

Statement on Avient

Introduction

Avient were named in Annex 3 (Business enterprises considered by the Panel to be in violation of the OECD Guidelines for Multinational Enterprises) of the initial UN Expert Panel report on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo (DRC) published in October 2002.

In the final Panel report published in October 2003 Avient were listed in Category 3 (unresolved cases referred to NCP for updating or investigation).

These lists contain the names of entities that the UN Expert Panel on the DRC alleged had been in breach of the OECD Guidelines for Multinational Enterprises.

Basis of Allegations

Specifically the Panel alleged Avient provided military supplies to both the Congolese Army (FAC) and the Zimbabwe Defence Force (ZDF), thus contributing to the conflict in the area.

It was alleged that Avient provided crews for Antonov 26 aeroplanes and Mi 24 helicopters stating that these types of aircraft were used in offensive action in the DRC at the time Avient were contracted by the government of the DRC. The Panel did not supply further details nor evidence of any specific actions undertaken by Avient crews.

Finally the Panel alleged that Avient brokered the sale of six military helicopters to the DRC Government. No evidence was supplied by the Panel to support this allegation.

The Panel did not, however, identify which provision(s) of the OECD Guidelines for MNEs they alleged Avient to be in breach of.

Co-operation with the UN Expert Panel

In the Panel documentation the company is described as 'Avient Air'. The company has denied ever being incorporated as Avient Air and for the purposes of this process the U.K. NCP has conducted all dialogue with representatives of Avient Ltd.

The Panel stated in a letter to the U.K. NCP dated 26 September 2003 that some progress had made with Avient over the allegations but that it could not come to definitive conclusions before the Panel's mandate expired in October 2003. Avient met with the Panel in May 2003 and corresponded with the NCP, the Panel and the UN on a number of occasions subsequently. Avient were, and remain, unhappy with the conduct of the Panel throughout— although they agreed to cooperate with the Panel, the U.K. NCP and to abide by the Guidelines. Specifically Avient feel aggrieved that the allegations were

presented as fact, but without evidence to substantiate such assertions. Subsequently these allegations have been produced by banks, organisations and governments as reasons as to why they cannot conduct business with the company.

NCP Comment on Panel Accusations

The Panel supplied very little evidence to support the allegations made. Some documentation was supplied by the UN in May 2004 and, informed by this documentation and discussion with Avient, the NCP asked Avient to respond formally to the specific accusations.

1. The Panel allege that *Avient Air had a close relationship with Oryx (another company named in the UN report) and that Avient Ltd. was a military company which supplied services and equipment to the ZDF and the FAC.*

Avient Ltd. has confirmed that they carried commercial cargo from Zimbabwe and South Africa to the DRC (Mbuji-Mayi) for Oryx and had done so for a number of years, providing a selection of manifests, as requested by the NCP, to support this. The equipment carried was commensurate with mining activity. From the evidence provided, the NCP finds that although owned and partly managed by a former military person, Avient Ltd. is not a military company.

Avient Ltd. denies supplying equipment to the ZDF and FAC, but concedes supplying services (“carriage, re-supply and movement of personnel and equipment”) to the ZDF. They stress this was not a tactical or military role but a supply function.

Avient Ltd. also provided engineering, training and crews for the FAC for a short period of time. They claim certain issues within the DRC made such work ineffective and these also meant that the crews supplied by Avient Ltd. hardly ever flew. Their major support function was the airdropping of food and supplies to DRC Government forces who were cut off in places by rebel forces. Avient Ltd claim its staff respected all cease-fire agreements.

2. *Crewing for Antonov cargo planes, Mig 23 Jet fighters and MI 24 attack helicopters.*

Avient Ltd. admits carrying cargo and supplies under a commercial arrangement with the Government of the DRC using their Antonov aircraft.

Avient Ltd. provided crew for a Mig 23 jet fighter to train DRC crews to fly and maintain the aircraft. On arrival in the DRC the staff found the aircraft were in poor condition and supplied to the FAC a list of spare parts required to make them airworthy. This resulted in one aircraft flying a circuit of Kinshasa airport and thereafter a flight training course was arranged as agreed. Events overtook such training and the course was cancelled after 3 days; the aircraft never flew again and the whole crew returned home.

Avient Ltd. admits that it provided crew for an MI 24 helicopter and that they were involved in the relief of isolated places but shortly afterwards it suffered a technical problem and the staff returned home.

Avient Ltd. claim that the FAC became disillusioned with the methodology employed by the Company and the contractual arrangements were dissolved after 8 months. This is supported by UN documentation.

3. The Panel allege that Avient Ltd. brokered the sale of six military helicopters to the DRC Government.

Avient Ltd. absolutely denies this allegation. No evidence has been supplied by the UN to support this allegation. No evidence from other enquiries across government by the NCP has arisen. In the circumstances the NCP finds this allegation unsubstantiated.

Conclusions

The U.K. Government is firmly committed to the Guidelines as a baseline for corporate behaviour and an aid to companies drawing up their own codes of conduct. The purpose of the Guidelines however, is not to act as an instrument of sanction nor to hold any company to account. The implementation procedures within the Guidelines are a problem solving mechanism with a view to parties coming to an agreement or for the NCP to make recommendations for future behaviour in similar circumstances. In this case, given that there is no complainant, it falls to the NCP to make recommendations.

The DRC and surrounding area is a difficult business environment. During the period under consideration there was a lack of regulation coupled with lawlessness and poor governance. With this in mind, although difficult, it is important for companies to act in a way which would support the development of the region.

The NCP accepts Avient Ltd's contention that they were working within a contractual arrangement with the officially recognized governments in the area.

In future Avient Ltd. should carefully consider the recommendations of the Guidelines particularly, but not exclusively, Chapter 2 before entering into contracts with Governments and businesses in the area.

Specifically Chapter 2 of the Guidelines states enterprises should;

- contribute to economic, social and environmental progress with a view to achieving sustainable development;
- respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments;
- abstain from any improper involvement in local political activities.