# Final Statement by the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines)

## Complaint from Corner House against Rolls-Royce Group plc

## SUMMARY OF THE CONCLUSIONS

- The UK NCP concludes that Chapter VI(2) of the Guidelines requires the disclosure of a list of agents (meaning disclosure of the identity of agents) and that this should be provided upon request from the relevant competent authorities. The UK NCP considers that Chapter VI(2) does not require disclosure of agents' commissions. The UK NCP also concludes that the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.
- If Roll-Royce did make applications between April and October 2004, and if it did refuse to disclose a list of agents to the UK Export Credits Guarantee Department (ECGD), then this would have constituted a breach of Chapter VI(2) of the Guidelines.
- There is evidence which shows that Rolls-Royce strongly opposed the introduction of a requirement to disclose a list of agents to the ECGD when making applications for support. This suggests that, if Rolls-Royce had made applications for support during the relevant period (between April and October 2004), it may have been reluctant to disclose a list of agents to the ECGD. However, Rolls-Royce has stated that it made no applications to the ECGD between April and October 2004. The UK NCP has been unable to verify this with the ECGD, and considers that it does not have sufficient evidence to make a finding as to whether Rolls-Royce made applications for support to the ECGD during the relevant period and, if it did, whether it refused to disclose a list of agents. Accordingly, the UK NCP is unable to make a finding as to whether Rolls-Royce breached Chapter VI(2) of the Guidelines in this respect.
- The UK NCP concludes that Rolls-Royce did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance did not constitute a breach of Chapter VI(2) of the Guidelines.
- The ECGD introduced new anti-corruption procedures on 1 July 2006. These procedures include a requirement on applicants to disclose their list of agents to the ECGD if agents are acting in relation to the project for which support is sought. The ECGD has stated that, since those procedures were introduced, no applicant has refused to comply with ECGD's requirements. In light of this and also the steps taken by the company to combat bribery, the UK NCP does not consider that it is appropriate to make any recommendations to Rolls-Royce. This Final Statement therefore concludes the complaint process under the Guidelines.

## BACKGROUND

### *OECD Guidelines for Multinational Enterprises*

1. The Guidelines comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.

2. The Guidelines are not legally binding. However, OECD governments and a number of non OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.

3. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

### *UK NCP complaint procedure*

4. The UK NCP complaint process is broadly divided into the following key stages:
(1) Initial Assessment – This consists of a desk based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
(2) Conciliation/mediation OR examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
(3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;
(4) Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.

5. The complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website: http://www.bis.gov.uk/nationalcontactpoint.

## DETAILS OF THE PARTIES INVOLVED

6. **The complainant.** Corner House Research (Corner House) is a UK registered company carrying out research and analysis on social, economic and political issues.

7. **The company.** Rolls-Royce Group plc (Rolls-Royce) is a UK registered company providing integrated power systems for use on land, at sea, and in the air. The company is listed in the FTSE 100.

## COMPLAINT FROM CORNER HOUSE

8. On 4 April 2005, Corner House submitted a complaint to the UK NCP under the Guidelines in relation to Rolls-Royce's operations in the United Kingdom in the period from April to October 2004.

9. There are two aspects to Corner House's complaint:

   a) Firstly, that Rolls-Royce refused, in the period from April to October 2004, to disclose the details of its agents and its agents' commissions to the ECGD following ECGD's request to do so. In particular:
      - The ECGD allegedly wrote to the company in March 2004 advising Rolls-Royce about the coming into effect of new anti-bribery and anti-corruption procedures in May 2004, which included a requirement for companies to provide details of their agents and their agents' commissions to the ECGD when applying for a credit guarantee or overseas investment insurance.
      - Rolls-Royce allegedly wrote to the ECGD on 23 April 2004 stating that the new disclosure requirements on agents were not acceptable.
      - At a meeting between ECGD and industry groups on 5 July 2004, Rolls-Royce allegedly supported Airbus in stating that it would not provide any agents' details to the ECGD because it had entered into confidentiality agreements with its agents and regarded these arrangements as a matter between the company and the agents.
      - On 30 July and on 9 August 2004, several aerospace companies including Rolls-Royce allegedly stated to the ECGD that agents' details needed to remain confidential.
      - On 12 August 2004, the ECGD allegedly wrote to the aerospace companies stating that there could be no commercial disadvantage in ECGD's being aware of an agent's identity. In

the same letter, the ECGD allegedly offered to put in place procedures to ensure the security of this information.

b) Secondly, that Rolls-Royce sought an assurance from the ECGD that it could withhold disclosure of its list of agents and agents' commissions to the ECGD on grounds of commercial confidentiality following new procedures being introduced by the ECGD in May 2004. In particular:

- On 25 August 2004, the Confederation of British Industry (CBI) Solutions Group, negotiating on behalf of companies which included BAE Systems, Airbus and Rolls-Royce[1], allegedly stated to the ECGD that agents' details would not be provided if there was a justification for not doing so.
- On 7 October 2004, at a meeting with the ECGD, Rolls-Royce allegedly sought an assurance that commercial confidentiality could justify non-disclosure of its agents' names.
- On 29 October 2004, the ECGD allegedly gave written confirmation to BAE Systems, Airbus and Rolls-Royce that using commercial confidentiality for not disclosing agents' details to the ECGD would not be used by the ECGD as a reason for not providing support to the companies.

10. Corner House submitted that Rolls-Royce's alleged conduct as summarised above was contrary to Chapter VI(2) of the Guidelines which states that enterprises should[2]:

*"Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities".*

**UK NCP PROCESS**

11. On 4 April 2005, Corner House submitted to the UK NCP a complaint against BAE Systems, Airbus and Rolls-Royce under the Guidelines.

12. When the complaint was submitted, the UK NCP did not have a published complaint procedure. It did however publish a booklet titled "UK National Contact Point Information Booklet"[3] to explain the Guidelines and, in broad terms, how the UK NCP would handle a complaint under the Guidelines. The booklet stated that: *"In deciding whether to pursue an issue, the NCP will consult the company in*

[1] The CBI Solutions Group also represented the interests of the British Exporters Association and the British Bankers Association.
[2] OECD, *OECD Guidelines for Multinational Enterprises*, p. 21 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 21 July 2010).
[3] Department of Trade and Industry (DTI), *UK National Contact Point Information Booklet*, 28 February 2001 (available at http://www.bis.gov.uk/files/file10209.pdf - visited on 21 July 2010).

*question and also any other interested parties, as appropriate* [...] *Then if having consulted others as outlined above, the NCP decides that the issue does merit further consideration, we will contact the originator and seek to contribute to its resolution"*[4].

13. The UK NCP considered that Corner House's submission met the criteria for accepting a complaint under the Guidelines. On 10 May 2005, the UK NCP wrote to the three companies forwarding a copy of the complaint and asking for a written response to the allegations. On 18 May 2005, the UK NCP met with the three companies in order to explain the complaint process under the Guidelines.

14. On 3 August 2005, the UK NCP decided to defer progressing the case until the conclusion of the ECGD's consultation on its anti-bribery and anti-corruption procedures. The consultation process concluded in March 2006 and ECGD's new procedures came into effect on 1 July 2006.

15. The UK NCP did not progress the complaint further and the current members of the UK NCP became aware of the existence of this case after it was flagged in a report submitted to the OECD on 12 June 2009[5]. The UK NCP then contacted Corner House to ascertain whether it still wished to pursue the complaint. On 4 November 2009, Corner House confirmed that it did. Therefore, the UK NCP decided to progress the complaint in accordance with its complaint procedure[6].

16. On 15 December 2009, the UK NCP wrote to Rolls-Royce and Corner House informing them that it was going to progress the complaint in accordance with its published complaint procedure. In the same letter, the UK NCP offered to both parties professional conciliation/mediation in order to pave the way to a mutually satisfactory outcome of the complaint. On 29 January 2010, Rolls-Royce declined this offer.

17. Therefore, on 15 February 2010, the UK NCP informed the parties that it would move to an examination of the complaint. The UK NCP asked the parties to provide evidence to support their positions in respect of the complaint by 15 April 2010. The UK NCP also asked Rolls-Royce to comment on its compliance with the new anti-bribery procedures introduced by the ECGD on 1 July 2006. The UK NCP also asked the ECGD to provide any relevant documents. All the evidence received by the UK NCP was shared with both parties.

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[4] *UK National Contact Point Information Booklet*, op. cit., p. 12.

[5] OECD, *Submissions by TUAC and OECD Watch - Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises*, document reference DAF/INV/NCP/RD(2009)3, 12 June 2009, page 68. This document is, at the time of writing this Final Statement, still classified by the OECD. However, both TUAC and OECD Watch contributions are available from the following websites (visited on 21 July 2010): www.tuac.org/en/public/index.phtml and http://oecdwatch.org/.

[6] http://www.bis.gov.uk/files/file53070.pdf (visited on 21 July 2010)

## RESPONSE FROM ROLLS-ROYCE GROUP PLC

18. On 15 April 2010, Rolls-Royce stated that the complaint from Corner House should be rejected on the grounds that between April and October 2004 Rolls-Royce made no applications to the ECGD for support for overseas sales and therefore it cannot be found to have breached Chapter VI(2) of the Guidelines. Rolls-Royce also stated that it has been complying with the requirements set out in ECGD's application procedures introduced on 1 July 2006 (which require the disclosure of agents' details to the ECGD) and therefore the UK NCP cannot make any useful recommendations to the company.

## UK NCP ANALYSIS

19. The analysis of the complaint against Rolls-Royce will address the following key areas. Firstly, it will explain the meaning and scope of Chapter VI(2) of the Guidelines. Secondly, it will explain whether Chapter VI(2) of the Guidelines is qualified so that disclosure can be withheld on grounds of commercial confidentiality. Thirdly, it will look at what ECGD's policy was on requesting agents' details as part of its application process for export support in the period between April and October 2004. Fourthly, it will examine whether Rolls-Royce did refuse to disclose its list of agents to the ECGD when making applications to the ECGD for support between April and October 2004. Finally, it will address the issue of whether Rolls-Royce did seek, between April and October 2004, an assurance from the ECGD that it could use commercial confidentiality as a reason for refusing to disclose a list of agents to the ECGD and, if it did, whether this constituted a breach of the Guidelines.

### *What is the meaning and scope of Chapter VI(2) of the Guidelines?*

20. Chapter VI(2) of the Guidelines states that enterprises should ensure that the remuneration of their agents is appropriate and for legitimate services only and that, where relevant, enterprises should make available to competent authorities a list of the agents that they employ in relation to transactions with public bodies and state-owned enterprises.

21. Chapter VI(2) provides that companies should disclose a "list of agents". The UK NCP considers that the term "list of agents" in Chapter VI(2) means that companies should disclose the identity of agents. The UK NCP considers that it is clear from the wording of Chapter VI(2) that this Chapter only refers to the disclosure of a "list of agents" (meaning disclosure of the identity of agents) and does not extend to disclosing details of agents' commissions.

22. The UK NCP therefore rejects Corner House's interpretation that the recommendation extends to other agents' details such as agents'

commissions[7]. The UK NCP has therefore not examined whether the company refused to provide details of agents' commissions to the ECGD as this is outside the scope of Chapter VI(2).

23. The UK NCP considers that the words "made available to competent authorities" in Chapter VI(2) mean that companies should provide the information upon request from the competent authority.

***Is Chapter VI(2) of the Guidelines qualified so that disclosure can be withheld on grounds of commercial confidentiality?***

24. The UK NCP considers that if it was intended to make Chapter VI(2) subject to such a qualification then this would be expressly referred to in Chapter VI(2) itself or at the very least in the "Commentary on Combating Bribery". The UK NCP notes that Chapter VI(2) itself does not state that disclosure can be withheld on grounds of commercial confidentiality. The UK NCP also notes that the "Commentary on Combating Bribery" annexed to the Guidelines[8] is silent on this particular point.

25. In light of the above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities upon request is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.

***What was ECGD's policy on requesting agents' details as part of its application process for support in the period between April and October 2004?***

26. Based on information received from the ECGD, ECGD's policy on requesting agents' details as part of the application process when a company requests support has been as follows:
    a) Prior to 1 April 2003 – The ECGD did not require the disclosure of agents' names and addresses.
    b) From 1 April 2003 – The ECGD required all applicants to provide agents' details (including names and addresses).
    c) From 1 May 2004 – The ECGD required all applicants to notify the ECGD whether any agent or other intermediary was involved. If the answer was positive then the applicant was required to provide the agent's details (including names and addresses).
    d) From 1 December 2004 – The ECGD amended its requirements in respect of agents' details as follows:

[7] Corner House, *Complaint against BAE Systems, Airbus and Rolls-Royce under the OECD Guidelines for Multinational Enterprises*, paragraph 5, p. 2.
[8] OECD, *Commentary on Combating Bribery*, in "Commentary on the OECD Guidelines for Multinational Enterprises", paragraphs 43-47, pp. 48-49 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 21 July 2010).

- o No agents' details were required provided that any agents' commission was not included in the contract price and that any such amount did not exceed 5% of the contract price;
- o Agents' details were required in all cases which did not meet the above criteria. The agent's details included the agents' names and addresses unless the applicant had valid reasons (to be communicated to the ECGD in writing) for not identifying its agents.

e) From 1 July 2006 – following a public consultation, the ECGD requires applicants in all cases to confirm whether any agent or intermediary is acting in relation to the supply contract and, if the answer is positive, to provide the agent's details (including the agent's name and address). Applicants may request that the agent's name and address are provided under "special handling" arrangements to protect the sensitivity of this information.

27. The UK NCP has considered whether applicants for ECGD's support, including Rolls-Royce, may have been unaware or unclear about whether ECGD's procedures between April and October 2004 required them to disclose agents' details.

28. Based on the information provided by the ECGD, the UK NCP considers that it is clear that ECGD's policy between April and October 2004 was to require all applicants to disclose their agents' details to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).

29. The UK NCP also considers that ECGD's disclosure requirements from March 2004 had been clearly communicated to all applicants. The UK NCP has seen a letter dated 4 March 2004 from the ECGD to "all customers" which clearly set out the requirement from 1 May 2004 to disclose to the ECGD the list of agents involved in the project for which support was sought.

***Between April and October 2004 did Rolls-Royce refuse to disclose its list of agents to the ECGD when making applications to the ECGD for support?***

30. Corner House refers to a number of documents produced between April and October 2004 in the course of the negotiations between the CBI Solutions Group and the ECGD on ECGD's application process. Corner House argues that these documents prove that Rolls-Royce refused to disclose its list of agents to the ECGD when applying for support. The UK NCP has examined all the documents referred to by Corner House, together with rest of the evidence received on this complaint. The relevant documents in respect of Rolls-Royce are outlined below:

a) The UK NCP has seen a letter dated 23 April 2004 from Rolls-Royce to the ECGD, in response to ECGD's letter dated 4 March 2004 referred to above (which set out the requirement to disclose a list of agents involved in the project for which support is sought), in which the company states that: *"Neither the new declarations in relation to Agents nor the new audit rights in relation to Agents Commissions are acceptable"*.

b) The note of a meeting, seen by the UK NCP, between the CBI, businesses (including Rolls-Royce), and the Department of Trade and Industry and the ECGD on 5 July 2004, states that: *"Airbus insisted that it will not provide any details relating to its agents. It entered into confidentiality agreements with its agents and regarded these arrangements as strictly a matter between the company and the agent involved. It was supported in this by Rolls-Royce"*. The same note states that: *"ECGD expressed surprise that companies were now refusing to provide additional information on agent's commission that it required since most of these details had been specified in ECGD application forms since April 2003"*.

c) The UK NCP has also seen a note dated 30 July 2004 from the aerospace industry, which represents Rolls-Royce amongst other manufacturers, to the ECGD in which the aerospace industry found it *"unacceptable"*, mainly on the ground of commercial confidentiality, to disclose agents' details to the ECGD as part of the application process for support. The note indicates that: *"The identities of third party 'agents or intermediaries' appointed by applicants to assist with their marketing is commercially sensitive information and is part of the company's commercial assets* [...] *Contracts with third parties may contain confidentiality provisions which prevent disclosure to third parties"*.

d) In an exchange of e-mails, seen by the UK NCP, between BAE and the ECGD dated 5 August 2004, the ECGD stated: *"We assume that the only issue outstanding at that point* [i.e. 11 August 2004] *will be the refusal by Airbus, BAES, and Rolls Royce to disclose the name of any agent*".

e) An informal internal ECGD note dated 5 August 2004, which the UK NCP has seen, states that: *"ECGD believes that the leading members of the CBI group, ie Airbus, BAES and Rolls Royce, who have formed a common line on the issue of disclosure of agents, are willing to disclose to ECGD: (i) their corporate code of conduct governing the conduct of employees on overseas dealings, which is intended to comply with UK law; (ii) Their standard form of contract with agents, which will enclose anti-bribery and corruption wording in line with UK law and a summary description of the services to be provided by the agent; and (iii) whether commission for an agent is included in their price or not. The large exporters are further willing to offer the following warranties in any new ECGD application form:*

*(i) They are in compliance with UK law; and (ii) If there is a signed agency agreement, it contains anti-bribery and corruption provisions consistent with the spirit of their standards form of contract with agents".*

f) The note of a meeting prepared by the ECGD, seen by the UK NCP, between the CBI Solutions Group and the ECGD on 9 August 2004 states that *"ECGD asked for a clear explanation as to why the Aerospace/Defence companies were unable to provide ECGD with the name of their agents/intermediaries. Industry response was that aerospace/defence companies operated in a particular environment"* and that *"These details* [agents' details] *were very commercially sensitive* [...] *The intermediaries themselves may have valid and justifiable reasons for wanting to remain anonymous".*

g) In a letter dated 12 August 2004, which the UK NCP has seen, from the ECGD to the CBI Solutions Group, the ECGD states that: *"We are most grateful for the explanation given at our meeting* [meeting of 9 August 2004] *of why industry places such importance on maintaining the confidentiality of the names of agents. We conclude from this explanation that, while there can be no commercial disadvantage to you in ECGD's being aware of an agent's identity, your objection to this is the heightened risk of inadvertent leakage of that information".* In the same letter, the ECGD proposes a secure way for it to collect information about companies' agents.

h) An e-mail, which the UK NCP has seen, from the CBI to the ECGD dated 25 August 2004 states that: *"Although we* [CBI Solutions Group] *are unable to agree to divulge details of agents to ECGD we hope that the compromise of offering you either details of the due diligence process by which agents/advisers are appointed or the pro-forma agency/advisory agreement forming the basis of that appointment will enable you* [the ECGD] *to take a positive view of the compromise we are offering".*

31. The UK NCP considers that the documents referred to above clearly show that the company argued strongly (either directly or through its business sector representatives) that ECGD's application procedures should permit agents' details to be withheld on grounds of commercial confidentiality. However, the UK NCP considers that, in order to make a finding as to whether there has been a breach of the Guidelines, it is necessary to determine whether the company actually refused to disclose a list of agents to the ECGD when making specific applications to the ECGD for support during the period between April and October 2004.

32. The UK NCP notes that in its response to the complaint Rolls-Royce states that: "[...] *Rolls-Royce's position is simply stated. Rolls-Royce made no applications to ECGD in respect of which export credit*

*support was provided for overseas sales during this period. Accordingly, we do not consider that any complaint can be sustained against the company for non-compliance with Chapter VI paragraph 2 of the OECD Guidelines*". Rolls-Royce has stated that because it made no applications to the ECGD, there are no supporting documents which it could produce in relation to its position.

33. The UK NCP has asked the ECGD whether it has any documents which are relevant to the allegation that Rolls-Royce refused to disclose a list of agents to the ECGD when making applications for support to the ECGD during this period. The ECGD stated that, as far as it is aware, in the period between April and October 2004 Rolls-Royce complied with ECGD's application procedures in place at the time (which included a requirement to disclose a list of agents). However, the ECGD also stated that, between April and October 2004, it did not keep a central record of all the applications received, and unsuccessful (or withdrawn) applications will have been destroyed. In light of this, the UK NCP has been unable to verify with the ECGD whether or not Rolls-Royce made any applications to the ECGD for support during this period (and, if it did, whether it disclosed a list of agents).

34. Therefore, the evidence which is available to the UK NCP is limited to the documents referred to in paragraph 30 above and Rolls-Royce's statement that it made no applications during the relevant period. The UK NCP considers that the documents referred to in paragraph 30 show that Rolls-Royce strongly opposed the introduction of a requirement to disclose a list of its agents to the ECGD when making applications for support. For example, the note of a meeting on 5 July 2004 (which the UK NCP has seen) between the CBI, the Department of Trade and Industry, the ECGD and businesses (including Rolls-Royce) states that: "*Airbus insisted that it will not provide any details relating to its agents. It entered into confidentiality agreements with its agents and regarded these arrangements as strictly a matter between the company and the agent involved. It was supported in this by Rolls-Royce*". This suggests that, if Rolls-Royce had made applications for support during the relevant period (between April and October 2004), it may have been reluctant to provide information on its agents to the ECGD, given that it had been arguing strongly, either directly or through its business sector representatives, that ECGD's application procedures should have permitted agents' details to be withheld on grounds of commercial confidentiality.

35. However, the UK NCP considers that the documents referred to in paragraph 30 do not provide conclusive evidence as to whether Rolls-Royce submitted specific applications for support between April and October 2004, and, if it did, whether it refused to provide a list of agents to the ECGD. In particular, the UK NCP has not received any evidence which clearly shows that the company made applications for support to the ECGD during the period between April and October

2004, was asked to provide a list of agents by the ECGD, and refused to do so.

36. The UK NCP therefore considers that it does not have sufficient evidence to make a finding as to whether Rolls-Royce did make applications for support to the ECGD during this period and, if it did, whether it did refuse to disclose a list of agents to the ECGD. Accordingly, the UK NCP is unable to make a finding as to whether Rolls-Royce breached Chapter VI(2) of the Guidelines in this respect.

37. The UK NCP considers that if the company did refuse to disclose a list of agents to the ECGD when making applications to the ECGD for support then this would have constituted a breach of Chapter VI(2) of the Guidelines.

***Between April and October 2004 did Rolls-Royce seek an assurance from the ECGD that it could use commercial confidentiality as a reason for refusing disclosure of its list of agents to the ECGD and, if so, does this constitute a breach of Chapter VI(2)of the Guidelines?***

38. The UK NCP has reviewed copies of several documents which show that Rolls-Royce did seek an assurance that it could use commercial confidentiality as a reason for refusing disclosure of its list of agents to the ECGD, as follows:

a) In an exchange of e-mails dated 25 August 2004, which the UK NCP has seen, between the CBI Solutions Group and the ECGD, the CBI Solutions Group states that: *"We accept that where commission has been included in the gross price quoted to ECGD, both the level of commission and the name of "agent" concerned would require disclosure, except, in the case of the name of the agent, where there is justification for not disclosing it (e.g. competitive reasons)".*

b) In a letter dated 24 September 2004 from the CBI Solutions Group to the ECGD, which the UK NCP has seen, the CBI Solutions Group states that: *"We understand that grounds of commercial confidentiality will be accepted by ECGD as a valid reason for not disclosing the names and addresses of agents and that cover will not be refused simply because Agents' details cannot be divulged due to issues of commercial confidentiality. We would appreciate your written confirmation on this point".*

c) The UK NCP has seen a note of a meeting on 7 October 2004 between the ECGD and the CBI Solutions Group, inclusive of representatives from Rolls-Royce. At the meeting, the CBI Solutions Group states that: *"Companies wanted some assurance that if they were unwilling to disclose the identity of an agent on the grounds of commercial confidentiality then this would not be used by ECGD as a reason for not providing support".* In a letter dated 29 October

2004 from the ECGD to the CBI Solutions Group, which the UK NCP has seen, the ECGD confirmed that, from 1 December 2004, where commercial confidentiality was given as the ground for not disclosing agents' names, this would not automatically be used by the ECGD as a reason for not giving cover.

39. The UK NCP has considered whether the fact that Rolls-Royce sought an assurance from the ECGD not to disclose its list of agents on grounds of commercial confidentiality constitutes a breach of Chapter VI(2) of the Guidelines.

40. As set out above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines to keep a list of agents and to make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of confidentiality.

41. However, the UK NCP has also taken into account that the Guidelines (and the commentary to Chapter VI(2) of the Guidelines) do not provide that companies cannot lobby competent authorities in order to seek changes to existing requirements. In particular, the UK NCP also notes that paragraph 6 of the Commentary[9], while recommending multinationals to *"avoid efforts to secure exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives among other issues"*, expressly recognises *"an enterprise's right to seek changes in the statutory or regulatory framework"*.

42. In light of the above, the UK NCP concludes that, Rolls-Royce's actions in seeking an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality did not constitute a breach of Chapter VI(2) of the Guidelines.

**CONCLUSIONS**

43. On the basis of the analysis of the evidence outlined above, the UK NCP draws the following conclusions:

a) That Chapter VI(2) requires the disclosure of a list of agents (meaning disclosure of the identity of agents) but does not extend to requiring disclosure of agents' commissions, and that the words "made available to competent authorities" in Chapter VI(2) mean that companies should provide a list of agents upon request from competent authorities.

b) That the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that

[9] *Commentary on the OECD Guidelines for Multinational Enterprises*, 2008, op. cit., paragraph 6, p. 40 (available at www.oecd.org/dataoecd/56/36/1922428.pdf- visited on 21 July 2010).

disclosure can be withheld on grounds of commercial confidentiality.

c) That, between April and October 2004, ECGD's policy was to require all applicants to disclose their list of agents to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).

d) That, if Rolls-Royce had made applications for support to the ECGD between April and October 2004, the documents which the UK NCP has seen, suggest that Rolls-Royce may have been reluctant to disclose its list of agents to the ECGD. However, Rolls-Royce has stated that it made no applications to the ECGD during this period. The UK NCP has been unable to verify this with the ECGD and considers that it does not have sufficient evidence to make a finding as to whether Rolls-Royce did make applications for support to the ECGD during this period and, if it did, whether it refused to disclose a list of agents to the ECGD. Accordingly, the UK NCP considers that it is unable to make a finding as to whether Rolls-Royce breached Chapter VI(2) of the Guidelines in this respect.

e) That Rolls-Royce did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance does not constitute a breach of Chapter VI(2) of the Guidelines.

## THE COMPANY'S CURRENT PRACTICES

44. The ECGD has stated that Rolls Royce has been complying fully with the ECGD's application procedures introduced on 1 July 2006. These procedures include a requirement to disclose a list of agents to the ECGD whenever agents are involved in the transaction for which support is sought.

45. Rolls-Royce's policy on corporate responsibility is accessible through the company's web portal. In respect of the issues covered by Chapter VI(2) of the Guidelines, the UK NCP notes that the company's published "Global Code of Business Ethics"[10] states that: *"We* [Rolls-Royce] *only appoint intermediaries to represent our interests in the sales process who can demonstrate they fully comply with the principles of this Code and avoid bribery and corruption. We actively manage these intermediaries to ensure they continue to comply with these principles"*[11]. The Code also states that: *"We* [Rolls-Royce] *will: require any intermediaries in the sales process to comply with a code of ethics that is at least comparable to ours and to applicable laws; conduct thorough due diligence and only select intermediaries that meet our ethical requirements; only make payments to intermediaries that are proportionate, proper and legitimately due in relation to the*

[10] Rolls-Royce Group plc, *Global Code of Business Ethics*, June 2009 (available at http://www.rolls-royce.com/Images/ethicscode_eng_tcm92-13314.pdf - visited on 23 June 2010).

[11] *Global Code of Business Ethics*, op. cit., p. 26.

*services provided; ensure that internal controls are in place to prevent bribery and corruption; and ensure staff receive training to prevent bribery and corruption"*[12]. The Code recognises the need to apply the higher standards it sets out: *"Where the guidance in this Code conflicts with any applicable local laws you should follow the higher standard, ensuring always that local laws are satisfied"*[13].

46. The UK NCP understands that Rolls-Royce has established an "Ethics Reporting Line" which allows employees to report in confidence alleged breaches of the company's "Global Code of Business Ethics" and that reports are then examined by the company's Director of Risk, the Head of Business Ethics and Compliance, and the Director of Security. The UK NCP also understands that an Ethics Committee[14], composed of independent non-executive directors, monitors the reporting line and the connected investigations, as well as the company's overall compliance with the "Global Code of Business Ethics".

**RECOMMENDATIONS TO THE COMPANY AND FOLLOW UP**

47. Where appropriate, the UK NCP may make specific recommendations to a company so that its conduct may be brought into line with the Guidelines going forward. In considering whether to make any recommendations, the UK NCP has taken into account that it was unable to make a finding as to whether Rolls-Royce breached Chapter VI(2) of the Guidelines, and that the ECGD introduced anti-corruption procedures on 1 July 2006 which include a requirement to disclose the applicant's list of agents to the ECGD. The company has stated that it complies with these procedures in all cases and the ECGD has confirmed that it is not aware of any cases in which the company has not complied with the procedures.

48. Accordingly, the UK NCP does not consider that it is appropriate to make any recommendations to Rolls-Royce. This Final Statement therefore concludes the complaint process under the Guidelines.

**5 November 2010**

**UK National Contact Point for the OECD Guidelines for Multinational Enterprises**

**Nick van Benschoten, Sergio Moreno**

[12] *Global Code of Business Ethics*, op. cit., p. 27.
[13] *Global Code of Business Ethics*, op. cit., p. 92.
[14] Rolls-Royce Group plc, *Ethics Committee Terms of Reference*, 11 September 2008 (available at http://www.rolls-royce.com/Images/ethics_tcm92-12993.pdf - visited on 23 June 2010).