

Memo

Subject: Complainants' observations following failed mediation in relation to complaint by SOMO on behalf of 474 Myanmar civil society organisations to the Norwegian NCP, in relation to the operations of Telenor Myanmar Ltd., a former subsidiary of Telenor ASA

From: SOMO, on behalf of 474 Myanmar civil society organizations (the complainants)

To: Anna Triponel and Mark Stevens, mediators

Date: 9 September 2024

Over the past nearly three years, we, the complainants, have faithfully engaged in the process set up by the Norwegian National Contact Point (NCP) process with a view and hope to reaching a mediated solution with Telenor to bring its actions in line with the OECD Guidelines and address the severe human rights risks to which it contributed when it exited Myanmar in an irresponsible manner in 2022. We regret that the mediation has failed to achieve that aim, but are grateful for the efforts made by the Norwegian NCP and the mediators throughout the process. This memo comprises the complainants' brief final reflections on the mediation process. We will continue to engage in good faith in the process as the NCP moves into the next phase of examining Telenor's behaviour in light of the OECD Guidelines and preparing a final public statement to conclude the process.

The complainants contend that, from the very beginning and through to the end of the mediation, Telenor did not meaningfully engage in the NCP process and that this lack of meaningful commitment to and good faith engagement in the process has compromised the outcomes of the mediation. Telenor's intentional delay of the mediation until it completed its sale in March 2022, five months after the complaint was accepted by the NCP and mediation was offered, was indicative of its lack of commitment to address or mitigate the risk of severe adverse impacts with regards to its business decisions in Myanmar. Although interim agreements were made between Telenor and the complainants, Telenor continuously refused to meaningfully engage with the complainants on the core aspect of the complaint – Telenor's responsibility to contribute to the mitigation of risks to which it contributed through the way in which it exited Myanmar – which resulted in the breakdown of the mediation.

Telenor delayed the mediation process until it completed its sale and the harm was done

Our intention in filing the OECD Guidelines complaint was to engage in meaningful NCP-facilitated mediation prior to the completion of the sale in order to identify areas of leverage to reduce the adverse human rights impacts of Telenor's sale. The complainants, who included

many of Telenor's customers in Myanmar that were being put at risk by the proposed sale, filed a complaint to the Norwegian NCP on 27 July 2021, well in advance of the sale taking place and thus allowing ample time to engage in a dialogue about steps that Telenor could take to mitigate risks associated with its disengagement, as expected by the OECD Guidelines. Rather than agreeing to engage with the complainants in the NCP process, Telenor argued that the NCP should reject the complaint and prevent a mediated dialogue within the NCP process. Nevertheless, the Norwegian NCP issued an initial assessment accepting the complaint and offering its good offices for mediation on 27 September 2021, still well in advance of the sale going through. Rather than respecting the NCP's offer to start mediation immediately, Telenor refused to allow the mediation process to begin, preventing meaningful dialogue and intentionally delaying the process until after important decisions were taken and severe risks were created by the March 2022 sale of the company – including highly sensitive historical (dating back five years) data of its 18 million Myanmar subscribers and its telecommunications interception capabilities – to the Myanmar military-linked conglomerate Shwe Byain Phyu (through the front company M1 Group). By intentionally delaying the process, Telenor eliminated important moments for engaging with stakeholders and exercising leverage and forced the eventual discussion into being one of mitigating and remediating rather than preventing risks in the first place.

Telenor was dishonest and disingenuous about the buyer

In addition to delaying mediation, Telenor acted dishonestly and disingenuously regarding the identity of the real buyer of Telenor Myanmar. Telenor's initial proposal was to sell Telenor Myanmar to Lebanon-based M1 Group; however, already in November 2021 it became clear that the real buyer was to be the Myanmar military-linked conglomerate Shwe Byain Phyu (SBP), with M1 Group acting as a fronting vehicle. In January 2022, as Telenor was still delaying the start of mediation, we asked Telenor for a strictly confidential discussion about how to prevent the additional (and even more severe) risks posed by a sale to SBP as compared to M1. Rather than engage, Telenor lied directly to us, claiming that, as far as they knew, the sale was still to M1 and M1 only and that they had no knowledge of SBP being involved. This is demonstrably false. In January 2022, when it was widely reported in the media that the ultimate buyer was SBP, we asked Telenor to please "drop the charade" and have an honest discussion with us about risks associated with a sale to SBP and what could be done (by Telenor and jointly) to prevent them. Incredibly, Telenor maintained this disingenuous charade and continued to refuse mediation until the long-planned transfer of the company to SBP was fully completed in May 2022.

Lack of meaningful outcomes from interim agreements

Despite Telenor's dishonesty and its failure to engage meaningfully in the NCP process for nearly one year after the initial complaint was filed, we remained hopeful that, now that the sale had been completed, NCP-facilitated mediation could lead to meaningful outcomes for the Telenor Myanmar customers and workers now facing severe risks to which Telenor had contributed through its disengagement, as is expected by the OECD Guidelines. The June 2022 mediation led to an interim agreement with several action points to be followed up on and that had the potential to lead to meaningful outcomes. However, despite the intense yet positive engagement

during the physical mediation sessions in Stockholm, as soon as the physical mediation was over, Telenor continued its pattern of not engaging meaningfully in the process and refusing to recognise its responsibility for contributing to severe risks under the OECD Guidelines. As a result, and despite the passing of two additional years, no meaningful outcomes resulted from the action points in the interim agreement. Below we reflect briefly on the lack of meaningful outcomes from the various commitments in the interim agreement:

- **Meaningful engagement and information exchange with stakeholders and rightsholders**

Despite detailed requests for specific, useful information, Telenor never provided any information in these engagements that was useful for mitigating ongoing risks or not already known to the complainants. Telenor frequently provided information to the complainants only after it was already published on Telenor's corporate website. For this reason, the exchange was discontinued almost immediately after it started. Everyone recognized that it was pointless and no one made an effort to keep it up.

- **Independent ICT ecosystem study and digital security relief mechanism**

An explicit objective of the ICT ecosystem study was to set the ground for exploring a digital security relief mechanism to which Telenor would contribute along with other actors in Myanmar's ICT ecosystem. However, as soon as we began discussing the terms of reference for the study, it became clear that Telenor was seeking to prevent the study from providing any meaningful insights into its own contribution to the actual digital footprint of Myanmar telecom customers, seeking to deflect the focus from its own actions and role onto that of other actors. This was yet another indication that Telenor was continuing its pattern of denying or ignoring its own responsibility for the severe human rights risks in Myanmar associated with its sale. This failure to acknowledge its responsibility was also visible in Telenor's lack of seriousness with regard to the digital security relief mechanism. The exploration of a potential mechanism in the study was minimal, and recommended the parties needed to explore this further. For this reason, we hoped the final mediation could focus on exploring the development of such a mechanism as agreed in the MOU. In preparation, we consulted the full group of complainants and rightsholders on the digital security needs of local users and discussed a potential concept for the mechanism to propose in the final mediation. Unfortunately, Telenor was apparently unwilling to discuss the concept for the mechanism, including its own financial contribution, and thus the final mediation was never held.

- **Revisiting assessment of risks to former employees**

Former Telenor Myanmar employees faced severely increased risks of harassment and violence due to their association with Telenor following Telenor's exit, in particular because of the way in which Telenor exited. Telenor agreed to conduct another review of their initial assessment of risks to former employees. Telenor sought to conduct the review using an internal hotline and internal audit/investigations process. However, Telenor did not provide secure enough channels for employees to feel comfortable discussing their security concerns. Telenor could not guarantee that their identity would be protected. The complainants shared that the former employees did not feel comfortable being interviewed by anyone from Telenor's internal audit office because the internal auditor is still a Telenor employee that reports directly to the board of

Telenor, and the former employees did not feel that their identity could be protected. Given the severe risks they faced, this was not acceptable to them. They offered to provide anonymized written feedback about their situation to Telenor until Telenor could provide a secure way for them to engage, but Telenor refused to accept this offer, insisting that the employees would need to participate in an interview (either physically or online) that would expose their identity to the auditor.

- **Internal assessment of lessons learned**

Telenor completed an internal review and sharing of lessons learned and had invited the complainants to provide input; however, as per an email exchange on 9 December 2022 between the complainants and Telenor, the complainants had requested clarification on the outcome of the internal review and had voiced that we did not feel comfortable providing input without knowing how our perspectives were contributing to the review. Unfortunately, Telenor continued its pattern of not providing any non-public information to us, responding that they could not disclose any further information on its review process and outcomes. We responded that we were disappointed by the continued lack of openness and trust from Telenor.

- **Telenor's sharing of lessons learned**

Telenor conducted an internal learning process that included input and reflections from business and human rights experts on its disengagement process, including organizing an in-person workshop and several meetings with these experts. Bizarrely, although the discussions Telenor sought to have with these experts were directly related to the NCP complaint, Telenor never informed us about this process. Following Telenor's typical pattern throughout the NCP process, we only heard about it following the public release of its report. Although there is of course nothing wrong with Telenor consulting other experts (and the report from the session with the other experts is actually quite interesting and affirming of many of the things we have been saying in the NCP process), Telenor's lack of communication with the complainants on this action point is indicative of Telenor's lack of transparency and trust with us throughout the mediation process. Transparency and improved information exchange were key elements for the success of this mediation process, yet Telenor's lack of exercise of these principles were apparent in all of the action points as listed above.

Last-minute cancellation of the final mediation and next steps

Despite these setbacks and the continued lack of meaningful engagement by Telenor, the complainants were still counting on the process and hoped that the final mediation would finally turn the tide and see Telenor meaningfully engage with a view to coming to a joint solution on the core issue of the complaint, which remained how Telenor could – in line with its responsibilities under the OECD Guidelines – contribute, including financially, to the mitigation of risks to which it contributed as part of its exit. However, Telenor's apparent refusal to discuss this in a meaningful way left the parties "too far apart" and led the mediators to cancel the final mediation at the last minute.

Following from all of the above, we cannot but conclude that Telenor did not meaningfully engage in the mediation, and that there have unfortunately been no positive outcomes from this 3-year process which started when the NCP accepted the complaint and offered its good offices

in September 2021. Telenor has wasted our time, as well as that of the mediators and the NCP. Given that the mediation has failed, we are requesting that the Norwegian NCP proceed to the next stage of the NCP process in which the NCP itself examines whether or not Telenor's behaviour was in line with the OECD Guidelines in relation to the matters raised in the complaint and release a public final statement providing recommendations as appropriate to Telenor regarding its behaviour in light of the OECD Guidelines. In order to keep the NCP's examination manageable, the NCP could use the areas of agreement between the parties in the interim MoU (i.e. section II on "Joint Agreements and Acknowledgements") as a starting point. We further respectfully request that the NCP include in its final statement an examination of whether Telenor – according to the factors provided by the OECD Guidelines and due diligence guidance - contributed to severe human rights risks to both its former customers and workers in Myanmar through the manner in which Telenor exited Myanmar. We remain at the NCP's disposal to provide any information or analysis necessary during the final statement phase.

We wish to reiterate our thanks to and appreciation for the mediators for all their efforts to make this mediation a success, and to the Norwegian NCP for facilitating the mediation. We remain hopeful that the NCP's final statement and recommendations will contribute to furthering the implementation of the OECD Guidelines by Telenor and other companies that may find themselves in a similar situation. That in itself would be a valuable contribution to the purpose and the intention of the OECD Guidelines for Multinational Enterprises for Responsible Business Conduct.