

Public statement by the Australian NCP on the transfer of a specific instance involving an Australian-headquartered enterprise to the Chilean NCP

On 11 January 2012 the Australian National Contact Point for the OECD Guidelines (ANCP) received a specific instance complaint from a Chilean auto parts manufacturer regarding the activities of a joint venture mining operation operated and largely owned by multinational enterprises, based in Australia and the United Kingdom, in Chile.

The specific instance complaint alleged breaches of:

- Paragraph 3 of Chapter 2 – General Policies of the *Guidelines* - Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise’s activities in domestic and foreign markets, consistent with the need for sound commercial practice.
- Paragraph 6 of Chapter 2 – General Policies of the *Guidelines* - Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.
- Paragraph 13 of Chapter 2 – General Policies of the *Guidelines* - In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.

The ANCP discussed the matter with the Chilean National Contact Point and determined that the specific instance complaint should be transferred to the Chilean National Contact Point on the basis that:

- the joint venture mining operation which is the subject of the complaint is in Chile;
- the key [Company] representatives that have day to day decision making responsibilities for these projects are based in Chile;
- Spanish is the first language of the proponents of the complaint and the [Company] representatives with day to day responsibility for the projects; and
- the ANCP is not in the best position to assess whether the actions by [Company] in relation to the projects is valid or illegal under Chilean law – this will have some bearing on any consideration of the matter under the Guidelines.

Whilst the joint venture is owned and operated largely by Australian interests it is the Chilean offices of the joint venture which have carriage of the matter included in the specific instance complaint. Some of the legal issues surrounding these matters are not within the scope of the OECD Guidelines but do weigh heavily in the background when considering such matters.

In addition, it is noted that the Guidelines state: ‘Generally, issues will be dealt by the NCP in whose country the issue has arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level’ (2011, p.78). There is no

compelling reason to depart from this principle in relation to this specific instance, notwithstanding the reference to the ANCP.

The ANCP will provide support to the Chilean NCP in resolving this complaint as requested.

This statement has been prepared having regard to the confidentiality guidance published by the ANCP and in the guidance to the OECD Guidelines for Multinational Enterprises.

Canberra, 1 March 2012