



# FINAL STATEMENT

Former employees of the  
Joint Venture Douala In-  
ternational Terminal S.A. in  
Cameroun vs A.P. Moeller -  
Maersk A/S

**6 May 2024**

## About NCP Denmark and specific instances

The Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct (NCP Denmark) is the Danish National Contact Point to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereafter the OECD Guidelines). NCP Denmark is an independent non-judicial grievance mechanism established by law<sup>1</sup>. NCP Denmark is mandated to handle specific instances (complaints) concerning whether Danish companies, public authorities and public and private organisations observe the OECD Guidelines.

As stated in the Procedures to the OECD Guidelines, following the conclusion of the proceedings and after consultation with the parties involved, the NCP will make the results of the procedures publicly available by issuing a final statement.

As such, this final statement describes the issues raised by the complainant, the respondent's position, the reasons why NCP Denmark decided that the issues raised merited further examination and the procedures initiated by NCP Denmark to assist the parties. The statement furthermore contains the assessment, findings and conclusion of NCP Denmark. This statement also identifies recommendations made by NCP Denmark to the enterprise on the implementation of the OECD Guidelines.

As specific instances are not legal cases and NCPs are not judicial bodies, NCP Denmark cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

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<sup>1</sup> The Danish Act no 546 of 18 June 2012 on a Mediation and Complaints-Handling Institution for Responsible Business Conduct, henceforth "the NCP Act".

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# 1. EXECUTIVE SUMMARY

On 19 October 2021 337 former employees of the joint venture Douala International Terminal S.A. (hereafter DIT), represented by the law firm NGALLE-MIANO and Associates, Mohamed DJENABOU Esq. & James F. EPO Esq., submitted a complaint to NCP Denmark. The complaint was filed against A. P. Moeller - Maersk (hereafter APMM).

In 2004 APMM signed a 15-year-long concession agreement with the Port Authority of Douala regarding renovation, modernisation, operation and maintenance of the container terminal of the port of Douala-Bonaberi in Cameroun. In 2005 DIT was established as a joint venture (hereafter JV) between APMM, operating as APM Terminals, and the French company Bolloré to continue the operation of the port of Douala-Bonaberi. Since 2014 APMM, operating as APM Terminals, and Bolloré each held 44 per cent of the shares of DIT, while the Port Authority of Douala held 6 per cent and private shareholders held the last 6 per cent of the shares of DIT. As such, APMM, operating as APM Terminals, did not have full control of DIT on its own but held joint control of DIT with its JV partner Bolloré. DIT's operation of the port of Douala-Bonaberi ended with the expiration of the concession agreement in 2019 as DIT was excluded from the tender process on the continuation of the operation of the port. APMM ceased to have shares in DIT in June 2022.

The complainant asserts that APMM was non-observant of the OECD Guidelines during its engagement in DIT from 2004 until the end of the concession agreement. The complainant asserts – among other issues – that APMM did not exercise due diligence on its business relationship with DIT, that DIT imposed harsh working conditions on its workers and that DIT intentionally withheld the workers' administrative documents such as their work certificates after the ending of the concession agreement.

Furthermore, the complainant asserts that the working conditions in DIT can be characterised as forced labour and that the workers were embezzled of their shareholder rights.

APMM does not recognise the assertions of the complainant and finds the complaints unsubstantiated. APMM asserts that the JV partners of DIT conducted their business responsibly throughout DIT's operation of the port of Douala-Bonaberi. APMM further asserts that local labour regulations and employees' human and labour rights were respected in DIT.

In accordance with NCP Denmark's case-handling procedure, NCP Denmark conducted an initial assessment<sup>2</sup>. Based on this assessment, NCP Denmark accepted the complaint and encouraged the parties to initiate a bilateral dialogue, which APMM declined, as APMM found the complaint to be unfounded. Subsequently NCP Denmark initiated a preliminary investigation. In the preliminary investigation, NCP Denmark dismissed the complaints of forced labour, as NCP Denmark found that it was not substantiated, and embezzlement of shareholder rights, as NCP Denmark does not have the competency to assess the legality of an agreement or a company's compliance with corporate law. NCP Denmark could not dismiss non-observance of the OECD Guidelines in the other aspects of the complaint and thereby concluded that these parts of the specific instance merited further consideration. NCP Denmark offered its good offices (mediation) to the parties, which was not accepted by APMM. Accordingly, NCP Denmark initiated an actual investigation of the complaint, which is concluded by the publication of this final statement. Both parties have willingly engaged in the investigation providing the documentation that NCP Denmark has requested.

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<sup>2</sup>See section 3.1. on the five steps of NCP Denmark's case handling procedure according to the Danish NCP Act.

NCP Denmark assesses that the relevant chapters of the OECD Guidelines for this specific instance are Chapter I on Concepts and Principles (para. 2 and 4), Chapter II on General Policies (para. 10-14 and comm. 14, 19-22, 25) and Chapter V on Employment and Industrial Relations (Introduction, para. 3-4, 6 and comm. 47, 57, 59)<sup>3</sup>.

NCP Denmark has divided its analysis into the following four sections to determine APMM's observation of the OECD Guidelines:

**1. The nature of the responsibility of a parent company vis-à-vis a subsidiary's activities.**

The OECD Guidelines expect that parent companies and subsidiaries share the responsibility to take actions to observe the OECD Guidelines. This expectation applies to all company structures so that enterprises cannot choose to organise in a way that exempts them from responsibility. NCP Denmark therefore expects that APMM carries out its own due diligence and facilitate that risk-based due diligence is carried out in its corporate group, including addressing any potential or actual impacts in its own operations and in its value chain.

**2. APMM's approach to responsible business conduct and due diligence.**

From 2004-2011 NCP Denmark finds that the documentation does not substantiate non-observance of the OECD Guidelines as regards APMM's involvement in DIT. From 2011, when due diligence obligations were introduced in the OECD Guidelines, until the end of the concession agreement NCP Denmark finds that APMM did not sufficiently observe the OECD Guidelines on carrying out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts as well as account for how these impacts were addressed. Today APMM has adopted a Joint Venture Governance and Management Framework (hereafter JV Framework)

which may allow for better risk management in APMM's future JV activities.

**3. APMM's leverage in DIT.** NCP Denmark finds that APMM had a substantial degree of leverage in DIT which NCP Denmark expects APMM to use. NCP Denmark finds that APMM did not sufficiently observe the OECD Guidelines, as to encourage business partners to apply principles of responsible business conduct compatible with the OECD Guidelines by using its leverage in DIT and, consequently, did not sufficiently observe the OECD Guidelines as to prevent any potential adverse impact from occurring in DIT.

**4. APMM's involvement with potential and actual adverse impacts in DIT.**

NCP Denmark finds that the submitted documentation cannot substantiate non-observance of the OECD Guidelines with regard to poor working conditions, consultation and co-operation with workers and reasonable notice to workers. NCP Denmark finds that the lack of issuing work certificates to workers at the end of the concession agreement was an adverse impact on workers. However, NCP Denmark finds that it cannot be substantiated that APMM was non-observant of the OECD Guidelines in this regard as the specific circumstances hindered APMM in mitigating this adverse impact.

NCP Denmark makes three recommendations to APMM. NCP Denmark recommends that APMM updates its JV Framework so that it includes labour rights and human rights as well as risk-based due diligence practices in the mandatory training of board members appointed to JVs. Furthermore, NCP Denmark recommends that APMM actively considers its degree of leverage in business relationships and builds additional leverage – if necessary – to promote responsible business conduct. Lastly, NCP Denmark wishes to emphasise that risk-based due diligence is an ongoing process and enterprises' potential and/

<sup>3</sup>OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 edition. See also section 4.2. for further explanation of which versions of the OECD Guidelines NCP Denmark has used as the basis of the investigation.

or actual impacts must be reassessed at regular intervals, e.g. in response to changes in the operations such as anticipated closure of activities. In light of this, NCP Denmark recommends that APMM reviews its due diligence procedure to ensure that the six steps of risk-based due diligence are included, especially as regards risk mitigation and proper communication on due diligence to ensure better observance of the OECD Guidelines.

NCP Denmark will follow up with APMM 12 months from the publication of this final statement.

## 2. SUBSTANCE OF THE SUBMISSION

In October 2021 NCP Denmark received a complaint from 33<sup>4</sup> former employees of DIT brought forth by their attorneys, Mohamed Djenabou Esq. & James F. Epo Esq., and the law firm of NGALLE-MIANO and Associates. The complaint concerns whether APMM has observed the OECD Guidelines in relation to DIT’s operation and ending of activities concerning the container terminal of the Port of Douala-Bonaberi, Cameroun.

### 2.1. Facts about DIT ownership

DIT was a JV which was jointly controlled by APMM, operating as APM Terminals<sup>5</sup> (a subsidiary of APMM headquartered in the Netherlands) and the French company Bolloré<sup>6</sup>. DIT operated a 15-year-long concession agreement regarding renovation, modernisation, operation, and maintenance of the container terminal of the port of Douala-Bonaberi in Cameroun from 2005 onwards.

The concession agreement ended on 31 December 2019 and APMM ceased to have any shareholding in DIT in June 2022.

Developments in the shareholding of DIT	
2004	The Port Authority of Douala and APMM, operating as APM Terminals, signed a 15-year-long concession agreement assigning the operation of the container terminal of Douala-Bonaberi to APMM for 15 years. The Port Authority of Douala is a semi-public establishment responsible for the management and coordination of services in the port.
2005	In 2005 DIT was established as a JV between Bolloré and APMM, operating as APM Terminals, to continue the operation of the container terminal of Douala-Bonaberi as agreed upon in the concession agreement from 2004. In the initial agreement, Bolloré and APMM, operating as APM Terminals, each held 35 per cent of the shares. The remaining 30 per cent of the shares were divided between private shareholders (22 per cent), the Port Authority of Douala (6 per cent) and DIT employees (2 per cent).
2014 and onwards	In day-to-day operations, APM Terminals since 2014 held the managing director position in DIT while Bolloré held the CFO position. With the 2014 update of the agreement Bolloré and APMM, operating as APM Terminals, each held 44 per cent of the shares, while the remaining 12 per cent were divided between private shareholders (6 per cent) and the Port Authority of Douala (6 per cent).

<sup>4</sup>OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 edition. See also section 4.2. for further explanation of which versions of the OECD Guidelines NCP Denmark has used as the basis of the investigation.

<sup>5</sup>NCP Denmark has used the translation ‘operating as’. In the official French concession agreement, it says “A P MOLLER-MAERSK A/S, faisant commerce sous le nom de APM TERMINALS”.

<sup>6</sup>NCP Denmark has not assessed the role of Bolloré in this complaint, and has been informed by the complainant that no complaint has been submitted vis-à-vis Bolloré.

## 2.2. Details of the complaint

The complainant asserts that APMM has failed to observe the OECD Guidelines regarding issues related to human and labour rights in the operation and closure of DIT as APMM, operating as APT Terminals, held a partial ownership in DIT. The following description of the complaint is based on the complainant's written submissions and presentations to NCP Denmark and does not contain any assessment from NCP Denmark. The complaint pertains mainly to 3 main areas:

### 2.2.1. APMM's due diligence processes and implementation of human rights policies

The complainant asserts that APMM did not exercise due diligence or conduct risk assessments of its business relationship with DIT and thus failed to live up to its responsibility according to the OECD Guidelines. According to the complainant, APMM would have been aware of DIT's adverse impacts on DIT workers if APMM had tracked the effectiveness of its own human rights policies and conducted proper due diligence, including engaging stakeholders in dialogue.

### 2.2.2. Complaints about employment and working conditions

The complainant asserts that DIT ignored the workers' and worker representatives' continued complaints about forced overtime and compulsory extra work in breach of Cameroonian labour laws. The complainant further asserts that DIT failed to implement recommendations from the Regional Labour Authorities on compensation for overtime work. According to the complainant, there have been several attempts to inform DIT and labour authorities of the alleged inhumane working conditions,

double shifts and hard physical work at the terminal without a satisfactory result.

The complainant asserts that DIT failed to ensure workers' general health and safety at work. To substantiate this, the complainant has included testimonies from two former employees<sup>7</sup>. The testimonies address how overtime work was expected in DIT and mention the health consequences of the work they performed in DIT. The complainant has further included two medical reports carried out by a company called MEDICARE in 2018 and 2019 respectively, and the reports cover health issues on-site in DIT. Furthermore, to document the overtime work, the complainant has included pay slips from December 2018 to November 2019<sup>8</sup> and a spreadsheet that according to the complainant shows the overtime working hours in 2019 for 365 former employees. According to the complainant, this documentation substantiates the cruel and inhumane working conditions in DIT.

According to the complainant, DIT also acted against Cameroonian labour regulations and the OECD Guidelines in relation to the ending of the concession agreement and the closure of the operations in Cameroon. The complainant asserts that DIT failed to notify openly and timely about the changes in DIT's ownership and operation of the terminal and the expected dismissals and layoffs. The complainant further asserts that DIT refused to engage in constructive dialogue with workers and worker representatives concerning unresolved financial matters, including outstanding salaries, overtime compensation and distribution of work certificates in order to mitigate adverse impacts to the maximum extent practicable.

The complainant asserts that DIT intentionally withheld the workers' administra-

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<sup>7</sup>The testimonies do not contain a date of signing. The testimonies address the working conditions throughout their employment. One of the testimonies states that the employee in question has been employed at DIT since 1 January 2005. The second testimony is unclear as regards the employment date.

<sup>8</sup>The number of pay slips differs from month to month ranging from 414 pay slips from April 2019 to 364 pay slips from September, October and November 2019.



tive documents such as their work certificates. According to the complainant, DIT was obligated to issue work certificates by law and the retention of work certificates is preventing workers from applying for new jobs. The complainant asserts that the workers have requested these documents repeatedly from DIT without a result.

The complainant asserts that the above-mentioned issues regarding the alleged forced overtime and inhumane working conditions can be characterised as forced labour and argues that the amount and type of injuries presented in the two medical reports are evidence of forced labour.

The complainant has informed NCP Denmark that DIT has now issued work certificates to some of the former employees.

### **2.2.3. Complaints about shareholder rights**

Finally, according to the complainant, DIT failed to protect the workers' shareholder rights. The complainant asserts that the workers never received dividends on their shares in DIT as per the initial contracts and were never invited to DIT's general assembly where the agreement regarding dividends was changed. The complainant asserts that DIT continued to pay out dividends to APM Terminals and Bolloré while the workers were excluded from receiving their dividends. The complainant further asserts that in 2013, workers' representatives were forced to sign an agreement that would change the workers' 2 per cent shareholder rights to an annual bonus, which took effect in 2014. According to the complainant, this agreement was formed without the workers' knowledge or consent and was against DIT's own internal rules as well as the concession agreement. The complainant asserts, that the con-

cession agreement prevented sales of the workers' shares unless it was sold to other employees or another class B shareholder. The complainant also asserts that the new bonus was already written in DIT's internal rules, so there was no need to make the agreement in the first place.

## **2.3. Response from APMM to the assertions**

The following description is based on the APMM's written submissions and presentations to NCP Denmark and does not contain any assessment from NCP Denmark.

### **2.3.1. Response regarding due diligence processes and implementation of human rights policies**

APMM does not recognise the assertion about not conducting proper due diligence and finds the assertion undocumented. According to APMM, the JV partners conducted their business responsibly throughout DIT's period of operation. APMM asserts that it had a comprehensive system in place that enables proactive handling of financial, human rights, environmental and social risks as well as systems specifically related to employer relations and standards.

According to APMM, its system has since 2015 included labour rights self-assessments, which all fully or majority-controlled units are obliged to complete every second or third year. In 2015 the labour rights self-assessment was distributed to all units, including non-controlled JVs<sup>9</sup>, though it was not mandatory for those JVs.

APMM asserts that since DIT was established in 2004, before risk-based due diligence was implemented in the 2011 revision of the OECD Guidelines, there is no

<sup>9</sup>APMM's JV Framework from 2023 distinguishes between three types of JVs: 'Controlled' (full decision-making control), 'jointly controlled' (shares decision-making control with JV partner) and 'non-controlled' (no decision-making control). APMM uses different expressions throughout its letters to explain the relation with DIT: That APM Terminals was a jointly controlling shareholder, a non-controlling shareholder and also a co-controlling shareholder of DIT. The complainant has generally used the expression "main shareholder" about APMM and its relationship with DIT. This final statement generally uses "jointly controlled" in line with APMM's 2023 JV Framework unless it quotes the parties directly in which case it uses the parties' expressions.

documentation of an initial due diligence process prior to entering into the concession agreement.

APMM asserts that it has carried out a human rights due diligence assessment on all operations in 2015, which was updated in 2017, and repeated in 2021. APMM also asserts that its responsible business conduct standards and due diligence processes have developed and matured over time in line with the overall international development of standards on responsible business conduct, especially since 2011 when the UN Guiding Principles and the notion of due diligence were introduced and incorporated into the OECD Guidelines. APMM has been a signatory to the UN Global Compact since 2009 and has since then published annual Communication on Progress reports covering APMM's sustainability activities.

By now, APMM asserts, the due diligence on JV partners is guided by its JV Framework from 2023. APM Terminals published the first JV Framework in 2020 which – according to APMM – was largely similar to the 2023 APMM group version. Today APMM's work on responsible business conduct is moreover guided by human rights and labour rights policies and an APMM Employee Code of Conduct.

According to APMM, the policies apply to the whole corporation, including JVs where it is a controlling shareholder. APMM asserts that in non-controlled or jointly controlled JVs, APMM uses its influence and encourages other shareholders and partners to introduce and incorporate minimum standards on responsible business conduct.

### **2.3.2. Response regarding employment and working conditions**

APMM does not recognise the complainant's assertions regarding working conditions in DIT and does not find that the assertions have been substantiated by the provided documentation. APMM asserts that DIT complied with local labour reg-

ulations and in accordance with international standards of employment during its period of operation. APMM moreover asserts that APM Terminals worked closely together with its JV partner Bolloré to conduct business responsibly throughout its operation period, including respecting its employees' human and labour rights.

APMM asserts that DIT was committed to engaging openly with workers and workers' representatives. Regarding the specific assertions about overtime and compensation for extra hours, APMM points to the fact that this was regulated by a Memorandum of Understanding signed by DIT management, workers and workers' representatives in 2007.

APMM moreover rejects the assertions that DIT intentionally withheld administrative documents. APMM, with reference to the Cameroonian Labour Code, states that all contracts of employment are automatically transferred when a company is requisitioned by another company. APMM asserts that DIT – after the Port Authority of Douala's requisition of DIT's assets on 31 December 2019 – did not have access to the workers' administrative documents and other HR documents.

APMM disagrees with the assertions that APMM has acted irresponsibly towards the end of the concession agreement and the closure of activities in DIT. On the contrary, APMM asserts how DIT tried to support a smooth transition to the new owner of the terminal. APMM also mentions the difficult circumstances that the DIT management had to navigate and states that DIT was illegally excluded from bidding on the new concession agreement and violently evicted from the buildings. APMM states that the termination of DIT's operations was complex and characterised by a great deal of confusion and misinformation among workers. To mitigate this, APMM asserts that DIT ensured continued and close dialogue with relevant stakeholders. To substantiate this, APMM refers to letters to authorities and regular meetings with stakeholders including customers, author-

ities and employees from August to December 2019. Additionally, APMM asserts that DIT had several meetings between management and employees, including “coffee with the boss” where employees could raise concerns.

APMM does not recognise the complainant’s assertions of forced or compulsory labour and does not find that the complainant has substantiated these assertions. APMM asserts that DIT operated according to local laws and in accordance with DIT’s Code of Conduct. According to APMM, practices usually related to forced labour such as withholding of passports by the employer, debt bondage and other limitations to the freedom of employees to end their employment never occurred in DIT.

### **2.3.3. Response regarding shareholder rights**

APMM rejects any assertions that DIT did not comply with shareholder rights and does not believe that the complainant has submitted any documentation that would substantiate the assertions. APMM asserts that DIT operated in compliance with relevant laws and would regularly be audited by an independent third-party auditor. APMM also rejects the assertions that the workers were forced to give up their shares in DIT. According to APMM, the agreement was entered into voluntarily and signed by all parties and without disadvantage for the workers. APMM points to a 2013 agreement signed by all parties that describes that payouts to the workers could not happen because of ambiguities in the concession agreement. The agreement also shows that DIT created an annual bonus that replaced the provision in the concession agreement on the workers’ shareholder rights.

## **3. Proceedings**

### **3.1. NCP Denmark’s case-handling procedure**

According to the NCP Act, Sections 5 and 7, NCP Denmark’s procedure for handling a complaint consists of five steps. During the process, the parties will have two opportunities to resolve the matter (steps 2 and 4) and reach a solution. If unsuccessful, NCP Denmark will start an actual investigation of the complaint. These are the steps:

1. Initial assessment
2. Bilateral dialogue without NCP Denmark’s involvement
3. Preliminary investigation
4. Mediation facilitated by NCP Denmark
5. Actual investigation, including the drafting of a Final Statement

### **3.2. Summary of the proceedings** (see annex for a detailed overview of activities)

The complaint was received by NCP Denmark on 19 October 2021 and an initial assessment was carried out. The complaint was accepted for further handling on 2 December 2021. Following the initial assessment, the complainant and APMM were encouraged to initiate a bilateral dialogue without the involvement of NCP Denmark in accordance with the case-handling procedure. APMM declined to engage in bilateral dialogue with the complainant as APMM found the complaint to be unsubstantiated and unfounded.

As a result, NCP Denmark initiated the third procedural step of the case-handling procedure; a preliminary investigation. In this preliminary investigation, NCP Denmark could not dismiss that non-observance of the OECD Guidelines took place during the operation and closure of DIT as regards APMM’s lack of risk-based due diligence of DIT, lack of issuing work certificates to

workers, issues related to harsh working conditions and that APMM may not have done enough to ensure meaningful stakeholder engagement with workers in DIT in general, as well as specifically in the period before, during and after the ending of DIT's operations.

However, the part of the complaint concerning forced labour was found undocumented. Concerning the parts about economic compensation and embezzlement of shareholder rights, NCP Denmark found that it does not have the competency to assess the legality of an agreement or a company's compliance with corporate law. As a result, these parts of the complaint were dismissed.

Consequently, NCP Denmark accepted the specific instance for further consideration and decided to offer mediation to the parties. As the offer of mediation was declined by APMM, NCP Denmark initiated an actual investigation of the complaint<sup>10</sup>.

The results of the investigation are described in this Final Statement. The entire body of documentation submitted by the parties – confidential as well as non-confidential – constitutes the basis for NCP Denmark's investigation and Final Statement.

## 4. NCP Denmark's examinations and findings

NCP Denmark has divided its analysis into the following four sections to determine APMM's observation of the OECD Guidelines:

### **4.1. The nature of the responsibility of a parent company vis-à-vis a subsidiary's activities.**

What are the expectations for APMM on how to observe the OECD Guidelines on responsible business conduct, when APMM engages in jointly controlled JVs operated by its subsidiary?

### **4.2. APMM's approach to responsible business conduct and due diligence.**

Has APMM carried out risk-based due diligence in accordance with the OECD Guidelines?

**4.3. APMM's leverage in DIT.** To what extent did APMM have leverage in DIT and did APMM apply its leverage to ensure responsible business conduct.

**4.4. APMM's involvement with potential and actual adverse impacts in DIT.** Has a potential or actual impact occurred in DIT as regards employment and working conditions during the operation of DIT and how has APMM sought to prevent and/or mitigate these potential or actual adverse impacts?

NCP Denmark assesses that the relevant chapters of the OECD Guidelines for this specific instance are Chapter I on Concepts and Principles (para. 2 and 4), Chapter II on General Policies (para. 10-14 and comm. 14, 19-22, 25) and Chapter V on Employment and Industrial Relations (Introduction, para. 3-4, 6 and comm. 47, 57, 59).

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<sup>10</sup>Cf. NCP Act, Section 7, Subsection 4.

## 4.1. The nature of the responsibility of a parent company vis-à-vis a subsidiary's activities

Chapter I, para. 4, of the OECD Guidelines states that:

“The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.”<sup>11</sup>

While acknowledging that multinational enterprises may coordinate their operations in various ways, the OECD Guidelines imply that all entities within a corporate group are expected to take action to observe the OECD Guidelines and have a shared responsibility to contribute to and ensure that due diligence is carried out in line with the OECD Guidelines. This entails that if a subsidiary of a parent company – where the parent company owns the majority of the subsidiary – is connected to an adverse impact, the parent company will be connected to the impact in a similar way. This conclusion has been repeated in several NCP cases where the shared responsibility of a parent company and the subsidiary vis-à-vis an adverse impact is examined.

In two specific instances against a Norwegian oil company, NCP Norway finds that the parent company is not considered to

have fewer responsibilities than its subsidiary vis-à-vis the potential impacts<sup>12</sup>. In a similar specific instance handled by the Dutch NCP, where a subsidiary of an oil company operates a JV in Nigeria, it is also mentioned that the same expectations to observe the OECD Guidelines apply to both the parent company and the subsidiary<sup>13</sup>. The Dutch NCP highlights that the headquarters of the parent company lays out the global policies for the corporate group and that the subsidiaries report back on policy implementation. In addition, the headquarters oversees the activities of the subsidiary.

In another specific instance, the Dutch NCP concludes that a parent company's argument – that a subsidiary's dealings with a local union is a local issue and therefore not relevant to the parent company – is not a valid reason to refuse engagement and that the expectations for enterprises under the OECD Guidelines may go beyond what is required of them under domestic law and regulation<sup>14</sup>.

The OECD Guidelines thus apply throughout corporate structures and geographies and – as the Australian NCP phrases it – the OECD Guidelines do not envisage different standards depending on a particular entity's management<sup>15</sup>. In other words, enterprises cannot choose to organise in a way that exempts them from responsibility. Thus, the parent company should ensure familiarity with the OECD Guidelines in its governance structure and would be expected to lay out global policies for the corporate group and ensure follow-ups on these policies.

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<sup>11</sup> OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 Edition, chapter I, para. 4; and OECD (2000): OECD Guidelines for Multinational Enterprises, Revision 2000, chapter I, para 3.

<sup>12</sup> National Contact Point for Responsible Business Norway (2018): Final Statement DNO – Industri Energi; and National Contact Point for Responsible Business Norway (2020): Final statement: Industri Energi and the Coordination Council of DNO Yemen Labor Union – DNO ASA II

<sup>13</sup> National Contact Point for Responsible Business Norway (2018): Final Statement DNO – Industri Energi; and National Contact Point for Responsible Business Norway (2020): Final statement: Industri Energi and the Coordination Council of DNO Yemen Labor Union – DNO ASA II

<sup>14</sup> National Contact Point for Responsible Business Conduct the Netherlands (2023): Final Statement FNS vs. Just Eat Takeaway.com

<sup>15</sup> Australian National Contact Point (2021): Final Statement in “Complaint by Andrew Starkey and Robert Starkey regarding ElectraNet Pty. Ltd.”

In this particular case, it means that APMM and APM Terminals jointly hold the responsibility to take action to ensure that the OECD's Guidelines are observed in the activities of the JV DIT. It would be expected that any entity or unit in APMM's governance structure should consider how to observe the OECD Guidelines. If APMM chooses to delegate due diligence duties to APM Terminals, it should be clearly documented, and it does not exempt APMM from carrying out its own risk-based due diligence as prescribed in the OECD Guidelines. The description and examination of the due diligence process will be further expanded in section 4.2.

Furthermore, as regards the expectation of the enterprises, the OECD Guidelines, Chapter II, state that enterprises should:

“11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products, or services by a business relationship.”<sup>16</sup>

Despite efforts to avoid and prevent adverse impacts, adverse impacts sometimes occur. When the enterprise has identified potential or actual impacts, e.g. through its due diligence processes, the enterprise is expected to address or mitigate the impacts, depending on its involvement with the impact, including to the extent possible, to use its leverage to effect change<sup>17</sup>. The notion of leverage will be further examined in section 4.3.

Thus, NCP Denmark expects APMM to carry out its own due diligence and facilitate that risk-based due diligence is carried out in its corporate group, including address-

ing any potential or actual impacts in its own operations and in its value chain. NCP Denmark expects APMM to document and follow up with subsidiaries if due diligence duties have been delegated.

Additionally, NCP Denmark expects that APMM uses its leverage vis-à-vis business partners, subsidiaries and JVs to prevent or mitigate potential or actual adverse impacts.

## 4.2. APMM's approach to responsible business conduct and due diligence

The complaint against APMM covers a long timeframe from the entering of the concession agreement in 2004 until the complaint was received in 2021. NCP Denmark recognises that there are different expectations for enterprises before and after the 2011 revision of the OECD Guidelines.

Therefore, for clarity purposes, the examination of APMM's approach to responsible business conduct and due diligence processes has been divided into three periods: The period from 2004 - 2011 (before due diligence obligations were incorporated into the OECD Guidelines), the period from 2011 to the ending of the concession agreement, and finally APMM's current approach to responsible business conduct and due diligence. For each period, NCP Denmark has used the version of the OECD Guidelines which applied at the time in question as the basis of the investigation.

### 4.2.1. The period from 2004 - 2011

Even though the responsibility to carry out due diligence was only introduced in the update of the OECD Guidelines in 2011, enterprises were still expected to adhere to the OECD Guidelines on various topics on responsible business conduct before that.

Amongst others, enterprises were to observe standards of employment and industrial relations not less favourable than

<sup>16</sup>OECD (2011): OECD Guidelines for Multinational Enterprises 2011 edition, chapter II, para. 11-12.

<sup>17</sup>OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 17 and 27.

those observed by comparable employers in the host country and to take adequate steps to ensure occupational health and safety in their operations<sup>18</sup>.

NCP Denmark has received documentation of a tripartite meeting in July 2005 with regional employment authorities concerning overtime work in DIT which led to recommendations on working conditions in DIT, including adhering to a 40-hour working week, to avoid unnecessary use of double shifts as well as making sure that overtime work was paid according to the contract (after 8 hours of work per day). In the agreement, staff representatives confirmed that the employees wished to work only 40 hours per week and to no longer work overtime. The agreement was signed by regional authorities, DIT's management as well as staff representatives. NCP Denmark has not received documentation that indicates that DIT did not live up to the tripartite agreement in the period in question.

In 2009 APMM became a member of UN Global Compact and has since then regularly updated the Maersk Principles of Conduct.

Based on the submitted documentation, NCP Denmark finds that non-observance of the OECD Guidelines as regards APMM's involvement in DIT during the period 2004-2011 cannot be substantiated.

#### **4.2.2. The period from 2011 to the end of the concession agreement**

The OECD Guidelines acknowledge and encourage the positive contributions that business can make to economic, environmental, and social progress, but also recognise that business activities may result in adverse impacts related to corporate governance, workers, human rights, the

environment, bribery, and consumers<sup>19</sup>.

Thus, with the 2011 update of the OECD Guidelines, Chapter II, enterprises should "Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed".<sup>20</sup>

The notion of due diligence is important. It is a process which can help enterprises identify, prevent or mitigate potential and adverse impacts related to the topics covered in the OECD Guidelines. Risk-based due diligence goes beyond simply identifying and managing material risks to the enterprise itself, but must take into account adverse impacts on people, the environment or society that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services through a business relationship<sup>21</sup>.

Furthermore, due diligence involves multiple processes and objectives, and it is an exercise that is ongoing, responsive, and changing as it includes feedback loops, e.g. from meaningful stakeholder engagement and follow-ups<sup>22</sup>.

##### **4.2.2.1. APMM's due diligence process**

APMM has informed NCP Denmark that it carried out its first human rights due diligence assessment in 2015. This first human rights due diligence assessment covered all of APMM's operations, including controlled and non-controlled JVs. APMM has provided documentation of the assessment showing that in 2015, 109 human rights issues were calibrated into 43 issues and then later 34 issues. The content of these issues is not described

<sup>18</sup> OECD (2000): OECD Guidelines for Multinational Enterprises, 2000 Edition, Chapter IV, para. 4.a and 4.b.

<sup>19</sup> OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 9.

<sup>20</sup> OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 9.

<sup>21</sup> OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 Edition, Chapter II, comm. 14.

<sup>22</sup> OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p.17, p. 32 and 50.

in the documentation NCP Denmark has received nor where in APMM's value chain the issues were identified. Five issues were prioritised for further action and one of the prioritised salient human rights risks was "Indirect hiring and recruitment – locally hired manning and crewing agencies, and local agents or JV partners". It seems, thus, as if APMM was aware of risks in relation to JVs.

It is not clear from the documentation, though, whether the identified risks concern potential or actual adverse impacts, nor if any potential or actual impacts were identified in DIT. It is indicated in the documentation received from APMM that – after the conclusion of the 2015 human rights due diligence assessment – the Maersk Human Rights Working Group was to support the relevant business units in order for them to develop and agree on action plans for the severe risks. APMM has explained that the development of action plans was integrated into each business unit's – in this case, APM Terminals' – sustainability plans. NCP Denmark has not received any documentation on this.

The documentation does not show whether stakeholders have helped inform the risk assessment, though it is mentioned that the methodology has been developed together with the Danish Institute for Human Rights.

APMM asserts that it has repeated its corporate human rights assessment in 2017, where labour relations for own employees and for third parties remained a priority human rights risk for the APMM group. NCP Denmark has not received this risk assessment, nor any documentation on how APMM has sought to mitigate and/or prevent any identified potential or actual impacts.

APMM also asserts how it has since 2015 used self-assessments as a tool to inform its labour rights assessments and to verify that APMM's business units comply with

its global policies. These self-evaluations must be completed by all fully or majority-controlled units every second or third year. In 2015 the labour rights self-assessment was distributed to all units, including non-controlled entities. It was then up to the business unit – in this case DIT – to make action plans and follow up on identified risks.

NCP Denmark has not received the self-assessment questionnaire filled in by DIT from 2015, as APMM asserts that – due to confidentiality concerns – APMM can not share documentation without DIT's consent since APMM, operating as APM Terminals, is no longer a shareholder of DIT. NCP Denmark has tried to contact DIT through contact information provided by APMM, but DIT has not responded to NCP Denmark's request for information. APMM has summarised the main findings (for more information on the findings, see section 4.4.1).

Based on the documentation received, APMM was made aware of some potential or actual impacts related to DIT in 2015. It has, however, not been documented if APMM or APM Terminals have taken any action to try to prevent and/or mitigate these risks or has carried out a more in-depth assessment of any perceived risks, for example through engaging stakeholders.

#### **4.2.2.2. Implementation of policies**

The OECD Due Diligence Guidance, which provides practical support to enterprises on the implementation of the OECD Guidelines, highlights that effective due diligence should be supported by efforts to embed responsible business conduct into policies and management systems and aims to enable enterprises to remediate adverse impacts that they cause or to which they contribute<sup>23</sup>. Policies on responsible business conduct can thus be seen as a tool to support effective due diligence by clarifying an enterprise's strategy, building staff capacity, ensuring availability

<sup>23</sup> OECD Due Diligence Guidance for Responsible Business Conduct, p. 15.



of resources and communicating a clear tone from the top<sup>24</sup>.

APMM asserts that its subsidiary, APM Terminals, used its influence to support DIT's adoption of a Code of Conduct, which was largely inspired by APM Terminals', and which was accompanied by DIT's own Internal Rulebook. NCP Denmark has received DIT's Code of Conduct from 2016, and the DIT Internal Rulebook from 2017, but has not been informed by APMM whether Codes of Conduct were adopted in DIT before that. To secure proper implementation of the Code of Conduct, APMM asserts, internal audits were carried out at least annually by DIT. NCP Denmark has not received any documentation on this process.

As mentioned earlier, APMM has developed a wide range of policies on responsible business conduct. The main part of these policies, however, has been published after the ending of the concession agreement and can thus be said to support APMM's current efforts to mitigate adverse impacts but have not provided any guidance on activities in DIT as DIT stopped operating the port of Douala-Bonaberi in 2019.

For the period from 2011 to the end of the concession agreement APMM has described its risk assessment and due diligence processes which do not include documentation of how APMM has tried to prevent and/or mitigate identified potential or actual impacts or otherwise accounted for how impacts are addressed. There has not been documented any stakeholder engagement as regards the risk assessments. APMM has explained how it has implemented a Code of Conduct in DIT from 2016. NCP Denmark has not received documentation on follow-ups of this Code of Conduct.

While acknowledging the international developments of the responsible business conduct framework from 2011 onwards and the maturing of the responsible busi-

ness conduct framework of APMM as a group in recent years, NCP Denmark finds that APMM did not sufficiently observe the OECD Guidelines Chapter II, para. 10, on carrying out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts as well as account for how these impacts are addressed in the period 2011 to the ending of the concession agreement.

#### **4.2.3. APMM's current approach to responsible business conduct**

APMM's approach to responsible business conduct and its due diligence process has evolved over time, especially in the later years after the end of the concession agreement. APMM asserts that going from a conglomerate to "One-Maersk" in 2016 has strengthened its responsible business conduct practices as functional expertise (i.e. legal, compliance, labour rights, etc.) and governance were centralised.

Today a wide array of policies guide APMM's approach to responsible business conduct, including:

- APMM Employee Code of Conduct (2019 and updated in 2022)
- APMM Global Employee Relations Commit Rule (2020)
- APMM Global Employee Relations Framework (2020)
- APMM Human Rights Policy Statement (2021)

In 2021 APMM also had a corporate-level human rights assessment done to redetermine its most salient human rights risks across its value chain. APMM summarises the identified issues as: "health & safety, working conditions (wages, benefits and hours), modern slavery and access to remedy".<sup>25</sup>

In 2022 APMM reports to have defined action plans as a response to the salient human rights risks. Furthermore, APMM

<sup>24</sup> OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 16.

<sup>25</sup>A. P. Moller - Maersk (2022): Sustainability Report 2021, p. 43.

asserts that it has developed human rights training and focused on strengthening key processes that support the human rights due diligence framework in 2022<sup>26</sup>. NCP Denmark has not received documentation of action plans, implementation of action plans or follow-ups on human rights risks.

Furthermore, APM Terminals adopted a JV framework in 2020. A largely similar framework was adopted by APMM in 2023. The 2023 JV Framework contains a structured approach to the governance of JVs as regards the selection, obligations, qualification and training of management and board members in JVs. The JV Framework includes controlled, jointly controlled and non-controlled JV's. Furthermore, the JV framework clarifies that a compliance program should – as a minimum – include:

- Competition
- Anti-corruption
- Sanctions & Export Control

NCP Denmark notes that the minimum requirements of the compliance program do not include human and labour rights, and these topics are not mentioned as part of the training and qualification of appointed management and board members either. APMM asserts that these topics are addressed elsewhere, among others as part of its Employee Handbook and that although it is not covered in the JV Framework, APMM still tries to discuss human rights topics with business partners in JVs.

According to the 2023 JV Framework, APMM will conduct JV entity risk assessments every second year and conduct partner risk assessments every third year.

APMM has documented how it has several group policies in place today. APMM has conducted another human rights assess-

ment in 2021. APMM has not documented how it addresses potential and actual impacts and ensures follow-ups on such impacts. In recent years APMM as a group has put together a new JV framework which may allow for better implementation of policies and handling of risks in the future of APMM operations.

### 4.3. APMM's leverage in DIT

The OECD's Due Diligence Guidance explains how the primary goal of due diligence is prevention<sup>27</sup>. While the enterprise may not be able to address the impact itself, it should seek to influence its business relationship to prevent or mitigate the adverse impacts<sup>28</sup>.

The OECD Guidelines, Chapter II, state that enterprises should:

“In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners (...) to apply principles of responsible business conduct compatible with the Guidelines.”<sup>29</sup>

Meeting the OECD Guidelines on preventing or mitigating adverse impacts would therefore

“entail an enterprise [...], as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.”<sup>30</sup>

In other words, enterprises are expected to use their leverage. According to the OECD Guidelines:

“Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm.”<sup>31</sup>

<sup>26</sup>A. P. Moller - Maersk (2023): Sustainability Report 2022, p. 57.

<sup>27</sup>OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 74.

<sup>28</sup>OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 77.

<sup>29</sup>OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 edition, chapter II, para. 13.

<sup>30</sup>OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 edition, chapter II, comm 20.

<sup>31</sup>OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 edition, chapter II, comm. 19.

Enterprises can apply leverage in multiple ways to promote responsible business conduct, but the appropriate approach to using leverage is dependent, among other things, on the degree of leverage an enterprise possesses with its business relationship<sup>32</sup>. In the following, APMM's degree of leverage will be assessed. Then NCP Denmark will examine APMM's use of leverage in DIT.

#### **4.3.1. APMM's degree of leverage**

Since 2014 the ownership percentages in DIT have been divided between APMM, operating as APM Terminals (44 per cent), Bolloré (44 per cent), the Port Authority of Douala (6 per cent) and private shareholders (6 per cent). The board members of DIT are listed in a report from DIT's General Assembly in June 2020. This report lists the countries in which the board members live along with their names and/or a company. Four board members are listed as residing in Denmark and these board members were all appointed by either APMM or APM Terminals.

Further, the General Director of DIT was appointed by APM Terminals. Four additional board members are listed as residing in France and at least one of them is according to the report representing Bolloré, whereas the other three are listed as representing other companies. APMM has asserted that Bolloré appointed the CFO of DIT. The last three board members are listed as residing in Cameroon. One of them represented the Port Authority of Douala, one of them is listed as representing a company, and the last person, who was also a member of parliament in Cameroun, was the Chair of the Board.

This management structure indicates that APMM, Bolloré and the remaining group of shareholders, each held one high-level position as well as board members in DIT. This is also in line with what both parties have explained to NCP Denmark.

APMM's ownership percentage and high-level position in DIT indicate a substantial degree of leverage.

However, APMM's degree of leverage may have been limited by the Chair of the Board, who was a member of parliament, as well as the Port Authority of Douala's presence in the JV and on the board. As a semi-public authority, the Port Authority of Douala has ties to the government of Cameroon, and combined with the fact that the Port Authority of Douala is the administrative body of the port, in which DIT was operating, it might have been difficult to take up any potential systemic issues. Furthermore, APMM had signed a fixed-term concession agreement on operating the port of Douala for 15 years. Therefore, it might have been difficult for APMM to end the business relationship, which would otherwise have increased the effectiveness of APMM's leverage<sup>33</sup>.

NCP Denmark has taken the Port Authority of Douala's involvement in DIT and the fixed-term concession agreement into account as well as APMM and APM Terminals' ownership percentages and board positions. Against this background, NCP Denmark assesses that APMM had a substantial degree of leverage in DIT, which NCP Denmark expects APMM to use.

#### **4.3.2. APMM's use of leverage**

The OECD Due Diligence Guidance suggests several ways for the enterprise to use its leverage. The suggestions include engagement with the business relationship to urge them to prevent and/or mitigate impacts at an operational, senior management and/or board level to express views on issues related to responsible business conduct, using voting rights to express views on issues related to responsible business conduct, requesting information to obtain relevant information and make expectations clear, express support for implementation of policies and training etc.<sup>34</sup>

<sup>32</sup> OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 78.

<sup>33</sup> OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 80-81.

<sup>34</sup> OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 75-78.

Furthermore, the OECD Due Diligence Guidelines explain that enterprises may also pursue a combination of approaches in applying leverage<sup>35</sup>.

The OECD Guidelines and the accompanying Due Diligence Guidance furthermore prescribe how to responsibly disengage. According to the OECD Guidelines Chapter II, comm. 22:

“The enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage.”<sup>36</sup>

Furthermore, the Due Diligence Guidance suggests that enterprises should:

“Reassess impacts [...] prior to major decisions or changes in the activity [...], in response to or in anticipation of changes in the operation environment”.<sup>37</sup>

NCP Denmark uses these general suggestions as the starting point for the assessment of APMM’s use of leverage in DIT. APMM asserts that it has applied leverage to introduce a Code of Conduct in DIT and that APM Terminal’s Code of Conduct serves as a basis for DIT’s Code of Conduct. APMM further asserts that APMM has used its influence via its board member and engaged with its JV partners to share best practices and support respect for human rights, including labour rights.

NCP Denmark has received documentation of DIT’s Code of Conduct from 2016 and finds it to be similar to APM Terminals’ Code of Conduct from 2016. Furthermore, DIT’s Code of Conduct refers to APM Terminals and the Maersk Group’s Whistleblower system. Besides introducing DIT’s Code of Conduct in 2016, NCP Denmark has not received documentation of how APMM has tried to use its leverage as to prompt either APT Terminals or DIT directly to take

notice of, identify and/or prevent potential adverse impacts or follow up on the implementation of the Code of Conduct.

NCP Denmark has received documentation suggesting that APMM was notified of labour rights risks in DIT in 2015 (see section 4.4.1.). NCP Denmark would – based on the OECD Due Diligence Guidance – expect engagement in these issues by APMM. The appropriate approach will depend on the impact in question but could for example include raising concerns at General Assemblies, raising awareness of the importance of observance of the appropriate international standards, including the OECD Guidelines and the ILO Declaration on Fundamental Principles and Rights at Work, or by giving suggestions to APM Terminals and DIT to carry out a deeper risk assessment when APMM was notified of the risks in DIT. Furthermore, NCP Denmark expects APMM to track or document some of the efforts, interventions or activities, APMM may have carried out to support the observance of the OECD Guidelines as regards working conditions in DIT.

NCP Denmark has been notified by APMM that the closure of terminals in APMT is reported to APMM, as such a case exceeds the financial threshold for reporting. In this case – based on the OECD Due Diligence Guidance – NCP Denmark would expect APMM to revisit the risk assessment to ensure a responsible disengagement or to use its leverage to prompt DIT to revisit the impact assessment in light of the potential ending of the operation of DIT. If APMM had carried out its due diligence assessment considering this new situation, APMM might have identified potential adverse impacts for workers, which could have enabled APMM to better prevent or mitigate these impacts. NCP Denmark has not received documentation, and APMM has not in other ways made it probable that APMM has used its leverage to influence

<sup>35</sup> OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 78.

<sup>36</sup> OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 Edition, chapter II, comm. 22. Further elaborated in comm. 59.

<sup>37</sup> OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 26.

DIT to ensure responsible disengagement.

NCP Denmark finds, that APMM had a substantial degree of leverage in DIT, and APMM is expected to use its leverage. Besides introducing DIT's Code of Conduct in 2016, the documentation does not show that APMM has tried to use its leverage as to prompt either APT Terminals or DIT to take notice of, prevent and/or mitigate adverse impacts or follow up on the implementation of the code of conduct.

Therefore, NCP Denmark finds that APMM did not sufficiently observe the OECD Guidelines, Chapter II, para. 13, as to encourage business partners to apply principles of responsible business conduct compatible with the OECD Guidelines by using its leverage and consequently did not sufficiently observe the OECD Guidelines as to prevent any potential adverse impact in DIT, cf. para. 12.

#### **4.4. APMM's involvement with potential and actual adverse impacts in DIT**

For clarity purposes, the examination of APMM's involvement with potential or actual impacts as regards employment and working conditions in DIT has been divided into three sections: Working conditions in DIT, consultation with workers and reasonable notice of closure of DIT's activities and, lastly, issuing of work certificates.

##### **4.4.1. Working conditions in DIT**

Chapter V of the OECD Guidelines outlines the expectations of the OECD Guidelines regarding employment and industrial relations. Enterprises should:

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

b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best

possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise but should be at least adequate to satisfy the basic needs of the workers and their families.

c) Take adequate steps to ensure occupational health and safety in their operation.”<sup>38</sup>

The complainant includes two medical reports, pay slips and an Excel spreadsheet with overtime working hours as well as two testimonies to document the harsh working conditions in DIT. The medical reports cover health issues in DIT in 2018 and 2019 respectively and are carried out by a company called MEDICARE. The reports among other health issues list injuries and drug prescriptions on-site in DIT. NCP Denmark has not been able to confirm the content of the reports, and it has not been possible to compare them with other medical reports to assess the working conditions in port terminals.

The pay slips cover all months from December 2018 to November 2019. These pay slips do not list overtime working hours. The spreadsheet lists the alleged number of overtime working hours for 365 employees for each month in 2019, but the spreadsheet does not mention DIT, and it is not clear how the information was gathered.

The testimonies from two former employees mention the physical challenges and illnesses the two employees have suffered because of the work they performed at DIT. The testimonies describe how the employees were expected to work overtime and were threatened with dismissal if they did not comply. One of the testimonies mentions that the employees had a dialogue with DIT through the worker representative and that a report with proposals on improvements (such as working hours should

<sup>38</sup> OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 Edition, chapter V, para. 4. Further elaborated in comm. 57.

be 8 and not 12) was made, but that the proposals were never implemented in DIT. The identities of the two former employees are confirmed by submittance of passport information.

NCP Denmark takes note of the documentation but does not find that it is sufficient to establish non-observance of the OECD Guidelines, since the content of the medical reports and the spreadsheet of the overtime working hours cannot be confirmed.

From APMM, we have received the following summary of the 2015 Labour Rights self-assessment from DIT:

“1. health & safety procedures are in place, but ongoing training of workers needs to continue to ensure cultural practices changed,

2. salary levels were compliant with local laws but no “living wage” baseline for their workforce and looking at tools,

3. not all managers were following the overtime payment process.”<sup>39</sup>

These results indicate that APMM was made aware of labour rights issues in DIT through the Labour Rights self-assessment and that health and safety issues were to be addressed by DIT through training. APMM has asserted that its enterprise could not intervene in the handling of these risks as a non-controlling JV partner and that the responsibility of intervention thereby laid with DIT. NCP Denmark has not received documentation on the abovementioned training and what DIT did to address the fact that all managers did not follow the overtime payment process. NCP Denmark notes that the results from the 2015 Labour Rights self-assessment serve as a relevant example of a situation where APMM could have used its leverage vis-à-vis APM Terminals and DIT, cf. section 4.3.

This case has been difficult to assess for NCP Denmark. NCP Denmark recognises that health and safety issues are known risks working in port logistics<sup>40</sup>. However, based on the documentation received, it is not clear to NCP Denmark whether the standards of employment were worse in DIT than with comparable employers, cf. the 2011 edition of the OECD Guidelines, as well as whether DIT has taken adequate steps to ensure health and safety onsite.

DIT has held meetings with regional authorities throughout the years which, together with DIT’s labour rights self-assessment, indicate that there have been issues in DIT with overtime payments, but the documentation submitted cannot sufficiently substantiate that DIT has failed to implement the recommendations from the Regional Labour Authorities on compensation for overtime work.

NCP Denmark has dedicated much time and resources to research relevant information from a variety of experts both in Denmark and internationally as well as from both parties, who have willingly tried to comply with NCP Denmark’s requests for information. Although NCP Denmark’s investigations provided valuable insights, they did not provide information of decisive character.

NCP Denmark has taken note of the documentation presented by both parties. It has been difficult to ascertain comparable standards of employment, and it is unclear to NCP Denmark to what degree the operations and the situation in DIT were affected by the JV’s other shareholders. At the same time, it seems as though some initiatives were taken to countermeasure potential adverse impacts in DIT through training, although it is not documented. Notwithstanding the abovementioned documentation and taking into account the complex nature of the case, NCP Denmark finds that non-observance of the

<sup>39</sup> Mail from APMM received on 11 November 2023

<sup>40</sup> International Labour Organization (ILO). [<https://www.ilo.org/global/industries-and-sectors/shipping-ports-fisheries-inland-waterways/ports/lang--en/index.htm>]

OECD Guidelines Chapter V, para. 4, as regards working conditions in DIT cannot be substantiated.

#### **4.4.2. Consultation and notification of workers**

The OECD Guidelines, Chapter V, para. 3, state that enterprises should:

“promote consultation and cooperation between employers and workers (...) on matters of mutual concern”.

Further, the OECD Guidelines, Chapter V, para. 6, state that enterprises should

“particularly in the case of closure of an entity (...) provide reasonable notice of such changes to representatives of the workers (...) and co-operate with worker representative and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects”.<sup>41</sup>

The complainant asserts that DIT refused to engage in constructive dialogue with workers and worker representatives both as regards the poor working conditions in general as well as in order to mitigate adverse impacts related to the ending of the concession agreement to the maximum extent practicable. The complainant further states that DIT failed to notify openly and timely about the changes in the operation of the terminal and the expected dismissals and layoffs.

APMM asserts that DIT was committed to engaging openly with worker representatives to support a smooth transition to the new owner of the terminal, which included close dialogue with workers. APMM emphasises the difficult circumstances DIT had to navigate during the ending of the concession agreement, which was set to expire on 31 December 2019. The period leading up to the end of the concession agreement was characterised by uncertainty for DIT and its workers since DIT

was excluded from submitting a tender for continuing the operations of the port of Douala-Bonaberi, which led DIT to start court proceedings against the Port Authority of Douala. According to APMM, this all led to a tumultuous ending on the day of the contract expiration, where DIT’s management was escorted out of the terminal at gun point. All assets and systems were taken into possession by the Port Authority of Douala, and DIT was not able to access them.

Based on the parties’ submitted documentation, NCP Denmark has summarised the events leading up to the end of the concession agreement in a timeline in the annex.

There have been regular meetings with DIT and worker representatives throughout the years, but NCP Denmark has not received documentation of the content of the meetings. NCP Denmark has therefore not been able to assess whether the meetings provided meaningful opportunities for workers’ views to be taken into account<sup>42</sup>. As regards consultation and cooperation with workers in relation to the ending of the concession agreement, NCP Denmark has received documentation of several meetings and letters between DIT and worker representatives during 2019. In February 2019, worker representatives and the DIT management met to discuss a ‘Memorandum of Understanding’ on how to deal with the social aspect in anticipation of any non-renewal of the concession agreement. In April worker representatives asked the Cameroonian Ministry of Labour and Social Security to take part in the negotiations between DIT and the workers. From September to December 2019 NCP Denmark has received documentation of four meetings between DIT’s management, the worker representatives and the Ministry of Labour and Social Security. On 3 December 2019 worker representatives stated in a letter to DIT that none of the meetings allowed to examine the Mem-

<sup>41</sup>OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 Edition, chapter V, para. 3 and 6.

<sup>42</sup>Cf. OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 Edition, chapter II para. 14 and comm. 25.

orandum of Understanding presented by the worker representatives and that no counterproposals were made by DIT. Besides the abovementioned meetings, DIT discussed how to ensure jobs for the workers after the concession agreement with the Port Authority of Douala in July and December 2019.

Even though DIT and its workers did not reach an agreement as regards a Memorandum of Understanding, NCP Denmark cannot establish non-observance of the OECD Guidelines as to Chapter V, para. 3, on consultation and co-operation with workers on matters of mutual concern, as several meetings with DIT and its workers are documented.

As regards reasonable notice of the closure of DIT to workers, NCP Denmark has received documentation showing that on 5 December 2019, 26 days before the expiration of DIT's concession agreement, the Port Authority of Douala announced that it would continue operating the terminal after the ending of DIT's concession agreement.

The Port Authority of Douala and DIT met several times during December in an effort to organise the end of the concession. On 16 December DIT sent a staff notice ensuring that the workers' employment would continue with the new operator. On 23 December 2019 the Port Authority of Douala notified that it would requisition DIT's employees. On the same day the Cameroonian Ministry of Labour and Social Security, DIT's management and worker representatives held their last meeting. The next day, on 24 December 2019, DIT sent a staff notice to its workers emphasising that each employee should be free to decide whether or not to work for the potential new operator, in keeping with fundamental individual freedoms. While this is not a long notice, NCP Denmark

notices that DIT was only told on 5 December 2019 that the Port Authority of Douala would continue the operations of the port.

NCP Denmark recognises that the workers were informed of the closure of DIT relatively late, as the notice was given during the same month as DIT's concession agreement terminated. However, NCP Denmark also recognises that DIT itself was only given one month's notice, when the Port Authority of Douala informed that it would continue the operations. NCP Denmark therefore finds that non-observance of the OECD Guidelines as regards Chapter V, para. 6, on reasonable notice cannot be substantiated, as DIT provided as reasonable notice of the closure of DIT to the workers as possible.

#### **4.4.3. Work certificates**

The OECD Guidelines, Chapter V, para. 6, state that enterprises should

“co-operate with the worker representatives (...) so as to mitigate to the maximum extent practicable adverse effects”<sup>43</sup>

Further, the introduction of Chapter V emphasises that this should be done

“within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards”<sup>44</sup>,

which is in line with Chapter I, para. 2, stating that

“Obeying domestic laws is the first obligation of enterprises”<sup>45</sup>

NCP Denmark notices that work certificates are required by law in Cameroon. However, it is beyond the remit of NCPs to make judgements based on applicable law. To assess the significance of work certificates, NCP Denmark has paid attention

<sup>43</sup> OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 Edition, chapter V, para. 4.a and 6.

<sup>44</sup> OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 Edition, chapter V, introduction. Further elaborated in comm. 47.

<sup>45</sup> OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 Edition, chapter I on, para. 2.



to DIT's Internal Rulebook, which states that DIT requires work certificates from previous employers upon recruitment of new employees. Furthermore, it is stated in DIT's Internal Rulebook that when an employee stops working with DIT, a work certificate will be issued in accordance with legal provisions in force. Work certificates therefore seem to be significant for workers to apply for new jobs and without work certificates, workers are left in a potentially vulnerable situation when it comes to their possibilities of employment elsewhere. This is also in line with what the complainant has expressed to NCP Denmark.

NCP Denmark has received documentation that DIT did not issue work certificates to its employees<sup>46</sup>. As a result, DIT received an order to issue work certificates on 9 January 2020. However, APMM asserts that DIT could not access the workers' documents after the Port Authority of Douala requisitioned all of DIT's assets, including work certificates on 31 December 2019 which made DIT unable to issue the work certificates.

NCP Denmark finds that the lack of issuing work certificates is an adverse impact on workers. NCP Denmark at the same time recognises the difficult circumstances DIT had to navigate as all of DIT's assets, including workers' documents, were requisitioned by the Port Authority of Douala. It is therefore unclear how APMM could have mitigated the adverse impact after the requisition.

NCP Denmark therefore finds that the documentation cannot substantiate that APMM was non-observant of the OECD Guidelines as regards Chapter V, para. 6, as the specific circumstances hindered APMM in mitigating this adverse impact.

## 5. Conclusion

In this final statement, NCP Denmark has examined documentation provided by the complainant and APMM, who have both willingly responded to NCP Denmark's requests for information. Furthermore, NCP Denmark has gathered information from a variety of experts both in Denmark and internationally in its examination. Based on the extensive material, NCP Denmark has divided its examination into four sections.

Firstly, NCP Denmark has examined the expectations for a parent company vis-à-vis a subsidiary's activities. On a general note, the OECD Guidelines' expectation for a parent company vis-à-vis a subsidiary's activities outlines that parent companies and subsidiaries share the responsibility to take actions to observe the OECD Guidelines. This expectation applies to all company structures, so that enterprises cannot choose to organise in a way that exempts them from responsibility. Thus, in this specific case, NCP Denmark expects that APMM carries out its own due diligence and facilitate that risk-based due diligence is carried out in its corporate group, including addressing any potential or actual impacts in its own operations and in its value chain. Further, NCP Denmark expects APMM to document and follow up with subsidiaries if due diligence duties have been delegated as well as to use its leverage to effect change.

Secondly, NCP Denmark has examined APMM's approach to responsible business conduct and due diligence. NCP Denmark finds that APMM's approach has evolved during the 15 years of the concession agreement from 2004 to 2019 and further from 2019 until today.

For the period from 2004 to 2011 NCP Denmark finds that the documentation does not substantiate non-observance of the OECD Guidelines as regards APMM's involvement in DIT.

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<sup>46</sup>NCP Denmark notes that the complainant informed NCP Denmark that DIT has now issued work certificates to some of the former employees.

For the period from 2011, when due diligence obligations were introduced in the OECD Guidelines, until the end of the concession agreement NCP Denmark finds that APMM did not sufficiently observe the OECD Guidelines Chapter II, para. 10, on carrying out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts as well as account for how these impacts were addressed.

Today APMM has documented that the group has several policies in place and that APMM carried out a human rights assessment in 2021. APMM has not documented how it addresses potential and actual impacts and ensures follow-up on such impacts. In 2023 APMM launched a JV Framework which may allow for better implementation of policies and handling of risks in APMM's future JV activities.

Thirdly, NCP Denmark has examined APMM's leverage in DIT. NCP Denmark finds that APMM had a substantial degree of leverage in DIT which NCP Denmark expects APMM to use. Besides introducing DIT's Code of Conduct in 2016, the documentation does not show that APMM has tried to use its leverage to prevent and/or mitigate adverse impacts or follow up on the implementation of the Code of Conduct. NCP Denmark has not received documentation and APMM has not in other ways made it probable that it has used its leverage to influence DIT to ensure responsible business conduct. Therefore, NCP Denmark finds that APMM did not sufficiently observe the OECD Guidelines, Chapter II, para. 13, as to encourage business partners to apply principles of responsible business conduct compatible with the OECD Guidelines by using its leverage and, consequently, did not sufficiently observe the OECD Guidelines as to prevent any potential adverse impact from occurring in DIT, cf. para. 12.

Lastly, NCP Denmark has examined APMM's involvement with potential and actual adverse impacts in DIT. When it comes to working conditions in DIT, NCP Denmark appreciates the very difficult nature of

documenting these parts of the complaint and takes into account the complex nature of the case. NCP Denmark finds that non-observance of the OECD Guidelines Chapter V, para. 4, cannot be substantiated as regards employment standards and working conditions in DIT. When it comes to consultation and co-operation with workers, NCP Denmark cannot establish non-observance of the OECD Guidelines of Chapter V, para. 3, as several meetings with DIT and its workers are documented. When it comes to reasonable notice of workers of the closure of DIT, NCP Denmark finds that non-observance of the OECD Guidelines as regards Chapter V, para. 6, cannot be substantiated since DIT provided as reasonable notice to the workers as possible. NCP Denmark finds that the lack of issuing work certificates to workers at the end of the concession agreement was an adverse impact on workers. However, NCP Denmark recognises that all of DIT's assets, including workers' documents, were requisitioned by the Port Authority of Douala upon the end of the concession agreement.

On that ground, NCP Denmark finds that it cannot be substantiated that APMM was non-observant of the OECD Guidelines as regards Chapter V, para. 6, as the specific circumstances hindered APMM in mitigating this adverse impact.

## 6. Recommendations

The aim of recommendations in the final statement is twofold: To suggest actions the parties can take in order to resolve the issues, and in particular, to suggest actions that the enterprise can undertake to help ensure better observation of the OECD Guidelines.

As regards resolving the issues at hand, i.e. potential adverse impacts as regards working conditions in DIT and any outstanding issues following the ending of the concession agreement, NCP Denmark notes that APMM is no longer involved with DIT. Based on this, NCP Denmark does not put forward recommendations to APMM

vis-à-vis DIT as APMM has no leverage left in DIT.

The recommendations from NCP Denmark thus aim at ensuring better observance of the OECD Guidelines. Since the complaint was submitted, APMM's approach to responsible business conduct and due diligence has evolved. APMM has documented how it has several group policies in place today and has described that going from a conglomerate to "One-Maersk" in 2016 has helped them as functional expertise (i.e. legal, compliance, labour rights, etc.) and governance were centralised.

NCP Denmark finds it positive that APMM in 2023 has adopted a JV Framework which entails a more structured approach to the governance of JVs, as regards – among other topics – the selection, obligations, qualification and training of management and board members in JVs. NCP Denmark appreciates the fact that APMM has reviewed its internal procedures. However, NCP Denmark finds that responsible business conduct practices could be better integrated and emphasised in the framework.

Therefore, NCP Denmark recommends that APMM reviews its JV Framework to include labour rights and human rights in alignment with the OECD Guidelines. Moreover, NCP Denmark recommends that board members and management members appointed to JVs are systematically trained in risk-based due diligence practices, as well as provided with tools and guidance on how to respond to actual or potential adverse impacts and engage in a meaningful way with stakeholders to inform risk assessments. This should also include how to be aware of and use the leverage of APMM in JVs.

Furthermore, NCP Denmark recommends that APMM considers how to address the use of leverage in the JV Framework. NCP Denmark encourages APMM to implement practices to analyse its degree of lever-

age in various operations and business relationships when APMM engages in new activities and considers a strategy for how to use that leverage to promote responsible business conduct practices. If APMM assesses that it does not have sufficient leverage, APMM should consider ways to build additional leverage with the business relationship which can be achieved through outreach from senior management, commercial incentives, engagement with governments or industry collaborations. In this process, APMM is encouraged to track its use of leverage, e.g. by saving minutes from board meetings.

As regards the due diligence obligations, NCP Denmark wishes to emphasise that risk-based due diligence is a dynamic and ongoing process. This means that actual and potential impacts must be reassessed at regular intervals as needed, such as prior to major decisions or changes in activities, in response to or in anticipation of changes in the operating environment and periodically throughout the lifecycle of an activity or relationship.

NCP Denmark recommends that all companies regularly review their due diligence procedures to ensure systematic integration of risk-based due diligence in accordance with the OECD Guidelines. This includes all six steps of risk-based due diligence. In this regard, companies may find inspiration in the OECD Due Diligence Guidance for Responsible Business Conduct (2018).

As regards the implementation of due diligence processes in APMM, its practices have evolved since the complaint was submitted. However, in APMM's sustainability reports from 2021 and 2022, it is still not clear to NCP Denmark how and when APMM conducts due diligence, i.e. what its so-called red-flag system is<sup>47</sup>, as well as how APMM addresses potential and actual impacts and ensures to follow up on such impacts.

<sup>47</sup> OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct, p. 75.

NCP Denmark notes that the OECD Due Diligence Guidance has clear suggestions as to what communication on due diligence processes should entail<sup>48</sup>. NCP Denmark encourages APMM to pay particular attention to communicating externally on:

- Significant adverse impacts or risks identified,
- How these impacts have been addressed and prioritised as well as prioritisation criteria,
- Actions taken to prevent or mitigate those risks,
- Estimated timelines and benchmarks for improvement (where possible), and
- Measures to track implementation and results.

NCP Denmark recommends that APMM reviews its communication on due diligence according to the OECD Due Diligence Guidance as these are important elements in the due diligence process in order to build trust in its actions and decision-making and to demonstrate good faith. This could for example be done by adopting a Due Diligence Policy or by publishing all steps of APMM's due diligence process. Furthermore, NCP Denmark notes that with the update of the OECD Guidelines in June 2023, the understanding that risk-based due diligence entails a six-step framework has been further highlighted. Enterprises are henceforth expected to observe the updated OECD Guidelines.

## 7. Follow-up

As an important part of the NCP's non-judicial role, follow up on recommendations supports the effectiveness of the specific instance process.

12 months after the publication of this Final Statement, NCP Denmark will request that APMM provides NCP Denmark with a description and documentation on how APMM has approached the recommendations made by NCP Denmark on integrating Human Rights and Labour Rights in the JV Framework, training key personnel in the use of leverage and risk assessments as well as strengthening APMM's risk mitigation and communication on its due diligence processes. NCP Denmark will assess APMM's submission and publish a follow-up Statement.

With this Final Statement, NCP Denmark closes the specific instance procedure.

NCP Denmark would like to express its appreciation to both parties for participating in good faith in the procedure.

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<sup>48</sup> OECD (2018): OECD Due Diligence Guidance on Responsible Business Conduct, p. 33.

## 8. Annex

### 8.1 Overview of NCP Denmark's activities

Below is a chronological, non-exhaustive overview of activities classified according to the five steps of the Danish Case-Handling Procedure.

Date	Activities
<b>Initial Assessment</b>	
19 October 2021	NCP Denmark received the complaint.
3 December 2021	The complaint is accepted for further handling
<b>Bilateral dialogue without the involvement of NCP Denmark</b>	
14 December 2021	Parties are informed of the procedural step.
11 January 2022	Information meeting with the complainant.
27 January 2022	Information meeting with respondent.
10 February 2022	Respondent declines to engage in bilateral dialogue with the complainant.
<b>Preliminary Investigation</b>	
9 March 2022	Parties are informed about NCP Denmark's initiation of the preliminary investigation.
19 April 2022	First round of documentation submitted by the respondent.
10 May 2022	First round of documentation submitted by complainant.
30 September 2022	Second round of documentation submitted by complainant.
11 November 2022	Telephone meeting with respondent regarding the Danish Public Access to Information Act.
14 November 2022	Second round of documentation submitted by respondent.
28 November 2022	Third round of documentation submitted by complainant.
15 December 2022	Meeting with respondent presenting submitted documentation.
19 December 2022	NCP Denmark requests further documentation from respondent.
17 January 2023	Fourth round of documentation submitted by complainant.
6 March 2023	Meeting with complainant presenting submitted documentation.
25 April 2023	Both parties are informed of the partial procedural decision of NCP Denmark pursuant to the preliminary investigation and are given the possibility to comment on the draft preliminary investigation.

25 April 2023	Both parties are informed of the partial procedural decision of NCP Denmark pursuant to the preliminary investigation and are given the possibility to comment on the draft preliminary investigation.
6 June 2023	Final version of the preliminary investigation issued.
<b>Mediation</b>	
7 June 2023	Offer of mediation from NCP Denmark.
14 June 2023	Respondent declines NCP Denmark's offer of mediation.
21 June 2023	Public statement regarding the specific instance is published by NCP Denmark stating that the complaint is accepted for actual investigation.
<b>Actual Investigation</b>	
September- November 2023	Meetings with external experts on specific topics in the complaint.
30 October 2023	Meetings with respondent presenting the final round of documentation.
21 November 2023	Meeting with complainant presenting the final round of documentation.
12 December 2023	Meeting with respondent going through confidential documentation.
21 March 2024	Draft final statement shared with parties for comments.
24 April 2024	Final version sent to parties.
6 May 2024	Publication of the final statement on the NCP Denmark's website and closure of the specific instance

## 8.2 Events in connection with the ending of the concession agreement

Below is a chronological list of the documentation that NCP Denmark has received of the events in connection with the ending of the concession agreement.

Timeline: Events in connection with the ending of the concession agreement	
12 January 2018	The Port Authority of Douala Launched a new tender procedure for the renovation, modernisation, operation and maintenance of the container terminal of the Douala-Bonaberi port consisting of two phases. In the first phase, candidates were shortlisted to submit tenders and the second phase concerned the submission of tenders.
During February 2019	DIT's application for operating the port of Douala-Bonaberi was rejected.
6 February 2019	At a monthly meeting between worker representatives and the general management of DIT, worker representatives proposed a Memorandum of Understanding on how to deal with the social aspect, including pay for overtime work, in anticipation of any non-renewal of the concession to DIT.
12 April 2019	Worker representatives asked the Ministry of Labour and Social Security to take part in the negotiations between DIT and the workers. The employees attached a draft of a Memorandum of Understanding.
17 June 2019	Due to the exclusion of DIT in the tender procedure, DIT filed an assertion before the ICC Arbitral Tribunal.
12 July 2019	DIT sent a letter to the Port Authority of Douala to discuss the transfer of the workers to "deal under the best possible conditions with the transfer of the Douala container terminal to the next operator".
5 September 2019	The Port Authority of Douala published the results of the call for tenders and pronounced the provisional award of the Douala container terminal concession to a competitor to DIT.
26 September 2019	Three-party meeting between the Ministry of Labour and Social Security, DIT and worker representatives.
6 October 2019	Three-party meeting between the Ministry of Labour and Social Security, DIT and worker representatives.
23 October 2019	The Minister of State Secretary General of the Presidency asked the Managing Director of the Port Authority of Douala to suspend the signing of the new concession agreement with the competitor until the conclusion of the legal proceedings.
12 October 2019	Three-party meeting between the Ministry of Labour and Social Security, DIT and worker representatives.
During December 2019	The Port Authority of Douala and DIT met several times during December in an effort to organise the end of the concession.
3 December 2019	Worker representatives stated in a letter to DIT that none of the three-party meetings allowed to examine the Memorandum of Understanding and that the workers did not receive a counter-proposal of the Memorandum of Understanding.

5 December 2019	The Port Authority of Douala announced that it would continue the operation of the port terminal of Douala from 1 January 2020.
16 December 2019	DIT sent a staff notice to ensure the workers that their employment would be transferred to the new operator.
23 December 2019	The Port Authority of Douala notified DIT that it would requisition the employees.
23 December 2019	Three-party meeting between the Ministry of Labour and Social Security, DIT and worker representatives.
24 December 2019	DIT sent a staff notice to express that “the management feels that each employee should be free to decide whether or not to work for the potential new operator, in keeping with fundamental individual freedoms”.
30 December 2019	The Authority notified DIT that it would requisition all of DIT’s assets.
31 December 2019	The concession agreement formally ended. The Port Authority of Douala, accompanied by bailiffs and law enforcement officers, sealed off the premises and assets of DIT. According to APMM, DIT has not been able to access its offices since.
9 January 2020	DIT received an order to issue, among others, pay slips and work certificates from lawyers and a court in Douala.
10 January 2020	In a letter from DIT’s management to the workers, the workers were given a time and location to pick up their pay slips for December 2019.
1 November 2021	The ICC Arbitral Tribunal ruled in favour of DIT.
June 2022	APM Terminals ceased to have any shares in DIT.
10 January 2023	The Paris Court of Appeal set aside the ICC award due to a conflict of interest between DIT and the arbitrator. Link to courtcases, accessed 22 April 2024: <a href="https://jusmundi.com/en/document/decision/fr-douala-international-terminal-dit-v-port-autonome-de-douala-arret-de-la-cour-dappel-de-paris-tuesday-10th-january-2023#decision_43385">https://jusmundi.com/en/document/decision/fr-douala-international-terminal-dit-v-port-autonome-de-douala-arret-de-la-cour-dappel-de-paris-tuesday-10th-january-2023#decision_43385</a>