

**Reprieve Complaint dated 19 August 2014 to the UK National Contact Point  
Under the Specific Instance Procedure of the OECD Guidelines for  
Multinational Enterprises in Respect of BT plc**

***Response by British Telecommunications plc***  
**8 October 2014**

**1. Introduction**

- 1.1. By correspondence dated 19 August 2014 addressed to the UK National Contact Point (“NCP”) under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises (“Guidelines”), Reprieve, a legal action charity, renews allegations previously made against British Telecommunications plc (“BT”) in a complaint filed before the NCP (“Original Complaint”) on the grounds that “new information means the reasons for [the NCP’s previous] rejection [of the Original Complaint] no longer apply”.<sup>1</sup> The new complaint alleges that BT has breached the Guidelines by contracting with the US Defense Information Systems Agency (“DISA”) to supply an STM-16 fibre-optic communications cable that connects RAF Croughton to Camp Lemonnier, Djibouti (the “Contract”) (the “New Complaint”). RAF Croughton is a UK-located US Air Force communications Base. Camp Lemonnier is a US Naval Base located in Djibouti.
- 1.2. As is addressed further below, the reality is that the New Complaint does not present any new evidence. Rather, it relies on a recycling of the allegations, previously advanced by Reprieve in its Original Complaint, by *Computer Weekly*, which in turn itself relies on the Reprieve allegations and notes that “Reprieve is expected to persist with further legal action related to the issue”.<sup>2</sup> There is nothing new and material in the *Computer Weekly* articles on which Reprieve relies. The NCP’s rejection of the Original Complaint, on the basis that the “evidence does not show a specific link between the communications service provided and the impacts of drone operations”, should be maintained.

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<sup>1</sup> New Complaint, para 2.8, and footnote 8.

<sup>2</sup> Mark Ballard, “UK Telecoms Infrastructure Used to Support Controversial US Drone Operations”, *Computer Weekly* (2 May 2014)

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## 2. The New Complaint and the purported new evidence of BT's role in US Drone Programme and Mass Surveillance

2.1. In its New Complaint, Reprieve alleges that BT has breached the Guidelines by:

(a) "contracting with the [DISA] to supply the fibre-optic communications cable in question on the grounds that the cable "likely supports the round-the-clock drone strikes in Yemen and Somalia operated by the United States Air Force and Central Intelligence Agency as part of its "targeted killing" programme";

(b) "facilitating the blanket surveillance of telecommunications by the Government Communications Headquarters (GCHQ), the National Security Agency (NSA), and other intelligence agencies", which "has been openly acknowledged as a key part of drone targeting"; and

(c) failing to provide evidence of due diligence mechanisms showing how the company has sought to prevent, address, or mitigate the human rights impacts to which it appears to be contributing, as required in order to comply with the OECD Guidelines. Further, Reprieve alleges that, based on the alleged foreseeable use of the cable for US military drone strikes and on the risk that mass surveillance data may be used in drone targeting, BT has the responsibility to demonstrate that it has complied with the due diligence requirements of the Guidelines as stated in the Review Committee's policy note of 17 January 2014 and taken necessary steps to cease or prevent its contribution to any risk of harm.<sup>3</sup>

2.2. As stated in paragraph 2.4 of the New Complaint, Reprieve first raised the issue of a connection between BT's provision of an STM-16 fibre-optic cable and the US drone programme in its Original Complaint to the NCP dated 15 July 2013. In the Original Complaint, Reprieve alleged that BT had breached the Guidelines (a) "by contracting with [DISA] to supply the fibre-optic system in question on the grounds that the cable "is likely to be used in support of US unmanned aerial vehicles (UAVs) or 'drones' operated by the US Air Force and CIA as part of its 'targeted killing' programme"; and (b) by refusing to provide Reprieve with information showing how BT sought to prevent, mitigate, etc the human rights impacts to which it appears to be contributing.<sup>4</sup>

2.3. The Original Complaint was rejected by the NCP on the basis, inter alia, that the "evidence does not show a specific link between the

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<sup>3</sup> New Complaint, para. 1.1.

<sup>4</sup> Original Complaint, para.1.1.

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communications service provided and the impacts of drone operations. The company describes [the cable] as a standard circuit provided for general communications purposes”.<sup>5</sup>

2.4. The New Complaint is now made with reference to paragraph 3.6.4 of the NCP Procedures concerning the submission of a new complaint on issues previously rejected by the NCP if new information means that the reasons for rejection no longer apply.

2.5. In paragraph 2.6 of the New Complaint, Reprieve states that:

*“After the UK NCP rejected Reprieve’s complaint, journalists began investigating BT’s activities. Fresh evidence was uncovered suggesting BT had constructed the fibre-optic cable with full knowledge that the communications line would utilise Defense Information Systems Network (DISN) routers and KG-340 encryption devices”.*

### **3. BT’s Response to the New Complaint**

#### ***Reprieve’s assertion that BT continues to ignore evidence of its complicity with US Drone programme***

3.1. BT reiterates paragraph 2.5 of its response dated 20 August 2013 to the Original Complaint (the “Original Response”) as follows:

*“In summary, BT can state categorically that the communications system in issue in the Complaint is a general purpose fibre-optic system. It is not a bespoke system and has not been specifically designed or adapted by BT for military purposes, including drone strikes. BT has no knowledge, other than from general press reporting, of US drone strikes and the contract in question does not in any way address any such activity. BT cannot monitor or control the content that is carried on the system.”*

3.2. This statement was correct at the time it was made, and BT can confirm that it remains correct today.

3.3. BT also repeats paragraphs 3.1 to 3.12 of the Original Response regarding the nature of the STM-16 System and Contract. This explained that STM-16 is an industry-standard fibre-optic communications interface specification that has been in use since at least 1990, and that this connectivity standard is incorporated into STM-circuits that BT sells to

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<sup>5</sup> NCP Initial Assessment of the Original Complaint, para. 13.

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many multinational and wholesale customers, and that it is also available from many other telecommunications providers.<sup>6</sup>

3.4. BT notes the contents of the Separate Policy Note on Due Diligence dated 17 January 2014 from the NCP Review Committee (the "Policy Note"). It notes further the concluding paragraph of the Policy Note which says, "*Given the central importance of the Due Diligence provisions of the Guidelines, which arise in this case, we invite the NCP to publish more detailed guidance with regard to the scope of the Due Diligence requirements so that both complainants and companies are clear as to the obligations they place upon companies*". BT looks forward to the more detailed guidance to be published by the NCP in due course.

3.5. In this regard, the NCP will appreciate that a line must be drawn somewhere regarding what BT is required to do in terms of finding out how its equipment will be used, particularly when (as here) the equipment is generic in nature. This reality is recognised in the Policy Note as follows:

*"...an obligation to conduct due diligence cannot be an open-ended commitment to ensure that no harm ensues from whatever product or services it may provide to its customers. This would give rise to a responsibility for whatever a customer (or its further customers) might do – a responsibility that would amount to an open and unrewarded insurance policy against any harm that might subsequently follow"*.

3.6. BT rejects the allegation that its supply of the STM-16 System gave rise to a foreseeable risk of an adverse impact to human rights. There was and remains no reasonably foreseeable or otherwise credible basis for BT to suppose that its supply of a standard circuit for general communications purposes could or would be used in a manner that would adversely impact human rights as asserted in the Reprieve complaints. The NCP assessment concluded previously that, "*the complainants have not substantiated a link between the company's actions and the issues raised sufficient to give it any obligation under the Guidelines beyond a general level of due diligence*".<sup>7</sup> No evidence has been put forward in the New Complaint that warrants overturning the previous decision.

3.7. The stated intention in the Contract to apply KG-340 encryption devices to the circuit also does not change the analysis as it too is an off-the-shelf product that government agencies use "to protect classified

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<sup>6</sup> Original Response, para. 3.2.

<sup>7</sup> Initial Assessment, para. 16; see also Initial Assessment, para. 13.

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communications traversing the information grid”.<sup>8</sup> And the Request for Quotation’s reference to the fact that US government would deploy KG-340 devices at service termination points is of no significance for the simple reason that this reference merely allowed bidders to understand the physical characteristics of the equipment that the end-user would attach to the circuit and therefore to configure its technical characteristics accordingly.

- 3.8. In paragraph 4.7 of the New Complaint, Reprieve refers to remarks made by BT’s Chairman, Sir Michael Rake, at BT’s annual general meeting on 16 July 2014 in response to questions from Reprieve’s representatives. Sir Michael was pointing out that, subject to the requirements of law and applicable human rights guidelines, BT cannot properly enquire into or know what its customers do with the equipment it provides to them. This in no way detracts from BT’s or Sir Michael’s commitment to its human rights responsibilities. BT is fully supportive of the OECD Guidelines and takes its human rights obligations very seriously. BT reviews its policy and compliance programmes regularly and, as stated in its Annual Report 2014, it is undertaking a Board level review of its human rights compliance framework.

***Reprieve’s assertion that BT knowingly modified the Croughton-Lemonnier Fibre-Optic Cable for Military Purposes***

- 3.9. The New Complaint does not contain any information that can be considered to be “new evidence” to support Reprieve’s allegations of BT “likely support[ing]” the US Drone programme and any alleged adverse human rights impacts. As noted above, the purported “new evidence” in question in fact consists of a number of magazine articles published by ‘*Computer Weekly*’.<sup>9</sup> Much of the information contained in these articles appears to be sourced from Reprieve. The articles appear therefore to be almost contrived for the purposes of creating a basis for reopening the Original Complaint.
- 3.10. In paragraph 4.8 of the New Complaint, Reprieve states that investigations by *Computer Weekly* “revealed” on 2 May 2014 how BT’s Contract with the US government for the Croughton-Lemonnier connection stipulated

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<sup>8</sup> [http://www.businesswire.com/news/home/20081013005656/en/SafeNet-launches-Type-1-Certified-10Gbps-Encryptor#.VAc7A53D\\_GI](http://www.businesswire.com/news/home/20081013005656/en/SafeNet-launches-Type-1-Certified-10Gbps-Encryptor#.VAc7A53D_GI); see also

<http://raytheonusainc.com/capabilities/products/kg340/index.html>

<sup>9</sup> New Complaint, paras. 4.8 to 4.13.

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that the cable would be a part of DISN. However, this precise information was before the NCP when it considered the Original Complaint.<sup>10</sup>

- 3.11. The only wholly purportedly new information put forward by Reprieve is in paragraph 4.10 of the New Complaint, where Reprieve asserts that “the contract specified that DISN connection would operate at the highest security levels”, and that, “to achieve this, BT capped its fibre-optic cable with KG-340 encryption devices built specifically to National Security Agency Type-1 Top Secret classification requirements and algorithms”.
- 3.12. These assertions are simply incorrect. The contract does not specify that the cable would operate at the “highest security levels”. The US government would never inform BT, or any other provider of such equipment, of the security status of such a circuit, since this would be operationally sensitive information. BT did not provide or install any KG-340 encryption device. Pursuant to the Contract, the KG-340 encryption devices were to be provided and managed by the US government.
- 3.13. Further, mere knowledge that the US government uses KG-340 cannot of itself operate to impose any additional burden on BT, as Reprieve has urged. As stated above, KG-340 is an off-the-shelf product that simply protects the integrity of secure communications.

### **Summary**

- 3.14. It is clear from the above that, like the Original Complaint, the New Complaint is similarly speculative and does not contain any new evidence of BT involvement in the US drone programme. The only new information put forward by Reprieve relates to an alleged encryption device, which BT did not provide and, in any event, cannot conceivably be construed to raise any red flags under the Guidelines for the reasons already discussed.
- 3.15. Further, BT reiterates paragraph 2.2 to 2.4 of its Original Response regarding the open and active debate on the legality of the US government’s drone programme.
- 3.16. For the avoidance of doubt, BT also reiterates paragraphs 2.6 and 2.7 of its Original Response regarding the question of whether Reprieve can be an “interested party” under the NCP Procedures.

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<sup>10</sup> Original Complaint, para. 3.1, and Original Response, para. 3.4

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3.17. Given:

- (a) that the New Complaint against BT concerns simply the commercial provision of a generic communications system,
- (b) the general character of the communications system, i.e., that it was not tailor-made or adapted by BT for the purposes of facilitating US drone activity and, ultimately, any adverse human rights impacts,
- (c) the entirely speculative nature of the Reprieve allegations concerning the use of the fibre-optic system for purposes of US drone activity,
- (d) the open – and, by the NCP, unresolvable – debate about the legality of the US conduct that Reprieve alleges,
- (e) the fact that BT cannot monitor or control the content of what is carried on the system,

BT is very firmly of the view that there is no reasonable basis for concluding that further examination of this matter by the NCP “could make a positive contribution to the resolution of the issues raised”.<sup>11</sup> There is therefore no basis for proceeding further with this New Complaint before the NCP. BT accordingly invites the NCP to conclude that Reprieve’s claims do not merit further examination and that it will not therefore accept the New Complaint.

***Reprieve’s assertion that BT Facilitates Covert Mass Surveillance and Drone Targeting by the UK and US Governments***

3.18. The allegations raised by Reprieve in paragraphs 4.14 to 4.21 of the New Complaint concern matters not previously raised in the Original Complaint, but equally are not allegations that are in any way based on new information or which are germane to the Original Complaint. These allegations are the subject of proceedings before the Investigatory Powers Tribunal, the judgment of which is expected shortly. It is accordingly not appropriate to address these allegations here.

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<sup>11</sup> Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, p.83, at para.26.

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## 4. Conclusion

- 4.1. For the reasons set out above, BT is firmly of the view that the New Complaint is unfounded and as such should be rejected by the NCP at this Initial Assessment stage, notwithstanding the suggestion that Reprieve may apply to judicially review any such decision. Any other conclusion, unwarranted by the (absence of) evidence, would impose an “[in]appropriate”<sup>12</sup> burden of enquiry on a company like BT and have significant adverse implications for its business and other enterprises similarly situated, without advancing the policies or goals underlying the Guidelines.
- 4.2. Given that the New Complaint is wholly artificial, lacking in any foundation and is on its true construction a disguised complaint directed at the US, BT does not consider itself under any obligation to provide Reprieve any of the information or take any of the actions requested by Reprieve at section 6 of the New Complaint, save to note in passing that the amendments Reprieve proposes be made to the Contract would be wholly impracticable.

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<sup>12</sup> Initial Assessment, para. 15.

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