



National Contact Point

OECD Guidelines for Multinational Enterprises

Final Statement

ABP/APG - Lok Shakti Abhiyan, KTNC Watch, Fair Green and
Global Alliance, Forum for Environment and Development

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Final Statement

Final report of the Netherlands National Contact Point for the OECD Guidelines for Multinational Enterprises on the Specific Instance notified by Lok Shakti Abhiyan, KTNC Watch, Fair Green and Global Alliance and Forum for Environment and Development concerning an alleged breach of the OECD Guidelines for Multinational Enterprises by the Dutch Pension Fund ABP and its Pension Administrator APG

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1. Introduction

This report describes the process initiated and the good offices offered by the Netherlands National Contact Point for the OECD Guidelines after receipt of a notification by Lok Shakti Abhiyan, KTNC Watch, Fair Green and Global Alliance and Forum for Environment and Development on 9 October 2012.

The process was conducted as a dialogue between the parties SOMO, Both ENDS, APG and ABP and led to a joint agreement on the issues raised in the notification against ABP and APG.

The emphasis in this final statement is on the course of the procedure, the NCP's assessment of this specific instance, the outcome of the dialogue and the results of the issues Parties have agreed upon in their Joint Statement. It should be noted that the statement is based on the information presented by the Parties and the outcome of the discussions. The exchange of information during the dialogue is, in conformity with the OECD Guidelines, confidential.

2. The NCP procedure

2.1. The Netherlands NCP procedure in this specific instance

On 9 October 2012 Lok Shakti Abhiyan, KTNC Watch, Fair Green and Global Alliance (represented by SOMO and Both ENDS) and Forum for Environment and Development notified a specific instance with the National Contact Points of South Korea, Norway and the Netherlands with regard to an alleged breach of the Guidelines by South Korean Pohang Iron and Steel Company (POSCO) and the Dutch pension fund ABP, its Pension Administrator APG and the Norwegian Government Pension fund Global. On 17 October 2012 notifying parties specified their Norwegian addressee into Norwegian Bank Investment Management (NBIM).

The Netherlands NCP confirmed receipt of the notification to the notifying parties and forwarded the notification to ABP and APG on 5 November 2013.

In a clarification of the specific instance by mail of 23 November 2012 the notifying parties submitted additional information on the alleged breach by ABP/APG.

The Netherlands NCP held separate meetings with SOMO and Both ENDS on 26 November 2012 and with APG on 27 November 2012.

APG informed the NCP that it would act on behalf of its clients including ABP. SOMO and Both ENDS informed the NCP that they would represent the Fair Green and Global Alliance, Lok Shakti Abhiyan, KTNC Watch and ForUM with regard to the allegations against ABP and APG.

On 12 December 2012 the Netherlands NCP sent a draft Initial Assessment to APG, SOMO and Both ENDS offering them a 2 weeks' notice to respond. Parties responded on 18 December 2012 (enterprise) and 31 December 2012 (notifiers). The Netherlands NCP made an adaption concerning the percentage of the shares of APG in POSCO according to APG's comments.

On 18 January 2013 the Netherlands NCP published its Initial Assessment, in which it concludes that the issues raised against ABP and APG merit further consideration. The NCP hence offered its good offices to the Parties. The dialogue was conducted between SOMO, Both ENDS and APG.

Meetings were held on 17 January, 12 February and 27 February 2013 in which Parties jointly set the agenda and terms of reference for the dialogue.

On 6 March 2013 Parties reached a joint agreement on the issues raised in the notification.

Parties agreed upon the appropriate steps to be taken by APG in order to prevent or mitigate any potential negative impacts related to their minority shareholding in POSCO and to further effectuate APG's ongoing efforts in order to influence POSCO. Furthermore Parties agreed upon a draft Terms of Reference for an independent Review and Assessment of contentious issues in Odisha, India.

On 13 March 2013 the Netherlands NCP published a Preliminary Statement which has served as input for the Netherlands NCP's Final Statement. The Netherlands NCP has issued its findings in a preliminary form in the hope that coordination with the other NCPs involved would result in a joint approach.

2.2. Functional equivalence between the South Korean, Norwegian and Netherlands NCP

The notification has been submitted to three NCPs; the South Korean, Norwegian and Netherlands NCP. It entails an alleged breach of the Guidelines by South Korean Pohang Iron and Steel Company (POSCO) and its investors: the Dutch pension fund ABP, its Pension Administrator APG and the Norwegian Bank Investment Management (NBIM).

The notifying parties allege that POSCO has failed to (1) seek to prevent or mitigate human rights impacts, (2) to conduct comprehensive human rights due diligence and (3) to carry out environmental due diligence in its project to set up a steel plant in the Jagastinghpur District in Odisha, India, which is carried out by the wholly owned subsidiary POSCO India Private Limited.

The notifying parties allege that the Financial Institutions have not taken all the appropriate steps to prevent or mitigate POSCO's negative impacts on human rights and environmental rights which are directly linked to them through their financial relationship with POSCO. More specifically the notifiers claim that the Financial

Institutions did not fully observe Chapter II, section A, paragraph 12 and paragraph 14, 19, 20 and 22 in the Commentary of Chapter II.

In accordance with the Guidelines Procedural Guidance the NCPs have agreed that each NCP should handle the notification against its registered enterprise. Consequently the South Korean NCP has assessed the alleged breach by POSCO, the Norwegian NCP has assessed the alleged breach by NBIM and the Netherlands NCP has assessed the alleged breach by ABP and APG.

The Norwegian and Netherlands NCPs agreed to cooperate throughout the dealing with this specific instance as well as support each other. Throughout the process the Netherlands and Norwegian NCP have sought to consult with the South Korean NCP. Unfortunately mutual communication between all three NCPs proved to be very difficult in practice. It was not before the Annual NCP meeting at the OECD in Paris in June that a tripartite meeting between the three NCPs finally materialized. It is regrettable that the Norwegian and the South Korean cases were already closed by that time.

Although each NCP has its own responsibility to deal with its part of a multiple case, early exchanges of views and possible coordination are essential in order to meet the OECD Guidelines requirements of coherence between the NCPs' approaches (principle of functional equivalence). This view has been reconfirmed during the Annual NCP Meeting on 24 and 25 June, 2013. The Netherlands NCP believes that in cases like these it is recommended that the NCP which is closest to the alleged adverse impacts takes the initiative for such inter-NCP consultation (in this case the South Korean NCP). The objective of such early consultation is at least to agree on the procedure. If no agreement can be reached, such should be reported to the OECD Working Party on Responsible Business Conduct.

Except for the encouragement in par. 24 of the Commentary on the Implementation Procedures of the Guidelines, there is no formal obligation to collaborate with other NCPs and each NCP should deal with each company separately. However it is considered to be advisable when three notifications concern the same facts, such as in this case, that the NCPs consult each other - all the more so since in this specific instance the dialogue between the Dutch parties addressed relevant issues concerning activities related to Posco and because notifying parties' request referred to an independent Review and Assessment Mission in India jointly commissioned by the three NCPs. Consultation doesn't necessarily lead to a uniform approach. On the other hand: it can't be in the spirit of the Guidelines if NCPs work completely independently and subsequently take contradictory positions regarding the same facts measured up against the same guidelines.

2.3. Details of the notifiers

The notification was submitted by four civil society organizations.

1. Lok Shakti Abhiyan is an India-based alliance of civil society

organizations and peoples movements. They provide a forum for coming together of numerous vibrant strands of ideologies and have as a focus to develop linkages across the various sections of dalits and other suppressed castes, minorities, adivasis, unprotected workers, labouring poor, as well as sensitive intellectuals and other professionals.

2. Korean Trans National Corporation Watch (KTNC) is a network of NGOs based in Korea working in various fields from human rights and corporate social responsibility to energy/climate policy and labour rights. The network was formed to bring together various expertise and experiences to monitor corporations registered in Korea and address issues arising from their operations.
3. ForUM is a Norwegian civil society organization with 54 member organisations and a broad international network which aims to support local communities in the Southern hemisphere whose livelihood is threatened by the exploitation of human and natural resources. ForUM seeks to enhance the capacity of local communities and their civil society organizations to influence decision making process on national and international level.
4. Fair Green and Global Alliance (FGG) is an alliance of Dutch civil society organizations with a broad international network whose focus lies on support of local communities in the Southern hemisphere by contributing to poverty reduction and socially just and environmentally sustainable development. FGG seeks to enhance the capacity of local communities and their civil society organizations to influence decision making process on national and international level. In this specific instance FGG is represented by the non-profit organizations SOMO and Both ENDS. SOMO is an independent research and network organisation who investigates multinational enterprises and the consequences of their activities for people and the environment. Both Ends is an independent NGO that aims to strengthen Southern CSOs by supporting strategic networks and by monitoring, analysing and lobbying for sustainable capital flows. SOMO and Both ENDS represent the Fair Green and Global Alliance, Lok Shakti Abhiyan, KTNC Watch and ForUM in the specific instance against ABP and APG for the Netherlands NCP.

2.4. Details of the enterprise

Stichting Pensioenfond (ABP) is the pension fund for employees in the Dutch government, public and education sectors. With an invested capital of € 274 billion, ABP is one of the largest pension funds in the world and holds a substantial position in the capital market. Algemene Pensioengroep N.V. (APG) forms part of the APG Group which operates globally with offices in The Netherlands and subsidiaries in Hong Kong and New York. APG is one of the world's largest administrators of group pension schemes with approximately 4.000 employees. APG administers over 30% of all collective pension schemes in the Netherlands and manages pension assets of in total approximately 315 billion Euro. APG manages the pension capital of ABP. ABP holds a share of 19 million EURO in POSCO as per 31-10-2012

3. The NCP's assessment of the specific instance

3.1. The alleged breaches of the Guidelines

3.1.1. Context

POSCO and its fully owned subsidiary POSCO India Ltd. plan to construct an integrated steel plant and captive power plant in Jagatsinghpur District, Odisha, India. The original plan consisted in the construction of a 12 million-ton-per-annum integrated steel plant and a captive power plant, including a captive port and other related infrastructure on an area of 4,004 acre. In July 2012 POSCO revised its original plan and submitted a proposal to the Odisha State Government in which it requested transfer of 2,700 acre land in its favor to build a 8 MPTA steel plant. This plan foresees an expansion to the previous plan as soon as the necessary area is made available.

The notifiers state that the realization of this project will lead to the displacement of approximately 22,000 people, including individuals from Scheduled Tribes and Other Traditional Forest Dwellers that have special protection (Forest Right Act 2006).

The notifiers allege that POSCO has not carried out a comprehensive human rights and environmental due diligence and has not engaged in a meaningful consultation with all affected stakeholders to identify the full scope and severity of potential human rights and environmental impacts of the project and thus has breached the Guidelines. They suspect that POSCO's failure to do so will result in an incapacity to prevent or mitigate adverse impacts of the project on the local communities and the environment.

3.1.2. Issues raised against ABP and APG

APG manages the pension capital of ABP and as of October 2012 held a share of 0,084% in POSCO.

The issues raised in the specific instance against ABP and APG entail the alleged non-observance of specific due diligence provisions of the OECD Guidelines (version 2011). The notifying parties maintained that ABP and APG had not taken all the appropriate steps to prevent or mitigate the negative impacts of POSCO's activities on human rights and environmental rights which are directly linked to them through their financial relationship with POSCO. More specific the notifiers allege the financial institutions did not fully observe Chapter II, section A, paragraph 12, Chapter II, commentary paragraph 14, 19, 20 and 22 in the Commentary of Chapter II.¹

The notifying parties request that ABP and APG should increase their efforts to use their leverage in order to influence POSCO. Furthermore notifiers requested the public disclosure of minimum criteria for the continuation of the investment in POSCO. In addition the South Korean, Norwegian and Netherlands NCP where asked to carry out an independent fact finding mission in order to examine the issues raised in this specific instance.

3.2. Scope of the assessment

In its initial assessment of 18 January 2013 the Netherlands NCP concludes that the notification merits further consideration by the Netherlands NCP as far as it concerns the alleged breach of the Guidelines by the Dutch pension fund ABP and the Dutch pension fund asset manager APG. The Netherlands NCP has examined the due diligence performance of ABP and APG. The Netherlands NCP has not assessed the notifications against POSCO and NBIM, as they are being reviewed by the South Korean and Norwegian NCP. Hence the offer of good offices by the Netherlands NCP does not necessarily indicate an interpretation or reading of the notification against POSCO and NBIM.

However, since the dialogue with APG on behalf of its clients including ABP addressed relevant issues concerning activities related to POSCO, parties expressed the intention that the outcome of the dialogue that was conducted by the Netherlands NCP might result in a positive contribution to the specific instances regarding POSCO and NBIM. Therefore on March 13, 2013 the Netherlands NCP issued its findings in a preliminary form after having consulted the South Korean and Norwegian NCPs.

3.3. Applicability of the Guidelines to the financial sector

The NCP agrees with APG that further clarification of the applicability of the Guidelines to the day to day business of financial institutions is necessary. In the Netherlands NCP's view the issue is not and has never been if the Guidelines apply to the financial sector and whether financial services are part of a "business

to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm" (Chapter II Commentary par. 19). "Appropriate responses with regard to the business relationship may include continuation of the relationship with a supplier throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. The enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage" (Chapter II Commentary, par. 22). "The term 'business relationship' includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services" (Chapter II, Commentary, par. 14). "Meeting the expectation in paragraph A.12 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact" (Chapter II, Commentary par. 20).

¹ The Guidelines state that "enterprises should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship" (Chapter II A par.12). "If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps

relationship”, but rather how the applicability should be considered in specific cases.² This view has been confirmed at the Global Forum on Responsible Business Conduct, which was held on 26 and 27 June 2013. The overall conclusion was that it is no longer a question if the Guidelines in general and the due diligence provisions in particular apply to the financial sector, but how they do apply.

According to the Guidelines, enterprises “should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship”³. The term business relationship “includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services”⁴. These examples are not exhaustive, but illustrative, given the use of the word “include”. Hence the fact that the term business relationship is not specifically defined for various types of financial relations does not mean that the provisions on due diligence do not apply to the financial sector. The reference to services makes paragraph 12 applicable to any financial service, including but not limited to capital raising. Consequently there can be no doubt that such services are part of a business relationship. Furthermore the Netherlands NCP believes that the direct linkage⁵ as mentioned is related to the “operations, products, services”, not to the “adverse impacts” themselves.

3.4. Applicability of the Guidelines to minority shareholders

Since the Guideline provisions on due diligence do apply to the financial sector, the NCP finds that minority shareholders have a responsibility to perform a risk based due diligence on social and environmental issues. Minority shareholders, like any other investors, are expected to apply the Guidelines and, more specifically, carry out a risk based due diligence prior to making a decision relating to lending, investing or other financial services to a client. The Guidelines do not make any exception for minority shareholders nor do they indicate that the application is limited to shareholders from a certain size onwards.

² The Guidelines apply to all sectors, including the financial sector: “A precise definition of multinational enterprises is not required for the purposes of the Guidelines. These enterprises operate in all sectors of the economy”, Chapter I, par.4 Guidelines. The financial sector is even explicitly mentioned in the Guidelines Commentary on the Chapter of General Policies, making it all the more evident that the financial sector is not excluded from the Guidelines: “An increasing network of non-governmental self-regulatory instruments and actions address aspects of corporate behavior and the relationships between business and society. Interesting developments in this regard are being undertaken in the financial sector”, Chapter II, Commentary, par.12

³ Chapter II A par.12

⁴ Chapter II commentary par.14

⁵ Chapter II A par.12

Additionally the UN office of the High Commissioner for Human Rights has pointed out that the scope of application of the UN Guiding Principles on Business and Human Rights is not limited to situations where institutional investors hold majority shareholdings and that “minority shareholdings of institutional investors constitute a business relationship for the purposes of principle 13”.⁶ The OECD Guidelines chapter on Human Rights draws upon the UN Framework for Business and Human Rights and is in line with the Guiding Principles for its implementation⁷. Consequently the Guiding Principles elaborations on minority shareholders provide interpretative guidance for the applicability of the due diligence provisions of the OECD Guidelines to minority shareholders.

The Netherlands NCP believes that the size of a share that an investor holds in a company does not determine whether there is a business relationship for the purpose of the Guidelines⁸. It rather is a factor to determine whether or not the investor in question disposes of sufficient leverage to effectuate change in the wrongful practices of the entity that causes the harm.⁹

The issues raised in relation to ABP and APG concern their responsibility to use their leverage to seek to prevent or mitigate POSCO’s negative impacts on human rights and environmental rights which are directly linked to them through their investment in POSCO. The responsibility of ABP/APG to seek to prevent adverse impacts caused by their investee companies is not intended to shift responsibility from the entity causing the adverse impact (POSCO) to the enterprise with which it has a business relationship (ABP/APG). POSCO itself is responsible for avoiding causing or contributing to adverse impacts, while APG/ABP is responsible for seeking to prevent or mitigate adverse impacts when those impacts are directly linked to their operations, products and services by a business relationship including their investments. APG manages the pension capital of ABP and holds an interest of and as of October 2012 held a share of 0,084% in POSCO. The (large total) size of its fund, its stated prominent role in international sustainable finance and its cooperation (including coalitions) with other similar funds in this case outweighs its small shareholding in the perspective of possible leverage with POSCO. Concluding, it is not just the amount or percentage of financing which is an important consideration for the applicability of the Guidelines, but also, or even rather so the degree of leverage by an investor (or lender) on the enterprise which “caused or contributed” to the adverse impacts: such leverage may be very effectively applied by a large, high profile investor even if its participation is small in its own portfolio or in the enterprise

⁶ Letter dated April 26, 2013 from Craig Mokhiber, Chief of development and economic and social issues branch).

⁷ OECD Guidelines Chapter IV, Commentary par. 36

⁸ Chapter II, A, par. 12

⁹ Chapter II, Commentary 19

concerned, as is the case with APG and POSCO. Hence the due diligence provisions of the Guidelines do apply to APG as a minority shareholder.

4. The NCP's good offices

4.1. The course of the dialogue

The dialogue before the NCP was conducted between SOMO, Both ENDS, ABP and APG, the latter acting on behalf of its clients, including ABP. The NCP held joint meetings on January 17th, February 12th and February 28th, 2013. Parties jointly set the agenda and terms of reference for the dialogue. On March 6th, 2013 Parties reached a joint agreement on the issues raised in the notification. On March 13, 2013 the NCP published its findings in a preliminary form.

4.2. The outcome of the dialogue¹⁰

The aim of the dialogue has been:

- to come to an agreement between Parties about appropriate steps to be taken by APG, in cooperation with other (minority) shareholders, to identify, prevent, or mitigate any potential negative impacts of the investment plans of POSCO in Odisha on local communities and the environment;
- to further effectuate APG's ongoing efforts to use its leverage to influence POSCO to strengthen its engagement with all stakeholders and accommodate their concerns in its plans to ensure that POSCO's operations are in line with internationally recognized standards and principles, as reflected in the OECD Guidelines;
- to agree a draft Terms of Reference for an authoritative, independent review and assessment of contentious issues in Odisha, which should facilitate a constructive and meaningful dialogue among all stakeholders; such a review and assessment could be jointly facilitated by the Netherlands', the South Korean and Norwegian NCP.

Parties have agreed that:

- There is a gap between on the one hand the issues raised by the complainants in the Specific Instance and their subsequent submissions, and on the other hand the various responses of POSCO;
- there is a gap between the public statements and information from POSCO and the reports from local stakeholders and media regarding the active involvement of POSCO in the land acquisition by the local authorities;
- Parties are concerned about the occurrence of recent forced land acquisitions and police violence;
- there is a need from the beginning of the project development for the establishment of a constructive and meaningful stakeholder consultation process between POSCO India the

- local communities and NGOs to identify, prevent and mitigate any negative impact related to the project;
- for a successful dialogue it is essential that all parties have access to the information about all of POSCO's proposed investment plans in Odisha and their timeframes, covering its plans for the development of a steel plant, all its mining plans in the State as well as all infrastructural works required for the feasibility of the overall investment;
- that the absence of a fruitful dialogue and trust provide regrettable breeding grounds for further conflicts surrounding the land acquisition and other aspects of POSCO's investment plans;
- that an Independent Review and Assessment could help to facilitate a fruitful, multi-stakeholder consultation process to take place between POSCO, the local communities and the local, national and international NGO's with the aim to identify, prevent and mitigate any adverse impacts;
- to call on the NCPs of the Netherlands, Norway and South Korea to jointly commission and in consultation with the Indian authorities an International Review & Assessment Mission to identify and overcome the obstacles for such a stakeholder consultation process and to recommend feasible steps for all relevant stakeholders -including (minority) shareholders in POSCO- to resolve the current issues and conflicts.

Parties have agreed on the following draft terms of reference for a Review & Assessment Mission:

- a mission of independent, authoritative members to prepare a high level assessment of the social, environmental and human rights aspects of all proposed POSCO investments in Odisha;
- to assess how meaningful ongoing stakeholder engagement can be set up, in which the right to free, prior and informed consent is assured, including compliance with rights of indigenous people and forest dwellers, as defined by the UN Declaration on the Rights of Indigenous Peoples (DRIP);
- the Mission to be acting under the authority of the NCPs of the Netherlands, Norway, South Korea; at least one member must be from India or of Indian origin with a sound understanding of the local situation and context;
- the findings of the Mission will be made public;

Furthermore Parties agreed that they will continue their dialogue to seek ways to prevent or mitigate adverse impacts from POSCO's proposed investments in Odisha.

5. Recent developments

- Final Statement Norwegian NCP

On 27 May, 2013 the Norwegian NCP issued its Final Statement in which it states that NBIM has breached the OECD Guidelines for Multinational Enterprises, and lacks a strategy for identifying and handling possible violations of human rights in the companies they invest. (attachment)

¹⁰ Joint Statement, 8 March, 2013

The Norwegian NCP recommends that NBIM acts upon the following recommendations: “

- Cooperate with the OECD NCP Norway by responding to the NCP’s questions and accept the NCP offer to facilitate dialogue/mediation. Be transparent about how NBIM is a responsible investor in the POSCO case.
- Expand human rights due diligence to address the whole range of human rights relevant to its investments, and not only to child labour.
- Identify which human rights risks are prevalent in the various sectors or types of investments and develop a strategy to address these. NBIM is encouraged to work with other investors to increase leverage.
- Include in the strategy to work with other investors to encourage selected investees with particular risks to establish company based grievance mechanism.
- Publicize the strategy on human rights due diligence. Disclosure will make NBIM less vulnerable to criticism that NBIM addresses human rights risks randomly.”¹¹

- Initial Assessment South Korean NCP

On 21 June, 2013 the South Korean NCP issued its Initial Assessment in which it concludes that the issues raised against POSCO do not merit further examination. (Attachment). The South Korean NCP claims that the human rights and environmental issues raised in the notification are not linked to the activities of POSCO. It rejects the case under the assumption that these issues relate to “the administrative and judicial acts of the Odisha provincial government, which signed a contract with POSCO”¹² and are not considered to be related to the business activities of POSCO.

- Letter by POSCO

On July 11, 2013, in the midst of finalizing its Final Statement, the NCP received a letter by POSCO, which was forwarded to the NCP by APG¹³ (see attachment and NCPs subsequent reaction¹⁴.) POSCO refers to the Joint Statement of Parties of 6 March, 2013 as well as the Preliminary statement of the NCP of 13 March, 2013 and acknowledges “that you (the NL NCP) have determined that more work needs to be done to identify, prevent and mitigate any negative impacts related to POSCO’s operations and investments in Odisha. We understand that it is a necessary process and thereby we are prepared to cooperate with the Dutch NCP’s consultation process as well as the third party Independent Review Assessment (as stipulated in the Joint Agreement of parties). We are prepared to discuss with ABP, APG and NGOs in regards to the procedures of selecting the independent assessor for the Review and Assessment and determine the scope of

business and project related information, including confidential information. However we would like to share our concerns and requests several matters to be satisfied prior to the initiation of the assessment.” The issues raised by POSCO concern the selection of a member of Indian origin, the scope and procedure of the Assessment and the disclosure of its findings.

POSCO suggests to:

- Guarantee complete independency of the member of Indian origin;
- first review the validity of the arguments raised and their grounds by the NGOs;
- first decide upon the disclosure of certain confidential issues related to POSCO;
- deal separately with issues related to the Indian authorities;
- comply with legal restrictions and confidentiality requirements concerning the findings of the Assessment;
- right to review the validity of the findings, object an reassess.

- Recent developments on the ground

Throughout the course of the notification up to the publication of this Final Statement, the NCP has taken note of ongoing developments in India in the process of land acquisition as well as various governmental and court decisions. These developments indicate that the issues raised in the notification still need to be urgently addressed.

6. Observations by the Netherlands NCP

In general the Netherlands NCP finds that cooperation among NCPs and, where necessary, coordination by the OECD Working Party on Responsible Business Conduct in multiple NCP cases is warranted. The credibility of the OECD Guidelines themselves seems at stake here. The NCP regrets that the specific instance with the three NCPs for different reasons did not result into an effective joint approach, also considering the seriousness of the issues raised.

The NCP highly appreciates the constructive way and forward looking approach in which ABP, APG, SOMO and Both ENDS engaged in the process under the Netherlands NCP and have conducted the dialogue. The dialogue has been one of mutual consent on the main issues raised in this specific instance and has been performed in a prompt and forward looking manner. The NCP welcomes the joint agreement of parties and finds that it contributes to the objectives and effectiveness of the Guidelines and their further implementation in a substantial way.

Furthermore the NCP appreciates APG’s ongoing efforts and commitment to use its leverage to strengthen POSCOs engagement with all stakeholders in order to ensure that the activities on the project site in Odisha, India are in line with the standards and principles of the Guidelines.

¹¹ Final Statement Norwegian NCP, May 27, 2013

¹² Initial assessment South Korean NCP, Jun 21, 2013

¹³ Letter by SHIM, Tong-Wook, Senior Vice President, Head of Finance Department, POSCO, to The Netherlands NCP, APG, SOMO, Both ENDS, July 11, 2013

¹⁴ Letter by Netherlands NCP, August 6, 2013

In its Responsible Investment Policy ABP states that it expects companies to comply with the standards of the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the OECD Principles of Corporate Governance and the International Corporate Governance Network Statement on Global Corporate Governance Principles. ABP states that it will use its position as a shareholder to exert influence on companies that do not sufficiently comply with these standards and will dispose of its investments in companies that persistently fail to improve their compliance.

APG Responsible Investment Policy states that APG expects companies to act with respect for the principles of the UN Global Compact, and will sell the shares it holds if the dialogue does not lead to improvement.

For more than two years APG has actively engaged in a dialogue with POSCO about the human rights and environmental impacts of the project in Odisha, India and has encouraged POSCO to apply the principles of responsible business conduct. APG has used its leverage and has sought ways to increase it, and has actively brought the joint agreement with SOMO and Both ENDS to the attention of POSCO and urged POSCO to address the issues raised in the agreement. Hence the NCP finds that APG has taken its responsibility as a shareholder and is compliant with the requirements under the Guidelines. It used its leverage through extensive correspondence, phone calls, as well as face to face meetings with POSCO representatives at POSCO offices in Seoul.

However the NCP observes that the situation regarding the project site of POSCO in Odisha remains critical. The NCP shares parties concern about the reports of forced land acquisitions and violence on the project ground in Odisha. The NCP observes that there is a need to establish a constructive and meaningful stakeholder consultation process between POSCO and all affected stakeholders to identify, prevent and mitigate any negative impact related to the project and to ensure that effective local grievance mechanisms are developed.

The NCP welcomes the fact that parties have expressed their intention to continue their dialogue.

The NCP is especially pleased with the fact that APG is committed to continue to use its influence bringing POSCO's business practices in line with the Guidelines and other international principles and standards, under the expectation that POSCO publicly agrees to adopt these standards for all its operations including those in India and publicly reports on their implementation.¹⁵

The NCP is of the opinion that an independent Review and Assessment Mission and structured stakeholder dialogue with all parties concerned, including affected people and governmental authorities in India, as stipulated in the joint agreement of parties,

could contribute to a resolution of the conflict.

In its letter of July 11, 2013 POSCO expressed its willingness to cooperate with the Independent Review Assessment as stipulated in the Joint Agreement of parties. POSCO states that it is prepared to discuss with parties the procedures of selecting the independent assessor for the Review and Assessment and determine the scope and procedure of the Assessment.¹⁶

The NCP welcomes POSCO's interest in the matter. It finds that POSCO's collaboration is essential to realize improvements on the ground. The NCP would like to urge parties and POSCO to engage in a dialogue about the Independent Review and Assessment mission, as stipulated in the Joint Agreement of parties, in order to realize a meaningful stakeholder consultation between POSCO and the local stakeholders regarding POSCO's activities in Odisha, India.

The Netherlands NCP would contribute to such a mission provided that it is jointly commissioned with the South Korean and Norwegian NCP and Indian authorities are consulted.

¹⁵ Joint Statement of 8 March, 2013

¹⁶ Letter by SHIM, Tong-Wook, Senior Vice President, Head of Finance Department, POSCO, to The Netherlands NCP, APG, SOMO, Both ENDS, July 11, 2013

Argentina Australia Austria Belgium Brazil Canada Chile Colombia Czech Republic Denmark Egypt Estonia Finland France Germany Greece Hungary Iceland Ireland Israel Italy Japan Korea L

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP which is responsible for its own procedures and decision making, in accordance with the Procedural Guidelines section of the Guidelines. In line with this, the Netherlands NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on www.oecdguidelines.nl

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