

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Complaint from The LEAD Group Inc against Xstrata PLC (in the UK)

Background

OECD Guidelines for Multinational Enterprises

1. The OECD Guidelines for Multinational Enterprises (the Guidelines) comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including human rights, disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.
2. The Guidelines are not legally binding. However, OECD governments and a number of non-OECD governments are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
3. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided into the following key stages:
 - a) 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 UK NCP will use this information to decide whether further consideration of a complaint is warranted;
 - b) Conciliation/mediation OR examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the

- c) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;
 - d) Follow up – Where the Final Statement includes such recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company’s progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties’ responses and, where appropriate, the NCP’s conclusions on those responses.
5. The complaint process, together with the UK NCP’s Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP’s website:
<http://www.bis.gov.uk/nationalcontactpoint>

Complaint from The LEAD Group Inc and response from Xstrata PLC

6. On 27 August 2011, the Australian non-governmental organisation (NGO), The LEAD Group Inc¹, wrote to the UK NCP raising a number of concerns which it alleged constitute a Specific Instance under the Guidelines in respect of Xstrata PLC (Xstrata)’s operations in the UK. The LEAD Group Inc alleged that Xstrata supplied lead, extracted from Mount Isa (Australia) and smelted in the UK by Britannia Refined Metals LTD (Xstrata’s UK subsidiary), to a US-based multinational, Innospec Inc, which in turn used the lead allegedly supplied by Xstrata to produce the environmentally-harmful petrol (MOGAS) additive “tetraethyl lead” (TEL) for use in Afghanistan, Algeria, Burma, Iraq, North Korea and Yemen. The LEAD Group Inc alleged that Xstrata’s behaviour was contrary to the chapeau of Chapter VI (Environment) and Chapters VI(6)(a) and VI(6)(b) of the 2011 version of the Guidelines² which state that:

“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,

¹ “The Lead Education and Abatement Design Group Incorporated”.

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

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:
[...]

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;”.

7. More information about the allegations made by The LEAD Group Inc in respect of Xstrata can be found in the Initial Assessment which is available on the UK NCP’s website³.
8. Xstrata wrote to the UK NCP on 21 November 2011, denying having contravened the Guidelines, and stressing that, according to the Guidelines, responsible business conduct not only includes contribution to environmental performance but also economic and social progress with a view to achieving sustainable development. More information about Xstrata’s response can be found in the Initial Assessment which is available on the UK NCP’s website⁴.

UK NCP process in this Specific Instance

9. On 16 December 2011, the UK NCP concluded its Initial Assessment of this complaint⁵. As the complaint was filed before 1 September 2011, the UK NCP considered it under the 2000 version of the Guidelines⁶. The UK NCP accepted for further consideration the alleged breach by Xstrata of the following parts of the 2000 version of the

³ <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/i/11-1451-initial-assessment-lead-group-against-xstrata.pdf> - accessed on 23 April 2012.

⁴ Ibid.

⁵ Ibid.

⁶ *OECD Guidelines for Multinational Enterprises, 2000* – available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (accessed on 23 April 2012). On 25 May 2011, the OECD endorsed an update to the Guidelines (available at <http://www.oecd.org/dataoecd/43/29/48004323.pdf> - accessed on 23 April 2012). On 29 June 2011, the UK NCP’s Steering Board agreed that the UK NCP will apply the updated text with effect from 1 September 2011. The UK NCP’s application of the updated Guidelines is set out on the UK NCP’s website (accessed on 23 April 2012) under: www.bis.gov.uk/nationalcontactpoint and www.bis.gov.uk/ukncp-complaints-procedures.

Guidelines: chapeau of Chapter V (Environment); Chapter V(6)(a); and Chapter V(6)(b). The rationale for this decision was set out in the Initial Assessment of 16 December 2011. The Initial Assessment concluded that the UK NCP would attempt to facilitate a negotiated settlement in relation to the issue of Xstrata's role in Innospec Inc's production of TEL for MOGAS. **The acceptance of this Specific Instance for further consideration by the UK NCP does not mean that the UK NCP considers that Xstrata acted inconsistently with the Guidelines.**

10. The UK NCP offered, and both parties accepted, conciliation / mediation. The UK NCP therefore appointed ACAS⁷ mediator Dr Karl Mackie to serve as conciliator-mediator. The parties met in London on 17 February 2012 (The LEAD Group Inc participated in the meeting by telephone and was represented in London by the UK-based NGO "RAID"⁸). The meeting was chaired by Dr Mackie.

Outcome of the conciliation

11. The parties reached an agreement, and the complaint was withdrawn.

UK NCP conclusions

12. Following the successful conclusion of the conciliation process by Dr Karl Mackie and the agreement reached by the parties, the UK NCP will close the complaint. The UK NCP will not carry out an examination of the allegations contained in The LEAD Group Inc's complaint or make a statement as to whether there has been a breach of the Guidelines.
13. The UK NCP congratulates both parties for their efforts in reaching a mutually acceptable outcome and for constructively engaging in the discussions.

31 May 2012

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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⁷ Advisory, Conciliation and Arbitration Service.

⁸ "Rights & Accountability in Development".