

# Final Statement on Complaint against KLM Royal Dutch Airlines in relation to the OECD Guidelines for Multinational Enterprises

3 June 2022

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”), adopted by the Organisation for Economic Co-operation and Development (OECD) in 1976, are recommendations addressed by governments to multinational enterprises. The Guidelines provide the principles and standards for responsible business conduct in a broad range of fields such as disclosure, human rights, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation.
- (2) Governments adhering to the Guidelines, in this case the Government of Japan as well as the Government of the Netherlands, the country where the Headquarter of the enterprise involved KLM Royal Dutch Airlines (hereinafter referred to as “KLM”) is located, have established National Contact Points (hereinafter referred to as the “NCPs”) to promote the Guidelines and discuss matters related to them. While the Guidelines are not legally binding, the NCPs encourage enterprises to observe and use the Guidelines. 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 Japanese NCP.
- (3) Since the Guidelines do not require the NCPs to determine whether an enterprise’s activities are in line with the Guidelines, the Japanese NCP does not determine whether the enterprise’s activities are consistent with the Guidelines. In addition, the Japanese NCP does not determine the fact findings and validity of each party’s claims on the issues raised.
- (4) The Japanese NCP can make recommendations as appropriate on the implementation of the Guidelines and any observations the Japanese NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement.

## 2 Submission of a Specific Instance

- (1) Date of submission  
On 12 July 2018, the Japan Cabin Crew Union (hereinafter referred to as the “Complainant”) submitted a complaint to the Japanese NCP with respect to the activities of KLM based on the Guidelines.
- (2) Content of Specific Instance alleged by the Complainant  
The outline of content of the Specific Instance alleged by the Complainant is as follows. Since 1989, KLM has employed Japanese cabin attendants only under fixed-term employment for three to five years and replaced them with newcomers in a few years. Cabin attendants in the home country are employed as regular employees, and only Japanese, Korean and Chinese are employed on a fixed term.
- (3) Relevant sections in the Guidelines  
The Complainant claims that the fact that Japanese cabin attendants of KLM are employed on a fixed-term even though those of the home country are regular employees, breaches Paragraph 1. e) of V. Employment and Industrial Relations of the Guidelines. In addition, the Complainant claims that the fact that KLM employs Japanese cabin attendants under a fixed-term contract and does not switch them to open-ended

employment breaches Paragraph 4. a) of V. Employment and Industrial Relations of the Guidelines, since employers of JAL and ANA that correspond to “comparable employers in the host country” specified in Paragraph 4.a) of V. Employment and Industrial Relations of the Guidelines employ their cabin attendants as regular employees and 90% of cabin attendants of airlines in Japan are regular employees.

The relevant provisions of the Guidelines are as follows.

V. *Employment and Industrial Relations*

*Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:*

1. a)–d) *(Omitted)*

e) *Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established government policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.*

2. *(Omitted)*

3. *(Omitted)*

4. a) *Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.*

*(The rest is omitted)*

(4) Content of requests made by the Complainant

The Complainant would like to request, through procedures by the NCP, KLM to switch all of its Japanese cabin attendants to open-ended employment from fixed-term employment and ensure stability of employment in line with the content and intent of the Labor Contracts Act, which is a Japanese law.

**3 Decision of the Lead NCP**

According to the documents submitted by the Complainant, the Complainant has requested that KLM to switch the Japanese cabin attendants to open-ended employment from fixed-term employment in light of Article 19, and in accordance with the purpose and intent of Article 18 of the Labor Contracts Act, which is a Japanese law. According to the explanation given by the Complainant during the interview with the Japanese NCP in August 2018, the Complainant mainly negotiated with the AF-KLM Japan Branch, which is the base of KLM in Japan. From the above background, the Japanese NCP determined that it would be appropriate for the Japanese NCP to deal with the issue related to this Specific Instance based on past communication between the Complainant and the enterprise involved. The Japanese NCP informed the Dutch NCP, where the head office of the enterprise involved is located, about this Specific Instance, and the Dutch NCP stated that it was prepared to support the Japanese NCP as necessary. Based on the above, it was decided that the Japanese NCP would take the lead in this Specific Instance.

**4 Initial Assessment**

In accordance with the Guidelines and the Procedural Guidance for the Japanese National Contact Point (NCP) under the OECD Guidelines for Multinational Enterprises (Revised in 2011), the Japanese NCP carried out the Initial Assessment as outlined in (1) to (6)

below, and concluded (7) below on 8 February 2019. In conducting the Initial Assessment, the Japanese NCP proposed interviews with the Complainant and the enterprise involved. The Japanese NCP conducted the interview with the Complainant, but the enterprise involved did not respond to the interview.

- (1) The identity of the parties concerned and their interest in the matter  
The Complainant is the Japan Cabin Crew Union, which is a labour union in Japan, and the enterprise involved is KLM headquartered in the Netherlands. According to documents submitted by the Complainant, the Japan Cabin Crew Union has requested that the enterprise to switch Japanese cabin attendants to open-ended employment from fixed-term employment in light of Article 19, and in accordance with the purpose and intent of Article 18 of the Labor Contracts Act.
- (2) Whether the issue is material and substantiated  
The Initial Assessment does not determine whether the matters described in the documents and others submitted by the Complainant or the claims of the parties are correct. However, at least, the Complainant submitted a Specific Instance as described in 2 above and explained the background pertaining to this Specific Instance submitted at the interview with the Japanese NCP in August 2018. In addition, when the Japanese NCP made an inquiry to the Complainant about the relevance of this Specific Instance submitted to Articles 18 and 19 of the Labor Contracts Act, a copy of the request submitted by the Complainant to the AF-KLM Japan Branch on 11 March 2014 and a copy of the lawyer's opinion submitted to the Branch on 20 June 2014 were submitted for reference. Considering these factors, the Japanese NCP understands that the issue exists as a reality, is concrete, and is material and substantiated.
- (3) Whether there seems to be a link between the activities of the enterprise involved and the issue raised in the Specific Instance  
The issue raised is related to the employment of cabin attendants of the enterprise involved and there seems to be a link between the activities of the enterprise involved and the issue raised in the Specific Instance.
- (4) The relevance of applicable law and procedures, including court rulings  
As described in 4 (1) above, according to the documents submitted by the Complainant, the Complainant has requested that KLM to switch Japanese cabin attendants to open-ended employment from fixed-term employment in light of Article 19 and in accordance with the purpose and intent of Article 18 of the Labor Contracts Act, which is a Japanese law. When the Japanese NCP made an inquiry to the Complainant about the relevance of this Specific Instance to Articles 18 and 19 of the Labor Contracts Act, a copy of the request submitted by the Complainant to the AF-KLM Japan Branch on 11 March 2014 and a copy of the lawyer's opinion submitted to the Branch on 20 June 2014 were submitted for reference.
- (5) How similar issues have been, or are being, treated in other domestic or international proceedings  
It is not clear whether and how similar issues are being treated in other domestic or international proceedings.
- (6) Whether consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines  
The issue raised would be relevant to the provisions of the Guidelines, and consideration of this Specific Instance would contribute to the purposes and effectiveness of the Guidelines.
- (7) Conclusion of the Initial Assessment  
As a result of the consideration as described in 4 (1) to (6) above, the Japanese NCP determined that this Specific Instance deserves further examination.

## **5 The Japanese NCP's Assistance in dealing with the Issues**

- (1) On 8 February 2019, the Japanese NCP sent the Initial Assessment to the Complainant and the enterprise involved on the basis that it would not be released to the public, and asked them whether they intended to accept dialogue through mediation by the Japanese NCP with respect to the matters raised by the Complainant.
- (2) On 15 February 2019, the Complainant expressed its willingness to accept dialogue through mediation by the Japanese NCP.
- (3) On 1 August 2019, the enterprise involved contacted the Japanese NCP. The outline is as follows.

The matters raised have been discussed through collective bargaining for several years, and several judicial proceedings have also been conducted on the same or similar matters. Therefore, the enterprise involved does not believe that dialogue under the mediation of the Japanese NCP will be useful. On this basis, KLM respectfully declines to participate in the dialogue through the mediation by the Japanese NCP.
- (4) Since one of the parties does not have the intention to participate, the Japanese NCP determined that there is no agreement of the parties concerned on the NCP's assistance for solving the issue in this Specific Instance, and decided to terminate the handling of this Specific Instance in accordance with Paragraph 35 of the Commentary on the Implementation Procedures of the Guidelines. The Japanese NCP regrets that there has been no dialogue under the framework of the NCP.
- (5) The OECD Guidelines Chapter V, art. 1, e), states that companies be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, color, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.
- (6) In the preparation of this final statement, the Japanese NCP had prior consultations with Dutch NCP and made the draft of its final statement available to the Complainant and the enterprise involved and requested for comments on this draft on 27 August 2021. The Complainants and the enterprise involved submitted their comments to the Japanese NCP. The Japanese NCP considered their comments and finalised the statement.

## **6 Conclusion**

- (1) While the NCP's assistance in solving the issue is based on an agreement of the parties concerned, there is no such agreement in this Specific Instance. In view of this, the Japanese NCP will regrettably terminate the handling of this Specific Instance in accordance with Paragraph 35 of the Commentary on the Implementation Procedures of the Guidelines.
- (2) The NCP observes that KLM has standards in which it refers to the UN Guiding principles and the ILO Core conventions, with which the OECD Guidelines are aligned. Therefore, the NCP recommends that KLM clarify its policy concerning the issues raised in the Specific Instance and, if necessary, brings its policy in line with the OECD Guidelines. The Japanese NCP urges KLM to conduct activities while respecting the Guidelines for Multinational Enterprises.

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