



**OECD NCP Initial Assessment of alleged breach
of the *OECD Guidelines for Multinational Enterprises*
Warsaw, 25 June 2018**

1. On April 9th, 2018 the OECD National Contact Point (OECD NCP) received a notification of an alleged breach of the *OECD Guidelines for Multinational Enterprises* (hereafter the *OECD Guidelines*).
2. The notification was submitted by Frank Bold (hereafter “the Notifier”), a non-governmental organization working in the area of environmental protection with headquarters in Krakow.
3. The notification is with regards to the multinational enterprise Grupa OLX sp. z o.o. (hereafter “the Company”), located in Poznan and operating within the online advertisement portal sector, and is part of the corporate group OLX Group which has its main headquarters in the Netherlands.
4. The OECD NCP accepted the case for further consideration on 25 June 2018.

THE SUBJECT OF THE NOTIFICATION

The notification of an alleged breach of the OECD Guidelines was received by the Ministry of Investment and Economic Development, under which the OECD NCP operates, on 9 April 2018.

The following chapters of the *OECD Guidelines* were indicated as the subject of the notification:

- **Chapter II, General Policies, A, point 1**, according to which: *Enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development.*
- **Chapter II, General Policies, A, point 13**, according to which: *In addition to addressing adverse impacts in relation to matters covered by the Guidelines, enterprises should encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.*
- **Chapter VI, Environment, point 6**, according to which: *In particular, enterprises should 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 (point 6.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.*
- **Chapter VIII, Consumer Interests, points 2 and 5**, according to which: *When dealing with consumers, enterprises should act in accordance with fair business, marketing and*

advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

(point 2) Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.

(point 5) Support efforts to promote consumer education in areas that relate to their business activities, with the aim of, inter alia, improving the ability of consumers to: i) make informed decisions involving complex goods, services and markets, ii) better understand the economic, environmental and social impact of their decisions and iii) support sustainable consumption.

SUMMARY OF ACTIONS

Upon receiving the notification the OECD NCP took the following actions:

- 1) On 23 April 2018 the OECD NCP confirmed with the Notifier of having received the notification by way of email;
- 2) The OECD NCP notified the Company of having received the notification and requested a position on the matter by way of official letter dated 25 April 2018;
- 3) On 26 April 2018 the Dutch OECD NCP was notified about the submitted notification of an alleged breach of the OECD Guidelines (as a relevant institution on the grounds of the OLX Group main headquarters location, and it being a parent company to the notification's subject OLX Sp. z o.o.);
- 4) May-June 2018 – the OECD NCP assessed the notification, seeking out similar cases and consulting relevant experts;
- 5) The Company responded to the OECD NCP and conveyed its position on the matter by way of official letter dated 10 May 2018;
- 6) On 28 May 2018 members of the OECD NCP held a meeting with the Notifier;
- 7) On 11 June 2018 members of the OECD NCP held a meeting with a representative of the Company.

The OECD NCP conducted a focused assessment of the case on the basis of the documentation provided by the parties, along with supplementary documentation submitted in the framework of individual meetings and opinions of experts with whom the case was consulted. Throughout the process of consultations with external bodies the OECD NCP paid special attention to upholding confidentiality and withheld the names of the parties as well as details relating to the case that could allow for the identification of the parties.

In accordance with the gathered information, the OECD NCP concluded that the case concerns a multinational enterprise. Grupa OLX sp. z o.o., with headquarters in Poznan and operating within the

online advertisement portal sector, and which is a part of the corporate group OLX Group, which has its main headquarters in the Netherlands. OLX Group belongs to Naspers, an international internet and media concern with headquarters in the Republic of South Africa.

In the course of examining the notification, the OECD NCP concluded that the Company's online classified advertisement website includes sale offers of furnaces purposed for, among others, the burning of processed oil and discarded railway clippers. In the opinion of the Notifier, both the processed oil and the wooden railway clippers constitute hazardous waste, the burning of which has been prohibited under relevant legal provisions due to their substantial negative environmental impact. In accordance with the above, in the opinion of the Notifier the actions of the Company can be considered particularly harmful due to their impact on air pollution in Poland, subsuming the occurrence of human life-threatening smog. As stated by the Notifier, the Company is not directly responsible for the sale of processed oil-burning furnaces and discarded railway clippers, but it does answer for the ability of its portal's users to post such sale offers and procure those products that in all likelihood will be used in ways contrary to the law. In this context the Notifier points to a breach of the OECD Guidelines, particularly in consideration of the following chapters: Ch. II, General Policies, Ch. VI, Environment, and Ch. VIII, Consumer Interests.

In the opinion of the Company, the notification submitted to the OECD NCP by the Notifier lacks sufficient grounds and is the result of a misunderstanding of the nature of the advertisements posted to the portal, an omission of the binding legal provisions, as well as an improper assessment of the Company's role on the market. As was stated the Company is not a middleman in sale transactions and does not influence their terms, that is it does not determine the content of the offers nor the price of the sold product. In particular it does not influence the manner in which the product purchased by users of the portal is utilized. The Company informed that it in no way interferes with the terms of sale between the seller and the buyer.

DECISION OF THE OECD NCP

After its assessment of the notification, the OECD NCP accepted the case for further consideration on 25 June 2018. The acceptance of the case for further proceedings does not equate to a determination by the OECD NCP of a breach of the OECD Guidelines.

JUSTIFICATION

In accordance with the *Conduct procedure in specific instances related to an alleged breach of OECD Guidelines* (Part II. Procedure, Stage I), the initial assessment of the case conducted by the OECD NCP includes an evaluation of whether the notification fulfills the following criteria:

- **Whether a given specific instance is related to the OECD Guidelines implementation process.**

In the opinion of the OECD NCP, the issues raised in the notification concerning the activities of the Company can be deemed to be related to the provisions of the OECD Guidelines.

- **Whether the specific instance is significant and justified.**

In the opinion of the OECD NCP, the case is relevant and warranted. It concerns a multinational enterprise operating on the Polish market. A settlement of the case may be of value for many other parties operating on the growing e-commerce and classified ads market.

- **Whether there is a connection between the enterprise's activity and the specific instance.**

The content of the notification of an alleged breach of the OECD Guidelines, along with the positions of the parties presented in the course of the OECD NCP's assessment, indicates a connection between the activities of the Company and the case.

- **Whether there are alternative paths of conduct in the specific instance (arbitration, appeal mechanism, court proceedings, etc.).**

Though the outlined situation possesses alternative means of resolution, a settlement by way of the OECD NCP process carries certain valuable possibilities for reaching a compromise acceptable to both parties, which may have a favourable influence on the entire sector subsuming the Company's operations.

- **Whether execution of the procedure is possible - if there is a procedure carried out before another body in the same specific instance.**

The OECD NCP does not possess any knowledge with regards to parallel proceedings of the case being carried out before any other body.

- **Whether similar issues took place, and how the procedures of their consideration ended.**

Having reviewed cases conducted by other National Contact Points in other countries (on the basis of information provided on NCP websites), the OECD NCP failed to discover information concerning a similar case in another country.

- **Whether the NCP's involvement may contribute to the implementation of new good practices within the scope of responsible business conduct.**

In the opinion of the OECD NCP, in the case of a settlement for the case being worked out, its results can contribute towards the implementation of new good practices with regards to responsible business conduct in the e-commerce and online advertisement portal sectors.

In conclusion to its conducted assessment, the OECD NCP has determined that in the case of the notification described above, all criteria for opening proceedings have been fulfilled.

It is important to note however, that the proceedings overseen by the OECD NCP are of a particular nature, conducted on the basis of the OECD Guidelines, which are a so-called international soft law instrument and constitute an international standard of responsible business conduct.

Poland belongs to a group of 48 countries that implement the OECD Guidelines; as such multinational enterprises operating within the country are advised to mitigate the negative impacts

that may result from their business activities. The final results of the given specific instance proceedings, in the opinion of the OECD NCP, may contribute towards the implementation of proper responsible business conduct, including care for the environment and reliability of offered services. The jointly determined positions worked out by the parties, in conjunction with the OECD NCP's involvement, may positively impact the activities of the Company along with the functioning of the entire sector. The establishment of new, responsible market practices may additionally contribute towards the creation of conditions for economic development that considers the maintenance of sustainable development.

By accepting the case the OECD NCP also strives towards strengthening responsible business conduct, keeping in mind that a responsible enterprise cares for, among others, the environment, engages in dialogue with stakeholders, takes part in economic, environmental, and social development, and mitigates the negative impacts that may arise as a result of its business practices. Moreover, it observes human rights and communicates all of its activities.

SUBSEQUENT STAGES OF THE PROCEEDINGS

1. This initial assessment is available in Polish and English languages on the Polish NCP website.
2. The most important information concerning this initial assessment has been passed on to the OECD NCP of the Netherlands.
3. At a later stage of the proceedings the OECD NCP will propose dialogue, good offices, and actions to the parties, with continued active support from the OECD NCP. Upon conclusion of the proceedings the OECD NCP will prepare a final statement containing key findings and agreements made between the parties in the course of the proceedings. A detailed description of proceedings as conducted by the OECD NCP may be found in the *Conduct procedure in specific instances related to an alleged breach of OECD Guidelines*, available on the website provided above.