



Final Statement of the Korean NCP for the OECD Guidelines for Multinational Enterprises

**Complaint from Korean Metal Workers' Union et al against Hydys Technologies Co., Ltd.,
E Ink Holdings, Inc. and Yuen Foon Yu, Inc.**

December 8, 2016

1. Introduction

The OECD Guidelines for Multinational Enterprises (hereinafter "the Guidelines") are a set of recommendations aimed at minimizing adverse impacts from the activities of multinational enterprises and strengthening their social responsibilities.

To ensure the effectiveness of the Guidelines, the government of Republic of Korea established the Korean National Contact Point (KNCP) in 2001 to promote the Guidelines and deal with issues concerning their implementation in specific instances.

2. Substance of the Specific Instance

On July 23, 2015, the Korean Metal Workers' Union et al (hereinafter "the Union" or "Complainants") submitted a complaint to the KNCP against Hydys Technologies Co., Ltd. (hereinafter "Hydis"), E Ink Holdings, Inc. (hereinafter "E Ink"), and Yuen Foon Yu, Inc. (hereinafter "YFY") (collectively referred to as "Respondents"). The complaint specifically argued that Respondents acted inconsistently with the Guidelines.

On October 20, 2015, Complainants presented additional submissions, and Respondents submitted their responses to the KNCP on September 11, 2015 and January 7, 2016.

Complainants argued as follows:

- Hydys conducted surveillance on the activities of the Union and its members in violation of the Guidelines II(A)(2), IV(1), and IV(2).
- After the acquisition of Hydys, E Ink did not make sincere efforts to create new jobs, and laid off employees, or had them retire in violation of the Guidelines II(A)(4).

- E Ink and YFY provided Hydis' technologies to their affiliated companies at unreasonably low prices, resulting in an increase in profit for E Ink and YFY at the expense of Hydis' profitability and competitiveness in violation of the Guidelines II(A)(5), IX(1), and IX(4).
- Despite the Union's request, Hydis did not provide general information about corporate activities, including management performance and financial status in a timely manner and made the decision to shut down the factory on short notice in violation of the Guidelines III(1), III(2), V(2)(b), V(2)(c), V(6), and V(8).

Respondents answered as follows:

- Contrary to Complaints' argument, 'Daily Activities' is not the company's inspection and surveillance report, but only contains a record of negotiations between management and labor, publicly announced information and news articles. It is highly unlikely that Respondents could conduct surveillance on the Union members' activities considering that Hydis management consists of only 10 members.
- All possible measures were deployed to create employment opportunities: borrowing operating funds from the parent company, attempting a merger & acquisition by means of debt repayment, temporarily shutting down the plant, going through organizational restructuring four times, and introducing a performance management system.
- The act of mutually sharing patent rights is not illegal, and it was the best decision for Hydis' business strategy. The shared technology is not subject to the Act on Prevention of Divulgence and Protection of Industrial Technology.
- Hydis' management provided most of the information requested by the Union, including the company's financial and accounting information as well as the workforce status. They also held 16 meetings with the Job Security Committee before they made the final decision for dismissal in order to minimize its impact.

3. Proceedings of the NCP

The Guidelines state, *"In making an initial assessment of whether the issue merits further examination, the NCP will need to determine whether there is a bona fide issue and is relevant to the implementation of the Guidelines. In this context, the NCP will take into account the following:*

- *The identity of the party concerned and its interest in the matter.*
- *Whether the issue is material and substantiated.*
- *Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance*
- *The relevance of applicable law and procedures, including court rulings*
- *How similar issues have been, or are being treated in other domestic or international proceedings.*
- *Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines."*

To consider these factors at the initial assessment, the KNCP held meetings with Hydys on February 3, 2016 and June 23, 2016; with Complainants on February 4, 2016; and with both parties on August 19, 2016.

On August 19, 2016, the KNCP made an initial assessment as stated below and informed both parties on August 31, 2016.

- During the individual meetings that occurred in February 2016, each party requested opportunities to have a meaningful and constructive dialogue. In the initial assessment stage, the KNCP found that this specific instance merited further consideration.
- An initial assessment only determines whether the issues raised merit further examination or whether the KNCP can contribute to the resolution of the issue by offering its good offices. Therefore, the decision for further examination does not necessarily mean that the KNCP considers that Respondents have acted inconsistently with the Guidelines.

The Implementation Procedures of the Guidelines state, *“If the issues raised merit further consideration, the NCP will discuss the issue further with the parties involved and offer its good offices in an effort to contribute informally to the resolution of issues.”*

The KNCP organized a Mediation Committee, provided its good offices to the parties in an effort to contribute to the resolution of the issues, and requested the parties' voluntary and active participation in the mediation procedure. The Mediation Committee consisted of three members, one from among the KNCP commissioners and two experts from relevant fields. The chairman of the KNCP appointed Mr. Sang-Young Hong (Director General, Development Cooperation Team of Korea Trade-Investment Promotion Agency) to serve as the chairman of the Mediation Committee. Dr. Prof. Sung-Ryong Kim (Kyungpook National University) and Dr. Yeonjae Bae (Yoon & Yang LLC) were appointed as the other two members of the Mediation Committee.

On September 7, 2016, the Mediation Committee members and both parties participated in a mediation meeting held at the Korean Commercial Arbitration Board (Secretariat of the KNCP). Representing Complainants, three members from a local branch of the Union (Hydis' Union) and one representative from the Union participated in the meeting. Representing Respondents, the CEO and a staff member of Hydys participated in the meeting. At the meeting, Respondents insisted that the mediation procedure should be pursued exclusively between the local branch of the Union and Hydys' management, stating that they would not participate should other parties be involved. In response, Complainants argued that the participation of the Union is justifiable.

On September 19, 2016, Respondents refused to participate in the second meeting because the raised issue is a case between Hydys and the local branch of the Union, adding to the fact that both sides have already met for negotiations more than ten times.

4. Conclusion

The grievance mechanism in the Implementation Procedures of the Guidelines is based on the voluntary participation of multinational enterprises and stakeholders. The Implementation Procedures of the Guidelines state, *“As part of making available good offices, and where relevant to the issues at hand, NCPs will offer or facilitate access to consensual and non-adversarial*

procedures, such as conciliation or mediation, to assist in dealing with the issues at hand. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure.”

In an effort to promote understanding and ensure effective implementation of the Guidelines, the KNCP sought to further move forward with this case. Upon the initiation of the mediation process, however, both parties found out that they had different opinions over the scope of participants. For this reason, Respondents refused to further participate in the mediation process.

Despite continued efforts to convene a mediation meeting, the KNCP found no basis to continue the mediation process as both parties could not narrow their difference with regard to the scope of participants. The case would have set a good example of the Guidelines establishing good practices if the parties had participated in the mediation procedure and shown greater flexibility to reach a consensus.

The KNCP would like to recommend that Respondents keep communication channels open and continue to engage in dialogue concerning the issues raised by Complainants.

Korean National Contact Point
for the OECD Guidelines for Multinational Enterprises