

Final Statement on a Specific Instance Involving Tower Semiconductor Ltd. and TowerJazz Japan, Ltd. in Relation to the OECD Guidelines for Multinational Enterprises

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Japanese National Contact Point (NCP)
for the OECD Guidelines for Multinational Enterprises

1. OECD Guidelines for Multinational Enterprises

(1) The OECD Guidelines for Multinational Enterprises (hereinafter referred to as the “Guidelines”), which were adopted in 1976 by the Organisation for Economic Cooperation and Development, are recommendations addressed by governments to multinational enterprises. The Guidelines lay down the principles and standards of responsible business conduct in a broad range of fields, including information disclosure, human rights, employment and industrial relations, the environment, bribery prevention, consumer interests, science and technology, competition and taxation. As the Guidelines are not legally binding, enterprises are expected to observe the Guidelines on a voluntary basis.

(2) Governments adhering to the Guidelines establish National Contact Points (NCPs). In Japan, the Ministry of Foreign Affairs, the Ministry of Health, Labour and Welfare and the Ministry of Economy, Trade and Industry jointly constitute the NCP for Japan (hereinafter referred to as the “Japanese NCP”), which promotes activities to disseminate the Guidelines and handles issues raised based on the Guidelines.

2. Complainants and Companies Involved

(1) The entities that submitted the specific instance that follow (hereinafter referred to as the “complainants”) are the TowerJazz Branch of Rengo Hokuban Local Union, the Hokuban Local Council of Rengo-Hyogo, Rengo-Hyogo, and Rengo (Japanese Trade Union Confederation).

(2) The companies involved in the specific instance (hereinafter referred to as the “companies involved”) are Tower Semiconductor Ltd. (hereinafter referred to as “Tower Semiconductor”), headquartered in Israel, and its Japanese subsidiary, called TowerJazz Japan, Ltd. (hereinafter referred to as “TowerJazz Japan”).

3. The Issues Raised and Requests

(Provisional Translation)

On August 18, 2014, in relation to the closure of TowerJazz Japan's Nishiwaki factory, the complainants alleged that the companies involved were violating the Guidelines as described in (1) and called for the implementation of the measures specified in (2). In addition, the complainants made the requests described in (3) to the companies involved.

(1) Outline of the issues raised by the complainants and the relevant part of the Guidelines

A. Outline of the issues raised by the complainants

(A) Tower Semiconductor closed TowerJazz Japan's Nishiwaki factory on July 31, 2014. When laying off employees at the factory, TowerJazz Japan proposed to them terms stipulating that "50% of the severance allowances will be paid within one month from retirement, with the remaining 50% to be paid within six months after the first payment of the severance allowances but that the issue of severance allowance payment will be separately negotiated when the funds cannot be raised" whereas the company's Rules of Employment stipulate that the severance allowances should be "paid within one month from retirement in principle."

(B) On March 31, 2014, Tower Semiconductor unilaterally decided to close TowerJazz Japan's Nishiwaki factory, and on April 1, it announced the decision and notified the division chief in charge at TowerJazz Japan. TowerJazz Japan convened an emergency employees' meeting and notified the employees in the evening of the same day.

(C) Although the person in charge at TowerJazz Japan did not neglect to provide cooperation with respect to the labor-management consultations, the person had no authority to negotiate, while the Chief Executive Officer (CEO) participated in collective negotiations only once (on May 28, 2014).

B. Complainants' claim in relation to the guidelines and its relevant parts

Paragraph 6 of the Guidelines V. "Employment and Industrial Relations" recommends that (enterprises should) "In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.e The actions taken by the companies involved as described in A. above violate this provision.

(2) Contents of the complainants' requests to the Japanese NCP

The complainants request that the Japanese NCP see to it that Tower Semiconductor,

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headquartered in Israel, meet the labor union's demands, including a full and lump-sum payment of severance allowances to former employees of TowerJazz Japan. They also request that the Japanese NCP see to it that TowerJazz Japan's CEO participates in labor-management negotiations so that the negotiations can be conducted in a conscientious manner.

(3) Contents of the complainants' requests to the companies involved

- (A) Pay 100% of the severance allowances for involuntary retirement within one month from retirement.
- (B) Pay provisional severance allowances equivalent to three months' worth of the average wages within one week from retirement.
- (C) Provide full-fledged reemployment support for former employees.
- (D) Take care to prevent former employees from suffering inconveniences (allow employees eligible to live in company dormitories or to receive rent subsidies to retain such benefits for around one month after retirement, for example).

4. Undertakings of the Japanese NCP

(1) Issuance of the initial assessment

A. After holding consultations with the Israeli NCP, where Tower Semiconductor is headquartered, the Japanese NCP issued the letter of acceptance on 25 September 2014, and conducted initial assessment to "determine if the issues raised merit further examination" based on "Procedural Guidance" 25 while collecting information from the complainants and the companies involved..

B. As a result of examination based on the information thus collected, although the Japanese NCP is not in a position to make any determination with regard to the arguments made by either of the parties involved, it was confirmed that the issues raised were "bona fide" and that there were differences of opinion between the complainants and the companies involved with respect to the implementation of the Guidelines in relation to the issues raised. Therefore, the Japanese NCP concluded that this case "merits further examination" as referred to in Procedural Guidance I. C.1. and issued an initial assessment to that effect to the complainants and the companies involved on January 19, 2015.

C. The Japanese NCP requested the Israeli NCP to forward the abovementioned initial assessment to Tower Semiconductor.

(2) Steps taken to support the resolution of the issues

A. When the Japanese NCP inquired with the companies involved about providing an opportunity

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for consultations between the relevant parties in the case at the time of the issuance of the initial assessment mentioned in (1) above, TowerJazz Japan notified the Japanese NCP that it would reserve its reply. Meanwhile, on February 17, 2015 TowerJazz Japan gave a general explanation on how it treated former employees at the time of the closure of the Nishiwaki factory and later.

B. On March 23, 2015, when the Japanese NCP inquired with TowerJazz Japan again about providing an opportunity for consultations, the company replied that consultations with the complainants were ongoing elsewhere and that it would give its reply after the consultations.

C. By April 13, 2015, the Japanese NCP ascertained, based on information collected from both the complainants and the companies involved, that TowerJazz Japan had paid the full amount of severance allowances to the former employees on February 25, 2015.

D. On June 5, 2015, when the Japanese NCP inquired with TowerJazz Japan again about providing an opportunity for consultations, the company replied on June 9 that the process of mediation by the Hyogo Prefectural Government Labor Relations Commission was ongoing and that it would give its reply after the completion of this process. TowerJazz Japan explained that in Nishiwaki City, Hyogo Prefecture, where it has a business facility, periodic consultations were held between the company and the complainants.

E. On October 19, 2015, when the Japanese NCP inquired with TowerJazz Japan again about providing an opportunity for consultations, the company said it would give its reply in mid-November of the year as the process of mediation by the Hyogo Prefectural Government Labor Relations Commission had been completed on June 22, 2015.

F. On November 26, 2015, the Japanese NCP received from TowerJazz Japan a reply to the effect that the company was unable to agree to engage in dialogue with the complainants through the mediation of the Japanese NCP due to the following reasons:

- (A) TowerJazz Japan was conscientiously implementing the measures agreed upon with the former employees and the terms agreed through the process of mediation by the Hyogo Prefectural Government Labor Relations Commission.
- (B) Specifically, TowerJazz Japan has completed the payment of the full amount of severance allowances and most of the former employees found new jobs as a result of reemployment support. In addition, the company had been continuously and conscientiously engaging in collective negotiations.
- (C) TowerJazz Japan did not consider that the various measures implemented for the former employees following the factory closure were inadequate.

G. On January 8, 2016, following the abovementioned reply, when the Japanese NCP consulted

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with Tower Semiconductor about providing an opportunity for consultations, it received, on March 9, 2016, a reply to the effect that the company's position was the same as TowerJazz Japan's.

H. On September 9, 2016, the Japanese NCP provided the opportunity for the complainants and the enterprises involved to comment on the draft final statement and received the following comments from the complainants:

The CEO of that the TowerJazz Japan participated in collective negotiations only once and the TowerJazz Branch of Rengo Hokuban Local Union is still asking the TowerJazz Japan to participate in labor-management negotiations because there are still some issues to be solved by the enterprises involved such as the payment of provisional severance allowances equivalent to three months' worth of the average wages. Taking these into account, the complainants consider that the TowerJazz Japan's assertion of being "continuously and conscientiously engaging in collective negotiations" is factually inaccurate.

5. Conclusion

The Japanese NCP has ascertained that, although the companies involved did not want the Japanese NCP to provide an opportunity for consultations in this case, TowerJazz Japan conducted consultations with the former employees through mediation by the Hyogo Prefectural Government Labor Relations Commission. The Japanese NCP decided to end its involvement with this Specific Instance in consideration of the principle that the provision of an opportunity for consultations by NCPs should be based on an agreement by the parties involved.

(End)