

Final Report

Final report of the National Contact Point for the OECD Guidelines in the Netherlands on the Specific Instance notified by CEDHA, INCASUR Foundation, SOMO and Oxfam Novib concerning Nidera Holding B.V.

The Hague, 03 February 2012

Introduction

Countries adhering to the OECD Guidelines for Multinational Enterprises (the *Guidelines*) are under the obligation to set up National Contact Points that undertake promotional activities, handle enquiries and contribute to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances.

This report describes the procedures initiated and the good offices offered by the Netherlands National Contact Point for the OECD Guidelines (hereafter: NCP) after receipt of a notification by a collective of four NGOs from Argentina and the Netherlands regarding the human rights policy and due diligence procedures of a Dutch multinational enterprise. Early December 2011, parties involved informed the NCP of their mutual agreement and requested the NCP to formally finalize the specific instance procedure.

Notification and parties involved

On 27 June, 2011, the Netherlands NCP received a notification from the Argentinean NGO 'Centro de Derechos Humanos y Ambiente' (CEDHA), also on behalf of the Argentinean 'International Institute of Studies and Social Training of the South (INCASUR), Netherlands based NGOs Stichting Onderzoek Multinationale Ondernemingen (SOMO) and Oxfam Novib (hereafter collectively: the Notifiers). A copy of the notification was forwarded by the NCP to the Argentinean NCP.

The notification concerned the alleged non-observance of the *Guidelines* by the Dutch-based multinational Nidera Holding B.V. and its Argentinean subsidiary Nidera S.A. (hereafter: the Enterprise). The Enterprise's activities in which the alleged non-observance took place concerned the adoption by Nidera (the parent company) of "a policy commitment to respect human rights and follow due diligence procedures at the highest management levels of the company". According to the Notifiers, the need for this was reflected in "hiring of temporary workers for detasseling corn under conditions that did not seem to meet the standards for the protection of workers and of

internationally recognised and enforced human rights in the Republic of Argentina.”¹ More specifically, the non-observance concerned health and safety conditions, wages, and submission and dependence.

Notifiers requested the NCP to offer its good offices in order to facilitate a dialogue between Notifiers and the Enterprise that would lead to the Enterprise’s adoption and implementation of a “company-wide human rights policy that includes a concrete due diligence procedure for identifying, preventing and mitigating actual and potential adverse human rights impacts throughout its global operations, in particular regarding the hiring and employment processes of the temporary workers in detasseling operations.”²

Procedures initiated by the NCP

By letter of 16 August, 2011, the NCP informed the parties that it accepted the notification for further examination under the NCP procedures while clearly noting that this acceptance in itself did not imply that the NCP supports the substantiation of an apparent breach of the *Guidelines* as described by Notifiers. The NCP considered that an offer of its good offices as requested by Notifiers would help the Enterprise and its stakeholders with its development of a human rights policy and its human rights due diligence procedure in accordance with the *Guidelines*.

A copy of the acceptance letter was sent to the Argentinean NCP, which responded swiftly by expressing its gratitude for the information received and interest in following the proceedings of the notification. Meanwhile the Netherlands’ embassy in Buenos Aires was kept informed and consulted during the course of the handling of the notification.

On 28 September, 2011, the NCP organised a meeting with the Enterprise and Notifiers, to which representatives of other organisations that deal with responsible business conduct were also invited by the NCP. During the meeting, the CEO of the Enterprise, accompanied by the CFO and CSR responsible, explained how the Enterprise in their view complies with the OECD Guidelines and controls its operations and described its comprehensive CSR approach (including CSR and human rights standards).

Notifiers welcomed the efforts and commitment the Enterprise had undertaken and shown, but also pointed out that they would like to take a more elaborated look at the Enterprise’s CSR policies. The CEO expressed his willingness to engage in a dialogue with Notifiers and other stakeholders, which he considered part of the Enterprise’s process of regular review of its CSR policies with a view to further improvement and development.

In the two months that followed the meeting of 28 September, parties met bilaterally and managed to agree on Notifiers’ main request, the setting up of a human rights policy that includes due diligence as described by the *Guidelines* and the United Nations’ Guiding Principles for Business and

¹ Notification of Specific Instance by Notifiers, Part II, page 3, 26 June, 2011

² Notification of Specific Instance by Notifiers, Part III, page 7, 26 June, 2011

Human Rights. The mutual agreement comprised of agreement over the Enterprise's human rights policy, its human rights due diligence procedure, monitoring, its supply chain approach, and grievance mechanism.

The parties informed the Netherlands NCP about their mutual agreement by letter of 2 December, 2011, and requested the NCP to draft its final report. Parties also requested the NCP to issue a position regarding transparency and confidentiality in light of the *Guidelines* and the specific instance procedure.

Remarks of the NCP

Regarding transparency and confidentiality in the specific instance procedure, the NCP has always been of the opinion that the mere fact that an enterprise is involved in a specific instance procedure and the allegations that led its stakeholders to file the notification ought to be publicly available information. Information shared and opinions expressed within the specific instance procedure are however confidential. This distinction was first developed during the NCP's dealing with the notification concerning the G-Star notification in 2006 and was further confirmed during the NCP's peer evaluation in 2009.³

Article C4 of the OECD Guidelines Procedural Guidance in this regard reads that the NCP will:

"In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law."

The Commentary (no. 21) on the Procedural Guidance additionally reads:

"The effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines."

The NCP would like to congratulate the parties with their mutually agreed solution and wishes to praise the Enterprise with its forthcoming policies on human rights and its openness towards stakeholders in shaping these policies, especially given the fact that the concept of due diligence in the framework of business and human rights is still new and requires exploration and context-

³ More information on <http://www.oecdguidelines.nl/get-started/peer-review/>

specific adaptation. Also the Notifiers deserve credit for their open and constructive attitude during the proceedings of this notification.

After having agreed on a human rights policy including a human rights due diligence procedure the Enterprise will now face the surely challenging task of putting them into practice throughout its activities and business relations worldwide. In this regard, the NCP is glad to see that the agreement also includes provisions on monitoring, through for example stakeholder consultations and on-site visits.

With a view to learning from the handling of the specific instance and monitor progress on this successfully finalized NCP procedure, the NCP would like to invite parties to inform the NCP on their practical experiences with the Enterprise's human rights policy one year after publication of this report.

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Agreement between Nidera Holdings B.V. and CEDHA, SOMO, Oxfam-Novib and INCASUR, 25 November 2011: http://oecdwatch.org/cases/Case_220/1000/at_download/file