

FINAL ASSESSMENT BY THE UK NATIONAL CONTACT POINT FOR THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: PSA PEUGEOT CITROEN

SUMMARY OF NCP DECISION

The National Contact Point (NCP) considered the complaint brought under the Employment and Industrial Relations chapter of the OECD Guidelines for Multinational Enterprises alleging that PSA Peugeot failed to undertake a meaningful consultation with the Unions when closing down the Ryton manufacturing plant in Coventry. The NCP found that the Company provided reasonable notice of the closure of the Ryton Plant in regards to (i) allowing workers the opportunity to start searching for new jobs and (ii) the unions with the opportunity to negotiate on the phasing of the closures and redundancy package available. However, the NCP has concluded that the Company failed to fulfil all the requirements under the Guidelines in particular, that the Company should have engaged with the Unions when the decision to make the closure of Ryton was at a formative stage and should have provided sufficient information to allow the Union to understand the reasoning for the decision so they could contribute to the consultation appropriately. The NCP is committed to highlighting good practice where it finds it and recognises that the Company provided a redundancy package significantly above the legal requirements and created a dedicated Resource Centre, with a budget of £5million to help employees prepare for redundancy.

BACKGROUND

1. On 28 July 2006, the UK National Contact Point (NCP) received a request from Amicus and T&G (the Unions) to consider a specific instance regarding PSA Peugeot Citroen (the Company). The complaint alleges that the company failed to undertake a meaningful consultation with the Union when closing down the Ryton manufacturing plant in Coventry.
2. PSA Peugeot Citroen announced the intention to close the Ryton Plant on 18 April 2006. Management explained that actual sales in 2005 had failed to meet predicted targets, and that as a result of that and other factors (such as comparative production costs at the branch of PCG in Trnava in Slovakia) production at Ryton was no longer financially viable and proposed that Ryton would undergo phased closure, to be complete by mid 2007. The Company highlighted its commitment to its social responsibilities and stated it would work closely with Trade Unions and Government to provide a comprehensive support package for its staff and to help as many as possible to find alternative employment.
3. On 5 May 2006, the Company initiated the 90 day consultation period which is required under UK law when undertaking large-scale redundancies by sending the form HR1 to the DTI. The first shift were terminated on 3 August 2006 with 775 redundancies and the final closure of the plant was brought forward to 8 January 2007 with a further 724 redundancies.

4. The announcement of intended closure occurred a year after the Chief Executive Officer of the Company addressed representatives of the Unions at the Ryton Branch and assured them that they could expect to continue production of the Peugeot 206 until 2010.

GOOD PRACTICE

5. The NCP has committed to highlight good practice where it finds it. While the NCP has found Peugeot to have not met the requirements of the Guideline, the NCP recognises the Company provided a redundancy package significantly above the legal requirements and created a dedicated Resource Centre, with a budget of £5 million to help employees prepare for redundancy. The Resource Centre was staffed by seven employees and a number of resident employees of Jobcentre Plus and the LSC who provided additional support and access to training and employment opportunities.

THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

6. The Guidelines are recommendations that governments endorse and promote in relation to the behaviour of multinational enterprises. They are voluntary principles and standards for responsible business conduct. They are the only comprehensive, multilaterally-endorsed code of conduct for multinational enterprises.

7. The Guidelines establish non-legally binding principles covering a broad range of issues in business ethics in the following areas of operation: general company policies, disclosure of information, employment and industrial relations, environment, combating bribery, consumer interests, responsible use of science and technology, competition and taxation.

8. The Guidelines are not legally binding but OECD governments and a number of non OECD members are committed to promoting their observance. The Guidelines are also supported by the business community and labour federations. In addition, a number of Non-Governmental Organisations are also heavily involved in the work of the OECD Investment Committee responsible for monitoring and reviewing the Guidelines and are increasingly involved in overseeing the operation and promotion of the Guidelines.

THE SPECIFIC INSTANCE PROCEDURE

9. The first step when a complaint is brought to the NCP under the OECD Guidelines is the initial assessment; this consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The NCP uses this information to determine whether further consideration is required under the Guidelines. The initial assessment is published to www.csr.gov.uk. If a case is accepted, the NCP instigates mediation between the two parties to ascertain whether they can agree on an appropriate way forward. Should mediation fail, the NCP will determine whether the Guidelines have been met and if necessary, make recommendations for future conduct.

10. In this case, The NCP did not produce an initial assessment because:
 - a) The closure of the Ryton plant meant that mediation between the parties was inappropriate; the Company is not in a position to reopen the plant so there is no appropriate way forward.
 - b) The Company had indicated they had provided all available information to the NCP and had nothing further to add. As all information had been received, the NCP decided to produce the final statement. Both parties were informed of the NCP's intention to proceed to a determination and to produce the final assessment on the basis of the documents submitted.
11. Both the Company and the Unions gave permission for all correspondence about the complaint sent to the NCP to be exchanged between the parties ensuring transparency in the system.
12. The Final Statement has been approved by Gareth Thomas, Minister for Trade and Development and copies has been placed in the House of Commons and House of Lords libraries.

SUBSTANCE OF THE COMPLAINT

13. Amicus and T&G allege that PSA Peugeot Citroen did not comply with Chapter IV of the Guidelines that covers employment and industrial relations, specifically:

IV.6 In considering changes in their operations which would have major effects upon the livelihoods of their employees, in particular in the case of a closure of an entity involving collective layoffs or dismissals, provide reasonable notice of such changes to representatives of their employees and where appropriate to the relevant governmental authorities, and cooperate with the employee representatives and appropriate government authorities so as to mitigate to the maximum extent practicable adverse effects. In light of specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful cooperation to mitigate the effects of such decisions.

IV.1.a Enterprises should respect the right of their employees to be represented by trade unions and engage in constructive negotiations, whether individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions

IV.2.b Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment

IV.2.c Promote consultation and cooperation between employers and employees and their representatives on matters of mutual concern

IV.3 Provide information to employees or their representatives which enables them to obtain a true and fair view of the performance of the entity, or, where appropriate, the enterprise as a whole

IV.4a Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country,

14. The Union's allegation that the Company announced their decision to close the Ryton Plant without undertaking meaningful consultation and negotiations on the closure with the recognised trade unions prior to making the decision. In essence, that the Company rejected the principle of full disclosure and refused to answer relevant questions from the trade unions despite a history of sharing commercially sensitive material with the Trade Union in the past without cause for complaint.

PSA PEUGEOT CITROEN'S RESPONSE

15. PSA Peugeot Citroen provided an extensive response to the Union's allegations supported by transcripts of speeches and copies of the documents shared with the Unions in the period following the announcement of the intended closure. The premise of the Company's response is that the announcement of the closure of the Ryton plant was a proposal not a decision and that extensive engagement took place with the unions after the announcement was made.

16. Peugeot management met with the Unions several times after the announcement of the intended closure. Mr Folz, then Chief Executive of the Group addressed a separate, private meeting with officials of the two unions representing the Ryton workforce shortly after making the announcement of the pending closure to the workforce. The Company provided the transcript of Mr Folz's speech at this meeting and the press release of the same day to the NCP. Both these documents refer to the closure of the Ryton Plant as being "proposals" and an "intention" indicating scope for discussion and alteration.

17. The speech given by Mr Folz was informative, stating the reason for the pending closure. The final paragraphs refer to the intention to phase out production over a year and to provide a comprehensive programme of support for all employees. However, a member of the team was tasked with working with the Trade Union "to provide you [the Union] with the detailed information that you will need".

18. Peugeot provided the Unions with an extensive amount of information as requested however, some information was not disclosed on the grounds of confidentiality. The Company state that not all the requested information was provided but considered that the Trade Union's request for "line for line detail on very many areas of activity was immense, disproportionate and very hard to achieve in the limited time scales available".

19. Various meetings took place between the Company and the Unions which included the presentation of an initial business plan by the Union, which was

ultimately rejected by Peugeot. A second more detailed business plan was due to be presented by the union in September 2006 but was subsequently withdrawn due to the announcement that Peugeot would not proceed with the proposed extension of the Trnava plan.

20. The Company describe a difficult working relationship with the national level Unions while highlighting their relationship with the trade union at the plant remained positive.

21. PSA Peugeot Citroen provided a robust defence of the allegations, pointing out that the Trade Union's economics expert had accepted they had received sufficient information by 26 July for the unions to put together an alternative plan thereby substantiating Peugeot's view that the consultation that took place was meaningful and meets their commitments under the OECD Guidelines. In addition, the Company's direct response to the allegation in section 6 is:

- Employees and Trade Union representatives were provided with reasonable notice of changes. They were informed of the proposal to terminate the second shift on 18th April and the first block of redundancies took effect on 3 August, only those that volunteered to leave at that stage did so.
- The Company cooperated with the unions to mitigate adverse effects; this is illustrated by the 8 formal meetings between the trade unions and the Company between the announcements on 18th April until 4 October 2006.
- It is clear from the press release and presentation from Peugeot management that no final decision had been made.
- The Company were willing to cooperate with the unions with the aim of mitigating the effects of the Group's proposal. However they maintain that the trade unions were not willing to negotiate on the redundancy packages as they included compulsory redundancies.

NCP ANALYSIS

22. The UK NCP analysis is restricted to the content of the complaint lodged, the NCP does not have a role in establishing whether PSA Peugeot Citroen fulfilled its regulatory commitment to commence a 90 day consultation period when undertaking large-scale redundancies, however, the NCP notes that this consultation period was initiated by the submission of the form HR1 to the DTI (now BERR).

23. **Paragraph IV.6** requires that enterprises:

*"In considering changes in their operations which would have major effects upon the livelihoods of their employees, in particular in the case of a closure of an entity involving collective layoffs or dismissals, **provide reasonable notice of such changes to representatives of their employees and where appropriate to the relevant governmental authorities, and cooperate with the employee representatives and appropriate government authorities so as to***

mitigate to the maximum extent practicable adverse effects. In light of specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful cooperation to mitigate the effects of such decisions.”

24. The unions highlight Chapter IV, paragraph 6 as being the most important aspect of their complaint. The commentary of the Guidelines, which forms part of the text of the meeting of the OECD council at ministerial level, 2000, explains:

“Paragraph six recommends that enterprises provide reasonable notice to the representative of employees and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their employees, in particular the closure of the entity involving collective lay offs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in industrial relations laws and practices of adhering countries, although the approach taken to ensuring an opportunity for meaningful cooperation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful cooperation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented”.

25. The NCP has concentrated on:

- i) Whether the Company provided reasonable notice of the closure of Ryton and related redundancies.
- ii) Whether the Unions were given notice prior to the final decision being taken to close the plant.
- iii) If not, would it have been inappropriate to have given the Unions prior notice to the final decision being taken to close the plant.
- iv) When notice was given did Peugeot management work with the Union to mitigate to the maximum extent practicable adverse effects.

26. The NCP considered each aspect independently:

Did PSA Peugeot Citroen provide reasonable notice of the closure of Ryton and related redundancies?

27. The announcement of the intention to close Ryton was made on 18 April 2006, the first redundancies took place on 3 August 2006 (775 redundancies, all voluntary) with the final closure of the plant brought forward to 8 January

2007 (further 724 redundancies). This meets UK legislative requirements and the NCP is content that reasonable notice of the closure took place that allowed the workers and union to take action to mitigate the effects of the closure. In particular this period provided 1) workers with the opportunity to start searching for new jobs and 2) the unions with the opportunity to negotiate on the timing of the closures and redundancy packages.

28. In concluding that the Company provided reasonable notice of the closure, the NCP has distinguished between the need to provide a certain period of time to employees and unions to mitigate the effects of the closure from reasonable notice needed to provide unions with sufficient opportunity to negotiate alternatives to closure with the Company.

Was the Union given notice prior to the final decision being taken to close the plant?

29. The NCP considers that the decision to close the plant to all intents and purposes had been taken by 18 April 2006, when the Company announced its intention to close the plant. Mr Folz's speech to the unions following the announcement stated the reason for the pending closure. An explicit invitation to discuss alternative proposals to the closure of the plant was not offered and the accompanying slides to Mr Folz's speech states that "the only justifiable economic position is to cease production in the plant as quickly as possible". While the Peugeot response to the allegations indicates that a member of the team was tasked with working with the Trade Union "to provide you [the Union] with the detailed information that you will need", the documents supporting the Company's response to the allegations indicate that this offer was predominantly made in regards to the phasing of the closure and the redundancy package on offer to workers at the plant. This is supported by the final paragraphs of Mr Folz's speech and accompanying slides that refer to the intention to phase out production over a year and to provide a comprehensive programme of support for all employees.

30. The NCP did not find evidence that the Company intended to consult on alternatives to the closure of Ryton, however the NCP acknowledge that the Company did respond to the majority of the requests for information by the Unions (with some key exceptions).

31. PSA Peugeot Citroen takes the view that the decision to close Ryton had not been made by 18 April. It cites evidence of the provision of information to the Unions after that date and explained they consider sufficient information was passed to the Unions by 26 July to allow for an alternative business plan to be created. The Company takes the view that the time available was not affected by stopping a shift on 3 August 2006.

32. The NCP view remains that the decision to close Ryton was made before 18 April. While accepting that PSA Peugeot Citroen may previously have operated with 1 shift, the continuous departure of workers between August and 2 October (when the plant effectively moved to running half a shift) ultimately contributed to the plant's ultimate closure.

33. The NCP concludes that the Unions were not given prior notice to the final decision being taken to close the plant.

Would it have been inappropriate to have given the Union prior notice to the final decision being taken to close the plant?

34. As the Company state they had not made the decision to close the plant as at 18 April, when announcing the pending closure, they have not provided the NCP with any reasons why it would have been inappropriate to have given the Union prior notice to the final decision being taken to close the plant.

35. In this case, the NCP considered the specific context, particularly noting the assurances given by the Company to the Unions at Ryton just a year earlier, of their expectation that production would continue at Ryton until 2010. It is reasonable to conclude the workers may have made financial arrangements on the back of such assurances. While accepting that earlier dialogue may have had effects on productivity, the NCP concludes that the earlier assurances of continued production at the plant made it particularly important that the Unions and workers should have been informed of the potential closure before the final decision was made.

36. The NCP concludes that PSA Peugeot Citroen should have provided the Union prior notice to the final decision being taken to close the plant.

Did PSA Peugeot Citroen management work with the Union to mitigate to the maximum extent practicable adverse effects?

37. It is clear that the Company was willing to negotiate the details of the redundancy package with the Unions.

Paragraph IV.1.a required that an enterprise

“Should respect the right of their employees to be represented by trade unions and other bona fide representatives of employees and engage in constructive negotiations either individually or through employers’ associations with such representatives with a view to reaching agreements on employment conditions.”

38. It is clear that the Company recognised the role of the Unions to represent the workers at the Ryton plant. The Company met with the unions regularly after announcing the intention to close Ryton and had 8 formal meetings with the trade unions between 18th April and 4 October 2006.

39. In considering whether the Unions were able to engage in constructive negotiations with a view to reaching agreements on employment conditions, it is necessary to consider whether the unions were provided with adequate information. This is considered under paragraphs IV.2b and IV.3. Due to the similarities between the two paragraphs these are considered together.

Paragraph IV.2.b requires that employers:

40. *“Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment”*

Paragraph IV.3 required that employers:

41. *“provide information to employees and their representatives which enable them to obtain a true and fair view of the performance of the entity, or, where appropriate, the enterprise as a whole.”*

42. The commentary of the Guidelines, which forms part of the text of the meeting of the OECD council at ministerial level, 2000, explains:

43. *“In paragraph three of this chapter, information provided by companies to their employees is expected to provide a ‘true and fair view’ of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality. Considerations of business confidentiality may mean the information on certain points may not be provided, or may not be provided without safeguards”.*

44. The union requested a great deal of information soon after the announcement of the proposed closure and a good proportion was made available to the union over the following few weeks. The NCP notes that the strategic manufacturing review which had ultimately recommended the closure of Ryton was not made available to the Union. While the commercial sensitivity of such a document is fully understood, the NCP concludes that the absence of access to this key information effectively disabled the Unions from putting forward an alternative and realistic business plan or for the Unions to make the initial determination as to whether an alternative business plan could be realistic, this effectively prevented them from undertaking a meaningful negotiation with the Company.

45. Information allowing comparative costs between the Ryton Plant and Trnava were made available to the unions on 16 June 2006. It was understandable that the Unions concentrated their efforts on attempting to reduce the cost differential between these two plants as this had been given as a key reason for the closure of the Ryton plant. However, the fluidity of the situation is sufficiently illustrated by the decision made in September 2006 not to build a new plant in Trnava and instead, continue to use the existing plant for production.

46. It is not the role of the NCP to determine the validity of alternative business plans put forward by the parties but merely to determine whether adequate information was passed to the unions for them to negotiate. The NCP determines that the Union was not given sufficient information to negotiate on the closures in a meaningful way. In particular, the refusal to share the strategic review with the Unions resulted in a clear example of

asymmetric information with the Union unaware of the range of options considered by PSA Peugeot Citroen before they made the decision to close down Ryton. This effectively undermined the union's negotiating position.

47. It should be noted that the NCP recognises the commercial sensitivity of the strategic review which ultimately led to the closure of the Ryton Plant. However this was a key document which would have allowed the Unions to understand the level of consideration given to the various alternative options. While the NCP accept the business need to keep this document within the Board, the NCP believes that an alternative method of providing the Unions with sufficient information that would have allowed the Unions to fully understand the thinking taking place would have provided the opportunity for the Unions to get a realistic understanding on how best to engage in the issue.

Paragraph IV.2.c requires that employers:

48. *“promote consultation and cooperation between employers and employees and their representatives on matters of mutual concern”*

49. This paragraph is the only mention of consultation made in the employment and industrial relations chapter of the Guidelines. It is reasonable to conclude that the Guidelines would expect a meaningful consultation and the case of **“R v British Coal” 1994** which defines “fair” consultation is introduced to the analysis at this point to consider whether Peugeot promoted consultation and cooperation with the employees at Ryton and its representatives in relation to the closure of the plant. Useful guidance in determining a “meaningful consultation” is provided by **R v British Coal” 1994** which outlines the elements of fair consultation set out in paragraph 24:

- 1) Consultation when the proposals were still at a formative stage
- 2) Adequate information on which to respond
- 3) Adequate time in which to respond
- 4) Conscientious consideration by (the employer) of the response to the consultation

50. Paragraph 25 goes on to say:

“Another way of putting the point more shortly is that fair consultation involves giving the body consulted a fair and proper opportunity to understand fully the matters about which it is being consulted, and to express its views on those subjects, with the consultor thereafter considering those views properly and genuinely.”

51. The NCP considered whether these elements of “fair” or “meaningful” consultation were met:

Whether PSA Peugeot Citroen consulted when the proposals were still at a formative stage

52. This issue has been analysed in paragraphs 28-30 above.

Whether PSA Peugeot Citroen provided adequate information for the Unions to respond

53. The NCP analysis of this issue is set out in paragraphs 28-30 above.

Adequate time in which to respond

54. The announcement of the intended closure of the plant was made on 18 April 2006. Discussions between the Company and the Unions commenced immediately. The Unions requested a substantial amount of information and some of this was made available between 4 and 14 May. By 16 June the Union had received most of the information, with the notable exception of the strategic report which was not shared due to its commercial sensitivity. The Company consider sufficient information was passed to the Unions by 26 July.

55. The first redundancies were on a voluntary basis and took place on 3 August 2006 with the final closure on 8 January 2007.

Conscientious consideration by (the employer) of the response to the consultation

56. The Unions put forward an alternative preliminary Business Case on the closure of Ryton to the Company on 12 May 2006 and received a response on 17 May explaining the reasons for rejecting the plan. The Company appears to have given conscientious consideration to the Unions' plan and responded accordingly. However, this must be placed in the context of whether the information received by the unions was adequate to participate meaningfully in the consultation.

57. Paragraph IV.4a required that employers:

"Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country."

58. The NCP did not receive any evidence from the Unions that the Company observed standards of employment less favourable than those observed by comparable employers in the UK.

NCP CONCLUSION

59. Obeying domestic law is the first obligation of business. The Guidelines are not a substitute for nor should they be considered to override national law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character, particularly concerning the international operations of these enterprises. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situation where it faces conflicting requirements.

60. The NCP concludes that PSA Peugeot Citroen provided reasonable notice of closures in regards to:

- Allowing workers the opportunity to start searching for new jobs
- The unions with the opportunity to negotiate on the phasing of the closures and redundancy package

61. However the NCP concludes that PSA Peugeot Citroen failed to meet the Guidelines' expectation that notice should have been given to the Unions of the pending closure of the Ryton Plant. In particular the Company should have engaged with the Unions when the decision to make the closure was at a formative stage, providing sufficient information to allow the Union to understand the reasoning for the decision and to contribute appropriately.

62. The NCP concluded that PSA Peugeot Citroen did not provide sufficient information to the Unions to allow them to undertake meaningful negotiations with the Company on the closure of the plant.

63. Therefore, in regards to the individual paragraphs of the Guidelines, the NCP found the following:

- IV.1.a –The Company met the requirements of the Guidelines.
- IV.2.b –The Company failed to meet the requirements of the Guidelines.
- IV.2.c - The Company failed to meet the requirements of the Guidelines.
- IV.3 –The Company failed to meet the requirements of the Guidelines.
- IV.4a –The Company met the requirements of the Guidelines.
- IV.6 – The Company failed to meet the requirements of the Guidelines.

NCP RECOMMENDATIONS

64. The NCP recommends that PSA Peugeot Citroen adhere to chapter IV of the OECD Guidelines for Multinational Enterprises. In particular when considering closures of its premises, the Company should engage the unions at the appropriate time and provide adequate information for meaningful discussions to take place. In particular the Company should meet the requirements on “fair consultation” as defined by **“R v British Coal” 1994:**

- when the proposals were still at a formative stage
 - Provide adequate information on which to respond
 - Ensure adequate time in which to respond
 - Conscientious consideration by (the employer) of the response to the consultation

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