

COMMUNIQUE OF THE
ARGENTINE NATIONAL CONTACT POINT (ANCP)
for the OECD Guidelines for Multinational Enterprises
as closing of the specific instance “*Recalde v. ACCOR*”

Buenos Aires, Argentina

25. June, 2010

A) Facts presented in the complaint by National Deputy Héctor Recalde

I. Facts invoked in the complaint.

On 2007, National Deputy, Héctor Pedro Recalde promoted the introduction of a Bill in the Chamber of Deputies of the Nation to make food vouchers/restaurant tickets be formally included in salaries and therefore used for calculation of employees' holidays, sick leave, and bonuses. Such a measure would have increased labour costs for employers and would have reduced employers' demand for the food vouchers. As a consequence, the enterprises would no longer provide the service; therefore, this brunch of the business would cease to exist within ACCOR SERVICE ARGENTINA.

Under these circumstances, according to the complaining party, a person who alleged to be acting in representation of ACCOR SERVICE (The Argentinian subsidiary of the French Group ACCOR) would have made an attempt to prevent the aforementioned Bill from becoming a Law, offering bribes to Deputy Recalde.

Together with the presentation made to the ANPC on November 2007, the complaining party handled documents, press articles, and other elements that had been previously presented before the Argentinian Justice.

The ANCP established, prior to the formal admissibility of the specific instance, that the task of verifying the denounced facts belonged exclusively to the Argentinian Justice, and extensively exceeded the ANCP's faculties. However, as an agreement between the parties already existed regarding this matter, the ANCP decided to carry on with the instance, after issuing the formal admissibility report, executing its good offices to bring the parties closer. The ANCP considered that the requests made by the complaining party neither influenced nor hampered the judicial caused initiated by the complaining party.

It is important to highlight that the food vouchers system was widely used by companies (it was estimated that 14, 000 companies were using the service), representing an estimative annual turnover of a thousand million dollars. Also, it is important to mention that the fact that originated the complaint had a great coverage in the national media. Particularly, its circulation in audiovisual media had a great impact in the national public opinion.

II. Guidelines chapter allegedly breached

Chapter II. General Policies (Concerning the respect for strict conduct guidelines and to avoid promoting and using unfair practices to get improper competitive advantages).

Chapter IV. Employment and Industrial Relations (Concerning the promotion of labor standards less unfavorable for workers).

III. Requests

- ✓ That ACCOR Service acknowledge the relevance of the OECD Guideline for Multinational Enterprises.
- ✓ That ACCOR Service expouse its internal and external measures and policies to combat bribery.
- ✓ That ACCOR Service display an attitude of cooperation towards the Argentinian Justice in relation to the criminal complaint presented by Recalde's legal representative, Hugo Wortman Jofre and towards the ANCP in relation to the specific instance.
- ✓ That ACCOR Service explain its position in relation to the denounced facts.
- ✓ That ACCOR Service appraise the actions taken by National Deputy, Héctor P. Recalde.
- ✓ That the ANCP summon another multinational enterprise that offers food vouches in the market, and was allegedly involved in the bribery negotiations.

IV. Information related to the parallel judicial proceedings

At the moment of the presentation of the complaint before the ANCP on November, 2007, there was an ongoing lawsuit (on which a gag order was imposed) brought by Deputy Recalde before the an Argentinian Criminal Court, charging with bribery an individual who had offered a gift to a public officer.

B) ANCP Formal Admisibility report

"...It is hereby expressed that the facts denounced in the complaint are the subject of an ongoing judicial investigation. However, the requested intervention of the ANCP in the mediation instance can take place provided both parties agree to that. Such intervention will take place according to what had been established in the criteria applied by the ANCP (ANCP Formal Admisibility Report)

The ANCP decided to accept only four of the requests made by the complainants:

- ✓ That ACCOR SERVICE acknowledge the relevance of the OECD Guideline for Multinational Enterprises.
- ✓ That ACCOR SERVICE expouse its internal and external measures and policies to combat bribery.
- ✓ That ACCOR SERVICE display an attitude of cooperation towards the Argentinian Justice in relation to the criminal complaint presented by Recalde's legal representative, Hugo Wortman Jofre and towards the ANCP in relation to the specific instance.
- ✓ That ACCOR SERVICE explain its position in relation to the denounced facts.

The last two requests were considered inappropriate, specially the one that asks for the other enterprise that offers food vouchers in the market and was allegedly involved in the bribery negotiations to be summoned as an interested third party. That is not foreseen in the Protocol of Operations of the ANCP. To get this point of the complaint dealt with, the complainants should present a new complaint before the ANCP.

C) ACCOR's response to Recalde-Wortman Jofre's presentation

On May, 2008, ACCOR SERVICE sent a letter to the ANCP in which states that *“...the complaint is based on the facts denounced before the Argentinian Criminal Justice, in which a former director of ACCOR had been involved...”*

The company based its defense on *“...the fact that the behavior of a former director of ACCOR is being investigated in court does not imply that neither the enterprise nor the other employees are responsible for what happened...”*

Also it stated that *“...after taking notice of an allegedly criminal act involving an ACCOR Argentina S.A director, with no executive functions, the company immediately announced the director’s dismissal of every position he had in the company; the presentation before the Argentinian Justice to offer the cooperation necessary to solve the case...”*

In relation of the points of the complaint that were accepted by the ANCP, the enterprise adduced that it has never breached any of the OECD Guidelines for Multinational Enterprises: *“...ACCOR GROUP’s Ethic Code contains a paragraph in its chapter on “Corruption Prevention” that expressly forbid any kind of passive or active corruption that distort the markets by influencing public officers’ decisions...”*

“...The Board of Directors at international level instructed its subsidiaries to be extremely careful regarding management control and internal and external audits, to honor the public commitment to act according to strict ethical principles and strict conduct guidelines, to avoid any illegal or corrupt kind of practices [...] the Ethic Code and the OECD Guidelines for Multinational Enterprises spread with more emphasis among the employees [...] the French-based Headquarters hired ETHIC Intelligence to design and implement a program on the subject [corruption] to train ACCOR directors around the world...”

D) Mediation and agreement

1. After several individual meetings, exchanged letters, and two joint meetings, matters that were not expected at the beginning of the discussions came up. These matters opened new opportunities to achieve success in the mediation process and reach an agreement between the parties after fifteen months of negotiations. On the one hand, Recalde’s legal representative suggested that the denounced company support the making of a concrete program to protect public officials from the pressures related to corruption, influence peddling, etc. On the other hand, there was the problem of job losses and labor instability that would arise within the company due to the compulsory restructuring that it would have to do (and in fact that it had to do) after the approval of the new law modifying the system of food vouchers (Law 26.341 that gave food vouchers a remunerative character).

2. As a result of the mediation and due to the good will of the parties, in March, 2009, the following agreement was signed by the parties:

- ✓ ACCOR SERVICE assumed responsibility of fully financing a program on control of corruption and/or transparency, carried out by “Fundación Poder Ciudadano” (an NGO from Argentina).
- ✓ Due to the inevitable restructuring that the company will have to do owing to the approval of the law changing the food vouchers system, ACCOR workers of that sector of the company could be affected. Because of that, the company committed to make a hard effort to implement a social safety net program including training programs for reinsertion into the labour market, relocation of affected workers to other companies in the group, additional compensations with severance payments higher than the amount required by the Law.
- ✓ The parties committed to join forces so that all the terms of the present agreement can be carried out. Any dispute between the Parties concerning the interpretation or application of this agreement shall be resolved in good faith
- ✓ ACCOR Company commits to publish a paid-advertisement in two nation-wide circulation broadsheet newspapers, in order to make public the content of the present agreement.

E) Chronology

- ✓ Date of the presentation of the complaint by Recalde/Wortman Jofre: 28th of November of 2007
- ✓ Date of Formal Admisibility: 19th of December of 2007
- ✓ Date of ACCOR SERVICE's response: 27th of May of 2008
- ✓ Date of joint meetings: 2nd of July of 2008, 17th of November of 2008.
- ✓ Date in which the Record of Agreement was signed: 5th of March of 2009.
- ✓ Length of the Specific Instance: 15 months.

F) Some comments on anti-corruption legislation

Taking into account the 2008 OECD recommendations of the anti-bribery committee (related to the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions -signed by Argentina-) and the O.A.S, in Argentina two projects to reform the Criminal Code had been presented. Both aim to establish the criminal liability of the enterprises when there is a case of bribery in international business transactions (one of the projects was presented by a group of national Deputies and the other one by the Executive branch of the Government).

The bill proposed by the President to Congress seeks to include *"the criminal liability of the person who acts in benefit of a third one, as well as the criminal liability of legal persons" (both private and public), in the understanding of the necessity to fill a legal loophole, contributing to generate security, confidence, and previsibility in the economic and financial activities of the country and its system of sanctions and payments..."*

G) Final comments

As general criteria regarding the question of "parallel instances", the ANCP considers that it is correct to carry on with a specific instance in which parallel judicial proceedings exist every time that the parties agree to do so and every time that the development of the specific instance neither hinder nor interfere in the judicial investigation. This is the case of the specific instance we are analyzing here.

During the specific instance, the company (honoring the requests of the complainant, which were accepted by the ANCP):

- ✓ Ratified its adhesion to the OECD Guidelines for Multinational Enterprises
- ✓ Explained its policy to respect the OECD Guidelines for Multinational Enterprises, and the measures it took after finding out about the facts that originated the complaint.
- ✓ Committed to implement initiatives on Corporate Responsibility (programs related to the improvement of transparency in management, including corruption control and the protection of public officials).
- ✓ Committed to protect the workers that could be affected by the negative impact of the fall in turnover that the decrease in food vouchers sales could provoke.

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