterprises or other entities incorporated in more than one country and related in such a way that they can coordinate their activities in different ways. Although one or more of these entities may be capable of exercising a meaningful influence on the activities of others. Its autonomy level within the enterprise may widely vary from one multinational enterprise to another. The Guidelines are intended for all entities belonging to the multinational enterprise (parent enterprises and / or local entities)*"⁵.

Likewise, the Guidelines also stipulate that enterprises should "*encourage, to the extent possible, their business partners, including their suppliers and contractors, to apply principles of responsible business conduct in line with the Guidelines*"⁶.

4. After reviewing the Specific Instance, is understood that it involved a disagreement regarding the interpretation of labor standards on collective bargaining by branch of activity and by enterprise level. Besides, it involves a disagreement regarding the lack of legitimacy of SINTENEL to negotiate with the "collaborating" enterprises of the Telefónica Group. These disagreements have been set forth in the corresponding administrative instances of the MTPE and after completing the administrative procedure, in some cases, in the Judiciary.

5. In this regard, it should be mentioned that the Guidelines state that they do not replace existing national laws nor should they be considered to prevail over them. However, if national legislation conflicts with principles and standards outlined in the Guidelines, enterprises should seek ways of respecting them without infringing national legislation⁷.

⁵ Guidelines of the OCDE. Concepts and principles, Number 4).

⁶ Guidelines of the OCDE. General Principles, Number 13) of Letter A).

⁷ Guidelines of the OCDE. Concepts and Principles, Number 2).

Likewise, according to the Guidelines: "The NCP will not decide that issues do not deserve further consideration simply because parallel processes have already been carried out, or are in progress or are pending for the parties concerned. The NCP should assess whether the offer of good offices will contribute positively to the resolution of issues that would have aroused (...)"⁸.

6. To the extent that, in the specific instance raised, there were ongoing administrative procedures where the disagreements between the enterprises of the Telefónica Group and collaborators and SITENEL were set forth, The NCP Peru understood its participation as a facilitator of dialogue. In this regard, it corresponded to the NCP Peru to offer its good offices in order to provide the parties with a scenario and opportunity for dialogue on all aspects of the Specific Instance. All of this, without taking actions that could adversely affect any of the parties involved in the ongoing administrative processes.

In view of the foregoing, the NCP Peru considered it important to contact and meet with the parties involved in order to have a greater understanding of the positions of two parties. Likewise, to be able to communicate the NCP Peru concerns, as can be seen from the coordination meetings held as set forth in Paragraphs 3, 4 and 5 of the Background section of this Final Evaluation.

7. Besides, the Guidelines further state that in order to contribute to the resolution of issues that may arise with respect to the implementation of Guidelines in specific instances, the NCP shall seek advice from competent authorities and experts.⁹

In this regard, The NCP Peru understood that it corresponded to consult with the MTPE, as a competent sector. This is performed in order to explain to the MTPE the Specific Instance proposes, the work of The NCP Peru, and likewise to obtain information on ongoing administrative proceedings, involving the parties of the Specific instance. Likewise, this is made to reach a fully understanding regarding labor standards under discussion and the administrative procedures to be followed regarding presentation of union claims documents. For this reason, the NCP contacted, gathered and formally consulted the MTPE with regard to several topics as seen in Paragraphs 7, 8, 9, 10 and 11 of the Background section of this Final Evaluation.

V. Considerations of The NCP Peru with regard to the Specific Instance

1. As stated in the Guidelines, the objective of the Guidelines is to ensure that the activities of multinational enterprises are: *"developed in compliance with the public policies, to strengthen the basis of mutual trust among enterprises and societies, wherein they develop their activities, to contribute improve the environment for foreign investment and to enhance the contribution of multinational enterprises for a*

⁸ Guidelines of the OCDE. Comment on implementation procedures of the Guidelines of the OCDE for multinational enterprises, Number 26).

⁹ Guidelines of the OCDE. Procedure guideline, number 2a) of letter C. Implementation in Specific Instances.

sustainable development."¹⁰

2. As stated in Clause 4) of Section 11 of this document, in the Specific Instance filed, the claimants request to NCP Peru to be informed about the proceedings, to open a process of investigation and intervention of the actions of the enterprises of Telefónica Group and collaborating enterprises and order to that group of companies to enter into collective bargaining with their workers without any restrictions or conditions.
3. According to the indications in the Guidelines, as regards Specific Instances, the NCP should contribute to their resolution, offering their good offices in order to provide the parties a scenario and opportunity for dialogue on the aspects that involve the Specific Instance¹¹. However, it does not correspond to The NCP Peru to open investigation processes regarding the actions of Telefónica Group enterprises and collaborating enterprises. What corresponds is that The NCP consults with the MTPE, as a competent sector to fully understand the problem, the regulatory interpretations, administrative procedures with the workers and employers to raise their positions and the criteria used by the MTPE in these cases.
4. In this case, The NCP Peru has reviewed the Specific Instance presented, consulted with the MTPE and offered its good offices to establish a space for dialogue with the parties.

In relation to the revision of the Specific Instance, it should be noted that it has been found that there are several terms of claims filed with MTPE so that FETRATEL and SITENEL can start collective bargaining with Telefónica Group enterprises and collaborators. However, as explained by the parties, we understand that the procedures that are generated because of the presentation of the files to the Group companies and Partners mentioned in this document and their opposition involve disagreement on two specific aspects: (i) That claim files are presented to negotiate at an enterprise level, while the mentioned companies reply that FETRATEL and SITENEL have legitimacy to negotiate at activity branch level; and, (ii) that SITENEL presents claim files to start collective bargaining with Telefónica Group's collaborating enterprises and they indicate that their activities are not only related to telecommunications so SITENEL does not have the legitimacy to negotiate with them.

5. Regarding the coordination carried out with the MTPE, it was consulted on the regulations on collective bargaining by branch of activity and by enterprise. In this regard, the disagreement refers to the different interpretations granted by the parties to the provisions of Article 47 of the Supreme Decree No. 010-2003-TR that approves the Single Revised Text of the Collective Labor Relations Act. In this regard, the representatives of the MTPE explained the administrative procedures that are available to the parties to be applied in case of disagreement on some aspect when presenting bills of claims.

¹⁰ Guidelines for multinational enterprises. Preface

¹¹ Guidelines for multinational enterprises. Guide of Procedures

6. On the other hand, concerning the collaborating enterprises Emerson Network Power Peru S.A.C., Cobra Peru S.A., Consorcio Antonio Lari Mantto e Instalaciones y Tendidos Telefónicos del Perú S.A. - ITETE, in follow-up to this case, we performed several coordinations with the MTPE, as well as consultations. Finally on September 19th, 2012¹², the MTPE pointed out that recently by Resolution No. 022-2011-MTPE / 1/20 the MTPE stated that, due to the principle of primacy of reality and according to what was verified through the corresponding labor inspection, it was evidenced that the staff of the collaborators carried out work corresponding to the Telecommunications area. This Resolution was confirmed by the General Directorate of Labor of the MTPE, through General Directorial Resolution No. 021-2011-MTPE / 2/14.
7. Finally, having reviewed the Specific Instance and its annexes, as well as the disagreements between the parties and having obtained the answers from the MTPE, NCP Perú considers that the failure of the Telefónica Economic Group to comply with the Point 2) of Letter A) of the General Principles of the Guidelines (Human Rights) or concerning Point 1A) of Section IV of the Guidelines (Employment and Industrial Relations) has not been evidenced.
8. With regard to the possibility of dialogue, The NCP Peru offered its good offices to the parties. In spite of the coordination with Telefónica, they stated that the company maintained a good relationship with its unions but, with respect to these particular disagreements, they preferred to deal with them directly through the MTPE.
9. In this regard, having coordinated with the parties involved, having analyzed the Specific Instance, having consulted to the MTPE and offered its good offices to the parties, The NCP Peru considered that its efforts in the present Specific Instance should be terminated.

VI. Final Assessments

1. The NCP Peru considers that it is important to count on with dialogue options that allow the parties involved to solve issues of their interest, through the good practices of NCP. Nevertheless, the NCP Peru considers that the steps it can take to generate opportunities for dialogue are limited by the decision of one of the parties that are not willing to enter into a negotiation period since it considers that divergences must be dealt with in the courts with corresponding administrative or judicial jurisdiction.
2. Regardless of the foregoing, we point out what it is set forth in the Guidelines, that enterprises should encourage their trading partners, including their suppliers and contractors, to apply the principles of responsible business conduct in line with the Guidelines. Likewise, it is important to mention that Guidelines set forth the respect enterprises must maintain with regard to the right of workers employed by them *"in order to entrust trade unions and representative organizations of their own choice*

¹² Official Letter No. 2357-2012-MTPE/4

to represent them in collective bargaining, as well as to initiate constructive negotiations with such representatives in order to reach agreements on employment conditions. This may be done either individually or through entrepreneurs associations ¹³.

3. On the other hand, in this particular case, upon reviewing the Specific Instance, the disagreements between the parties and upon obtaining answers from the MTPE, The NCP Peru considers that there is no evidence of non-compliance with the Guidelines by the Telefónica Group in Peru.
4. Finally, The NCP Peru restates its willingness to establish a forum to discuss and dialogue between the business sector and non-governmental organizations, including workers' organizations with the intention to resolve specific instances as set forth in the applicable laws and guidelines.

Lima, July 17th, 2017

(Signature)
César Martín Peñaranda
Technical Secretariat
National Contact Point in Peru
(Seal: INVESTORS SERVICING DIVISION)

¹³ Guidelines. Section V.