

Final Statement in the case of

Gewerkschaft der Privatangestellten Druck – Journalismus – Papier

against

Novartis Institutes for BioMedical Research GmbH & Co. KG

On 5 February 2008, the *Gewerkschaft der Privatangestellten Druck-Journalismus-Papier* (Union of Private Employees – Print, Journalism and Paper, GDA-DJP) filed a written complaint with the Austrian National Contact Point (the "Contact Point") concerning alleged breaches of points 3 and 6 of the Employment and Industrial Relations chapter of the OECD Guidelines for Multinational Enterprises (the "Guidelines") in connection with the closure of Novartis' research centre in Vienna.

The GDA-DJP complained about the closure, announced on 18 December 2007, of Novartis' research centre in Vienna, which employed 240 researchers, on the grounds that closure was avoidable and the adverse effects would have been greatly mitigated if more notice had been given and stakeholder representatives had been consulted. More specifically, the GDA-DJP complained that neither the works council nor the workforce had been given any kind of notice before 18 December 2007 that the site was under threat or could be closed. The timing of the announcement and the fact that it was made by means of a video message were also criticised. Further criticism was made of the lack of information about the "Forward" internal restructuring programme (particularly significant under the circumstances), under which an evaluation of the Vienna research centre had been carried out in the summer of 2007.

After identifying the respondent and assessing its competence, the Contact Point transmitted the complaint to Novartis Institutes for BioMedical Research GmbH & Co. KG ("Novartis Institutes") for comment.

Novartis Institutes stated on 26 March 2008 that the matters to which the complaint related had already been discussed before the National Economic Commission, established within the Federal Ministry for the Economy, the Family and Youth (at the time the Federal Ministry for the Economy and Employment), but that it was nevertheless willing to respond.

Internal enquiries revealed that a written request to introduce a procedure under Section 112.1.1 of the Labour Constitution Act to decide on the referral to the National Economic Commission was submitted by the Novartis Institutes works council on 3 January 2008 via the ÖGB (Austrian trades union federation), GPA-DJP.

The National Economic Commission's task is to make proposals to foster agreement between a works council and company management. Before the formal referral to the National Economic Commission, informal attempts to find a solution had been made, as is customary in such cases. These informal contacts helped to improve the basis for dialogue between employees and employers and led to internal negotiations. In April 2008, in the course of these negotiations between management and employee representatives, a solution involving a redundancy plan was found. Consequently, on 9 April 2008 the Novartis Institutes works council, via the ÖGB, GPA-DJP, withdrew the referral to the National Economic Commission. As a mutually satisfactory agreement had been found at this preliminary stage, a formal referral to the National Economic Commission and the introduction of a procedure under the Labour Constitution Act became superfluous.

In response to an enquiry, the GPA-DJP subsequently informed the Contact Point that the complaint under the Guidelines still stood. In the interests of effective application of the Guidelines, the Contact Point decided to continue to process the complaint and on 19 May 2008 asked Novartis Institutes for a further response, which was received on 13 June 2008.

In its response, Novartis Institutes explained that the message to the workforce from Dr. Mark C. Fishman on 18 December 2007 was transmitted by video because the measures concerned several of the company's sites and Dr. Fishman could not be present in person at all of them. According to Novartis Institutes, after the video message the local manager, Dr. Jan E. de Vries, explained the details that were known to him at the time. Dr. de Vries had learnt the outcome of the Vienna research centre evaluation on 13 December 2007 and had told the works council about it on the same day. The works council had neither made representations nor sought consultation. Once the relevant decision had been taken in Basel, the works council and then the workforce were informed on 18 December 2008 of the forthcoming closure of the Vienna research centre and the works council was invited to engage negotiations on a redundancy plan.

Concerning "Forward", Novartis Institutes pointed out that the groupwide programme launched on 18 October 2007 had entailed a global review of the measures that the company could envisage in order to make the necessary adaptations to the challenges facing the pharmaceutical industry. The options were presented to Novartis' board of directors on 12 December 2007 and, taking up one of them, the decision was made to evaluate the Vienna research centre.

Novartis Institutes argues that it complied with its notification requirement

promptly and in accordance with the relevant provisions of the Labour Constitution Act. The assertion that the closure was avoidable and that the adverse effects would have been greatly mitigated if more notice had been given and stakeholder representatives had been consulted was unfounded and inaccurate. Novartis Institutes therefore rejected all allegations that it had breached the Guidelines.

In the light of this response, the Contact Point made an initial assessment of the complaint in accordance with point I.C.1 of the Procedural Guidance, concluding that the issues raised merited further examination. The parties were informed of this in a letter dated 16 June 2008.

On 17 June 2008, the Contact Point put a number of questions arising from the Novartis Institutes response to the GPA-DJP. The Contact Point received an answer on 7 July 2008.

The GPA-DJP explained that it had not made representations on 13 December 2007 because Dr. de Vries had said he knew nothing more about the evaluation and that a decision had been announced for 18 December 2007. In the end, on 18 December 2007, no member of the senior management team had been available for consultation in the two hours between the time when the works council was informed and the time when the workforce was informed. Furthermore, the workforce had been notified only of the forthcoming closure and of the intention to negotiate a redundancy plan. The closure date of 30 June 2008 was not revealed until 22 January 2008, after representations by the works council. Overall, the GPA-DJP complains that it had been presented with a *fait accompli*, that it had therefore not been able to exercise its rights of consultation and that it had not been possible to take any measures to secure the future of the site.

Following this response and after carefully examining the facts, the Contact Point considers that it has been provided with sufficient information and, in agreement with GPA-DJP and Novartis Institutes, concludes as follows.

- On 18 December 2007, Novartis Institutes notified the works council then the workforce of the forthcoming closure of its Vienna research centre. The works council had been informed on 13 December 2007 of an evaluation of the research centre.
- The first issue was whether this procedure was consistent with the recommendation in point 3 of the Guidelines chapter on Employment and Industrial Relations to "provide information to employees and 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".
- The second issue was whether this procedure was consistent with the recommendation in point 6 of the same chapter, namely "in considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the 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 co-operation to mitigate the effects of such decisions."
- Concerning point 3, the Contact Point finds that the works council was notified of the decision about the evaluation of the Vienna research centre on 13 December 2007, one day after the board of directors took the decision. However, the notification contained no information about the contents, purpose or timetable of the evaluation, on the basis of which the closure of the site was announced just six days later. This

made it if not wholly impossible then at least much more difficult for the employees and the works council "to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole".

- Concerning point 6, the Contact Point finds that the lapse of time, and especially the fact that only six days passed between the decision to evaluate the Vienna research centre and the announcement of its closure, suggests that decisions under the "Forward" programme, and in all events the evaluation decision on 13 December 2007, had already been taken on the basis of "changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective layoffs or dismissals". The question was whether employee representatives and, where appropriate, the relevant authorities were "provide[d] [with] reasonable notice of such changes". The Guidelines state that "in light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken." That did not happen in this case, as a result of which the employee representatives were not able to propose any alternatives to the closure the site.
- On the other hand, at the same time as announcing the decision to close the site on 18 December 2008, Novartis Institutes expressed its willingness to negotiate a redundancy plan for the staff concerned. The management and employee representatives also agreed to refer the plan to the National Economic Commission, established within the Federal Ministry for the Economy and Employment (now the Federal Ministry for the Economy, the Family and Youth), as a result of which the Novartis Institutes works council withdrew its referral to the National Economic Commission under Section 112.1.1 of the Labour Constitution Act. In this respect the course of action taken by Novartis Institutes is consistent with the Guidelines recommendation that in the cases referred to in point 6, companies should "co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects."

- The Contact Point has no evidence that the local management of Novartis Institutes did not do everything it could to comply with the Guidelines recommendations. In fact, it was notified of the relevant decisions taken by the parent company board only shortly before the employees and their representatives.
- Point 3 of the Guidelines chapter on Concepts and Principles states that "the Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines."
- In light of this, the Contact Point is instigating an internal assessment of Novartis' decision-taking and notification procedures with the aim of identifying where they can be improved.

The Contact Point thanks the representatives of Novartis Institutes for BioMedical Research GmbH & Co. KG, of GPA-DJP and of the National Economic Commission for their positive and constructive cooperation.

Vienna, 17 July 2009