



OECD Guidelines for Multinational Enterprises Initial Assessment

(Specific Instance regarding Adiy Baimuldinov v. GM Korea)

17 March, 2023

The objective of an initial assessment under the Procedural Guidance of the OECD Guidelines for Multinational Enterprises is to determine whether the issues raised in the specific instance merit further examination. If so, the KNCP will offer or facilitate access to consensual and non-adversarial procedures, such as good offices, to the relevant parties. As specific instances are not legal cases and KNCPs are not judicial bodies, KNCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a conciliation or mediation process.

Table of Contents

1. Overview of the KNCP and its Role.....	2
2. Executive Summary	2
3. Substance of the Submission and the Enterprise’s Response.....	3
4. Proceedings of the KNCP to date	4
5. Initial Assessment by the KNCP	5
6. Conclusion.....	7
7. Next Steps.....	8

1. Overview of the KNCP and its Role

The OECD Guidelines for Multinational Enterprises (hereinafter, the “Guidelines”) are voluntary recommendations without legally binding force established for the purpose of minimizing the adverse effect of multinational enterprises’ activities and strengthening their responsible business conduct.

The Korean government operates the Korean national contact point (hereinafter, the “KNCP”) in order to promote the Guidelines and handle specific instances for multinational enterprises based or operating in Korea.

The KNCP offers good offices for parties to amicably resolve issues with respect to any specific instances in accordance with the implementation procedures of the Guidelines. The KNCP may only conduct such procedures if the parties agree and commit to participate in the procedures in good faith.

If a multinational enterprise decides to accept good offices, this does not mean that the enterprise admits to having engaged in any activity inconsistent with the Guidelines, and the KNCP will not recommend or force any accepting party to make any concession, reserve their legal rights or violate any laws.

2. Executive Summary

On 8 November 2022, the KNCP received a notification of a specific instance from Adiy Baimuldinov (hereinafter the “complainant”) against GM Korea (hereinafter the “enterprise”). On 22 December 2022, the KNCP received a revised complaint from the complainant.

Upon receipt of the complaint, the KNCP informed the complainant that it offers good offices to both parties prior to an initial assessment if they both agree to participate.

The issue raised is with regard to the assigning of an invalid vehicle identity number code (hereinafter the “VIN code”) to a Chevrolet-Cruze manufactured by the enterprise (hereinafter the “vehicle concerned”), resulting in the complainant facing material and moral damages. The issue raised in the submission claimed that the OECD Guidelines had been violated, specifically in terms of the obligation to respect human rights in the country where an enterprise is operating; consumer protection; consideration of the views of stakeholders; and compliance with the OECD Due Diligence Guidance for Responsible Business Conduct.

An initial assessment was conducted to determine whether the issues raised are bona fide and relevant to the implementation of the Guidelines and whether the issues merit further consideration such as good offices. To that end, six criteria under the Procedural Guidance of the Guidelines were taken into account.

Following the initial assessment, the KNCP concluded that the issues raised do not merit further consideration. The relevant details of this decision are described below.

3. Substance of the Submission and the Enterprise's Response

3.1 Substance of the Submission

- ① In 2015, the complainant purchased a 2014 Chevrolet-Cruze from Asia-Auto, a local car dealership in Kazakhstan.
- ② The vehicle concerned was assigned a VIN code KL1JA6859EK577362 from the enterprise and another one, XWWJA6859EU008438, from Asia-Auto at the same time.
- ③ A VIN code is a unique identification number for a vehicle. As such, although two VIN codes cannot be assigned to the same vehicle, the complainant's vehicle had been assigned two different VIN codes. Also, according to multiple websites where the validity of VIN codes can be checked, the VIN code of the vehicle concerned was found to be either invalid or belonging to another vehicle, not the vehicle concerned.
- ④ The invalid VIN code of the vehicle concerned has caused significant material and moral damages to the complainant.
- ⑤ Therefore, the assigning of an invalid VIN code by the enterprise constitutes a violation of the Guidelines for the following reasons:
 - Failure to respect human rights in the country where it is operating (Chapter IV - Human Rights)
 - Failure to comply with fair business practices while dealing with consumers (Chapter VIII - Consumer Interests)
 - Violating Chapter X - Competition
 - Involvement in economic crime (Chapter VII - Combatting Bribery, Bribe Solicitation and Extortion)
 - Failure to take into full consideration the policies established in the country where the enterprise is operating, and in particular, the views of other stakeholders (Chapter II - General Policies)

3.2 Response from the Enterprise

The enterprise responded to the specific instance as follows:

- ① The vehicle concerned was manufactured by the enterprise and exported to the Kazakhstan car seller in a semi knock-down (SKD) condition. The problem is that the vehicle concerned was simultaneously assigned the VIN code KL1JA6859EK577362 from the enterprise, the original manufacturer (as per TR CU 018/2011 regulation), and another VIN code XWWJA6859EU008438 from Asia-Auto, the final manufacturer and seller.
- ② The VIN code from the enterprise was validly assigned in accordance with the Enforcement Regulations of the Motor Vehicle Control Act of Korea. However, the assignment of another VIN code by Asia-Auto was neither assigned nor managed by the enterprise.
- ③ On websites such as VINcheck and VINinfo, the complainant found that the VIN code of the vehicle concerned was invalid or belonged to another vehicle. This is attributable to the lack of information in the database on such websites. Upon checking the VIN code KL1JA6859EK577362 assigned by the enterprise on the official Chevrolet website, the validity of the vehicle concerned was confirmed.
- ④ This specific instance stems from the complainant's inaccurate knowledge regarding VIN codes and lack of understanding about the reliability of VIN code-related websites.

3.3 Additional Information from the Complainant

On 27 January 2023, the complainant submitted its additional information saying that it had no further comments on the enterprise's response.

3.4 Additional Response from the Enterprise

On 10 February 2023, the enterprise responded that it had no further comments on the additional information from the complainant.

4. The Proceedings of the KNCP to date

On 24 October 2022, the complainant submitted documents related to the specific instance to the KNCP via email. On 25 October 2022, the KNCP informed the complainant of the procedures, notification form, submission method and other relevant details. On 8 November 2022, the complainant officially submitted its specific instance.

Upon receipt of the specific instance, the KNCP notified the Kazakhstan NCP. On 1 December 2022, both NCPs held a video conference to inquire about VIN code systems in Kazakhstan and discuss how to cooperate on this specific instance.

On 2 December 2022, the KNCP informed the complainant of the Kazakhstan NCP's procedures and the option of handling the specific instance through the Kazakhstan NCP. On 6 December 2022, however, the complainant made it clear that it wished to opt for the Korean NCP's procedures.

On 7 December 2022, the KNCP asked the complainant to improve its case with respect to the specific instance and submit additional information regarding the issues raised. On 21 December 2022, the complainant submitted additional documents.

On 10 January 2023, the complainant submitted its comments regarding the issue raised. And on 17 January 2023, it had a preliminary interview upon the request of the KNCP.

On 27 January 2023, the complainant submitted additional comments. On 10 February 2023, the enterprise responded that it had no further comments.

The KNCP shared the information submitted with both parties, undertook translation and conducted an initial assessment based on communication between parties and the documents received.

5. Initial Assessment by the KNCP

The KNCP conducts an initial assessment on specific instances submitted under the Procedural Guidance of the Guidelines.

An initial assessment is to determine whether the issues raised are bona fide and relevant to the implementation of the Guidelines and whether the issues merit further consideration such as good offices. To make such a decision, the KNCP takes into account the following six criteria:

5.1 The identity of the party concerned and its interest in the matter

The complainant is a Kazakhstani individual residing in the country who purchased the vehicle concerned and claimed that he faced material and moral damage due to the invalid VIN code assigned by the enterprise, GM Korea. In this regard, it can be said that the complainant has an interest in the issue that was raised.

The enterprise, a Korean subsidiary of General Motors (GM) based in the US, manufactures complete vehicles in three plants in Korea and exports them to over 150 countries across the world. This multinational enterprise manufactured the vehicle concerned and assigned the original VIN code to it. In this regard, it can be said that the enterprise has an interest in the issue that was raised.

However, the vehicle concerned was assigned two different VIN codes because the local car dealership in Kazakhstan assigned another VIN code while reassembling auto parts exported in SKD condition from Korea under the Eurasian Customs Union, of which Kazakhstan is a member. From this perspective, it is difficult to establish whether the enterprise has an interest in the issue that was raised.

5.2 Whether the issues raised are material and substantiated

The complainant claimed that the enterprise assigned an invalid VIN code to the vehicle concerned, causing material and moral damage. However, the enterprise denied the complainant's claim.

Following a review of the materials submitted by both parties, the KNCP did not find any specific details, facts or grounds for concluding that the enterprise assigned an invalid VIN code. Furthermore, it is difficult to establish whether the issue raised is material and substantiated given that there is no way to verify the validity of the VIN code by any authoritative third party or government agency other than the manufacturer's website, or whether the VIN code assigned by the enterprise caused any verifiable damage to the complainant.

5.3 Whether there is a link between the activities of the enterprise and the issues raised

There is a link between the complainant's claim that an invalid VIN code was assigned and the business activities of the enterprise that assigned the VIN code.

However, the alleged assignment of an invalid VIN code as well as the concrete damage faced by the complainant has not been confirmed. Therefore, it is difficult to establish whether there is a link between the assignment of the VIN code and the damage faced by the complainant.

In addition, the alleged assignment of an invalid VIN code is attributable to the business activities of the local car dealership in Kazakhstan, not the enterprise. The resulting issues stemming from the validity of the VIN code and violations of the Guidelines have no link with the business activities of the enterprise.

5.4 Relevance of applicable laws and procedures, including court rulings

A VIN code is a number assigned by a vehicle manufacturer in order to prevent vehicle theft and trace vehicle defects. VIN codes of vehicles manufactured by the enterprise are assigned in accordance with the Motor Vehicle Control Act of Korea and the Enforcement Ordinance, Enforcement Regulations and Ministerial Ordinance of the same Act, as well as the marking method determined by the International Organization for Standardization (ISO).

The laws and regulations regarding VIN codes assigned by the Kazakhstani car dealership include the technical regulation “TR CU 018/2011” on the safety of wheeled vehicles which are distributed within the Eurasian Economic Union. There has been no confirmation of any other laws, regulations or procedures regarding the validity of VIN codes.

There has also been no confirmation of any previous court rulings or alternative dispute resolution (ADR) cases relevant to this specific instance.

5.5 How similar issues have been, or are being, treated in other domestic or international proceedings

The KNCP did not find any past or present cases of similar specific instances regarding the VIN codes of vehicles.

5.6 Whether considering this submission would contribute to the purposes and effectiveness of the Guidelines

The role of the NCP is to provide a venue for discussions and help relevant parties find solutions, thereby contributing to the purposes and effectiveness of the Guidelines.

For this specific instance, it is difficult to establish whether the enterprise has a direct interest in the assignment of an invalid VIN code, and there are no grounds to believe that the enterprise did so.

Furthermore, the KNCP did not find any specific details or grounds for the damage allegedly caused to the complainant. It is also difficult to establish whether there is a link between the damage and business activities of the enterprise. Taking this into account, the issues raised do not merit further consideration.

In addition, it is unlikely that further examination of the issues raised will contribute to the purposes and effectiveness of the Guidelines considering the fact that the enterprise is unwilling to engage in discussions with the complainant on the issues raised.

6. Conclusion

The KNCP concludes that the issue raised by the complainant against GM Korea does not merit further consideration based on the following criteria:

- Both parties have an interest in the issues raised
- It is difficult to establish whether the issues raised are material and substantiated
- It is difficult to establish whether there is a link between the activities of the enterprise and the issues raised

- It is difficult to establish whether considering the issues raised would contribute to the purposes and effectiveness of the Guidelines

7. Next Steps

The KNCP does not accept this case for further examination, and the initial assessment will serve to conclude the process under the Guidelines concerning this submission.

The KNCP will inform the OECD Secretariat and the initial assessment statement will be added to the OECD Guidelines for Multinational Enterprises Database of Specific Instances.

17 March 2023
Korean National Contact Point