PRIVACY INTERNATIONAL & GAMMA INTERNATIONAL UK LTD: FINAL STATEMENT AFTER EXAMINATION OF COMPLAINT

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

DECEMBER 2014

Contents

Summary of the conclusions

- **The UK NCP finds that actions of Gamma International UK Limited were inconsistent with the following provisions of the OECD Guidelines: Chapter II, Paragraphs 2, 10 & 13, and Chapter IV 1,4, 5 & 6.**

- **The UK NCP recommends that Gamma International UK Limited takes the following actions to make its conduct more consistent with the Guidelines: that the company takes note of evidence from international bodies and UK government advice in its future due diligence, that it participates in industry best practice schemes and discussions, that it reconsiders its communications strategy to offer the most consistent and transparent engagement appropriate for its sector, and that, where it identifies that its products may have been misused, it co-operates with official remedy processes.**

- **The UK NCP cannot conclude that Gamma's actions are inconsistent with the other Guidelines issues examined (Chapter II, Paragraphs 11 & 12 and Chapter IV, Paragraphs 2 & 3). This is because examination has not been able to confirm that the supply alleged by the complainants took place, and took place in a period when these provisions applied.**

- **The UK NCP will issue a follow-up report to this Final Statement in November 2015.**

Background

OECD Guidelines for Multinational Enterprises

1. The Guidelines are voluntary principles for responsible business conduct in areas including employment, human rights and the environment. As an OECD member government, the UK must maintain a National Contact Point (NCP) to promote the Guidelines and consider complaints that multinationals based or operating in the UK have breached the Guidelines.

2. The UK NCP is based in the Department for Business, Innovation and Skills (BIS) and funded by BIS and the Department for International Development (DfID). A Steering Board including members from business, trade unions and civil society has general oversight of the NCP.

The UK complaint procedure

3. Full details of the NCP's process and statements are at http://www.bis.gov.uk/nationalcontactpoint . The complaint process is divided into the following stages:

   a) Initial Assessment: desk-based analysis of the complaint and the company's response to decide whether issues raised merit further examination;

   b) Mediation OR examination: If the UK NCP accepts that issues merit further examination, it offers mediation to parties to help them resolve the issues. If conciliation/mediation is declined or fails to achieve a resolution, the UK NCP examines the complaint further and reach findings on whether the company's actions are consistent with the Guidelines;

   c) Final Statement: the NCP issues a Final Statement recording the agreement reached by the parties or, alternatively, its findings on the company's actions. If appropriate, the Final Statement includes recommendations to help the company make its conduct consistent with the Guidelines;

   d) Follow up – where a Final Statement includes recommendations, or where an agreement between parties provides for it, the NCP publishes a further statement based on reports from the parties at a specified interval (usually a year) after the Final Statement.

Details of the parties involved

The complainants

4. The lead complainant is Privacy International, an NGO that works to defend the right to privacy across the world and to fight unlawful surveillance and other intrusions into private life by governments and corporations. Privacy International was founded in 1990 and is funded mainly by charitable bodies in Europe and North America.

5. Co-complainants are:
   a) the European Centre for Constitutional and Human Rights (ECCHR), an NGO working to protect civil and human rights worldwide, based in Switzerland
   b) Reporters Without Borders, an international NGO that advocates press freedom and freedom of information
   c) Bahrain Centre for Human Rights, an NGO that defends and promotes human rights in Bahrain.
   d) Bahrain Watch, a research and advocacy organisation formed in 2012 by activists and researchers with personal and academic ties to Bahrain.

The company

6. Gamma International UK Limited is part of Gamma Group, a group of companies founded in the 1990s that supplies and trains government agencies in the areas of communications monitoring, data recovery and forensics, and technical surveillance. Gamma Group's website reports that it has technical and sales offices in Europe, Asia, the Middle East and Africa. A sister company, Gamma TSE, supplies off-the-shelf surveillance systems and vehicles to government agencies worldwide.

7. The company's legal representative informed the UK NCP that Gamma International UK stopped actively trading in 2013. The UK company remains in existence, however.

Initial Assessment of the complaint by the UK NCP

8. The complaint was made in February 2013. It alleged that Gamma had supplied a spyware product – Finfisher – to agencies of the Bahrain government which had used it to target pro-democracy activists. The complainants named three specific activists whose privacy they said had been breached by their being targeted with Gamma's product. The complainants also alleged that it was likely that the product had been used against other activists, including some who were detained or mistreated by the authorities as a result.

9. The UK NCP's Initial Assessment of the complaint can be found at https://www.gov.uk/government/publications/uk-ncp-initial-assessment-complaint-from-privacy-international-and-others-against-gamma-international-uk-ltd . The NCP accepted issues with regard to the following Guidelines obligations:

Chapter II General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

A. Enterprises should:

2. Respect the internationally recognised human rights of those affected by their activities.

10. Carry out risk based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines through their own activities, and address such impacts when they occur.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

13. In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.

Chapter IV Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

3. Seeks ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

4. Have a policy commitment to respect human rights.

5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

6. Provide for or co-operate though legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to those impacts.

10. The UK NCP applies the updated 2011 Guidelines to the actions of companies from 1st September 2011 and to outstanding impacts known to the company at that date.

11. Because of uncertainty over when the equipment was supplied, the complainants also cite provisions of the 2000 OECD Guidelines, which were applied by the UK NCP until 1st September 2011. The complainants cite Chapter II, Paragraphs 2 & 10 and Chapter III Paragraph 5 a,b and c. The UK NCP notes that the Chapter II provisions are retained (as Paragraphs 2 and 13 respectively) in the 2011 Guidelines, and the NCP has considered the company's observance of these provisions on the basis that they are an ongoing obligation throughout the period considered in the complaint. Chapter III Paragraphs 5 has the nature of an encouragement to companies to

communicate information, rather than an obligation to do so, and the NCP has not considered this aspect further.

UK NCP process

Initial Assessment

12. The UK NCP received the complaint on 1st February 2013 and issued its finalised Initial Assessment accepting the issues for further examination in June 2013. The Initial Assessment is published at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208112/bis-13-947-complaint-from-privacy-international-and-others-against-gamma-international-uk-ltd.pdf

Mediation

13. Parties accepted in principle the NCP's offer of mediation, and Professor Roy Lewis was appointed as mediator. A meeting of the parties with the mediator took place on 11th September 2013.

14. After this meeting, the parties exchanged correspondence over a number of weeks without making progress. On 22nd November the UK NCP commissioned a progress report from the mediator including an assessment of the prospects for agreement. The report was received on 13th December and shared with the parties. On the basis of the report, the UK NCP concluded that mediation had failed to produce an agreement and notified the parties that it would make a further examination of the complaint. The complainants asked the UK NCP to pass on their thanks to the mediator.

15. In June 2014, the UK NCP was made aware by a third party[1] of concerns expressed by one of the complainant organisations that the failure of mediation was partly due to a failure to ensure that the company's representative at the mediation meeting was authorised to discuss the issues. Responsibility for this aspect of mediation falls to the UK NCP and the party concerned (rather than the external professional mediator). The UK NCP notes that the legal representative who attended the mediation meeting has been the lead (and only) contact offered by the company throughout the complaint process.

16. The UK NCP notes that parties should refer to it any concerns about the complaint process directly and at the appropriate time for them to be addressed.

Further examination

[1] OECD Watch http://oecdwatch.org/

17. As the further examination began, Gamma notified the UK NCP that it considered there was a risk of prejudice to parallel proceedings if the complaint proceeded to a Final Statement. Gamma referred to proceedings previously mentioned during the Initial Assessment, in which Privacy International sought Judicial Review of a decision by HM Revenue and Customs (HMRC) that it could not provide information to Privacy International about whether exports by Gamma were under investigation. Gamma was not a party to the Judicial Review proceedings

18. Gamma also asked the NCP to note that any HMRC investigation of its exports (whether or not revealed as a result of the Judicial Review) could potentially be prejudiced by the NCP's further examination. The UK NCP informed HMRC about its further examination before proceeding (see Paragraph 54.).

19. The UK NCP advised Gamma that it did not consider the Judicial Review proceedings themselves justified suspension of the examination, and asked Gamma to provide more details of the risks it had raised. The examination was suspended for a short time to allow these details to be received (and also because it initially appeared a conclusion to the Judicial Review was imminent – this was subsequently delayed). Gamma did not submit the details requested by the NCP.

20. The UK NCP notes that the Judicial Review ruled on 12th May that HMRC should reconsider its decision not to provide information to Privacy International. The UK NCP understands that HMRC has subsequently provided some information to Privacy International. The information has not been shared with the NCP.

UK NCP analysis

Information reviewed in further examination

Complainants

21. In addition to the information provided in the complaint, the complainants provided, at the NCP's request, details of email exchanges between Privacy International and Gamma Group in 2012. The complainants also drew to the NCP's attention online media and NGO reports that "hacking" of Gamma's servers in July 2014 obtained information about company communications with Bahrain.

Company

22. In addition to its response to the complaint, the company provided answers to some enquiries by the NCP about its status, its ceasing to export and its development of a code of conduct relevant to human rights obligations under

the Guidelines. The company did not provide any information in response to an earlier enquiry by the NCP about reported comments of the Gamma Group Managing Director. It did not offer any other information in the further examination.

Other sources

23. The NCP obtained additional background information from UK government statements, and spoke to officials in the UK Government's Foreign and Commonwealth Office (FCO) Bahrain team, officials involved in export controls work (in BIS and in HMRC), and BIS and FCO officials involved in cyber security policy.

24. The NCP also made online searches for additional information about public statements made by Gamma and by other companies in the sector about their actions and policies.

Information sharing

25. All the information provided to the NCP has been shared with the parties in the complaint. Information is shared on the understanding that while the complaint is under consideration it should not be shared further or made public. After the process is complete, parties are free to discuss it but should not share information provided by another party without its permission.

Limitations of information review

26. The UK NCP operates within boundaries set by the OECD Guidelines, including the voluntary nature of the Guidelines and the requirement on NCPs to operate transparently.

27. In this complaint, these boundaries mean that the UK NCP has not been able to verify key facts relating to the complaint. The UK NCP has no powers to require any party to provide information to it, nor any special status permitting it to obtain confidential information that other government officials are under statutory obligation to protect. The UK NCP expects, in any case, to share information it obtains with the parties. The UK NCP has some ability to share sensitive information on a conditional basis. Its ability to do this depends on parties' own transparency or confidentiality obligations, however, and also on the level of good faith with which parties approach the process. Where there is little trust or limited engagement, it is unlikely that sensitive information will be shared.

28. The UK NCP has made findings where it believes that information is available to support them.

NCP findings

UK NCP's understanding of the product

29. The UK NCP understands the Finfisher range of products to be software tools permitting both "intrusion" (covert access to information held on the devices it is sent to) and "remote monitoring" (covert access to communications of the people using the devices and their contacts). The products are designed for use against targeted individuals rather than surveillance generally. From information in the public domain, the NCP understands that contracts typically involve the customer obtaining a set number of software licences which dictates the maximum number of targets at any one time (if all the licences are in use against targets, the customer will then need to end use against one target to start use against another).

30. The UK NCP understands that the effectiveness of this type of product depends on its not being detected by the target. Personal security products are updated regularly to respond to known threats, and intrusion tools generally need to be updated to evade them.

31. From information provided to the complainants by UK government officials involved in export controls, the UK NCP understands that the Finfisher range includes products subject to export controls. Gamma was informed of this in August 2012, in response to an enquiry it made in June 2012. Export controls do not apply to products directly, but apply because (as submitted) they use controlled cryptography.

UK NCP's understanding of the relevant period to any supply

32. Gamma has declined to tell the UK NCP whether any supply was made[2] (for customer confidentiality reasons), but has told the UK NCP that Gamma International UK Limited ceased any exports of Finfisher software in April 2012 and soon after that (around July 2012) ceased any exports of hardware components of the system (some components continued to be shipped to Germany later in 2012 but not as exports).

33. In the complaint, the complainants said they did not know when any supply was made. The complainants subsequently referred the UK NCP to media reports about the hacking of Gamma's servers in July 2014, and these reports say that information the hacker obtained about Bahrain covered a period from 2010 to 2012.

34. The UK NCP also viewed online a statement by another communications company which suggests that this company provided monitoring centre services to the Bahraini authorities until March 2009.

[2] The NCP notes that Gamma Group's Managing Director is reported to have stated that the Group did not make any supplies to Bahrain.

35. Based on all the above, the UK NCP takes April 2009 to April 2012 as the period within which it is likely that any supply to Bahrain would have taken place. The NCP has considered this as the relevant period for its further examination of the issues. The application of the 2011 OECD Guidelines to this period is discussed by the NCP below.

Do provisions of the 2011 Guidelines apply?

36. General provisions of the Guidelines obliging companies to respect human rights (Chapter II, Paragraph 2) and to encourage business partners to apply Guidelines standards (Chapter II, Paragraph 13) were in effect before 2011. However, other provisions cited by the complainants were only added to the Guidelines in the 2011 update. As noted at Paragraph 10 above, the UK NCP applies the new provisions to actions of enterprises from 1st September 2011 and outstanding impacts known to the company at that date.

37. In this case, a supply could have taken place either before or after September 2011 (the information offered by the complainants in August 2014 and noted by the NCP at Paragraph 28 above suggests any supply would have been before September 2011). The UK NCP cannot hold Gamma accountable under the 2011 Guidelines for actions it took before 1st September 2011, unless those actions have outstanding impacts that the company is aware of and able to address. The complainants allege that Gamma can address the alleged abuse of its equipment by the Bahraini authorities by ceasing to update it and/or by "switching it off".

38. Neither party offered the UK NCP information that would verify whether the software could be switched off once supplied. The view of UK government officials working in cyber security policy is that it is unlikely to be feasible for a company in the cyber security to build a remote switch-off option into its products because of the effect on relationships with its (existing and future) customers.

39. As previously noted, however, a company can exercise some control via the software licensing mechanism to prevent a user deploying the product against more targets than the contract allows. A company may also stop updating the product so that it is less effective as security products develop counter measures. The UK NCP considers that Gamma's ability to take these kind of actions would depend on the terms of the relevant contracts, details of which have not been made available to the UK NCP.

40. The UK NCP does not consider that uncertainty about Gamma's ability to address any impact outstanding at 1st September 2011 affects the application from 1st September 2011 of obligations to have appropriate policies and (due diligence) practices.

What information was available to Gamma about human rights risks of a supply of this type to Bahrain in the relevant period?

41. Nobody has suggested that Gamma has a role in deciding who is targeted or verifying whether persons targeted are “legitimate targets”. The suggestion the complainants make is that the company should have made a judgment about the general risk that a supply to Bahrain would lead to the product being used for internal repression.

42. In considering how a company should regard a business relationship with a government or its agencies, the UK NCP considers information available to the company about findings of relevant international bodies (such as the UN) and any guidance from its home government (in this case the UK government), as well as information available from the host government itself. The UK NCP does not make any independent assessment of a country’s human rights record and does not consider that it is within its remit to do so.

43. There were no UK legal restrictions (sanctions) against Bahrain during the relevant period. Gamma did not apply for an export licence, and so did not receive any direct UK government advice about supply to Bahrain.

44. Bahrain was not a “country of concern” in any of the Annual Reports of the UK Foreign and Commonwealth Office (FCO) during 2009-2012 (or subsequently). The 2010 report notes that Bahrain had implemented recommendations of its Universal Period Review by the UN Human Rights Council. This review took place in May 2008, with the UK performing a rapporteur role, and was generally favourable, recognising reforms made by Bahrain in a number of areas. The report does note some general concerns about freedom of expression.

45. Unrest in Bahrain in February/March 2011 was well reported and clearly raised new risks of abuses of human rights. The subsequent report of the Bahrain Independent Commission of Inquiry (BICI) clearly stated that systematic abuses of human rights occurred, including serious abuses: killings, torture and ill-treatment. The report does not appear to contain any specific allegations about surveillance of activists, but it does make clear that many activists were detained without being implicated in serious offences (of the kind that would justify surveillance).

Can specific human rights abuses the complaint refers to be verified?

46. The complaint refers to spyware sent to 3 individuals: Ala’a Shehabi, Husain Abdulla and Shehab Hashem. None of these individuals appears to have been arrested or detained by agencies of the Bahraini government as a result (although one at least had been arrested previously. Two of the three were living outside Bahrain at the time). If they were targeted illegitimately, the abuse therefore appears to have been an abuse of their right to privacy only. The NCP has not been made aware of any information that suggests these individuals were targeted for legitimate security reasons.

47. The right to privacy is nonetheless an important human right. The UN recently re-affirmed the importance of the right to privacy and the application of human

rights law to digital communications in its report The Right to Privacy in the Digital Age.[3] (and noted also that interference with the rights to privacy can affect the free exercise of other rights).

48. The complaint makes a link between the alleged abuse of these individuals' right to privacy and abuses of other rights of individuals detained by Bahraini authorities whose experiences are reported in the complaint. The complainants say that if Gamma's product was used against the 3 identified individuals, it is likely it was supplied to the Bahrain authorities, implicating Gamma in the abuses of these individuals.

49. Within the context of the UK NCP examination, it has not been possible to verify that agencies of the Bahraini government sent the spyware to the 3 named individuals. The NCP has not been able to refer to any admission by the state or any relevant legal decision. The UK NCP notes that some of the individuals are pursuing (or considering pursuing) legal action and this may subsequently clarify the position.

50. In the UK NCP's opinion, the complaint makes a strong circumstantial case, principally based on a technical analysis of the product, on other accounts of people detained by the Bahraini agencies, media reports referring to use of interception by Bahrain state agencies, and Bahrain's 2009 Lawful Access Regulation.

Can it be verified that Gamma's spyware products were sent to the named individuals and/or supplied by Gamma to the Bahraini authorities.

51. Within the context of the UK NCP examination, it has not been possible to verify that Gamma supplied the Finfisher products to agencies of the Bahrain government.

52. Gamma declines to say which countries it supplied the product to. The company says that it does not consider it appropriate to confirm or deny the identity of its customers, because of the risk of prejudice to legitimate police and security operations. The UK NCP notes, however, that the Gamma Group's Managing Director Martin Muench is quoted in online press reports as denying that any supply was made to Bahrain.

53. The UK NCP notes that other companies in the sector also decline to identify customers, and UK government officials working in cyber security policy have commented that it is standard for companies supplying similar products not to comment on the identity of their customers. There is no UK statutory requirement for companies to supply this type of product only to governments.

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3 http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf

54. The complainants do not offer any information that verifies a supply by Gamma to Bahrain. The UK NCP notes that Privacy International has sought information about Gamma's exports from UK government officials dealing with export controls and licensing. BIS officials informed Privacy that (as of September 2012) Gamma had not sought any export licences for the Finspy system. A subsequent response by HMRC that it could not confirm or deny whether it was investigating Gamma's exports was challenged by Privacy via Judicial Review proceedings in April 2014.

55. The UK NCP asked HMRC whether it could provide any further information that could be shared with the parties relating to exports by Gamma. HMRC did not consider that it could provide information, noting that HMRC cannot legally disclose taxpayer related information unless there is a specific statutory gateway that allows it to do so. This includes disclosures to other government departments and their agencies, local authorities, the police or any other public bodies.

56. Based on the information reviewed and shared by the UK NCP, the NCP considers that it is reasonably certain that the product reported by the activists as having been sent to them was Gamma's. The technical analysis offered by the complainants has not been challenged. In an earlier response to the analysts' report, Gamma Group's Managing Director is reported to have suggested that the product could have been a stolen copy of Finfisher (no suggestion is made as to who may have been responsible for any theft).

57. As set out above, the UK NCP has not been able to verify whether Gamma supplied the product to Bahrain (and so cannot verify a business relationship between Gamma and Bahrain).

58. Gamma has not offered the NCP any information that rules out a business relationship with Bahrain. Information offered by the complainants appears to show that Gamma was willing to market its products to security agencies in Egypt whose activities have raised human rights concerns (even if it cannot be shown that this resulted in a supply). Media reports viewed by the NCP record statements by Gamma Group's MD and Gamma International UK Limited's lawyer that no supply was made to Bahrain, but Gamma has not made any such statements to the UK NCP.

Is Gamma linked to impacts, either its own activities or by a business relationship

59. The UK NCP cannot verify the allegation that Gamma is linked to abuses through a supply to Bahrain because it cannot establish that there was a supply at a time when available information about human rights risks would have ruled it out, and also because it cannot establish that Gamma had the capacity to take any action with regard to impacts that became known after any supply.

60. The UK NCP notes, however, that in the case that Gamma Group's MD is reported to have described – where the product was stolen – while Gamma

would not be responsible for any misuse of the products, it could potentially take action to help address impacts of misuse. Gamma has not responded to an enquiry from the NCP about whether it investigated any theft of the product or developed any new policies to address unauthorised use, and does not appear to be co-operating with action pursued by or on behalf of victims.

Did Gamma have human rights policies and due diligence processes that would protect against abusive use of its products

61. No. In its response to the complaint, Gamma provided a copy of a human rights policy that it said was under development by the Gamma Group in partnership with the Electronic Frontiers Foundation (EFF). Gamma subsequently advised that the partnership with EFF had ended, but that the policy had subsequently been adopted across the Gamma Group. The NCP could not find any reference to the policy on Gamma Group's webpage or any reference to the partnership on the EFF site (the NCP notes that EFF is currently assisting a US citizen in a legal action against the Ethiopian state in connection with alleged surveillance using Gamma's product).

62. Based on statements by Gamma, it appears that the company relies on the UK Government (and other European governments and bodies) to identify, through the export controls regime, countries of concern. Human rights assessment is part of the export control regime for those products and services that are subject to controls. The NCP notes Gamma's advice that it stopped exporting the Finfisher software in April 2012. The company's enquiry to UK Export Controls officials about whether a product (Finspy) required an export licence was made after this, in June 2012. Gamma does not appear to have applied for a licence for this product subsequently, so no assessment would have been made.

63. The UK NCP accepts that in this sector there will be good reasons for limiting the information publicly available about products, customers and operating standards. The UK NCP also accepts that this is a sector in which human rights policies adopted in other sectors may not be appropriate, and it should not be assumed that a failure to communicate policies means that a company does not apply them. The UK NCP has , however, viewed policy statements by other companies in the sector, that set out their approach to human rights/ internal repression risks.

64. The NCP notes that Gamma does, by its own account, limit its customer base and, through the licensing system, the number of targets customers can select. These actions do not appear sufficient, however, to meet obligations under the Guidelines.

Does Gamma provide for or co-operate in legitimate remedy processes

65. Paragraph 6 of the Human Rights chapter of the Guidelines obliges enterprises to provide for or co-operate through legitimate processes in the

remediation of adverse impacts where they identify that they have caused or contributed to these impacts.

66. The NCP has noted above (Paragraph 55.) that Gamma Group's Managing Director suggested that the product reported by activists could be a stolen copy of its product. If Gamma considered that its product had been misused in this way, the UK NCP considers that it had (and has) a responsibility to co-operate with any enquiries into this misuse and adverse impacts on the rights to privacy that may have resulted.

67. Enterprises are also obliged under the Guidelines to encourage business partners to apply Guidelines standards. Gamma's business partners are state agencies. The UK NCP accepts that it may not be practical or appropriate for Gamma to exert influence on such partners directly. It appears to the UK NCP that the obligation to encourage is not met where partners know they will not be named and can rely on Gamma not publicly stating the human rights policy it applies in selecting them.

Conclusions

68. On the basis of its further examination, the UK NCP has concluded that Gamma International UK Limited has not acted consistently with provisions of the OECD Guidelines requiring enterprises to do appropriate due diligence (Chapter II, Paragraph 10 and Chapter IV, Paragraph 5), to encourage business partners to observe Guidelines standards (Chapter II, Paragraph 13), to have a policy commitment to respect human rights (Chapter IV, Paragraph 4), and to provide for or co-operate through processes to remediate human rights impacts (Chapter IV, Paragraph 6).

69. The UK NCP has also concluded that the company's approach is not consistent with the general obligations to respect human rights (Chapter II, Paragraph 2 and Chapter IV, Paragraph 1). The commentary to Chapter IV (Paragraph 41.) suggests that "*addressing actual and potential human rights impacts consists of taking adequate measures for their identification, prevention, where possible, and mitigation of potential human rights impacts, remediation of actual impacts and accounting for how the adverse human rights impacts are addressed*." Taking account of the particular risks associated with the company's product and of the company's response to allegations and enquiries raised with it, the NCP considers that Gamma has not met the Guidelines standards.

70. The UK NCP also considers that the company's overall engagement with the NCP process has been unsatisfactory, particularly in view of the serious nature of the issues raised. Through its legal representative, the company has raised obstacles to the complaint's progress, whilst failing to provide information that would help the NCP make a prompt and fair assessment of these. The NCP considers that this does not have the appearance or practical effect of acting in good faith and respecting the NCP process.

Examples of company good practice

71. The company did not provide the NCP with any examples of good practice beyond its compliance with legal requirements and the self-regulatory practice it has committed to in not providing its products to private actors. Apart from initial contact forwarding the complaint, the company's engagement with the NCP process has been entirely through its external legal representative.

Recommendations to the company and follow-up

72. The UK NCP notes that Gamma International UK Limited is not currently trading. The recommendations following therefore apply broadly to its future trading (except actions to co-operate with any remedial processes relating to misuse of its product, which apply regardless of trading). The UK NCP also invites the wider Gamma Group, which continues to trade, to note the recommendations.

73. The NCP recommends that the company:
    a) takes note of international evidence and UK government advice and not just sanctions, in its due diligence
    b) participates in industry best practice schemes and discussions
    c) reconsiders its communications strategy to offer the most transparent and consistent engagement it considers appropriate to its sector.
    d) Where it identifies that its products may have been misused, co-operates with official remedy processes used by victims of the misuse.

74. The UK NCP will request an update from both parties in November 2014 and will publish on its website an update Statement reflecting the information received. The UK NCP notes that Bahraini activists have (with the complainants' support) made a criminal complaint in the UK. If the relevant authorities decide that this merits further action, more information may become available about the issues considered in this complaint.

DECEMBER 2014
UK NATIONAL CONTACT POINT FOR THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

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Annex 1: Request for review of the NCP's procedure in this complaint

1. At the conclusion of the UK NCP complaint procedure, a party has a set period within which to request a review if it considers that the NCP did not follow proper or fair procedure in considering a complaint.

2. Full details of the UK NCP review procedure can be found at: https://www.gov.uk/government/publications/complaints-brought-under-the-oecd-guidelines-for-multinational-enterprises-to-the-uk-national-contact-point-review-procedure . Reviews are conducted by the NCP's Steering Board and consider procedure: they do not address the substance of complaints or NCP decisions. A statement subject to a review request is not generally published until the review is completed.

3. In this complaint, the UK NCP's finalised Final Statement was issued to parties on 17th December 2014. The company's representative informed the NCP on 8th January that the company was seeking a review on the grounds that comments in the Final Statement about its engagement were unfair in light of the risks from parallel proceedings.

4. Paragraph 4.3 of the review procedure states that the NCP can recommend at any time that the Board refuses a review request as ineligible, frivolous or vexatious. A recommendation of this kind by the NCP stands unless three or more Steering Board Members object.

5. The NCP recommended to the Steering Board on 27th January 2015 that the Board refuse the company's request as ineligible because no error of procedure was identified. No objections were received and on 5th February 2015 the NCP informed parties that the review request was refused and the Final Statement issued to parties on 17th December would now be published.