

**Initial Assessment By The UK
National Contact Point For
The OECD Guidelines For
Multinational Enterprises**

**COMPLAINT FROM A NON-
GOVERNMENTAL ORGANISATION
AGAINST A UK REGISTERED
COMPANY IN THE UK**

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Summary of the UK NCP decision

- The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) has decided to reject the complaint on the grounds that some aspects of the complaint were not sufficiently substantiated, and further consideration of any aspects of the complaint would not contribute to the purposes and effectiveness of the Guidelines.
- This Initial Assessment concludes the complaint process under the Guidelines.

The complaint and response

1. On 23 December 2011, an Australian non-governmental organisation (“A”) wrote to the UK NCP raising a number of concerns which it considered constitute a Specific Instance under the Guidelines in respect of the operations in the UK and in Europe of a UK registered company (“B”).
2. A alleged that B had failed to comply with the following parts, reproduced below, of Chapter VI (Environment) of the 2011 version of the Guidelines¹: chapeau; VI(1); VI(2); VI(3); VI(6); VI(7); and VI(8):

“Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:

a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;

b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and

¹ OECD, *OECD Guidelines for Multinational Enterprises, 2011* – available at <http://www.oecd.org/dataoecd/43/29/48004323.pdf> (accessed on 29 February 2012).

c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

a) provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environmental, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and

b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:

a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;

b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;

c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and

d) exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.

7. Provide adequate education and training to workers in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.

8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.”

3. A made various allegations in respect of B. These allegations can be summarised as follows:
 - a) That, by selling the product X² containing an environmentally harmful substance (“Y”), B does not take due account of, amongst other factors, the need to protect the environment;
 - b) That, had B collected and evaluated information regarding the environmental impact of X, the company would have come to the conclusion that X damages the environment and would have taken steps to stop selling X;
 - c) That B does not have target dates for improved environmental performance but has publicly stated that it intends to continue to sell X;
 - d) That B has not provided the public or customers with adequate information on the potential environmental, amongst other, impacts of the sale of X in Europe; and does not train distributors and users on the environmental impact of Y;
 - e) That B’s assessment, published on the company’s website, of the environmental risk of the use of Y is inaccurate and misleading;
 - f) That B has failed to recognise that substituting Y with non-lead additives is a priority to protect the environment from harmful emissions;
 - g) That B should explain how the company has contributed to the development of environmentally meaningful and economically efficient public policy.

4. In its responses of 16 January 2012 and 25 January 2012, B stated that leaded petrol is legal in the UK and that lead additives have not been banned in most countries of the European Union. B also explained that it is a very small and specialist company providing a lead-based fuel additive to owners of classic and vintage cars for use both on road and in racing. B further claimed:
 - a) That its activities actually help the environment by helping to keep old cars in use thus reducing the need to buy (and therefore manufacture) new cars;

² The actual name of the product has been omitted to avoid identifying the company.

- b) That the banning of the sale of leaded fuels in many countries has actually encouraged the production of petrol that is high in the environmentally harmful benzene;
- c) That the residues of the combustion of leaded fuels wash away as harmless lead salts.

The UK NCP process so far

- 5. The UK NCP received A's complaint against B on 23 December 2011.
- 6. On 11 January 2012, the UK NCP forwarded the complaint to B and, in accordance with the UK NCP's published complaint procedure, offered the company the opportunity to submit a preliminary response to the allegations by 9 February 2012.
- 7. B submitted its preliminary response on 16 January 2012 and further clarified its position on 25 January 2012. On 26 January 2012, A submitted comments on the company's response.
- 8. On 28 and 29 March 2012 both parties submitted further comments to the UK NCP.
- 9. Neither party decided to meet with the UK NCP but both parties remained in contact with the UK NCP.

UK NCP decision

- 10. The UK NCP has decided to reject A's complaint against B on the grounds that some aspects of the complaint have not been sufficiently substantiated, and further consideration of any aspects of the complaint would not contribute to the purposes and effectiveness of the Guidelines. The reasons for this decision are explained below at paragraph 11.
- 11. In accordance with section 3.2 of the UK NCP's published complaint procedure³, which reflects paragraph 25 of the "Commentary on Implementation Procedures of the OECD Guidelines for Multinational Enterprises"⁴, the UK NCP took the following points into account when considering whether A's concerns merited further consideration:

- a) Identity of A and its interest in the matter:

³ UK NCP, *UK NCP's procedures for dealing with complaints brought under the OECD Guidelines for Multinational Enterprises* – available at <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/u/11-1092-uk-ncp-procedures-for-complaints-oecd.pdf> (accessed on 29 February 2012).

⁴ OECD, *OECD Guidelines for Multinational Enterprises, 2011*, page 82 – available at <http://www.oecd.org/dataoecd/43/29/48004323.pdf> (accessed on 29 February 2012).

a.1. The UK NCP is satisfied that A is a legitimate and credible body to make this complaint. A is an NGO based in Australia and works towards the elimination of lead poisoning (and the protection of the environment) across the world. The UK NCP considers that A is directly interested in the issues raised in the complaint and is in a position to supply information about it.

b) Whether the issue is material and substantiated:

b.1. Within the scope of the Initial Assessment, A has provided sufficient supporting information for the UK NCP to conclude that the issues identified by A in respect of the Chapeau to Chapter VI, and in respect of Chapters VI(2)(a), VI(3) and VI(6) of the Guidelines are material and substantiated. A supported its allegations with a number of documents, including: a report of the United Nations Environment Programme (UNEP) evaluating the UNEP-based “partnership for clean fuels and vehicles” (FPVC); a report published on the UNEP’s website from the “Alliance to end childhood lead poisoning” on the effects of lead poisoning; and a snapshot of the company’s website in which B confirmed that its product, X, contains Y. The UK NCP notes that just because it has found that these aspects of the complaint are substantiated, this does not mean that it has concluded that the Guidelines have been breached.

b.2. However, the UK NCP does not consider that A sufficiently supported the allegations against B under Chapters VI(1), VI(2)(b), VI(7), and VI(8) of the Guidelines. In particular:

i. In relation to Chapters VI(1)(a), VI(2)(b), VI(7) and VI(8) A did not provide sufficient supporting material to indicate that B may not be complying with these recommendations of the Guidelines. At the Initial Assessment stage of the complaint process, it is not for the UK NCP to find but for the complainant to produce such supporting evidence.

ii. In relation to Chapters VI(1)(b) and VI(1)(c), A submitted that B does not include on its website target dates (and regular monitoring) for improved environmental performance in the form of the cessation of the sale of X. From a preliminary review of the facts of the case within the scope of the Initial Assessment, it is clear that B’s sole product for sale is X. Therefore, termination of the sale of X could have effectively required the termination of B as a company. Such a target does not appear “appropriate to the enterprise” so as to be required under Chapter VI(1). Furthermore, the general purpose of the Guidelines is not to shut multinationals down but

“to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises”⁵.

In the circumstances of this case, considering a complaint that B has failed to set a target for the cessation of the sale of X appears inconsistent with the purposes of the Guidelines. In particular, the business carried out by B appears “in harmony” with current government policies, which allow the sale of such products. A has not provided sufficient evidence that there may be a failure to take other measures (appropriate to the enterprise) recommended under VI(1)(b) or VI(1)(c).

c) Relevance of applicable law and procedures, including court rulings:

c.1. The UK NCP is not aware of parallel legal proceedings against B in respect of the same allegations made by A.

c.2. The UK NCP notes that the Guidelines clearly state⁶ that:

“Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.”.

In light of the above, had the complaint been accepted, the UK NCP would not have determined whether B’s sale of X complied with domestic and European Union law in the UK or abroad. However, the UK NCP notes that A has not alleged any breach of the applicable laws.

⁵ OECD, *OECD Guidelines for Multinational Enterprises, 2011*, paragraph 1, page 13 – available at <http://www.oecd.org/dataoecd/43/29/48004323.pdf> (accessed on 29 February 2012).

⁶ OECD, *OECD Guidelines for Multinational Enterprises, 2011*, paragraph 2, page 17 – available at <http://www.oecd.org/dataoecd/43/29/48004323.pdf> (accessed on 29 February 2012).

d) How similar issues have been, or are being, treated in other domestic or international proceedings:

d.1. The UK NCP notes that similar complaints under the Guidelines have been submitted by A against a US-based company and a separate UK-based company. Both of these complaints have been separately considered by the US NCP and the UK NCP, respectively. The UK NCP observes that while all complaints have related to Y, the characteristics of the companies involved in each case are different and therefore the treatment of these complaints can only be of limited assistance in determining how to proceed in relation to this Specific Instance.

e) Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines:

e.1. The UK NCP does not consider that further consideration of A's complaint against B would contribute to the purposes and effectiveness of the Guidelines. In reaching this decision, the UK NCP took the following points into account.

e.2. The UK NCP had regard to the acknowledgment in the Guidelines that while Governments wish to encourage the widest possible observance of the Guidelines, small enterprises may not have the same capacities as large enterprises, and in this regard notes:

i. That B is a very small company which operates in the niche market of vintage and old cars with engines that predate the use of unleaded fuel. Therefore, the UK NCP considers that a change in B's behaviour of the nature sought by A would not significantly affect the global sales of Y (and would not significantly reduce the global level of harm allegedly caused by the use of Y), but would almost certainly cause B's extinction as a viable company since the only product that B currently sells is based on Y. The purpose of the Guidelines is not to force companies to close, particularly when a company appears to be operating "in harmony" with current government policies.

ii. That the fact that B sells one product, which is based on Y, would make it virtually impossible for B to reach a mediated settlement with A on the allegations raised in the complaint. Therefore the UK NCP does not consider that further consideration of A's complaint would

contribute to the aim of strengthening mutual confidence between enterprises and the societies they operate in.

- e.3. The role of NCPs is to further the effectiveness of the Guidelines. In respect of Specific Instances the main obligation is for the NCP to

“offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law”⁷.

For the reasons outlined above, the UK NCP does not consider that further consideration of the issues raised would assist in resolving the issues raised, and therefore would not contribute to the effectiveness of the Guidelines.

- e.4. That, as indicated in paragraph 11(b)(2)(ii) above, consideration of the allegations raised under Chapters VI(1)(b) and VI(1)(c) would be inconsistent with the purposes of the Guidelines.

Next steps

12. This Initial Assessment concludes the complaint process under the Guidelines.

14 May 2012

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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⁷ OECD, *OECD Guidelines for Multinational Enterprises, 2011*, paragraph I(C) of the “Procedural Guidance”, page 72 – available at <http://www.oecd.org/dataoecd/43/29/48004323.pdf> (accessed on 29 February 2012).