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Decision

Initial Assessment: ClientEarth complaint to the UK NCP about BP

Published 16 June 2020

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This statement was published on 16 June 2020 by UK National Contact Point (UK NCP) for the OECD Guidelines for Multinational Enterprises.

Summary of the UK NCP decision

ClientEarth made a complaint to the UK NCP in December 2019 that BP's global corporate advertising misled the public in the way that it presented BP's low-carbon energy activities including their scale relative to the company's fossil fuel extraction business.

This advertising campaign was withdrawn by the company and will not be replaced, according to a commitment made by BP on 12 February 2020.

The UK National Contact Point has therefore decided to not accept this complaint on the grounds that it would not contribute to the purposes or effectiveness of the Guidelines. This Initial Assessment concludes the complaint process under the Guidelines.

Substance of the complaint

The complaint was made by ClientEarth, a registered environmental law charity and company limited by guarantee, registered in England and Wales.

The complaint was about BP plc, an oil and gas company, incorporated in the UK and the parent company of a group of companies that operate worldwide.

In January 2019 BP launched a global corporate advertising campaign Possibilities Everywhere, including a tagline Keep Advancing, through a range of media including television and billboards in the United Kingdom, Germany and the United States as well as on its website and social media.

ClientEarth claimed that this campaign misled the public in the way that it presented BP's low-carbon energy activities including their relative scale to their fossil fuel extraction activities, the role of gas including its role in the energy transition, as well as the global energy system and climate change.

ClientEarth claimed that the main chapters of the Guidelines breached by BP were on the Environment (Chapter 6) and on Consumer Interests (Chapter 8).

ClientEarth claimed BP breached the Guidelines by:

- giving a misleading impression of the role of renewables in the company's business (Chapter VI(2(a) and 6(c)), VIII (2, 4 and 5))
- making a misleading claim about the company's wind business (Chapter VI(2(a) and 6(c)), VIII (2, 4 and 5))
- making misleading statements regarding the company's facilities at the Queen Elizabeth II Reservoir Solar Farm (Chapter VI(2(a) and 6(c)), VIII (2, 4 and 5))
- omitting lifecycle emissions information for gas (Chapter VI(2(a) and 6(c)), VIII (2, 4 and 5))
- making misleading claims that the company's gas is "cleaner burning" (Chapter VI(2(a) and 6(c)), VIII (2, 4 and 5))
- making misleading claims that the company's gas only performs a back-up function in electricity generation and regarding the nature of its renewable's projects (Chapter VI(2(a) and 6(c)), VIII (2, 4 and 5))

- making misleading statements that gas is a “perfect”, “ideal” or “smart” partner to renewables (Chapter VI(2(a) and 6(c)), VIII (2, 4 and 5))
- making a misleading claim that growing global energy demand is inevitable and necessary for human progress and development (Chapter VI(2(a) and 6(c)), VIII (2, 4 and 5))
- omitting information about the impacts of climate change on people, the natural environment, and the global economy (Chapter VI(2(a) and 6(c)), VIII (2, 4 and 5))

ClientEarth requested BP take the following steps to correct the misleading information in its public communications by:

- withdrawing and ceasing publication of the identified advertisements and public communications until they are revised to conform with the OECD Guidelines, to including by not misleading with respect to climate and other environment-related issues
- making a public statement explaining the withdrawal and/or correction of its advertisements. All advertisements must clearly state how much of the company’s investment is in oil and gas and how much is in what it calls low carbon businesses. In the case of the company, this means that it should disclose clearly in all advertising the proportion of its annual investment that is in fossil fuels and the proportion that is in low-carbon sources of energy
- ensuring that all future advertising and public communications include a comment in the form of a warning or a disclaimer that the use of the company’s oil and gas products creates GHG emissions that contribute to global climate change. They proposed that all advertising must include the following text:

The Intergovernmental Panel on Climate Change (IPCC) has found that emissions from fossil fuels are the dominant cause of global warming.

The IPCC warns that fossil fuel emissions must be halved within 11 years if global warming is to be limited to 1.5°C. Warming above 1.5°C risks further sea level rise, extreme weather, biodiversity loss and species extinction, as well as food scarcity, worsening health and poverty for millions of people worldwide.

- making a public commitment to ensure that future communications on climate and environment-related issues and on the environmental impacts of its products and services are consistent with the purposes of the OECD Guidelines and introduce a clear internal policy to this effect to the extent that no such policy already exists.

ClientEarth requested the UK NCP’s good offices to facilitate mediation with BP in order to resolve the dispute and/or for the UK NCP to make recommendations to BP on its behaviour in line with the Guidelines and to arrange for ongoing follow up and scrutiny of the company in respect to any breaches.

BP accepted an invitation from the UK NCP to respond to the complaint. It did not accept the allegations set out by ClientEarth and noted that that the advertising campaign in question had finished. It also noted that since the complaint had been made BP had made an announcement about their wider carbon net zero carbon emission aims on 12 February 2020. As part of this announcement BP committed to stop global corporate reputation advertising campaigns and to re-direct resources towards promoting climate policies.

OECD Multinational Enterprises Guidelines provisions cited

Chapter II: General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

A, Enterprises should:

1, Contribute to economic, environmental and social progress with a view to achieving sustainable development.

11, Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

Chapter VI: Environment

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:

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

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

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:

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);

Chapter VIII: Consumer Interests

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:

1, Ensure that the goods and services they provide meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information.

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.

4, Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.

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.

The initial assessment process

The Initial Assessment process is to determine whether the issues raised merit further examination. It does not determine whether the company has acted consistently with the Guidelines.

The OECD procedural guidance to NCPs state that generally issues are dealt with by the NCP of the country in which the issues have arisen. Although the ClientEarth complaint referred to other countries where the advertising campaigns were running, such as Germany and the USA, it submitted that the UK NCP was the appropriate forum for this complaint as they claimed the impact occurred due to the decisions being made by the company in the UK.

The NCP offered each party a meeting to explain the process which they both accepted. In line with the UK NCP's procedures the meeting notes were shared with both parties.

All documents provided about the complaint and response were shared with both parties.

UK NCP handling process

3 December 2019	The <u>UK NCP</u> receives complaint from ClientEarth
9 December 2019	The <u>UK NCP</u> contacts BP to inform them of the complaint
11 December 2019	The <u>UK NCP</u> acknowledges receipt of the complaint by email to ClientEarth
13 December 2019	The <u>UK NCP</u> shares ClientEarth's complaint with the company
9 January 2020	The <u>UK NCP</u> met with a representative of BP to explain the complaint process
30 January 2020	The <u>UK NCP</u> met with ClientEarth to explain the complaint process
21 February 2020	The <u>UK NCP</u> receives and shares response with the ClientEarth
3 April 2020	The <u>UK NCP</u> issues draft Initial Assessment to the parties inviting written comments
20 April 2020	The <u>UK NCP</u> receives comments from BP
21 April 2020	The <u>UK NCP</u> receives comments from Client Earth

24 April 2020

The UK NCP shares comments it has received with both parties

UK NCP decision

In line with the UK NCP Rules of Procedure the complaint was considered against the six Initial Assessment criteria to decide whether the issues raised merit further examination.

Identity of the complainant and its interest in the matter

ClientEarth is a registered environmental law charity and company limited by guarantee, registered in England and Wales. According to the Charity Commission website ClientEarth's objectives are the promotion and protection of the environment for the public benefit by the use of the law. They use advocacy, litigation, and research to achieve these goals.

The NCP therefore accepts that ClientEarth has a legitimate interest in this matter.

Whether the issues are material and substantiated and whether there seems to be a link between the enterprise's activities and the issues raised

In support of its' complaint ClientEarth provided the following information:

- its' analysis of BP's fossil fuel and renewable operations based on publicly available information including BPs annual reports
- its' analysis of how the OECD Guidelines and other relevant international standards or codes of conduct have been used by advertising standards bodies and other OECD National Contact Points (as listed in the section on "Relevance of applicable law and procedures" below)
- photographs, video transcripts and links to online material to demonstrate the content of the "Possibilities Everywhere" advertising campaign

In response BP claimed that the statements it made as part of its Possibilities Everywhere campaign and the Keep Advancing tagline (together, the Campaign) are not misleading. BP further stated that the complaint:

- failed to address the wider context in which the statements in the campaign should be considered. They claim that it would be wrong to assess the campaign in a vacuum, ignoring the wider publications and statements made by BP over many years as part of its work on climate change and the energy transition.
- failed to recognise that, as the complaint itself admits, BP is "one of the world's largest and best-known oil and gas companies" BP is clear as to the nature of its oil and gas businesses in its own external reporting, marketing and communications and this fact is widely recognised by the general public.
- failed to appreciate the purpose of the campaign, which was to engage with individuals who are well-informed about climate change and BP's role in this area, rather than to influence consumer decision making. Especially when viewed in this wider context, BP believed that a reasonable and objective observer would not regard the campaign as misleading.

In its response BP also offered to engage with ClientEarth in a forward-looking manner outside the NCP process.

The NCP therefore accepted that the issue was material and substantiated.

Relevance of applicable law and procedures, including court rulings and how similar issues have been, or are being, treated in other domestic or international proceedings

Related to Chapter VIII of the Guidelines about consumer interests Client Earth also referred to a number of other standards and codes of practice. Chapter VIII is partly based on the International Chamber of Commerce (ICC) Advertising and Marketing Communications Code which is supported by their Framework for Responsible Environmental Marketing Communications.

Client Earth also mentioned the UK Consumer Protection from Unfair Trading Regulations, the EU Unfair Commercial Practices Directive, the UK Codes of Broadcast and Non-Broadcast Advertising, the Green Claims Guidance issued by the Department for Environment Food and Rural Affairs (DEFRA) and an ISO Standard on Green marketing claims.

The complaint referred to decisions made by other National Contact Points and the UK Advertising Standards Authority (ASA). The UK NCP noted the information provided but considers each complaint on its own merits.

Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the Guidelines

ClientEarth submitted this complaint on 3 December 2019. Before BP sent its' response about the complaint to the NCP on 21 February 2020, they announced the following on 12 February 2020:

We will stop corporate reputation advertising campaigns and re-direct resources to promote well-designed climate policies. This means our Possibilities Everywhere campaign will come to an end and not be replaced. In future, any corporate advertising will be to push for progressive climate policy; communicate our net zero ambition; invite ideas; or build collaboration. We will continue to run recruitment campaigns and advertise our products, services and partnerships – although we aim for these to increasingly be low carbon.”^{[footnote}

^{1]} This was part of a wider announcement including new net zero carbon emission aims.

Following this announcement the UK NCP considered that it did not serve the purpose and effectiveness of the Guidelines to continue with ClientEarth's complaint.

The UK NCP Initial Assessment process determines whether the issues raised merit the offer of mediation and further examination. Had the global corporate advertising campaign still been live at the time of this Initial Assessment, there may have been grounds to consider the issues raised further. However as the advertising campaign that is in the central subject of the complaint has been withdrawn with a commitment that it will not be replaced the UK NCP has decided not to accept the complaint for mediation or further examination.

In line with the UK NCP's role in promoting dialogue between parties, the UK NCP encourages BP and ClientEarth to meet, as proposed in BP's response, to discuss climate change and environment-related issues outside the NCP process, and in line with the OECD Guidelines for Multinational Enterprises.

The UK NCP reminds BP that as well as the OECD Guidelines for Multinational Enterprises on responsible business conduct the OECD has also published sector specific guidance for the oil and gas sector: “Due Diligence Guidance for Responsible Business Conduct: Meaningful stakeholder engagement in the extractive sector”.

Next steps

As the complaint has not been accepted, this Initial Assessment concludes the process under the Guidelines.

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1. [BP, Our Ambition \(https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/12-feb-2020/bp-ambition-aims-and-purpose-12-feb.pdf\)](https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/12-feb-2020/bp-ambition-aims-and-purpose-12-feb.pdf)
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