



**Commentary by CEDHA regarding the case of the Finnvera Specific Instance to
Finnish NCP**

Rebuttal to Finnvera's Commentary

**Presented Wednesday, 30th of August 2006
MONIKA Advisory Committee Meeting, Helsinki**

CEDHA's Commentary to the case Finnvera's Specific Instance Complaint

Finnvera's commentary to the Finnish National Contact Point responding to the Specific Instance submitted on the 8th of June 2006, contends that the OECD Guidelines for Multinational Enterprises (the Guidelines) are not applicable to Finnvera:

Pursuant to Finnvera's understanding the Guidelines are not addressed to or applied to Export Credit Agency (ECA) activities due to the fact that export credit agency operations can not be regarded as operations of a multinational enterprise. In this regard, the Guidelines or the National Contact Point process, including filing a Specific Instance Complaint, do not apply to Finnvera.

Accordingly, Finnvera is of the opinion that the issues raised by CEDHA do not merit further examination under the National Contact Point process.

Arguments as and the substantive breaches of the Guidelines and relevant to the applicability of the Guidelines to Finnvera appear in detail in the Specific Instance Complaint, whereas this commentary addresses specifically the observations put forth by Finnvera in the MONIKA Committee meeting of August 30, 2006 in Helsinki.

Relative to the Applicability of Guidelines to Finnvera

With regards to the argument that Finnvera does not fit the guise of Multinational Enterprise under the Guidelines, and subsequently that the "Guidelines are not addressed to or applied to Export Credit Agency activities" and in this regard, the Guidelines or the NCP process, including filing a Specific Instance Complaint, do not apply to Finnvera:

We note Finnvera plc is a Finnish company and that Chapter I Paragraph 4 of the Guidelines states that:

The Guidelines are not aimed at introducing differences between multinational and domestic enterprises; [and] accordingly, multinational and domestic enterprises are subject to the same expectations in respect to their conduct wherever the Guidelines are relevant to both.

Further, the Guidelines apply to 'private, state or mixed enterprises' (Chapter 1, paragraph 3 of the Guidelines). Finnvera's commentary to the NCP states that 'Finnvera is a limited liability company entirely owned by the State of Finland' (page 2), and that the official title of Finnvera is Finnvera plc, where plc stands for 'public limited company'. As other private companies, Finnvera must abide by the law, international standards and their implications given that its decisions will greatly affect the viability of a private investor's project, and as such are extremely important to the outcomes obtained by the investor. This moral and ethical liability, also has direct implications relative to the guidelines, and we would state that NOT ONLY is Finnvera obliged to comply and with

the Guidelines but their role as an entirely State-owned, State-financed and State-guaranteed company is all the MORE responsible to abide by the guidelines, as taxpayers are also implicated in the decisions made by this state owned company.

The higher degree of responsibility on ECAs and their multinational/commercial role as a private enterprise by providing export credits to companies demands that the Guidelines apply to Finnvera. Further we note that there exists no procedural nor substantive reason to deny Guideline applicability to Finnvera.

Finnvera puts forth that it provides export credit guarantees following the Finnish Government's mandate to promote foreign investment, and puts in doubt that its operations are not of a commercial manner. It is CEDHA's understanding that in a transaction for export credits, monies are paid for guarantee/insurance services responding to specified investment risk, and that such a service could be supplied by any private or public insurer on the market. Those who receive benefits arising from the provision of export credit guarantees are commercial companies that wish their commercial activities to be covered by an insurance or guarantee service, as in this case it is Botnia of Finland who are the subject of the parallel Specific Instance complaint. It follows that there is no doubt that the operations of the export credit guarantee provider are undoubtedly of a commercial nature.

Finally on this point, we want to stress that should there be any doubt as to the applicability of an Export Credit Agency to be considered a company to which the Guidelines apply, one must seek clarity as to the definition of "multinational enterprise", to which the Guidelines themselves leave the definition intentionally flexible:

'a precise definition of multinational enterprise is not required for purposes of the Guidelines' (Chapter 1, Paragraph 3, the Guidelines) .

In this regard, we can and should be flexible in our definition and err on the side of the most beneficial definition for the stakeholder. In any case, lack of clarity of applicability is to not serve to protect the state agency, but to promote and protect the public good, and ultimately, in this case, to help promote and apply the Guidelines.

Relative to Finnvera's arguments suggesting that the Guidelines are addressed to multinational enterprises acting as primary or direct investors:

We understand that it is widely accepted that the Guidelines apply to entities with which the primary or direct investor enjoys a working relationship. (Finnvera Commentary, page 3)

The Guidelines encourage 'compatible principles of corporate responsibility among business partners and serves to combine a re-affirmation of the standards and principles embodied in the Guidelines with an acknowledgment of their importance to suppliers, contractors, subcontractors, licensees and other entities with which MNEs enjoy a working relationship.' (Commentary 10, Chapter 2, the Guidelines)

The Guidelines 'recognize practical limitations to the ability of enterprises to influence the conduct of their business partners' (Commentary 10, Chapter 2, the Guidelines). Finnvera, by way of advising its clients about compliance with the Guidelines, realizes that it can and do have a tangible ability to influence business partners, and should not take refuge in a conceptual definitional difference to skirt this obvious influence and reality.

With respect to the issue stated by Finnvera that any member of the supply chain could not be considered as parties to a specific instance, we note that those partners with a sufficient 'investment nexus' can and should be considered party to a specific instance by way of supply chain. The relationship between Finnvera and the primary investor Botnia is VERY SIMPLE, and VERY CLOSE in terms of business relationship, and is undoubtedly covered by the investment nexus requirement, which is that of 'an established or direct business relationship' (Chapter 2, Commentary 10, the Guidelines). It is worth noting that this relationship is NOT an 'individual or ad-hoc transaction that is based solely on open market operations or client relationships' (Chapter 2, Commentary 10, the Guidelines) and is clearly a case where direct influence is possible.

The observation that Finnvera makes about the risks of “dozens of companies”, as suppliers that might otherwise become party to a Specific Instance, as a deterrent to interpreting the Guidelines with a wider based liability is erroneous, as we understand this to be precisely the inherent power of the guidelines to work across the supply chain. It is precisely that risk (of becoming a party to a Specific Instance) which will help ensure and protect a wider base of stakeholders from non-compliance with the guideline principles.

In conclusion, we would like to draw your attention to the document published by the Trade Committee on August 9th, 2006 that “contains the latest Responses to the Revised Questionnaire on Members Procedures and Practices regarding Officially Supported Export Credits and the Environment”.

Finnvera's response to the Questionnaire respective to Environmental Review and respective roles, states that:

Normally, project company, sponsor or main contractor is responsible for letting an EIA to be carried out. The applicant provides the EIA to Finnvera. In a co-insurance situation with other OECD ECAs or if there are multilateral financial institutions involved in the project, Finnvera may utilise reviews conducted by these institutions in its own review. In a reinsurance situation, Finnvera may follow the review conducted by principal insurer, is the principal insurer is an ECA from an OECD country. Finnvera's environmental review is carried out by the environmental practitioners.

We are interested to know and understand hence, how Finnvera will interpret the critical position taken by the Compliance Advisory Ombudsman of the International Finance

Corporation (CAO) and an eventual pull-out of the World Bank from this investment, as we anticipate will occur, in the near future.

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