GoodElectronics
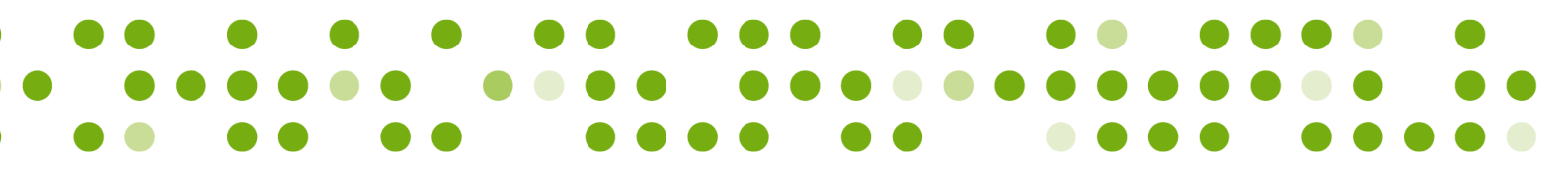

Unable to connect

Research on labour disputes at NXP

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June 2015

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Acronyms

CBA	Collective bargaining agreement
CoC	Code of conduct
CSR	Corporate social responsibility
EICC	Electronic Industry Citizenship Coalition
ESG	Environmental, social, governmental
FoA	Freedom of association
GE	GoodElectronics
HPMS	High Performance Mixed Signal
IoT	Internet of Things
ILO	International Labour Organization
KKR	Kohlberg Kravis Roberts & Co
LBO	Leveraged buyout
NFC	Near field communication
NXP	Next eXPerience
ODM	Original design manufacturers
OEM	Original equipment manufacturers
PE	Private equity
SEZ	Special Economic Zone
SP	Standard Products

Summary

About NXP and its trip to the top

NXP Semiconductors N.V., based in Eindhoven, the Netherlands, is a key supplier of chips and semiconductors that are used in billions of passports, mobile phones, tablets and cars. It is also involved in the revolutionary "Internet of Things" (IoT) as co-inventor of a new wireless technology called Near Field Communication (NFC).

Last year, NXP got selected by Apple to supply the NFC technology for 'Apple Pay'. Getting Apple on board confirms the success NXP is having: in 2014, enterprise value grew by 45% and net income grew by 54%. Recently, NXP announced the $11.8 billion acquisition of Freescale Semiconductor Ltd., this deal is the biggest deal in almost nine years for the chip industry.

Workers paying the price

When it spun off from Philips in 2006 and was purchased by a private equity (PE) consortium the future wasn't quite this bright. The company faced a billion dollar debt on its balance sheets. Combined with the global financial crisis and a low demand for NXP's products, massive reorganisations followed, including the slashing of 4,500 jobs in 2008.

Recently, the company started having issues with trade unions in the Philippines and in Thailand. These cases represent a break from the heritage of good industrial relations that NXP got from Philips. In this report SOMO aims to give a detailed account and background of the conflict with the trade unions. SOMO also questions if these conflicts can entail a business risk for NXP.

Aim & methodology

This research has been carried out based on desk research and through local contacts in Thailand and the Philippines including GoodElectronics Thailand (GET) and the Metal Workers Alliance of the Philippines (MWAP). The goal is to provide workers with more insight into the business strategies of NXP and to use these insights to recover the relationships between NXP and the unions, as well as to inform shareholders about social issues at NXP.

Findings

NXP claims to have good relationships with all its employees and views the disputes with the unions as regular discussions that can take place between company and employee representatives. The case studies indicate otherwise, however. The cases show that NXP violates workers' rights as laid down in the ILO Conventions regarding working hours and freedom of association.

The background of the conflicts can be found in a number of elements. The sites in Thailand and the Philippines are back-end facilities, which are driven by low-cost manufacturing in a competitive market with many rivals. The presence of a union is often seen as an obstacle to competing for lower wages and increased flexibility. Furthermore, the private equity (PE) takeover must be taken into account. PE investors have a short-term interest in yielding high rates of return. As a result, unions' concerns and demands and worker satisfaction can get pressured.

In its annual report, NXP does not mention the disputes in Thailand and the Philippines. By ignoring and hence not addressing the conflicts, the company is putting its business relations with its biggest brand customers such as Apple and Samsung at risk. First of all, because strikes can disrupt production. Secondly, because these customers are sensitive for negative publicity in their supply chain. They could reconsider their business with NXP, at a time when NXP is in a good position to profit optimally from upcoming developments, like the mobile payments market.

Recommendations
For NXP:
- NXP should adapt its policies and practices to international labour standards, including the eight fundamental ILO Conventions, not least ILO Convention 1 stipulating a maximum working week of 48 hours.
- NXP should not refer to what is allowed by local authorities if this means violating international labour standards, in this case NXP should go beyond legal compliance.
- NXP should be careful not to play down their disputes with the local trade unions. While NXP considers their employee relations to be good; we recommend NXP to re-evaluate their employee relations and take pro-active steps and invest in the improvement of their relations with local trade unions.

The insights from the report provide the following leverage points and possibilities for creating openings:

For (international) trade unions and labour groups:
- Collaboration can be sought with major shareholders, such as the Norwegian government, and the pension fund 'Texas Teacher Retirement System', both known for shareholder actions.
- Another point of leverage is NXP's biggest customers Apple and Samsung; both representing about 10% of total revenue. This means that Apple as well as Samsung has leverage over the company. They can both be approached for dialogue to pressure NXP into solving the collective bargaining disputes.
- NXP is registered under Dutch law. This means that the Dutch government has leverage over the company and that for example stakeholders can submit an OECD complaint to the Dutch National Contact Point.

For shareholders:
- Shareholders should require NXP to be transparent about social issues and pressure the company to refrain from actions that hamper workers' ability to exercise their trade union rights.
- Shareholders should pressure NXP to invest in the improvement of their relations with local trade unions and specifically pressure NXP to solve the conflict in Thailand in compliance with the ILO Conventions, especially regarding working hours, freedom of association and collective bargaining rights.

For the EICC:
- NXP is misusing the EICC code to justify the implementation of regular working days of twelve hours. The EICC should be aware of that and act upon it.

1. Introduction

Context

On 5 May 2014, a group of workers of Dutch chip company NXP in Cabuyao, the Philippines, was caught by surprise when they were pulled out of production and called into the manager's office, where they received a letter of discharge and were escorted to the shuttle-bus.[1] Soon, they had their pictures posted at the guards' houses and their names written on a blacklist. According to the company, the workers participated in and encouraged illegitimate strikes when they did not come to work on April 9, 17 and 18, but according to the local union these were national holidays.[2] For the union, the termination was a clear case of union-busting, because the dismissed workers were all union officers and part of the running collective bargaining negotiations.

In Thailand, NXP has a dispute with the local union since 2012. One of the issues is a new working schedule in which 8-hours shifts are changed into 12-hours shifts for 4 consecutive days, claimed by NXP to be compliant to Thai labour law. However, the union argues this results in forced overtime without the overtime being paid as such. A call for action by the union led NXP to lock-out union members and sympathizers. Just last month, a new collective bargaining agreement was put on hold.

Aim

As a spin-off from Philips, NXP inherited good industrial relations. The union in the Philippines has always been on good terms with the local Philips management, despite being located in a notorious 'no union-no strike' zone. This heritage now seems disturbed. In this report SOMO aims to give a detailed account and background of the conflict with the trade unions. SOMO also poses the question: can these conflicts entail a business risk for NXP?

This report has the goal of providing unions and employees with more insight into the business strategies of NXP to better understand the choices of the company and the impacts of these choices on workers. The idea is to use these insights to recover the relationships between NXP and the trade unions and to achieve good collective bargaining agreements. Furthermore, it aims to inform shareholders about social issues at NXP.

Methodology

The information for this company profile has been gathered by desk research, on the basis of various corporate, non-governmental organisation (NGO) and media websites, as well as databases including Bloomberg, Orbis and LexisNexis. Information has also been gathered through local contacts in Thailand and the Philippines including GoodElectronics Thailand (GET) and Metal Workers Alliance of the Philippines (MWAP).

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[1] Pinoy Media Center & Mayday Multimedia, "Holiday bust", 12 August 2014,
    <https://www.youtube.com/watch?v=QGSdSRAYUPE>
[2] These dates celebrate National Valor Day, Maundy Thursday and Good Friday, and are widely observed in a deeply
    Catholic country like the Philippines.

Review

A draft version of this report has been sent to NXP for review. The company was given a standard period to provide comments and corrections of any factual errors in the draft version prior to publication. SOMO has processed NXP's comments throughout the report. In case of factual errors or misunderstandings SOMO integrated the corrections into the text. In case of opposing views, SOMO has included the opposing view of NXP in the footnotes.

NXP says it does not recognize many of the statements and conclusions in the report. According to the company, the report misrepresents the reality of the relationship between NXP and its employees:

"Contrary to what this report seems to suggest, NXP has very good relationships with its employees and their representatives all over the globe. The main evidence for this is that over the years NXP have agreed Collective Labor Agreements with unions worldwide. Also the relationships with the respective workers' councils have been very good, which has led to constructive dialogues with them and secured support from the workers' councils for many – also difficult – measures and restructurings. In fact, all restructurings and redesign programs during the last nine years have been developed in close consultation with employees and their representatives in workers' councils and unions, and the discussions on these often difficult measures can be described as positive and cooperative. This good relationship between NXP and its employees also is shown by the Employee Engagement Surveys improvements overtime. As always, also during the time that NXP was part of Philips, there are discussions with – and sometimes actions by - employees and its representatives, but these discussions and actions never have become material for NXP's global operations."[3]

Structure

The first chapter provides a detailed account of the cases. The following chapter characterises NXP's activities, structure, international presence and competitive environment. Chapter 4 is about the company's corporate social responsibility (CSR) policy regarding freedom of association. Chapters 5, 6 and 7 provide background to the cases and outline an historic overview of the company; how it was divested from Philips and was sold to private equity. The chapters include descriptions of the most important economic-financial developments and management changes. Chapter 8 analyses the company's business strategy and identifies the main strategies and characteristics in the period 2006-2014. The final chapter presents some concluding remarks and the recommendations.

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[3]   E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

2. Case studies

This chapter provides a detailed description of the two cases that were briefly outlined in the introduction and that triggered this report. Though especially the Philippine case has been covered by the international media quite extensively following the workers' international campaign, the aim is to provide a complete overview that includes all steps in the disputes. This is important in order to arrive at a proper understanding of both the unions' and the company's position.

2.1. The Philippines

On 5 May 2014, workers of NXP Semiconductors Cabuyao Incorporated (NXPSCI) were surprised when they were pulled out of production and called into the manager's office, where they received a letter of discharge.[4] [5] According to the company, these workers had held illegal strikes[6] when they did not work on April 9, 17, and 18. However, according to the company's union, NXPSCIWU, these were public holidays and the termination was a case of union-busting. The dismissed workers were all union officials and part of the collective bargaining agreement (CBA) negotiation panel.

According to workers' testimonies, they were not allowed to collect their personal belongings from their lockers, and were immediately escorted to a shuttle bus.[7] [8] Other workers, who were not at work that day, had to learn from a text message from their colleagues that they were dismissed.[9] Soon, a total of 24 sacked workers had their pictures posted at the guards' houses and their names written on a blacklist.[10]

The Cabuyao plant is one of NXP's test and assembly sites ("back-end"), and employs 3,200 workers.[11] These are reportedly not all regular employees; hundreds of them are contractual workers to meet fluctuating demands.[12] The plant is situated in a special economic zone (SEZ), called Light Industry and Science Park 1 (LISP 1), some 50 kilometres outside of Manila. NXP

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[4] NXP comments: Prior to this, the workers were given an explanation letter indicating the specific violation. Employees were then given 5 days to explain and be heard. They chose not to explain, hence, waiving their right to be heard. They were invited to a meeting to receive their letters of dismissal, but only three attended the meeting. Even with the dismissal there is a grievance machinery where they can file and appeal, (they had the right to appeal the decision within 7 days, besides which, they also had resort to an internal grievance mechanism: the Code of Conduct reporting hotline) but they never made use of these legal remedies." E-mail communication between Jean Schreurs, SVP & Senior Corporate Counsel at NXP, and SOMO on 22 May 2015.

[5] Pinoy Media Center & Mayday Multimedia, "Holiday bust", 12 August 2014, <https://www.youtube.com/watch?v=QGSdSRAYUPE> (17 March 2015).

[6] NXP comments: The union officers were dismissed for encouraging their members to be absent during those dates. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[7] Pinoy Media Center & Mayday Multimedia, "Holiday bust", 12 August 2014, <https://www.youtube.com/watch?v=QGSdSRAYUPE> (17 March 2015).

[8] NXP comments: The workers were escorted because, as evidenced from past activities, they might again encourage their members to engage in other illegal action like noise barrage, which is in violation of the CBA. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[9] Pinoy Media Center & Mayday Multimedia, "Holiday bust", 12 August 2014, <https://www.youtube.com/watch?v=QGSdSRAYUPE> (17 March 2015).

[10] MWAP, "Urgent appeal. 24 union officials illegally dismissed amidst CBA talks", 9 May 2014, <http://www.industriall-union.org/sites/default/files/uploads/documents/mwap-nxp_urgent_appeal.pdf>

[11] NXP Semiconductors, open letter, 13 May 2014, <http://nxpphilippines.com/2014/05/13/an-open-letter-from-nxp-semiconductors/> (17 March 2015).

[12] E. Torres, "Philippines: 'They tried to crush us, and failed', say NXP unionists", Equal Times, 9 October 2014, <http://www.equaltimes.org/philippines-they-tried-to-crush-us#.VHMOD_ldV8E>

(previously Philips) has operated in the Philippines for more than 30 years.[13] The special economic zone is under the jurisdiction of the Philippine Economic Zone Authority (PEZA). In 2007, NXP restructured its operations in Cabuyao, causing the loss of hundreds of employee positions as well as "a number of contractual positions".[14] The plant has several certifications including OHSAS18001 (for Occupational Health and Safety) and SA8000 (for decent workplaces).

Collective bargaining and the right to strike are incorporated in the Philippine Constitution of 1987. The Philippine Economic Zone Act guarantees that workers' rights are non-negotiable. However, in practice there is a highly repressive labour climate. In the special economic zones, there is a "no-union, no-strike policy".[15] According to Daisy Arago, Executive Director of the Center for Trade Union and Human Rights CTUHR, these economic zones exist like "'independent kingdoms without respect for Philippine labor laws".[16]

Nevertheless, NXPSCIWU, the NXP union, is one of the few independent unions that has managed to exist for 33 years.[17] NXPSCIWU is a member of the Metal Workers Alliance of the Philippines (MWAP), a national alliance of unions and workers in the electronics, automotive, shipbuilding, metallurgical mining, steel and related industries. NXPSCIWU is also affiliated to the National Federation of Labor Unions (NAFLU) under the national labour centre Kilusang Mayo Uno (KMU). Reden Alcantara is President of both NXPSCIWU and MWAP. As one of the few unions in the SEZ's, the NXPSCIWU struggle is said to have important implications for the entire labour movement nationwide. NXPSCIWU has had constructive relations with the company for decades. A new plant manager and HR officer were installed prior to the dispute.[18]

CBA negotiations

The NXP management and the union had started negotiations on a CBA for 2014-2016 in January 2014. By May of that year, 23 negotiation sessions had taken place, without any agreement. The main contentious issue was wages.[19] The union demanded an 8% wage increase, which corresponds to $1.39 per day.[20] However, NXP refused to go higher than 3.5%.[21] According to some, the NXP offer was less than the official inflation rate of 4.1% and

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[13] NXP letter to Business & Human Rights Resource Center, 1 September 2014, <http://business-humanrights.org/sites/default/files/documents/NXP%20Response%20Letter%20to%20Business%20%26%20Human%20Rights%20Resource%20Center_Sept.%201%2C%20..._0.pdf>

[14] NXP Press release, "Company to move SIPS production line from Cabuyao to Calamba", 22 March 2007, <http://www.nxp.com/news/press-releases/2007/03/company-to-move-sips-production-line-from-cabuyao-to-calamba.html> (17 March 2015).

[15] Center for Trade Union and Human Rights & Asia Monitor Resource Centre, "Strengthening Freedom of Association in Asia. Strategies & Mechanisms", March 2011, <http://www.scribd.com/doc/126860686/Strengthening-Freedom-of-Association-in-Asia-2010>, p. 13.

[16] Center for Trade Union and Human Rights, "Dismissal of NXP-24, a deliberate move to weaken union organizing in EPZs", 16 May 2014, <http://ctuhr.org/dismissal-of-nxp-24-a-deliberate-move-to-weaken-union-organizing-in-epzs-ctuhr/> (8 April 2015).

[17] MWAP, "MWAP Statement on the Conclusion of NXP Cabuyao struggle", 27 September 2014, <http://www.industriall-union.org/sites/default/files/uploads/documents/mwap_statement_on_conclusion_of_nxp_fight.pdf> (8 April 2015).

[18] Letter of Jyrki Raina, General Secretary of IndustriALL, to Business & Human Rights Resource Center, 26 August 2014, <http://business-humanrights.org/sites/default/files/documents/2.NXP%20abuses%20get%20worse%20-%20letter%20to%20Business%20%284%29%5B1%5D.pdf>

[19] NXP comments: This was not the main issue. The union wanted to have the ability to hire and fire, a condition NXP did not agree to. This is contributory to the dragging of the negotiations. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[20] NXP comments: The union initially claimed 30%. We have a complete file of how the negotiations developed. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[21] MWAP Statement, "Respect workers' rights! Reinstate illegally dismissed union officers in NXP Cabuyao!", 6 May 2014, available at <http://goodelectronics.org/news-en/nxp-semiconductors-cabuyao-philippines-dismisses-24-union-officers-for-refusing-overtime-on-public-holidays>

thus was effectively a pay cut.[22] Others have said that the company has stated that it has a corporate policy against wage hikes.[23] [24]

A second point of disagreement in the CBA negotiations was the position of 'contractuals'. The union demanded that 1,500 contractual workers, some of whom have been working for the plant for years, should be regularised.[25]

In May, when negotiations had reached a deadlock, the entire union was dismissed for not working on April 9, 17, 18 and May 1 (which are public holidays in the Philippines). The first three dates celebrate National Valour Day, Maundy Thursday and Good Friday, and are widely observed in a deeply Catholic country like the Philippines. Furthermore, May 1 is known as International Labour Day, for which the workers and NXP management had a long-standing agreement.[26] According to NXP, May 1 was never a date in question. The company said it had respected workers' rights and the CBA by providing shuttle buses to the celebrations.[27] [28]

It must be noted that other members of the NXPSCIWU union did not go to work on the aforementioned holidays either. However, only the union officers were dismissed. This is seen by the union as clear proof of an anti-union attitude by NXP.[29] [30]

In response to the dismissal, MWAP immediately issued a statement, calling it "a malicious attack", "meant to weaken the bargaining power of the union".[31] On May 9, MWAP released an urgent appeal, calling for the immediate reinstatement of the 24 workers and for resuming CBA negotiations.[32] On a newly created website, NXP responded in a statement that the dismissal of the 24 union leaders "was not a decision it made lightly".[33] "*While it is true that these three dates were public holidays, Philippine labor law (article 94 of the Labor Code) clearly states that a company may ask employees to work on public holidays providing that employees are paid double their regular wages. On those three occasions, employee absenteeism spiked sharply*

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[22] D. Pastrana, "Global electronics giant NXP sacks union officials in the Philippines", World Socialist Website, 5 June 2014, <http://www.wsws.org/en/articles/2014/06/05/phil-j05.html> (17 March 2015).

[23] M. Salamat, "Labor department intervenes in NXP collective bargaining negotiations", Bulatlat, 20 April 2014, <http://bulatlat.com/main/2014/04/20/labor-department-intervenes-in-nxp-collective-bargaining-negotiations/> (17 March 2015).

[24] NXP comments: This is incorrect. The management initially offered a salary increase and an increase in the subsidies which included rice, education, meal subsidy and out-patient. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[25] Kilusang Mayo Uno, "Some facts on the NXP workers' struggle", 10 August 2014, <http://kilusangmayouno.org/some-facts-nxp-workers-struggle>

[26] MWAP, "Urgent appeal. 24 union officials illegally dismissed amidst CBA talks", 9 May 2014, <http://www.industriall-union.org/sites/default/files/uploads/documents/mwap-nxp_urgent_appeal.pdf>

[27] NXP Semiconductors, open letter, 13 May 2014, <http://nxpphilippines.com/2014/05/13/an-open-letter-from-nxp-semiconductors/> (17 March 2015).

[28] Also, April 18 (Good Friday) was never a date in question, says Jean Schreurs of NXP in e-mail communication with SOMO on 22 May 2015.

[29] Letter by Jyrki Raina, General Secretary of IndustriALL, to Tim Cook, 8 July 2014, <http://www.industriall-union.org/sites/default/files/uploads/documents/Jyrki_Letters/industriall_letter_to_apple_re_nxp_philippines_8july.pdf>

[30] NXP comments: The union officers were dismissed because they encouraged the other members to be absent. As officers, they are expected to uphold the law and observe protocols. While a strike or any concerted action is a right the union can exercise under the law, protocol must be observed. They should have filed a notice of strike under the DOLE and observed the one month cooling off period commencing from the day the NOS was filed. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[31] MWAP Statement, "Respect workers' rights! Reinstate illegally dismissed union officers in NXP Cabuyao!", 6 May 2014, available at <http://goodelectronics.org/news-en/nxp-semiconductors-cabuyao-philippines-dismisses-24-union-officers-for-refusing-overtime-on-public-holidays>

[32] MWAP, "Urgent appeal. 24 union officials illegally dismissed amidst CBA talks", 9 May 2014, <http://www.industriall-union.org/sites/default/files/uploads/documents/mwap-nxp_urgent_appeal.pdf>.

[33] NXP Semiconductors, open letter, 13 May 2014, <http://nxpphilippines.com/2014/05/13/an-open-letter-from-nxp-semiconductors/> (17 March 2015).

which impacted our output and our ability to serve our customers. Our Cabuyao factory is an important part of a global operation and this means we need to operate on a global schedule including on public holidays."[34] However, according to the workers, during holidays like these you can sign an overtime slip if you want to work.[35] If you don't sign up, you are not expected to work.[36]

Bring Back NXP 24

The workers started a campaign 'Bring Back NXP 24', which combined an active online campaign with on-the-ground protests. Some examples include:

- On May 19, a number of the sacked workers had their heads shaved during a protest outside the labour department's (DOLE) main office.[37]
- On July 2, a Global Day of Action was held, with a mass protest in Manila and a call on people worldwide to take pictures with a placard and share this on social media with the hashtag #bringbacknxp24 and on the special Facebook page.[38]
- On August 5, they held a benefit dinner to raise funds for their campaign.[39]
- On 6 August, some 1,000 NXP workers and sympathisers[40] held a march inside the special economic zone, marking the third month of the campaign.[41]
- On 12 August, a moving video was released including interviews with the sacked workers, who could no longer afford their children's school fees.[42]

Local support

Different sectors and organisations in the Philippines supported the NXP fight, for example, trade unions, small-scale farmers, students, migrants, church people, academics, labour advocates and progressive party-list groups.

International support

The campaign received a lot of support from all around the world. Fifteen trade unions from the Philippines affiliated to IndustriALL Global Union signed a powerful statement of solidarity.[43] The GoodElectronics Network and FNV Bondgenoten sent a joint letter to NXP on May 13, expressing concerns and outrage about the situation.[44] IndustriALL Global Union wrote a letter to NXP on May 9,[45] and one on July 8 to Apple, calling attention to its supplier responsibility.[46]

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[34] Ibid.

[35] Pinoy Media Center & Mayday Multimedia, "Holiday bust", 12 August 2014, <https://www.youtube.com/watch?v=QGSdSRAYUPE> (4 March 2015).

[36] NXP comments: Advisories were released that April 9 was a full production day. Several advisories were released informing the employees to report for work due to backlogs. In previous holidays, attendance was high. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[37] MWAP, Update, 22 May 2014, available at <http://goodelectronics.org/news-en/union-leaders-shave-heads-protesting-against-illegal-dismissals-by-nxp>

[38] Facebook page"Bring back NXP 24", <https://www.facebook.com/bringbacknxp24>

[39] MWAP, "Update on NXP Philippines fight", 8 August 2014, <http://goodelectronics.org/news-en/nxp-workers-hold-protest-march-and-benefit-dinner>

[40] According to NXP, there were only 400-500 people, of which 200+ were workers of NXP. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[41] IndustriALL Global Union, "Customers, students, NGOs and unions all demand that NXP 'bring back the 24!'", 14 August 2014, <http://www.industriall-union.org/customers-students-ngos-and-unions-all-demand-nxp-to-bring-back-the-24>

[42] Pinoy Media Center & Mayday Multimedia, "Holiday bust", 12 August 2014, <https://www.youtube.com/watch?v=QGSdSRAYUPE> (4 March 2015).

[43] IndustriALL Philippine affiliates, "Solidarity message for the NXP Semiconductor workers from the Philippine affiliates", 19 June 2014, <http://www.industriall-union.org/sites/default/files/uploads/documents/Philippines/industriall_affiliate_statement_nxp.pdf>

[44] The GoodElectronics Network, "GoodElectronics writes letters to NXP Thailand and NXP Philippines", 13 May 2014, <http://goodelectronics.org/news-en/goodelectronics-writes-letters-to-nxp-thailand-and-nxp-philippines>

[45] IndustriALL Global Union letter to NXP, "IndustriALL Global Union calls on NXP Cabuyao to reinstate dismissed union

USAS, the United Students against Sweatshops, also targeted Apple with a letter of concern.[47] Two other top NXP customers, Ericsson and Nokia, said to IndustriALL that they were "looking into the situation at their supplier", following an alert by IndustriALL affiliates in Sweden and Finland.[48] In addition, three online petitions were started,[49] which gathered thousands of signatories.

In response, NXP called the allegations "false" and said they were "misleading reports".[50] It accused the workers of "numerous illegal acts", like vandalism, noise barrages, blocking passengers when trying to disembark from the bus and pickets, as well as disrespect for protocols and encouragement of employee absenteeism.[51] As a result, the company reportedly installed cameras[52] and made use of extra security guards and policemen.[53] To gain public support, NXP placed a full-page advertisement in one of the Philippines' biggest newspapers, "boasting that it is a good employer and a good foreign investor in the Philippines".[54] Last but not least, NXP filed a complaint at the National Labor Relations Commission, a quasi-judicial agency attached to the Department of Labor and Employment (DOLE).

Mediation

DOLE arranged a number of conciliation meetings between NXP management and the union. In these meetings, the company offered a compensation package, but did not give in on the demand for reinstating the workers.[55] For the workers, the offer seemed as if the company wanted to pay them off, thereby basically admitting that the dismissal was wrong.[56] Jyrki Raina, IndustriALL's General Secretary, called the offer an "insulting attempt" to set "a dangerous precedent of trading corporate cash for workers' rights".[57] The workers also accused the company of trying to delay the conciliation meetings, waiting for and preferring a legal decision,

officers and resume collective bargaining negotiations in the Philippines", 9 May 2014, <http://www.industriall-union.org/sites/default/files/uploads/documents/Jyrki_Letters/industriall_global_unions_calls_on_nxp_cabuyao_to_respect_workers_rights_in_the_philippines_09-05-2014.pdf>

[46] IndustriALL Global Union letter to Apple, "IndustriALL flags labour violation in iPhone 6 production", 8 July 2014, <http://www.industriall-union.org/sites/default/files/uploads/documents/Jyrki_Letters/industriall_letter_to_apple_re_nxp_philippines_8july.pdf>

[47] Bring Back NXP 24 Facebook page, post 13 July 2014, <https://www.facebook.com/bringbacknxp24/photos/pcb.1494905047412664/1494904580746044/?type=1&permPage=1>

[48] IndustriALL Global Union, "Customers, students, NGOs and unions all demand that NXP 'bring back the 24!'", 14 August 2014, <http://www.industriall-union.org/customers-students-ngos-and-unions-all-demand-nxp-to-bring-back-the-24>

[49] Change petition: <https://www.change.org/p/bring-back-the-24-laid-off-workers-resume-negotiations-for-a-cba-in-nxp>, SumofUs petition: <http://action.sumofus.org/a/apple-supplier-nxp-union-busting/>, LabourStart petition: <http://www.labourstartcampaigns.net/showsupportersaspetition.pl?c=2312>

[50] NXP letter to Business & Human Rights Resource Center, 1 September 2014, <http://business-humanrights.org/sites/default/files/documents/NXP%20Response%20Letter%20to%20Business%20%26%20Human%20Rights%20Resource%20Center_Sept.%201%2C%20..._0.pdf>

[51] NXP letter to Business & Human Rights Resource Center, 1 September 2014, <http://business-humanrights.org/sites/default/files/documents/NXP%20Response%20Letter%20to%20Business%20%26%20Human%20Rights%20Resource%20Center_Sept.%201%2C%20..._0.pdf>

[52] IndustriALL Global Union, "Customers, students, NGOs and unions all demand that NXP 'bring back the 24!'", 14 August 2014, <http://www.industriall-union.org/customers-students-ngos-and-unions-all-demand-nxp-to-bring-back-the-24>

[53] MWAP, "Report on NXP Philippines Fight", 10 June 2014, <http://www.labourstart.org/philippines/nxp.pdf>

[54] KMU newsletter, May-June 2014, <http://www.labournetaustria.at/wordpress/wp-content/uploads/KMU-Correspondence-May-June-2014.pdf>

[55] GoodElectronics Network, "NXP workers hold protest march and benefit dinner", 12 August 2014, <http://goodelectronics.org/news-en/nxp-workers-hold-protest-march-and-benefit-dinner> (17 March 2015).

[56] Sum of Us petition, "Apple: stop abuses at your supplier", no date, <http://action.sumofus.org/a/apple-supplier-nxp-union-busting/>

[57] IndustriALL Global Union, "iPhone 6 supplier NXP ramps up intimidation and delaying tactics", 16 July 2014, <http://www.industriall-union.org/iphone-6-supplier-nxp-ramps-up-intimidation-and-delaying-tactics> (16 March 2015).

when it failed to bring a negotiation team to the table.[58] Furthermore, the workers claimed that the meeting venue was not announced until the last minute, to avoid sympathisers arranging protests.[59]

Settlement

Right before a Global Week of Action was going to be held, a settlement was reached and a Memorandum of Agreement (MOA) was signed in late September. Twelve out of the 24 dismissed union officers were reinstated, while the other 12 were given "a decent separation package".[60] This consisted of 150% severance pay, based on the number of years the workers had been with the company, plus a US$2,219 lump sum and a one months' salary.[61] The wage hike was set at 5.25% for the first year and 3.5% for the second and third year. Furthermore, all cases that were filed in relation to the dispute were dropped, with no retaliatory actions.

Alcantara said he had mixed feelings about the settlement. On the one hand, he was happy that NXP failed to crush the union. He called it a victory for Filipino workers and Filipino people.[62] On the other hand, NXP reneged on its commitment to give workers additional benefits such as meal benefits and an outpatient medical allowance.[63] According to Alcantara, it was DOLE that proposed to reinstate only half of the dismissed employees to achieve common ground.[64] The union signed the MOA because otherwise no one would have been reinstated:[65]

"We wanted more with regard to the number of officials who will be reinstated, to the wage hike that will be implemented, and to the number of contractuals who will be regularized. It is clear, however, that what we got constitutes a significant improvement from what the management was willing to give at the start. It also became clear to us that the management would go no further in acceding to our demands and that sacrifices had to be made on our part to get the best deal given the existing conditions."[66]

2.2.   Thailand

About the factory

In Thailand, NXP has two different operations: NXP Manufacturing and NXP Semiconductors. These are located in one facility just outside Bangkok named NXP Manufacturing (Tailand) Ltd.[67] The facility is a back-end facility, operating as a subsidiary of NXP B.V., and employs roughly 3,000 workers.[68] The facility has been there since 1974, so 40 years in 2014.[69]

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[58]   IndustriALL Global Union, "iPhone 6 supplier NXP ramps up intimidation and delaying tactics", 16 July 2014, <http://www.industriall-union.org/iphone-6-supplier-nxp-ramps-up-intimidation-and-delaying-tactics> (16 March 2015).

[59]   MWAP, "Update on the NXP fight", 8 August 2014, available at <http://goodelectronics.org/news-en/nxp-workers-hold-protest-march-and-benefit-dinner>

[60]   MWAP, "Victory for NXP Philippines union workers", 29 September 2014, available at <http://goodelectronics.org/news-en/victory-for-nxp-philippines-union-workers>

[61]   E. Torres, "Philippines: 'They tried to crush us, and failed', say NXP unionists", Equal Times, 9 October 2014, <http://www.equaltimes.org/philippines-they-tried-to-crush-us#.VHMOD_ldV8E>

[62]   MWAP, "Statement on the conclusion of NXP Cabuyao struggle", 27 September 2014, available at <http://goodelectronics.org/news-en/victory-for-nxp-philippines-union-workers>

[63]   According to NXP, the workers never asked for an additional increase in the subsidies during the settlement stage. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[64]   E. Torres, "Philippines: 'They tried to crush us, and failed', say NXP unionists", Equal Times, 9 October 2014, <http://www.equaltimes.org/philippines-they-tried-to-crush-us#.VHMOD_ldV8E>

[65]   Ibid.

[66]   MWAP, "Victory for NXP Philippines union workers", 29 September 2014, available at <http://goodelectronics.org/news-en/victory-for-nxp-philippines-union-workers>

[67]   Asia Monitor Resource Center, Labour Rights in High Tech Electronics. Case Studies of Workers' Struggles in Samsung

About the union

The Thai NXP Manufacturing Workers' Union is a member of the IndustriALL Global Union affiliated TEAM, Confederation of Thai Electrical Appliances, Electronic, Automobile & Metalworkers. Wanlop Chujit is the President.[70]

The dispute

Since late September 2012, negotiations have been going on. The central topic in these negotiations was the "4x2" work schedule proposed by the management. Under this schedule, workers were expected to work four consecutive days of 12 hours, followed by two days off. Prior to that, the workers had eight-hour shifts during six days, from Monday to Saturday.[71] In the new schedule, the four work days can fall any day in the week.[72]

According to the union president, NXP insisted on the new schedule to ensure continuous production, and tried to force workers to accept it by threatening to move production to China, Taiwan, Hong Kong, Malaysia and the Philippines.[73] [74] In their defense, NXP has stated in a letter to GoodElectronics Thailand (GET) that its clients Apple and IBM require this schedule,[75] as it is compliant with the EICC Code, which requires companies not to have workers exceed 60 working hours per week and to ensure at least one rest day per week. NXP's former work schedule reportedly did not meet these requirements.[76] The company further stated that there had been "extensive communication" with all workers about the schedule.

However, the union argued that a shift of 12 hours is essentially a requirement that amounts to forced overtime. It must be understood that most workers are daily-waged workers, which means in the new schedule they have 90 workdays less per year and thus have to work overtime to maintain their former level of earnings. Furthermore, the union stated that the new schedule, with potential weekend work, disrupted workers' family and social life.[77]

Electronics and its Asian Suppliers (Hong Kong, AMRC, 2013), p. 215. <http://www.amrc.org.hk/node/1354>

[68] IndustriALL Global Union website, "Dutch electronics multinational NXP locks out Thai workers", 21 March 2013, <http://www.industriall-union.org/dutch-electronics-multinational-nxp-manufacturing-locks-out-thai-workers>

[69] Asia Monitor Resource Center, Labour Rights in High Tech Electronics. Case Studies of Workers' Struggles in Samsung Electronics and its Asian Suppliers (Hong Kong, AMRC, 2013), p. 215. <http://www.amrc.org.hk/node/1354>

[70] IndustriALL Global Union website, "Dutch electronics multinational NXP locks out Thai workers", 21 March 2013, <http://www.industriall-union.org/dutch-electronics-multinational-nxp-manufacturing-locks-out-thai-workers>. Chujit got re-elected in July 2014.

[71] Thai News Service, 'Thailand: Thai worker unions at foreign firms protest outside embassies', 13 March 2013, via LexisNexis.

[72] IndustriALL Global Union website, "Dutch electronics multinational NXP locks out Thai workers", 21 March 2013, <http://www.industriall-union.org/dutch-electronics-multinational-nxp-manufacturing-locks-out-thai-workers>

[73] Ibid.

[74] According to NXP, this statement is false. "The change in work schedule was required to ensure we remained fully compliant with international labor standards and Code of Conduct such as EICC", says Jean Schreurs of NXP in e-mail communication with SOMO on 22 May 2015. SOMO's reaction onto this is that international standards do not allow standard working days of 12 hours. A regular working day is 8 hours, extra hours should be paid as overtime.

[75] Thai National Human Rights Commission verdict, page 4, available at <http://goodelectronics.org/news-en/verdict-from-thai-national-human-rights-commission-in-nxp-case-translated-in-english>

[76] NXP letter from Theo Halders to GET.

[77] NXP comments: The new working schedule is providing a higher income to all employees for the same number of working hours. In the old schedule, the majority of our people did not have a weekly day of. In the new schedule this is guaranteed with at least one day off, every 6 days. Ultimately the new schedule was supported by the vast majority of our employees, most of whom are actually quite happy with it after adapting. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

Lock-out

After 14 rounds of negotiations, the dispute finally came to a head when, in response to a strike notice by the union, NXP declared a lock-out effective 1 March 2013.[78] In violation with Thai law, management called in workers in small groups and told them to leave the premises if they supported the union's demands.[79] The workers, many of them women, would have had to travel home in the dark.[80] [81] The next morning, union members and officials could not clock in and were labelled "high-security risks".[82] Workers inside the plant were forced to sign the form, thereby accepting the company's terms and conditions, including abandoning the union demands. In response, union members continued their strike outside the factory gates on March 1, followed by a bigger one on March 13 outside the Dutch Embassy in Bangkok.[83] This one was a joint rally with labour unions from three other companies – Electrolux, Linfox and General Motors – and the Thai Labour Solidarity Committee (TLSC). They also targeted the US and Australian embassies.[84] Hundreds of workers claimed to be treated unfairly by these foreign employers, complaining of sudden lay-offs, refusal to pay minimum wage and increased working hours without overtime wages.[85] On 5 March 2013, the NXP union filed a complaint with the National Human Rights Commission.

On 29 April 2013, with mediation from the Ministry of Labor, the union and the company signed a memorandum regarding working conditions covering eight items.[86] Furthermore, both parties agreed to let the Labor Relation Committee (LRC) make a decision on the legality of the 4x2 schedule, which was binding. The memorandum allowed the workers to wait until the LRC had issued its final decision before returning to work. On June 20, the LRC stated that the working week with four consecutive working days and two days off was on its face not contrary to Thailand's Labor Protection Act. However, local labour groups say this was based on a selective reading of the workers' complaint that failed to take into account consequences such as reduced wages and forced overtime, issues that the union had put forward to the LRC. Unlike the LRC, the Thai National Human Rights Commission declared the new work schedule did not conform with Thai law. It recommended that NXP should revert to the old work schedule and the government should revoke all other permissions to use a 4x2 schedule. Nevertheless, NXP has continued to use the 4x2 schedule.[87] [88]

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[78] NXP comments: After the union called for a strike, the company had to take measures to protect its business and assets through a perfectly legal 'counter lock-out'. E-mail communication between Jean Schreurs and SOMO.

[79] NXP comments: Employees who wanted to join the strike were asked to leave the company on February 27-28, also to avoid further intimidation of employees who wanted to continue working. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[80] Asia Monitor Resource Centre, Labour Rights in High Tech Electronics. Case Studies of Workers' Struggles in Samsung Electronics and its Asian Suppliers (Hong Kong, AMRC, 2013), p. 215. <http://www.amrc.org.hk/node/1354>

[81] NXP comments: The employees who were asked to leave were treated with the utmost respect and transportation was arranged for them. In several cases money was provided to pay for taxi fares. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[82] Letter from GET to NXP, 27 March 2013.

[83] IndustriALL Global Union website, "Dutch electronics multinational NXP locks out Thai workers", 21 March 2013, <http://www.industriall-union.org/dutch-electronics-multinational-nxp-manufacturing-locks-out-thai-workers>

[84] Thai News Service, 'Thailand: Workers to protest at embassies, government house', 13 March 2013, via Lexis Nexis.

[85] Thai news Service, 'Thailand: Thai workers labour conditions talks fail at Australian embassy, 14 march 2013, via Lexis Nexis

[86] Verdict National Human Rights Commission, page 3, available at <http://goodelectronics.org/news-en/verdict-from-thai-national-human-rights-commission-in-nxp-case-translated-in-english>

[87] Verdict National Human Rights Commission, page 12, available at <http://goodelectronics.org/news-en/verdict-from-thai-national-human-rights-commission-in-nxp-case-translated-in-english>

[88] NXP comments: It has been confirmed several times by the Thai Labor Department, the Labor Relations Committee as well as the Thai Labor Court, that the current 4x2 schedule is fully compliant with Thai Law. Many major international electronics companies are applying the same schedule already for many years in Thailand, as well as abroad. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015. SOMO argues that NXP should abide by the ILO conventions, and not by local law if this means less protection for workers. The fact that other companies are doing the same is not a

Union harassment

There is evidence that union members have been harassed, pressured and discriminated against. After the LRC's decision, the workers had to report back to work. However, NXP management did not allow them to actually work. Workers had to clock-in multiple times per day pointlessly. In July 2013, 43 workers – union members and union executive committee members – were put to work in a tent on the parking lot, which, according to testimonies, did not provide adequate shelter against sun and rain. The area got flooded frequently so that the workers had to wade in ankle deep water. The workers were also not allowed to use the toilets and canteen facility. This situation was extremely humiliating for these workers and continued for a month.[89] When they were allowed back onto the production floor, most of them were required to work in a separate room that previously was used for storing chemicals. Two union leaders were put to work in a small office under heavy camera surveillance.[90]

In another example, the company ordered the union to move their office to a much smaller room, in another part of the facility. This new office required workers to pass by the HR office, which made it impossible for workers to approach the union anonymously. The company also no longer allowed the union to use its own computer, but proposed two company computers, connected to the company's main system. This made the union feel like they were being spied on.[91] Furthermore, NXP has been refusing to deduct union membership fees [from their pay slip] to the union, although it previously did so for many years.[92]

NXP also violated the CBA by no longer providing transportation to workers after the end of the regular working hours, but instead only providing transport after the end of overtime hours. This underscores the involuntary nature of overtime work. The union has tried to discuss the above-mentioned matters, but the management refused.

In January 2014, the union filed a complaint with the Central Labor Court Nonthaburi on the aforementioned issues. Reportedly, the union was pressured to withdraw their complaint. So far, no verdict has been issued. The workers have expressed concerns that the court might be prolonging the case to weaken the union until the workers will ask for a settlement. In this situation, time is on the side of the employer.

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strong argument.

[89] NXP comments: As the difficult CBA process led to a minority strike, marked with intimidation and other disruptive actions, we had to follow a careful reintegration process after the CBA was signed (in close consultation with the Thai Labor Department). It was during this short period of time that core union members were separated from other employees. In fact, a core group of about 40 union members continues to refuse to work as per the agreed new schedule and we have accommodated their wish by assigning them different jobs (at the same pay-grade) that can be done outside of the new shift schedule. While planning and arranging the proper re-integration of all employees, those awaiting return were asked to scan their ID-card for salary payment. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[90] NXP comments: We respect the legal rights of the union and each individual union member but simply cannot place all workers back in their old jobs if they refuse to work in alignment with the new schedule that was accepted and agreed at the signing of the latest CBA. No threats were made to the workers after they were back into the production floor. No production areas are endangering workers' health and safety. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[91] GET letter to NXP, 22 January 2014.

[92] NXP has never stopped deducting union membership fee from their pay slip, says Jean Schreurs of NXP in e-mail communication with SOMO on 22 May 2015.

Health and safety

A final issue in the Thai facility relates to health and safety. For example, in the wafer room, no sufficient protective gear is provided. This causes unsafe situations for workers' health. There are at least ten cases of workers suffering from cancer (breast cancer, uterus cancer, lymphoma), of which two have died last November. These cases might be the tip of the iceberg, since NXP Thailand has been in production for decades.[93]

On multiple occasions, GoodElectronics and GoodElectronics Thailand (GET) have informed NXP about these concerns through e-mail messages and letters. The position of NXP, as conveyed in its answers, was not reassuring.

2.3. Concluding remarks regarding the cases

With the introduction of the 4x2 schedule in the Thai facility NXP is depriving its employees of an international labor right as laid down in ILO Convention 1[94]. On the first of May (the International Workers' Day), the right to an 8-hour working day is celebrated worldwide. NXP deprives its employees of this right with the introduction of the 12-hour shift. The 4x2 schedule results in forced and unpaid overtime and the abolition of weekend days.

The dismissal and lock-out of trade union representatives is a violation of ILO Convention 87 which includes companies to refrain from actions that hamper workers to exercise their trade union rights.

NXP justifies the 12-hour shift by claiming to be compliant with Thai Labour Law and by saying that many major electronics companies are applying the same schedule (see footnote 98). Next to this, NXP says that it changed the working schedule to be compliant with the EICC Code of Conduct (see note 75). Compliance with the Thai Labour Law is disputed by Thai organisations such as the Thai National Human Rights Commission.

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[93] NXP comments: We have been operating the plant in Thailand for 40 years and have been recognized for our excellent working safety conditions and environment by the Safety Officer. The safety inspection has also been done in the mentioned areas by the District Safety Inspectors and no unsafe condition was reported. The company has a Occupational Safety & Health committee which a half of its members is represented from employee by voting. The team has conducted safety audit at least once a month and the results have always been discussed in the committee so as to proactively prevent any unsafe condition. E-mail communication between Jean Schreurs of NXP and SOMO on 22 May 2015.

[94] The international labour standard on working hours, ILO Convention 1, art 2, C., includes:
   • A maximum amount of eight hours per day and a maximum of 48 hours per week.
   • 12 hours per day is permissible if the average number of hours over a period of three weeks or less does not exceed eight per day and 48 per week.
   • A maximum amount of 60 hours is permissible but not on a regular basis and only when 12 hours thereof are paid at an overtime rate and when there is at least one day off per seven days.

3. Corporate information

This chapter provides a general corporate profile of NXP. It describes NXP's activities, structure, international presence, competitive environment and performance. The aim is to get a picture of who the company is.

3.1. Products & activities

NXP Semiconductors N.V. is a key supplier of chips and semiconductors that are contributing to important upcoming developments, including:

- 'Connected cars': cars that are connected to the internet. This enables, for example, electronic toll collection, collision warning and personalised car keys.
- Security solutions, such as chips for passports or banking cards.
- Portable and wearable devices, such as smart watches and health and fitness devices.
- The "Internet of Things" (IoT): the concept of connecting any device – from smartphones to washing machines – with the internet and with each other, also known as M2M (machine to machine).[95]

The Near Field Communication technology (NFC) plays a crucial role in facilitating these developments. NFC is a short-range wireless technology that enables different objects and machines to interact at a short distance, such as a mobile phone and a cash register to make a payment. NXP is the co-inventor of NFC chips and a pioneer in NFC technologies.[96] NXP dominates the market for NFC chips with a 59% market share in 2014.[97] The technology is expected to eventually become as widespread as Wi-Fi, Bluetooth and GPS.[98]

3.1.1. Organisation in business segments

NXP is organised into two business segments: High Performance Mixed Signal (HPMS) and Standard Products (SP). The HPMS category is the biggest business unit accounting for 77% of total revenue in 2014.[99] It is made up of specialised, application-specific semiconductors, as well as of the NFC technology described above. The HPMS business generated revenue of $4.2 billion in 2014, a nominal growth of 19.1% compared to 2013. The HPMS chips are organised along four lines: 'automotive', 'secure identification solutions', 'secure connected devices' and 'secure interfaces and power'.[100]

NXP's second category is the Standard Products (SP) business, which accounted for 23% of NXP's total revenues in 2014. The standard product business generated a revenue of $1.2

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[95] Jacob Morgan, "A simple explanation of 'the Internet of Things'", 13 May 2014, Forbes, <http://www.forbes.com/sites/jacobmorgan/2014/05/13/simple-explanation-internet-things-that-anyone-can-understand> (15 April 2015).

[96] Philips and Sony co-invented NFC technology in 2002.

[97] Noel Randewich, "Apple gives NFC chip technology a prized seal of approval", Reuters, 10 September 2014, <http://www.reuters.com/article/2014/09/10/us-apple-nfc-idUSKBN0H50I820140910?feedType=RSS&feedName=technologyNews>, (12 February 2015).

[98] Ibid.

[99] NXP Annual Report 2014, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm>, p. 7.

[100] Ibid, p. 7.

billion, which represents an 11.4% growth compared to 2013.[101] The Standard Products are considered standard semiconductor components like signal discretes, power discretes and integrated discretes. For these products, standardized production techniques are used. They are largely produced in high-volume manufacturing operations owned by NXP and can be integrated in many different types of electronics devices. The standard products are sold to many different customers, including automotive, security, lighting, industrial and infrastructure customers. The Standard Products are sold as separate components, but are also sold in conjunction with HPMS products.

In both business segments, NXP has a large patent portfolio: almost 9,000 patents and patent applications, plus royalty free licences to patents held by Philips.[102]

3.2.   Corporate structure

NXP is registered under Dutch law as NXP Semiconductors N.V. It is a holding company whose only material assets are 100% of the shares of NXP B.V.[103] NXP B.V. has research and development activities in Asia, Europe and the US, and manufacturing activities in Asia and Europe.

3.2.1. Manufacturing

NXP's manufacturing activities are divided into front-end and back-end operations. In the front-end process, silicon wafers are imprinted, which is a complex and precise job. This takes place in wafer-fabs, located in Hamburg, Manchester, Nijmegen, Singapore and Jilin (China). The back-end process involves the assembly, testing and packaging of semiconductors. The location of NXP's back-end facilities is mostly determined by cost factors. They can be found in low-cost production locations including Bangkok (Thailand), Cabuyao (the Philippines), Kaohsiung (Taiwan), Seremban (Malaysia) and Guangdong (China).[104]

Some of NXP's products are made in manufacturing facilities operated jointly with other semiconductor companies, third-party foundries (whose sole business is manufacturing) and assembly and test subcontractors.[105] The front-end unit in Singapore is a joint venture with Taiwan Semiconductor Manufacturing Company (TSMC).[106] In the back-end, NXP has a joint venture with Advanced Semiconductor Engineering (ASE) in Suzhou, in which it now holds a 40% stake. All of the other manufacturing facilities are 100% owned by NXP and are centrally managed. With this centralised organisation model the company says it aims to scale benefits, for example, regarding overhead leverage and purchasing volumes.[107]

As of 31 December 2014, NXP had 27,884 full-time equivalent employees located in over 20 countries, of which 69.3% worked in manufacturing operations. This represents a growth of 10.9% in 2014. In China alone, NXP employed 8,094 workers in December 2014, a growth of 10.3% in one year. It was only in Europe that the number of employees declined in 2014.[108]

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[101] Ibid, p.14.
[102] Ibid, p.18.
[103] Ibid, p.43.
[104] Ibid, p.16.
[105] Ibid, p.15.
[106] Ibid, p.16.
[107] Ibid, p.15.
[108] Ibid, p.35.

In the future, NXP expects to outsource an increasing part of its wafer foundry and its packaging to third parties. The reason for the company to outsource is increased flexibility.[109] This is especially true for the HPMS segment, and to a lesser extent for the SP business.[110]

Table 1

Number of employees (total and per segment)	2007	2008	2009	2010	2011	2012	2013	2014
Total # of employees	n/a	n/a	26,086	24,471	23,660	25,358	25,691	27,884
# HPMS	n/a	n/a	2,806	2,864	3,037	3,224	3,128	3,344
# Standard Products	n/a	n/a	1,488	1,746	1,745	1,654	1,864	1,674
# Manufacturing Operations	n/a	n/a	14,320	15,526	14,860	16,490	17,428	19,335

Source: Bloomberg database[111], retrieved February 2015

Table 2

Revenue (in $ million)2007	2008	2009	2010	2011	2012	2013	2014
6,321	5,443	3,519	4,402	4,194	4,358	4,815	5,647

Source: Bloomberg database, retrieved March 2015

Table 3

Gross profit (in $ million) in total and per segment	2007	2008	2009	2010	2011	2012	2013	2014
Total	2,045	1,218	898	1,823	1,906	1,988	2,177	2,640
HPMS	n/a	n/a	785	1,525	1,573	1,745	1,905	2,253
SP	n/a	n/a	74	280	336	238	285	382
Corporate and other	n/a	n/a	109	42	45	27	-13	5
Manufacturing	n/a	n/a	-70	-24	-48	-22	n/a	n/a

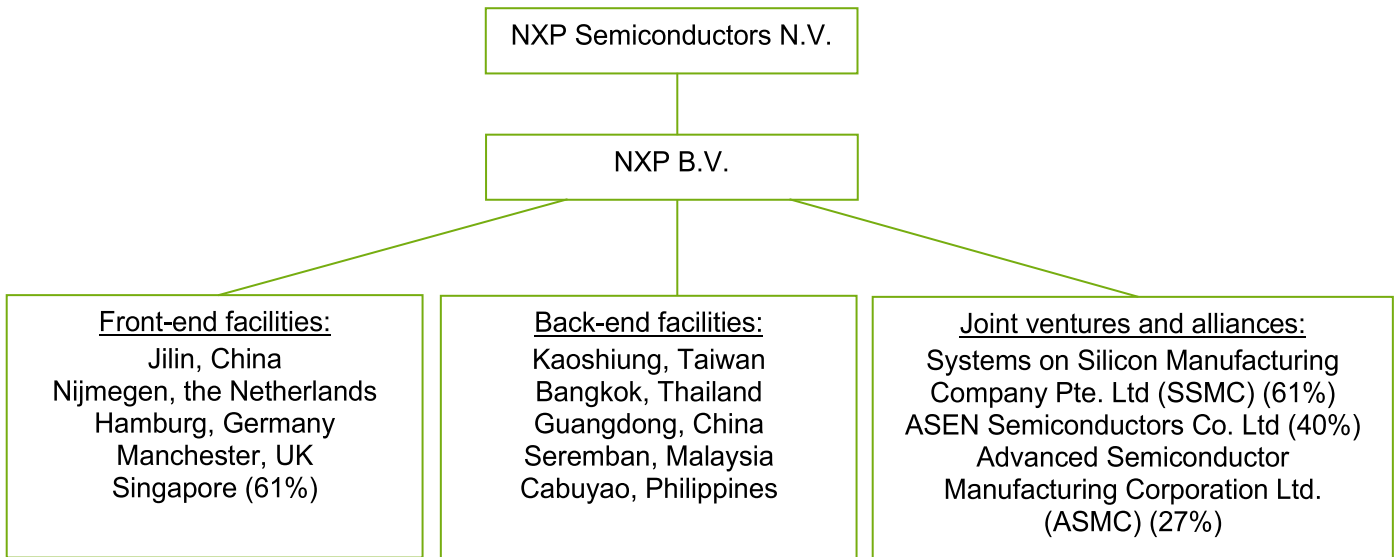Source: Bloomberg database, retrieved March 2015

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[109] Ibid, p.15.
[110] E-mail communication between SOMO and Jean Schreurs, SVP & Senior Corporate Counsel at NXP on 22 May 2015.
[111] NXP does not confirm the Bloomberg figures that are used throughout the report, but rather refers to its published financial results.

3.2.2. Research & development

NXP has 3,447 people working in R&D, which represents 12.3% of the total workforce. The vast majority of these people support the HPMS business: 3,142. The remaining 305 workers work for the SP business. In 2014, NXP invested $747 million in R&D, of which $642 million was invested in HPMS (86%).[112]

Figure 1: NXP corporate structure (manufacturing)

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                        ┌───────────────────────────┐
                        │  NXP Semiconductors N.V.  │
                        └───────────────────────────┘
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                            ┌─────────────────┐
                            │    NXP B.V.     │
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Front-end facilities:	Back-end facilities:	Joint ventures and alliances:
Jilin, China	Kaoshiung, Taiwan	Systems on Silicon Manufacturing Company Pte. Ltd (SSMC) (61%)
Nijmegen, the Netherlands	Bangkok, Thailand	ASEN Semiconductors Co. Ltd (40%)
Hamburg, Germany	Guangdong, China	Advanced Semiconductor
Manchester, UK	Seremban, Malaysia	Manufacturing Corporation Ltd.
Singapore (61%)	Cabuyao, Philippines	(ASMC) (27%)

Source: Orbis database & NXP Annual Report 2014, p. 16
For a full list of subsidiaries, see Annex I.

3.3. Competitors

The semiconductor industry is highly competitive. Semiconductors are characterised by constant technological changes and evolving standards. Amongst others, this has to do with the industry being driven by "Moore's Law": the prediction by Intel founder Gordon Moore that the number of transistors that can be placed on a chip will double every two years, which means that processing power and speed doubles, while at the same time relative costs decrease.[113] As such, investment and growth are necessary to retain a competitive position in this industry, says NXP. This is especially true for the HPMS business, which competes, amongst other things, on the basis of new products and intellectual property. In contrast, the SP business competes primarily on the basis of cost competitiveness and supply chain performance.[114]

NXP competes with many different semiconductor companies across markets and geographic areas. The company lists the following companies as its key competitors: Analog Devices Inc.; Atmel Corporation; Entropic Communications Inc.; Fairchild Semiconductors International Inc.; Freescale; Infineon; Linear Technology Corporation; Maxim Integrated Products Inc.; MaxLinear;

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[112] Ibid, p. 18.
[113] Intel, "50 Years of Moore's Law", no date, <http://www.intel.com/content/www/us/en/silicon-innovations/moores-law-technology.html>, (14 April 2015).
[114] NXP, Annual Report 2014, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm> p. 19-20.

Renesas; ON Semiconductor Corporation; Power Integrations Inc.; ROHM Co. Ltd.; Silicon Laboratories Inc.; STMicroelectronics; and Texas Instruments Incorporated. None of the competitors work in all of NXP's business lines.[115]

3.4. Customers

NXP's customers are diverse, including OEMs (original equipment manufacturers or brand companies), ODMs (original design manufacturers), contract manufacturers and distributors. The majority of NXP's revenue comes from sales to OEM customers, whose names probably sound familiar, such as Apple and Samsung. NXP lists the following companies as its top 10 OEM/brand customers (in alphabetical order): Apple, Bosch, Continental, Delphi, Gemalto, Giesecke/Devrient, Huawei, Kona, NSN, Panasonic and Samsung.[116]

According to the Bloomberg database, by far the biggest OEM/brand customers sorted by revenue are Apple and Samsung (respectively accounting for 10.07% and 9.22% of NXP's total revenue). They are followed by Huawei, Panasonic, Delphi, Gemalto and Continental, all representing between 1% and 2% of NXP's revenue. Some of the OEM and ODM customers are supplied through distributors, the largest being WPG, Avnet and Arrow. WPG and Avnet each both accounted for 13% of NXP's revenue in 2014.[117]

Table 4: NXP's biggest customers sorted by revenue

Biggest NXP customers	% of NXP revenue
Avnet	13.00
WPG	13.00
Apple	10.07
Samsung	9.22
Arrow Electronics	7.22
Edom Technology Co.	3.74
Taiwan Semiconductor Man.	2.71
Huawei	1.61
Panasonic	1.38
Delphi Automotive PLC	1.19
Gemalto N.V.	1.14
Continental AG	1.08
UKC Holdings Corp.	1.05
Kona	0.99
Vitec	0.91
Volkswagen AG	0.89
General Electric	0.86

Source: Bloomberg database, retrieved March 2015

NXP recently scored a big win when Apple announced they would use NXP's NFC chips for 'Apple Pay'. Apple Pay was introduced at the end of 2014 in the US for the iPhone 6 and the

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[115] Ibid, p. 19.
[116] Ibid, p. 17.
[117] Ibid, p. 17.

Apple Watch. Mobile payments are expected to be a fast-growing market in 2015.[118] The adoption by Apple of NFC could mean an extra $230 million in revenue for NXP in 2015, according to Pacific Crest analyst John Vinh.[119] NXP also supplies NFC chips for some of Samsung's Galaxy phones,[120] as well as other products.

NXP's sales strategy is built on the idea of long-lasting relationships with leading companies. In this way, the company seeks to avoid sales volatility in challenging, competitive markets. However, it can be argued that relying on a select number of high-end customers makes NXP vulnerable. High-profile brands, such as Apple, are sensitive to negative publicity related to environmental damages and human rights and labour rights violations in their supply chain. Being a key supplier of a selected number of high-profile brands also puts NXP under scrutiny and increases its own sensitivity to negative publicity about supply chain issues. Losing a major customer consequently means losing a big chunk of revenues. If they lost Apple as a customer, this could mean the loss of 10% of revenue for NXP.

Asia, especially China, is extremely important for NXP. In 2014, 68% of NXP's revenue was derived from the Asia Pacific region.[121] Revenue from China between 2011 and 2013 rose from 36.1% to 42.5%.[122] Furthermore, NXP employs 29% of its workforce in Greater China.[123] In this context, President and CEO Richard Clemmer has said that NXP "is practically a Chinese company", adding: "The only reason we are still a Dutch company, is because we enjoy our tax breaks in the Netherlands".[124] [125] Another lead in the importance of Asia is the fact that NXP established its global headquarter for the SP business and for operations in Singapore in September 2013. As such, Singapore is playing a pivotal role in managing NXP's operations in Asia.[126] More recently, in March 2015, NXP has established a regional headquarter in Shanghai, China, to integrate all current Chinese operations. According to the press release, the Chinese market is a vital part of the company's development strategy.[127]

3.5. Performance & outlook

Because of the fragile global economic outlook, prospects in the semiconductor industry are mixed; the industry generally reacts strongly to overall economic developments and can perform

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[118] Ed Carson, "NXP rides mobile payment chips, iPhone to big profit", Investor's Business Daily, 5 February 2015, <http://news.investors.com/technology/020515-738009-nxp-semiconductor-earnings-sales-top-estimates.htm> (10 February 2015).

[119] Noel Randewich, "Apple gives NFC chip technology a prized seal of approval", Reuters, 10 September 2014, <http://www.reuters.com/article/2014/09/10/us-apple-nfc-idUSKBN0H50I820140910?feedType=RSS&feedName=technologyNews>, (12 February 2015).

[120] Tim Bradshaw, Sarah Mishkin & Daniel Thomas, "Apple eyes pay-by-touch for next iPhone", 29 August 2014, Financial Times, <http://www.ft.com/cms/s/0/ee42ad02-2f32-11e4-afe4-00144feabdc0.html#axzz3XN7qlEcS>, (14 April 2015).

[121] NXP, Annual Report 2014, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm>, p. 6.

[122] Bloomberg database, Revenue by geography, (10 November 2014).

[123] Bloomberg database, Employees by geography, (10 November 2014).

[124] Junko Yoshida, "NXP Today: 'Practically a Chinese company'", EE Times, 30 April 2012, <http://www.eetimes.com/document.asp?doc_id=1264464>, (10 March 2015).

[125] Clemmer has later nuanced this statement in a message to the NXP employees in the Netherlands: "As with many articles in the press it does not always reflect precisely what has been said, describe the full picture and can sometimes be taken out of context. (…) Without a doubt, the Netherlands play a very key role". Provided by Jean Schreurs of NXP on 22 May 2015.

[126] NXP press release, "NXP strengthens footprint in Singapore and upgrades R&D capabilities" 26 September 2013, <http://www.nxp.com/news/press-releases/2013/09/nxp-strengthens-footprint-in-singapore-and-upgrades-r-and-d-capabilities.html>, (27 February 2015).

[127] NXP press release, "NXP establishes regional headquarters to enable 'secure connections for a smarter world' in China", 26 March 2015, <http://www.nxp.com/news/press-releases/2015/03/nxp-establishes-new-entity-to-enable-secure-connections-for-a-smarter-world-in-china.html>, (14 April 2015).

inconsistently from quarter to quarter. However, NFC looks promising for NXP. Although the mobile payment market earlier had a hard time taking off, it is likely that Apple is now going to be successful with Apple Pay, because thanks to iTunes the company already has the credit card details of millions of customers.[128] If so, other brand companies might want to replicate Apple's success, which may turn out well for NXP.

Chips are also getting increasingly important in cars. Think, for example, of the development of self-driving cars.[129] In March 2015, NXP announced a merger with Freescale Semiconductors. Freescale is a big player in the automotive industry. Due to the complementary nature of the portfolios of NXP and Freescale, creating an "automotive powerhouse", the merger was well-received by analysts and investors.[130] Rumours are that Apple is interested in working on an Apple car, for which NXP-Freescale could become an important supplier.

The market for e-passports and e-IDs is also expected to grow. Increasingly, governments are moving away from paper-based IDs and moving towards IDs with biometric data such as embedded fingerprints and iris recognition. For NXP this means that security chips are getting more and more important in terms of protecting personal information. NXP already supplies to roughly 85% of worldwide e-passport projects.[131]

The prospects and developments described above have resulted in NXP's share price going up. For example, after the announcement of the merger with Freescale, NXP gained more than 17% in value.[132] The share price in turn can have positive effects on NXP's enterprise value. In 2014, the company's enterprise value already grew by 45%, as can be seen in Table 5.

Table 5: Enterprise value (in $ million)

2007	2008	2009	2010	2011	2012	2013	2014
n/a	n.a.	n.a.	9,644.2	7,554.3	9,664.4	14,267.4	20,706.5

Source: Bloomberg database, retrieved March 2015

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[128] Tim Bradshaw, Sarah Mishkin & Daniel Thomas, "Apple eyes pay-by-touch for next iPhone", 29 August 2014, Financial Times, <http://www.ft.com/cms/s/0/ee42ad02-2f32-11e4-afe4-00144feabdc0.html#axzz3XN7qlEcS> (14 April 2015).

[129] Elco van Groningen, "NXP buying Freescale turns chipmaking challengers into giant", 2 March 2015, BloombergBusiness, <http://www.bloomberg.com/news/articles/2015-03-02/nxp-buying-freescale-turns-semiconductor-challengers-into-giant> (14 April 2015).

[130] Bill Gunderson, "Betting on Apple and a strong dollar through NXP Semiconductor", 10 March 2015, Market Watch, <http://www.marketwatch.com/story/betting-on-apple-and-a-strong-dollar-through-nxp-semiconductor-2015-03-10> (14 April 2015).

[131] NXP, Annual Report 2013, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm,> p. 9.

[132] Bill Gunderson, "Betting on Apple and a strong dollar through NXP Semiconductor", 10 March 2015, Market Watch, <http://www.marketwatch.com/story/betting-on-apple-and-a-strong-dollar-through-nxp-semiconductor-2015-03-10> (14 April 2015).

4. NXP's policies on freedom of association

This chapter focuses on what NXP says about freedom of association (FoA), and reviews its corporate social responsibility (CSR) policy. The aim is to be able to compare NXP's FoA policies with its practices.

4.1. Codes of conduct

CSR performance is not addressed in NXP's annual reports, which only make mention of the NXP Code of Conduct.[133] NXP does have a "sustainability policy" and a number of other policy documents regarding environment and society & people. These include, to name just a few, a list with substances of concern, a statement on human trafficking and slavery, targets for health and safety, and compliance documents on conflict minerals including a list of identified smelters in their supply chain.[134] In 2009, NXP issued its one and only sustainability report.[135]

NXP became a member of the Electronic Industry Citizenship Coalition (EICC) in April 2014. The EICC is a coalition of more than 100 electronics companies that are committed to supporting the rights and well-being of workers and communities worldwide affected by the global electronics supply chain. EICC members can be held accountable to a common code of conduct (CoC). They are expected to use a range of EICC training and assessment tools to achieve continuous improvement in their supply chains regarding social, ethical and environmental issues.[136] The EICC's common CoC, which NXP is held accountable to, includes the following standard on freedom of association:

> *"In conformance with local law, participants shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation or harassment."[137]*

According to NXP, the requirements from the EICC Code of Conduct are either part of its own Code of Conduct, or have been included in its policies and procedures.[138] NXP's Code of Conduct dates from 2012 and includes the following clause on the "right of organization":

> *"NXP recognizes the freedom of employees to establish or join an organization of their choice and will respect this right. We will not make employment subject to the condition that a person must not join a union or must terminate membership in a trade union. NXP respects the right to be represented by trade unions and other employee organizations.*

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[133] The next CSR report is expected in June 2015.
[134] NXP website, "About NXP", "Corporate Social Responsibility", <http://www.nxp.com/about/corporate-social-responsibility.html>, (11 March 2015).
[135] NXP, "High Performance Mixed Signal innovations for a better tomorrow. Sustainability Report 2009", <http://www.nxp.com/wcm_documents/about/corporate-social-responsibility/nxp_sustainability_report_2009.pdf>
[136] EICC website, <http://www.eiccoalition.org/>, (1 May 2015).
[137] Website EICC, EICC code 5.0, <http://www.eiccoalition.org/standards/code-of-conduct/>, (1 May 2015).
[138] NXP website, "About NXP", "Corporate Social Responsibility", "Program", "Suppliers", "Introduction", <http://www.nxp.com/about/corporate-social-responsibility/sustainability/suppliers/introduction.html> (23 March 2015).

NXP will, whenever applicable, engage in the negotiation process either on its own behalf or through employers' associations. Local rights and co-determination will be fully respected with a view to reaching agreement on the terms and conditions presented by employees."[139]

NXP's CoC refers to the International Labour Organization (ILO) in general, but does not mention the specific ILO standards of freedom of association and collective bargaining (ILO Conventions 87 and 98, supplemented by 135), which would avoid any possible misunderstanding regarding the interpretation of the standard. However, NXP is committed to respecting the right to organisation and collective bargaining according to the above standards.

Furthermore, NXP has a Supplier Code of Conduct, which is a combination of the NXP Code of Conduct and the EICC Code of Conduct, version 4.0.

NXP mentions three ways of reporting violations of the Code of Conduct: to the manager (1); to the Compliance Officer (2); and through the Ethics Hotline with guaranteed anonymity if desired (3).[140] There is no further information on NXP's website about how they implement the Code of Conduct in their own manufacturing facilities or at their suppliers. From its public information, it is unclear if NXP is using the EICC training and assessment tools. In an e-mail exchange with SOMO, NXP has stated that it has a pool of EICC lead auditors that support internal and external audits and support the implementation of the social responsibility standards, which go beyond EICC requirements.[141]

4.2. Transparency

NXP is evaluated as not being very transparent in terms of Environmental, Social and Corporate Governance (ESG) data. Issues include, for example, CO_2 reduction, gender diversity and executive compensation. NXP ranked number 235 out of 244 companies in the 2014 Transparency Benchmark by the Dutch Ministry of Economic Affairs, and as such, falls in the category "laggards".[142] According to the Bloomberg database, NXP ranks among the lowest companies related to the ESG Disclosure Score. This transparency score dropped significantly after 2009, from 33.47 to 9.50 in 2010 (where 100 points are possible) and is currently stable at 11.98 points.[143]

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[139] NXP, Code of Conduct 2012, <http://www.nxp.com/wcm_documents/about/corporate-social-responsibility/society-people/nxp_codeofconduct_june_2012.pdf>, p. 15.

[140] NXP, Code of Conduct 2012, <http://www.nxp.com/wcm_documents/about/corporate-social-responsibility/society-people/nxp_codeofconduct_june_2012.pdf>

[141] E-mail communication between SOMO and Jean Schreurs, 22 May 2015.

[142] Ministerie van Economische Zaken, Transparantiebenchmark 2014, <http://transparantiebenchmark.nl/sites/default/files/fotos/E02-627894_benchmark%20NL_def.pdf>, p. 2 & 6, (2 March 2015).

[143] Bloomberg database, ESG, (10 November 2014).

5. The origin of NXP

This chapter briefly shows how NXP emerged from Philips. It also serves to take a closer look at Philips' perspective on trade unions. The union in the Philippines has had constructive relations with Philips for decades, and settled a number of CBA's without conflict. This chapter seeks to describe the heritage that was passed down to NXP from Philips in terms of good industrial relations.

5.1. Philips Semiconductors

NXP was originally part of Royal Philips, a Dutch lamp manufacturer that eventually evolved into a broad electrical engineering company.[144] Philips' semiconductor activities started in the 1950s, and the company soon grew into the number two semiconductor manufacturer in the world when it strategically purchased pioneer company Signetics in 1975.[145] In the 1980s recession led to the formation of a separate product division called 'Philips Semiconductors'. Throughout the 1990s, Philips Semiconductor expanded production to China, Malaysia, Thailand and the Philippines.[146]

In 2004, Philips veteran Frans van Houten became head of Philips Semiconductors.[147] At that time, the market was volatile and the semiconductor unit had been swinging between profits and losses for a few years.[148] Van Houten decided to prune the variety of product lines and market segments and focused on five specific markets: automotive, identification, home, mobile & personal, and multimarket semiconductors.[149] Despite his restructuring efforts, the then Philips CEO Gerard Kleisterlee decided to cut Philip's exposure to volatile industries such as the chip industry, aiming to shift focus more towards the healthcare sector. In December 2005, Philips announced that it would carve out its semiconductor unit in a separate, independent legal entity, paving the way to officially put the unit up for sale in September 2006.[150]

5.2. Philips & freedom of association

Philips has always been among the "more humane employers" as far as wages and the treatment of workers are concerned.[151] In the early 20th century, the relationship between Philips

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[144] Philips Museum website, "History of Philips", no date, <http://www.philips-museum.com/uk/history_of_Philips.html>, (9 February 2015).

[145] Quote by Jack Akerman in Electronics & Power, 13 November 1975, <http://ieeexplore.ieee.org/stamp/stamp.jsp?arnumber=5182494>, (11 February 2015).

[146] Philips Quality Reference Handbook, <http://www.scribd.com/doc/237681698/Philips-Quality-Reference-Handbook-2002-pdf#scribd>, p. 100-101.

[147] Philips website, "Frans van Houten", no date, <http://www.philips.com/sites/philipsglobal/about/company/management/management/fransvanhouten.page>, (11 February 2015).

[148] Kate Norton, "What are KKR's plans for Philips Semi?", Bloomberg Business, 1 August 2006, <http://www.bloomberg.com/bw/stories/2006-08-01/what-are-kkrs-plans-for-philips-semi> (13 February 2015).

[149] NXP press release, "Philips semiconductor becomes NXP", 1 September 2006, <http://www.nxp.com/news/press-releases/2006/09/philips-semiconductors-becomes-nxp.htmlb>, (13 February 2015).

[150] Philips press release, "Philips kiest aparte juridische structuur voor zijn divisie Semiconductors", 15 December 2005, <http://www.newscenter.philips.com/nl_nl/standard/about/news/press/article-15558.wpd>, (11 February 2015).

[151] A. Heerding, 1988, University of Cambridge, "The History of N.V. Philips gloeilampenfabriek: A Company of many parts", p. 240.

and various trade unions was still "businesslike" and "cautious".[152] Nevertheless, the two sides kept each other informed by letter about developments, and grievances like hourly wage "were investigated and settled in consultation with the relevant union".[153] In the 1920s, Philips started developing a decentralised, international organisational structure. Philips became an "industrial democratic world federation": national subsidiaries kept their local autonomy, while being loyal to the company as a whole at the same time.[154]

In the 1940s, Philips built up an extensive social care programme for its workers, including housing facilities, medical care, schooling and social activities, such as the Philips football club PSV. Owner and co-founder Anton Philips had the "remarkable" view, especially for that era, that a booming company should pay fair wages and offer good social care.[155] Thus, the managers looked both after the interests of the employees and the interests of the company as a whole.[156] The interests of the employees were even placed above the interests of the shareholders.[157] Philips considered itself ahead of the curve in terms of solving problems on the factory floor and in furthering good internal relationships through workers' councils.[158]

[152] Ibid, p. 275.
[153] Ibid, p. 275.
[154] Keetie Sluyterman, 2005, Routledge, "Dutch Enterprise in the 20th Century: Business strategies in a small open country", p. 130.
[155] Ibid, p. 130.
[156] Ibid, p.74.
[157] Ibid, p. 130.
[158] Ibid, p. 130.

6. NXP under private equity ownership (2006-2014)

The Philips Semiconductors unit was acquired by a private equity consortium. When private equity works well, it can make distressed companies profitable. However, a number of buyouts in the 1980s that led to the bankruptcy of the acquired companies have made them notorious.[159] This chapter aims to describe what private equity did to NXP, and how the company evolved and performed under private equity ownership. Secondly, it aims to show the consequences of this type of ownership for workers and unions.

6.1. The private equity takeover of Philips Semiconductors

The struggling Philips Semiconductors unit was put up for sale in September 2006. Originally, Kleisterlee preferred another industry player, but ended up with three interested private equity firms.[160] A private equity consortium of Bain Capital, Silver Lake Partners, Apax and AlpInvest Partners NV – led by Kohlberg Kravis Roberts & Co. (KKR), bought 80.1% of the shares in 2006 in a $9.4 billion leveraged buyout[161] Philips retained the remaining 19.9% interest.[162] What was to become NXP was highly valued: $5.46 billion according to Bloomberg analysts and around $8.3 billion according to NXP.[163]

After the take-over by the PE consortium, the name Philips Semiconductors was changed into NXP Semiconductors. NXP became incorporated in the Netherlands as a Dutch private company with limited liability held by a holding company named KASLION Acquisition B.V,[164] an "acquisition vehicle" formed by the PE consortium and Philips.[165] The private equity (PE) consortium agreed to keep Van Houten on as CEO of the firm.

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[159] Victor Hwang, "What's the Difference Between Private Equity and Venture Capital?", 1 October 2012, Forbes, <http://www.forbes.com/sites/victorhwang/2012/10/01/presidential-debate-primer-whats-the-difference-between-private-equity-and-venture-capital/>, (24 April 2015).

[160] Ian Bickerton, James Politi, Tom Griggs, "Philips sells bulk of chip divison", 3 August 2006, Financial Times, <http://www.ft.com/intl/cms/s/2/a3d09d4c-231f-11db-848d-0000779e2340.html#axzz3XD9a2k6L> (14 April 2015).

[161] Kristen Scholer & Lee Spears, "KKR's NXP raises $476 million after cutting IPO price", Bloomberg Business, 5 August 2010, <http://www.bloomberg.com/news/articles/2010-08-05/kkr-bain-s-nxp-semiconductors-raises-476-million-after-reducing-ipo-33-->, (24 March 2015).

[162] NXP press release, "Philips Semiconductors becomes NXP", 1 September 2006, <http://www.nxp.com/news/press-releases/2006/09/philips-semiconductors-becomes-nxp.htmlb,> (13 February 2015).

[163] First figure by Kristen Scholer & Lee Spears, "KKR's NXP raises $476 million after cutting IPO price", Bloomberg Business, 5 August 2010, <http://www.bloomberg.com/news/articles/2010-08-05/kkr-bain-s-nxp-semiconductors-raises-476-million-after-reducing-ipo-33-->, (24 March 2015), second figure by Jean Schreurs, SVP & Senior Corporate Counsel at NXP, via e-mail communication with SOMO on 22 May 2015.

[164] NXP, Annual Report 2011, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm2012>, p. 5.

[165] NXP, Annual Report 2009, <http://media.corporate-ir.net/media_files/IROL/20/209114/reports/annual_2009_report.pdf>, p. 9.

Introduction to private equity and leveraged buyouts

Private equity (PE) firms raise and manage money from investors such as pension funds, banks, insurance companies and wealthy individuals. With this money, the PE firm buys another company, tries to improve its financial results, and then resells it.[166] The trick is that the PE firm only provides 10 or 20% of the cash for the acquisition. The remaining 80 to 90% is financed with borrowed money, the so-called "leverage".[167] Hence the term "leveraged buyout" (LBO).

In an LBO, the acquired company must take the debt on its balance and meet the interest payments.[168] After the acquisition, more debt is put onto the company to finance large dividend payments.[169] In addition, the PE firm often charges the acquired company huge fees for 'advice' on the deal.[170] Often, a member of the PE firm joins the board – or the management is replaced entirely – so that the PE firm has a final say over how the company is run.[171] Wider stakeholders such as employees and suppliers are generally not involved or consulted.[172]

The life cycle of an LBO is generally five to seven years, when the owners exit by selling the business with a profit to the public through initial public offerings (IPO), secondary offerings, or sales to strategic buyers.[173] Together, the investors typically receive about 80% of the profits from the deal. The remaining 20% is kept by the PE firm.[174]

Consequences of LBOs
Under private equity ownership, financial structure, strategies and management priorities often change dramatically. As the life cycle of an LBO is generally short, the PE firms don't have a long interest in observing the rights and interests of employees. Rather, PE firms are generally preoccupied with restructuring, cost cutting and generating high rates of return. The following consequences are often seen as a result:
o   Closing of workplaces: Private equity firm's concern with cash often leads to closing or selling of workplaces, despite their productivity or performance levels.
o   Lack of investment and innovation: Cash is generally extracted out of the company, rather than invested in e.g. workers trainings, new machinery, product development or pension plans.[175]
o   Lack of accountability: It is said the PE firm is an "invisible employer".[176] The company management's power is limited. The PE funds are the ones that are pulling the strings.
o   Lack of transparency: While information on public companies is openly accessible, private companies can act behind closed doors. They are not subject to disclosure requirements and can be more secretive.

166 Investopedia, "Private equity", <http://www.investopedia.com/terms/p/privateequity.asp>, (24 April 2015).
167 John Gilligan & Mike Wright, "Private equity demystified. An explanatory guide", ICAEW Corporate Finance Faculty, August 2008, <https://workspace.imperial.ac.uk/entrepreneurship/Public/Privateequity1[1].pdf>, p. 5.
168 International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association, 2007, "IUF Workers' Guide to Private Equity Buyouts", <http://www.iufdocuments.org/www/documents/A%20Worker%27s%20Guide%20to%20Private%20Equity-e.pdf>, p. 6-7.
169 International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association, 2007, "IUF Workers' Guide to Private Equity Buyouts", <http://www.iufdocuments.org/www/documents/A%20Worker%27s%20Guide%20to%20Private%20Equity-e.pdf>, p. 9.
170 International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association, 2007, "IUF Workers' Guide to Private Equity Buyouts", <http://www.iufdocuments.org/www/documents/A%20Worker%27s%20Guide%20to%20Private%20Equity-e.pdf>, p. 8.
171 Service Employees International Union, "Behind the Buyouts. Inside the World of Private Equity", April 2007, <http://gobnf.org/i/wog/behindthebuyouts.pdf>, p. 13.
172 John Gilligan & Mike Wright, "Private equity demystified. An explanatory guide", ICAEW Corporate Finance Faculty, August 2008, <https://workspace.imperial.ac.uk/entrepreneurship/Public/Privateequity1[1].pdf>, p. 37.
173 BloombergBusiness > Financials sector > Capital markets industry > KKR <http://investing.businessweek.com/research/stocks/snapshot/snapshot.asp?ticker=KKR>
174 Service Employees International Union, "Behind the Buyouts. Inside the World of Private Equity", April 2007, <http://gobnf.org/i/wog/behindthebuyouts.pdf>, p. 14.
175 Ibid, p. 15.
176 International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association, 2007, "IUF Workers' Guide to Private Equity Buyouts", <http://www.iufdocuments.org/www/documents/A%20Worker%27s%20Guide%20to%20Private%20Equity-e.pdf>, p.18.

For unions, these changes can grossly burden their work. The lack of transparency, for example, can have a negative impact during collective bargaining, when union officers may not be able to find financial information about the company (e.g. profit, sales) for the purpose of collective bargaining. Furthermore, the "invisibility" of the PE firm allows it to evade responsibility in the collective bargaining process; PE firms can argue that they are just investors, and that it is therefore not their job to talk with unions.

6.2. NXP under van Houten (2006-2008)

The first years in the hands of KKR were difficult. In 2007, the company's full year sales fell 6.7%.[177] The difficulties arose for several reasons. For example, there was a delay in the rollout of NFC, because there just wasn't a high demand for this application yet. The smartphone payment market had a difficult time taking off. NFC phones at the time did become popular in some markets, such as Japan, but in the US and Europe the technology has been slow to make a mark, as can be seen from the limited adoption of the Google Wallet and PayPal.[178] [179] More importantly, the economic downturn, a weak exchange rate of the US dollar and price erosion led NXP to announce a massive reorganisation in September 2008, referred to as "Redesign Program". Measures in this reorganisation included cutting jobs, a move to more advanced production processes and outsourcing to chipmakers in Asia. Another measure was a more focused R&D.[180] NXP also pulled out of a project set up in collaboration with STMicroelectronics and Freescale for the development of 45 nanometer technology.

Around 4,500 jobs were cut at NXP's manufacturing, R&D and back office operations, representing 15% of the total workforce.[181] As NXP was looking to decrease its manufacturing particularly in high cost geographies, especially employees in the Netherlands, France and Germany were affected. Part of the facilities in Nijmegen and Hamburg were sized down, while fabs in Fishkill, USA, Caen, France and Nijmegen, the Netherlands, were shut down or sold. This redesign cost $800 million but NXP says it was necessary to ensure the company remained competitive. It was aimed to lead to annual savings of $550 million.[182]

6.3. NXP under Clemmer (2009 onwards)

A combination of factors, including the falling profits and different visions and management styles, led to Van Houten's resignation in January 2009. The American Richard Clemmer (1951) was installed as the new CEO by the PE firm. Clemmer transformed NXP by radically slimming down the product portfolio.[183] The company focused its business specifically on HPMS products, in three areas: identification, lighting and automotive. According to NXP, HPMS products have

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[177] NXP Press Release, "NXP Semiconductors Announces Fourth Quarter and Full Year 2007 Results", 4 March 2008, <http://www.nxp.com/news/press-releases/2008/03/nxp-semiconductors-announces-fourth-quarter-and-full-year-2007-results.html> (24 March 2015).

[178] Tim Bradshaw, Sarah Mishkin & Daniel Thomas, "Apple eyes pay-by-touch for next iPhone", 29 August 2014, Financial Times, <http://www.ft.com/cms/s/0/ee42ad02-2f32-11e4-afe4-00144feabdc0.html#axzz3XN7qlEcS> (14 April 2015).

[179] Nevertheless, the business unit Automotive & Identification represented 23.5% of the total NXP revenues in 2008.

[180] It must be noted that no cuts were made in the total R&D capacity.

[181] During all of the reorganizations, NXP has offered employees that had to be made redundant new opportunities in the form of a new job or training course, says Jean Schreurs, SVP & Senior Corporate Counsel at NXP, in e-mail communication with SOMO on 22 May 2015.

[182] NXP Press Release, "Redesign of NXP Semiconductors organization", 12 September 2008, <http://www.nxp.com/news/press-releases/2008/09/redesign-of-nxp-semiconductors-organization.html>, (24 March 2015).

[183] Junko Yoshida, "NXP today: 'Practically a Chinese company'", EETimes, 30 April 2012, <http://www.eetimes.com/document.asp?doc_id=1264464> (23 March 2015).

higher margins and are attractive in terms of relative business stability.[184] Clemmer also continued the strategy initiated by Van Houten to shave costs, cut down on assets and capital investments, and to increasingly outsource manufacturing.

Analysts have characterised Clemmer as a "money man", rather than a "product guy".[185] Prior to taking the job at NXP, Clemmer has held different executive, financial and management positions in the technology industry over 30 years.[186] He was CEO of Agere Systems and chief financial officer (CFO) at Quantum Corporation.[187] In addition, Clemmer has sat on several advisory boards and was a senior advisor to KKR. The longest period of his career was spent at Texas Instruments, where he was Senior Vice President and CFO between 1988 and 1996. The high-tech industry in general does not have a good reputation when it comes to unions.[188] But this is especially true for Texas Instruments. Texas Instruments (alongside IBM and Digital) is mentioned as an example "where final authority rested with the management", with "no provisions for worker representation."[189] In another article, Texas Instruments is mentioned as being "especially unreceptive to union attempts to organize its employees".[190]

[184] NXP, Annual Report 2013, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm>, p. 7.
[185] Bolaji Ojo, "Analysis: NXP's survival options must include more asset sales", EE Times, 5 January 2009, <http://www.eetimes.com/document.asp?doc_id=1170063> (24 March 2015).
[186] Bloomberg Business, "Nxp Semiconductors Nv", <http://investing.businessweek.com/research/stocks/people/person.asp?personId=510726&ticker=NXPI> (24 March 2015).
[187] NXP website, "about NXP", "management team", "Richard Clemmer", <http://www.nxp.com/about/management/rick-clemmer.html> (24 March 2015).
[188] David Bacon, "Up against the Open Shop – the hidden story of Silicon Valley's high-tech workers", Truthout, 2 March 2011, <http://www.truth-out.org/news/item/117:up-against-the-open-shop--the-hidden-story-of-silicon-valleys-hightech-workers#>, (6 May 2015).
[189] Steve Early & Rand Wilson, "Organizing High Tech: Unions & Their Future", 1986, <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1071&context=lrr>, p. 49.
[190] Ruth A. Allen, George N. Green, and James V. Reese, "Labor Organizations," Handbook of Texas Online, 15 June 2010, Texas State Historical Association. <https://www.tshaonline.org/handbook/online/articles/oml01> (22 December 2014).

7. NXP – going public

This chapter analyses the current ownership situation at NXP. The aim is to understand who is pulling the strings and who is to be addressed in order to improve industrial relations. Together with the previous two chapters, this chapter also completes the historical overview of NXP.

7.1. Exit of the private equity consortium (2010-May 2014)

In mid-2010, the private equity consortium began its exit from NXP. In August of that year NXP converted into a Dutch public company – NXP Semiconductors N.V. – and entered the NASDAQ stock exchange in New York. With a level of debt as high as $5 billion,[191] the company could not be sold in one go. NXP therefore offered a number of 34 million shares, in an initial public offering (IPO). It sought to earn $18 to $21 per share, but in the end sold them for $14 each. This is a valuation of about $2 billion less than what the company was bought for in 2006, when the PE consortium paid $26.07 per share.[192] Meanwhile, Philips sold its remaining common shares in NXP to the Philips' UK pension fund. Throughout 2011 and 2013, the consortium continued its strategy of selling tranches of shares. In 2013, NXP joined the NASDAQ-100 Index, which comprises the 100 largest non-financial stocks listed on the NASDAQ Stock Market based on market capitalisation.[193]

7.2. Current shareholders & ownership (2015)

In May 2014, the PE consortium sold their remaining 17 million NXP shares, though representatives of some members of the PE consortium continue to sit on NXP's Board.[194] The biggest group of shareholders is now institutional investors. At the time of writing, NXP had 251 million shares outstanding, of which 245 million are free floating.[195 196]

The largest investment advisors include Fidelity, Wellington, Invesco, Waddell & Reed and Thornburg Investment. Among the hedge fund managers are Viking Global Investors and York Capital Management. The banks include Westpac Banking and Commonwealth Bank of Australia. One of the venture capital owners is Apax Partners. The pension fund owners include United States Steel & Carnegie and the Texas Teacher Retirement System. The government owners are Norges Bank, Korea Investment Corporation and Alaska Permanent Fund Corporation. 'Other' includes Alpinvest Beheer and LLB Vaduz. The insurance companies include Prudential Retirement and Manufacturers Insurance Co.

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[191] NXP, Annual Report 2009 and 2010. At the end of 2009, the total debt was $5,283 million. At the end of 2010, the total debt was $5,061 million.

[192] Michael Tsang and Lee Spears, "KKR, Bain sell NXP in Initial offering at 46% discount to LBO", BloombergBusiness.com, 6 August 2010, <http://www.bloomberg.com/news/2010-08-06/kkr-bain-sell-nxp-semiconductors-in-initial-offer-at-46-discount-to-lbo.html>, (23 March 2015).

[193] NXP Press Release, "NXP Semiconductors N.V. Joins the NASDAQ-100 Index", 16 December 2013, <http://www.nxp.com/news/press-releases/2013/12/NXP-Semiconductors-N-V-Joins-the-NASDAQ-100-Index.html> (24 March 2015).

[194] Johannes P. Huth and Ian Loring, NXP, Annual Report 2014, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm>, p. 38-39.

[195] Financial Times, NXP Semiconductors NV, <http://markets.ft.com/research/Markets/Tearsheets/Summary?s=NXPI:NSQ>, (24 April 2015).

[196] According to Jean Schreurs, SVP & Senior Corporate Counsel at NXP, all 251 million shares are free float. "Bloomberg may have deducted treasury shares held by NXP, but also treasury shares belong to the free float." 22 May 2015.

Finally, Richard Clemmer, Johannes Huth and Peter Bonfield – all on NXP's Board of Directors – are the biggest individual owners. This shows that they have confidence in the company. However, this probably affects the way the business is managed; it is likely that shareholders' value remains at the forefront of business decisions. In March 2015, Clemmer's shares were worth a total of $348,307,517.[197]

Table 6

Ownership type	%
Investment advisor	76.93
Hedge fund manager	14.45
Venture capital	1.84
Bank	1.76
Individual	1.45
Pension fund	1.06
Other	0.82
Government	0.79
Insurance company	0.70

Source: Bloomberg database, retrieved February 2015

Table 7

Largest shareholders	Amount of shares held	%
1. Fidelity Management and Research (FMR) LLC	**22,796,645**	**9.06**
2. Wellington Management Group	18,841,226	7.48
3. Invesco Ltd	8,116,149	3.22
4. Waddell & Reed Financial Inc	5,469,147	2.17
5. Viking Global Investors	5,411,595	2.15
6. Hartford Investment Management	4,769,260	1.89
7. Apax Partners Inc	4,355,793	1.73
8. York Capital Management	4,086,625	1.62
9. TIAA-CREF	4,070,054	1.61
10. Thornburg Investment	4,063,835	1.54
11. JP Morgan Chase & Co	3,867,295	1.45
12. Blackrock	3,643,677	1.38
….		
17. Clemmer, Richard L.	3,224,174	1,28

Source: Bloomberg database, retrieved March 2015

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[197] This figure is calculated by SOMO based on information of Yahoo Finance. On 20 March 2015, shares were worth most that month: $108.03. See Yahoo Finance, NXP Semiconductors N.V., <http://finance.yahoo.com/echarts?s=NXPI+Interactive#%7B%22range%22%3A%223mo%22%2C%22scale%22%3A%22linear%22%7D>, (24 April 2015). The figure is not confirmed by NXP.

8. Business strategy analysis

After having read the history of NXP, this chapter aims to highlight the most important developments and business strategies over the period 2007-2014, when the cases of union harassment occurred. The goal is to better understand NXP's choices and conduct, which in turn can be used for improving the relationship between the company and its workers.

8.1. Strategies and developments

Based on NXP's annual reports and the NXP website, the following strategies and characteristics can be identified over the period 2007-2014:

Strong strategic focus on HPMS

Of NXP's two product divisions – HPMS and SP – the strategic focus is directed at the HPMS business, because the standard products are less complicated and need fewer investments. This is shown by the fact that the majority of NXP's R&D investment is reserved for HPMS. Out of the 3,447 employees in R&D in 2014, 91% (3,142) support the HPMS business. Of the total R&D expenses, 86% was spent on the HPMS business in 2014.[198]

Most of NXP's revenue growth is coming from the HPMS business, and further growth is expected as the NFC chips fall under HPMS. According to analysts, the global NFC market is estimated to grow at a CAGR (compound annual growth rate) of 91.4% over the period 2013-2018.[199]

Decline of R&D investments

In 2007, NXP invested almost €1 billion in R&D.[200] More than 6,700 engineers in R&D were employed to guarantee innovation.[201] NXP says that heavily investing in R&D is a continued strategy to create leading market positions. However, after the PE takeover, the number of employees in R&D decreased dramatically and the R&D expenses dropped to its lowest point in 2010, not even matching half of the expenses of 2007.

Since 2010, R&D investments have grown steadily again, but have never reached the same level as under the ownership of Philips. Moreover, only 3% is invested in the development of fundamental new technologies or product categories that could contribute to future company growth.[202] According to analysts, this decline in R&D investments could signal that NXP's technology edge is declining.[203] However, according to NXP, investments in new companies

[198] NXP, Annual Report 2014, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm>, p. 18.
[199] Bianca Hsing, "There may be further upside for NXP Semiconductors", 2 December 2014, Seeking Alpha, <http://seekingalpha.com/article/2722855-there-may-be-further-upside-for-nxp-semiconductors>, (24 April 2015).
[200] NXP, Annual Report 2007, <http://media.corporate-ir.net/media_files/IROL/20/209114/reports/annual_2007_report.pdf>, p. 6.
[201] NXP Press Release, "Philips Semiconductors becomes NXP", 1 September 2006, <http://www.nxp.com/news/press-releases/2006/09/philips-semiconductors-becomes-nxp.htmlb> (24 March 2015)
[202] NXP Annual Report 2014, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm>, p. 18.
[203] Bianca Hsing, "There may be further upside for NXP Semiconductors", 2 December 2014, Seeking Alpha, <http://seekingalpha.com/article/2722855-there-may-be-further-upside-for-nxp-semiconductors>, (24 April 2015).

must also be taken into account. NXP acquires new companies especially with the purpose of investing in R&D.[204]

Restructuring & divesting

Continuing restructuring and cost savings programmes have taken place over the last eight years. The company divested several of its divisions. For example, NXP sold its wireless operations of the Mobile & Personal division to STMicroelectronics for a cash amount and 20% interest.[205] As a result, the number of employees in the Mobile & Personal division dropped drastically from 4,100 in 2007 to 1,416 in 2008.[206] This divestment was one of the reasons why annual sales in 2008 decreased by 36.5%.[207] In November 2012, NXP started the OPEX Reduction Program, a cost saving and restructuring initiative.[208] At the end of the programme, in mid-2015, the workforce, which is primarily in Europe and the US, will be reduced by up to 650 people.[209]

Going 'fabless'

NXP continued the strategy initiated by Philips to go 'fabless' or 'fab-lite', also called the 'asset-light' strategy. This means that manufacturing is increasingly outsourced, so that NXP can benefit from lower capital costs. For example, NXP sized down its plants in Nijmegen and Hamburg, and shut down fabs in Fishkill and Caen. In its annual report 2014, NXP predicts that "in the future, we expect to outsource an increased part of our internal demand for wafer foundry and packaging services to third party manufacturing resources in order to increase our flexibility to accommodate increased demand mainly in our HPMS and to a lesser extent in Standard Products business".[210]

Focus on top OEMS and high-profile brands

NXP's revenue is primarily derived from made-to-order sales to OEMs and similar customers. NXP's sales strategy is to become the preferred supplier of top OEMs, electronic manufacturing service (EMS) customers, and distribution partners.

Centralised model

NXP is clear about the fact that manufacturing is centrally managed. In its Annual Report, NXP emphasizes that, by having a centralised organisational model, it seeks to reach scale benefits. Philips, on the contrary, has always put more emphasis on the autonomy of local management. This raises the question whether a change is taking place. The company itself claims there isn't and argues that local management in 2015 has as much influence as it had before under Philips.[211]

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[204] E-mail communication between SOMO and Jean Schreurs, SVP & Senior Corporate Counsel at NXP, on 22 May 2015.
[205] NXP, Annual Report 2008, <http://media.corporate-ir.net/media_files/IROL/20/209114/reports/annual_2008_report_april.pdf>, page 16. A few months after the sale, STM exercised its option for NXP's shares, so it ended as a cash deal.
[206] Ibid, page 57.
[207] Ibid, page 38. In addition, Jean Schreurs, SVP & Senior Corporate Counsel at NXP has stated in e-mail communication with SOMO on 22 May 2015 that this divestment was necessary for NXP to survive.
[208] NXP, Annual Report 2012, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm2013>, p. 6.
[209] Ibid, p. 92.
[210] NXP, Annual Report 2014, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm,> p. 15.
[211] E-mail communication between SOMO and Jean Schreurs, SVP & Senior Corporate Counsel at NXP on 22 May 2015.

Focus on China

Clemmer has said that NXP is "practically a Chinese company", though this has been nuanced later (see page 23).[212] Shipment-based revenue in Greater China has become twice as big as that in Europe. Also, it is in China that the greatest number of components are procured, designed and manufactured. One in every three employees at NXP is located in China (about 8,000). China is NXP's most important growth market, which explains why the company recently opened a regional headquarter in Shanghai. According to the press release, the Chinese market is a vital part of the company's development strategy.[213]

Less transparency

NXP's transparency has significantly reduced since 2009. Much of the ESG data were no longer published by NXP from 2009 onwards. NXP's ESG (Environmental, Social and Governance) Disclosure Score has dropped from 33.47 to 11.98 (where 100 points are possible) between 2009 and 2013. The reason for NXP to stop the publication of ESG data was to reduce costs and thereby to save the company.[214]

8.2. Developments at NXP in relation to the private equity takeover

Private equity takeovers often lead to big changes in financial structure, strategy and management priorities and it certainly has had wide implications for NXP's business operations. Part of the changes, however, had probably also taken place when Philips Semiconductors had been taken over by another player in the chip industry. Cost cuttings, restructuring and divestments also take place after takeovers by peers. Furthermore, the global financial crisis struck in the first years after the PE takeover. In times of crisis, many companies have to cut costs and restructure, and this is especially true for the semiconductor industry; the state of the global economy is a key determinant for the state of the semiconductor industry.[215]
A focus on upcoming markets like China, increased outsourcing and flexibility and going fabless are common strategies in this sector.

A number of strategies at NXP, however, are fitting in the picture of private equity takeovers (see box p. 30). First and foremost is the lack of investment in new technologies. The Bloomberg database shows that total R&D expenses declined from $1,328 billion in 2007 to $763 million in 2014.[216] Moreover, only 3% is invested in the development of fundamental new technologies.[217] Second to mention is the diminished transparency. NXP belongs to the laggards regarding the transparency of ESG data. Especially after 2009, the setback has become apparent. The third strategy is NXP's centralised model. Under private equity ownership, it is the consortium that is pulling the strings, which is only possible under centralised management.

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[212] Junko Yoshida, "NXP today: 'Practically a Chinese company'", EE Times, 30 April 2012, <http://www.eetimes.com/document.asp?doc_id=1264464> (23 March 2015).
[213] NXP press release, "NXP establishes regional headquarters to enable 'secure connections for a smarter world' in China", 26 March 2015, <http://www.nxp.com/news/press-releases/2015/03/nxp-establishes-new-entity-to-enable-secure-connections-for-a-smarter-world-in-china.html>, (14 April 2015).
[214] E-mail communication between Jean Schreurs, SVP & Senior Corporate Counsel at NXP and SOMO on 22 May 2015.
[215] Werner Ballhaus, Alessandro Pagella, Constantin Vogel & Christoph Wilmsmeier, "Faster, greener, smarter – reaching beyond the horizon in the world of semiconductors", January 2012, PriceWaterHouseCoopers, <http://www.pwc.de/de_DE/de/technologie-medien-und-telekommunikation/assets/studie_semiconductor_120116_global.pdf> (28 April 2014), p. 14.
[216] Bloomberg database, data retrieved February 2015.
[217] NXP Annual Report 2014, <http://investors.nxp.com/phoenix.zhtml?c=209114&p=irol-agm>, p. 18.

9.   Conclusion & Recommendations

This chapter will address the central questions of this report:
- What is the background of the conflicts with the trade unions?
- Can these conflicts entail a business risk for NXP?

From the case studies described in the report, it can be concluded that at least two disputes with local unions have seriously escalated, leading to international media attention and solidarity actions of global unions and civil society organisations.

NXP claims to have good relationships with all its employees, and views the disputes with the unions as regular discussions that can take place between a company and employee representatives. The case studies, however, indicate otherwise.

With the introduction of the 4x2 schedule with 12-hour working days in the Thai facility, NXP is depriving its employees of an international labor right as laid down in ILO Convention 1; the right to an 8-hour working day. The 4x2 schedule results in forced and unpaid overtime and the abolition of weekend days.

The illegal dismissal of trade union representatives is a violation of ILO Convention 87 which includes companies to refrain from actions that hamper workers to exercise their trade union rights.

The background of these conflicts can be found in a number of elements:

- **The strategy to compete on costs**
  The sites in Thailand and the Philippines are back-end facilities. The competition on costs could explain why the back-end manufacturing, which is less complicated and involves the assembly, testing and packaging of semiconductors, is the subject of anti-union actions by the central management. The profitability of the back-end manufacturing (and more specifically the profitability of the 'Standard Products') is driven by low-cost manufacturing in a competitive market with many rivals. The need for flexibility of the workforce is high due to customer demand. The presence of a union is often seen as an obstacle to competing on low wages and flexibility.

- **Negative impact of the private equity takeover**
  In the report, a number of negative consequences are listed that private equity takeovers can have for trade unions. Under private equity ownership, business elements that are not directly linked to generating cash – like worker satisfaction or worker investment – can get pressured. Private equity investors typically do not have a long-term interest in recognising the rights and interests of employees as the life cycle of a PE takeover is short (5 to 7 years). Instead, they have a short-term interest in yielding high rates of return. And divesting, restructuring, cost cutting are perceived as easier to do without being accountable to trade unions. It can be said that in general private equity takeovers have a negative impact on the position of unions.

- **The central managing of manufacturing**
  NXP is clear about the fact that its manufacturing is centrally managed. The company points out in its annual report that by "having a centralized organisation model, NXP seeks to reach scale benefits". This makes it logical to assume that the social side of manufacturing is centrally managed as well. The research, however, does not provide proof that the current repressive treatment of trade union representatives is controlled by the central management. At the same time, it is clear that the central management has not corrected the local management in the Philippines and in Thailand when the conflicts escalated, while the centralized organization model is suited for that. Therefore, the fact that central management refrained from taking corrective actions can be seen as support for the current treatment of the union representatives.

Are there risks?

With regard to the case in the Philippines, NXP has stated that employee absenteeism "impacted our output and our ability to serve our customers."[218] In its latest annual report, NXP again admits that the failure to reach agreements with labour unions is an existing company risk: "*If we fail to extend or renegotiate our collective bargaining agreements and social plans with our labor unions as they expire from time to time, if regular or statutory consultation processes with employee representatives such as workers' councils fail or are delayed, or if our unionized employees were to engage in a strike or other work stoppage, our business and operating results could be materially harmed.*"[219]

This is a realistic observation. At this moment, NXP is in a good position to profit optimally from upcoming developments, including: connected cars, mobile payments and the Internet of Things. The coming years are crucial for the company to roll out the needed NFC technology. To profit in the optimal way, the company needs to have its logistics in order and needs to be able to deliver in a timely fashion. Dropping the ball now will give the competition time to catch up with NFC technologies and NXP could lose its leading position on the NFC market.

However, NXP currently denies the danger zone they are in. In their latest annual report, the company does not mention the recent and ongoing disputes in Thailand and the Philippines. "*We have not experienced any material strikes or labor disputes in the past. A number of our employees are members of a labor union. In various countries, local law requires us to inform and consult with employee representatives on matters relating to labor conditions. We consider our employee relations to be good.*"[220]

Apparently NXP does not want to inform its shareholders about the labour disputes described in the cases outlined in this report. However, it is in the interest of the shareholders for NXP to resolve the labour issues in the short term and to invest in good industrial relations, to avoid possible disruptions in production and to profit optimally from the current opportunity to make good money with NFC technology. There certainly is a business case for investing in sustainable relationships with trade unions.

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[218] NXP Semiconductors, open letter, 13 May 2014, <http://nxpphilippines.com/2014/05/13/an-open-letter-from-nxp-semiconductors/> (17 March 2015).
[219] NXP Annual Report, 2014, p. 59.
[220] Ibid, p. 35.

Another reason to resolve and avoid labour disputes is the fact that NXP is very dependent on two of its biggest customers, Apple and Samsung. As high-profile brands these companies are sensitive in terms of negative publicity along their supply chain and could always reconsider their business with NXP. If NXP lost Apple and Samsung, it would lose almost 20% of its revenue.

Recommendations

For NXP:

- NXP should adapt its policies and practices in accordance with international labour standards, including the eight ILO fundamental Conventions, not least ILO Convention 1 stipulating a maximum working week of 48 hours.
- NXP should not refer to what is allowed by local laws if this means violating international labour standards; in this case NXP should go beyond legal compliance.
- NXP should be careful not to play down their disputes with the local trade unions. While NXP considers their employee relations to be good, we recommend NXP to re-evaluate its employee relations and to take pro-active steps and invest in the improvement of its relations with local trade unions.

The insights from the report provide the following leverage points and possibilities for creating openings:

For (international) trade unions and labour groups:

- Collaboration can be sought with major shareholders, such as the Norwegian government, and the pension fund 'Texas Teacher Retirement System' who are both known for shareholder actions.
- Another point of leverage form NXP's biggest customers Apple and Samsung; both representing about 10% of total revenue. This means that Apple as well as Samsung has leverage over the company. They both can be approached for dialogue to pressure NXP to solve the collective bargaining disputes.
- NXP is registered under Dutch law. This means that the Dutch government has leverage over the company and that for example stakeholders can submit an OECD complaint to the Dutch National Contact Point.

For shareholders:

- Shareholders should require from NXP to be transparent about social issues, and pressure the company to refrain from actions that hamper workers to exercise their trade union rights.
- Shareholders should pressure NXP to invest in the improvement of their relations with local trade unions and specifically pressure NXP to solve the conflict in Thailand in compliance with the ILO Conventions, especially regarding working hours, freedom of association and collective bargaining rights.

For the EICC:

- NXP is misusing the EICC code to justify the implementation of regular working days of twelve hours. The EICC should be aware of that and act upon it.

Annex I: List of subsidiaries

#	Subsidiary name	Country	Direct ownership (%)	Total ownership (%)
1	NXP Semiconductors Switzerland AG	CH	100	100
2	Code Red Technologies Limited	GB	-	100
3	NXP B.V.	NL	WO	WO
4	Systems on Silicon Manufacturing Company PTE Ltd	SG	-	61.20
5	Jilin NXP Semiconductors Ltd	CN	100	n.a.
6	Catena DSP GMBH	AT	MO	n.a.
7	Catena Holding B.V.	NL	-	MO
8	Catena Holding, INC.	US	MO	n.a.
9	Catena Microelectronics B.V.	NL	-	MO
10	Catena Radio Design B.V.	NL	-	MO
11	Catena Wireless Electronics AB	SE	MO	n.a.
12	Electronic Devices Limited	HK	MO	n.a.
13	Glonav Limited	IE	-	MO
14	Jennic America INC	US	MO	n.a.
15	NXP Funding LLC	US	MO	n.a.
16	NXP Laboratories Holding UK Limited	GB	-	MO
17	NXP Laboratories UK Limited	GB	-	MO
18	NXP Manufacturing (Thailand) Ltd	TH	-	MO
19	NXP Semiconductors (GPS) USA, Inc	US	MO	n.a.
20	NXP Semiconductors (Shanghai) Co., Ltd	CN	MO	n.a.
21	NXP Semiconductors (Thailand) Co Ltd	TH	MO	n.a.
22	NXP Semiconductors Austria Gmbh	AT	-	MO
23	NXP Semiconductors Belgium	BE	-	MO
24	NXP Semiconductors Brazil LTDA	BR	MO	n.a.
25	NXP Semiconductors Cabuyao Inc	PH	MO	n.a.
26	NXP Semiconductors Canada Inc	CA	MO	n.a.
27	NXP Semiconductors Elektonik Ticaret AS	TR	MO	n.a.
28	NXP Semiconductors Finland OY	FI	MO	n.a.
29	NXP Semiconductors France	FR	-	MO
30	NXP Semiconductors Germany GMBH	DE	-	MO
31	NXP Semiconductors Guangdong Ltd	CN	MO	n.a.
32	NXP Semiconductors Hong Kong Limited	HK	MO	n.a.
33	NXP Semiconductors Hungary Ltd	HU	MO	n.a.
34	NXP Semiconductors India Private Limited	IN	MO	n.a.
35	NXP Semiconductors Japan Ltd	JP	-	MO

36	NXP Semiconductors Korea Co., Ltd	KR	MO	n.a.
37	NXP Semiconductors Malaysia SDN BHD	MY	-	MO
38	NXP Semiconductors Netherlands B.V.	NL	-	MO
39	NXP Semiconductors Philippines INC	PH	MO	n.a.
40	NXP Semiconductors Poland SP. Z O.O.	PL	-	MO
41	NXP Semiconductors Russia, Limited Liability Company	RU	MO	n.a.
42	NXP Semiconductors Singapore PTE Ltd	SG	MO	n.a.
43	NXP Semiconductors Sweden AB	SE	MO	n.a.
44	NXP Semiconductors Taiwan Ltd	TW	MO	n.a.
45	NXP Semiconductors UK Limited	GB	-	MO
46	NXP Semiconductors USA, Inc	US	-	MO
47	NXP Software B.V.	NL	-	MO
48	NXP Stresemannallee 101 Dritte Verwaltungs-GMBH	DE	-	MO
49	Semiconductors NXP Limited	HK	MO	n.a.
50	SMST Unterstützungskasse Gmbh	DE	-	MO
51	Suzhou Asen Semiconductors Co., Ltd	CN	40	n.a.
52	Senseg Oy	FI	-	n.a.

Source: Orbis database

Colophon

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The Centre for Research on Multinational Corporations (SOMO) is a non-profit Dutch research and advisory bureau. SOMO investigates the policies of multinational enterprises and the internationalisation of business worldwide. www.somo.nl

This report is part of a series company profiles of key companies in the electronics supply chain, produced in the context of the 5-year GoodElectronics program, co-funded by the European Commission. In these profiles, research focuses on profiling companies and their business strategies in order to better understand their choices and the impacts of these choices on workers, communities and the environment.

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The GoodElectronics Network brings together networks, organisations and individuals that are concerned about human rights, including labour rights, and sustainability issues in the global electronics supply chain, including to trade unions, grass roots organisations, campaigning and research organisations, academia, and activists. GoodElectronics has a vision of a global electronics industry characterised by adherence to the highest international human rights and sustainability standards. Labour rights and environmental norms are protected and respected throughout the entire production cycle, from the mining of minerals used in electronics products, to the manufacturing phase, and the recycling and disposal of electronics waste, both on the level of companies' own operations and in the value chain. Responsible mining is a key demand. Read more about GoodElectronics' Identity, Vision, Mission, and the GoodElectronics Demands on the Electronics Industry.