Pension Funds

International RBC | SER

The Big Tech Case

Introduction

In our society, information technology, including the internet and social media, is something we can no longer imagine life without. The power of major technology companies such as Apple, Meta (Facebook) and Alphabet (Google) is increasing more and more. These companies are also commonly referred to as "Big Tech".
At the same time, concerns about the adverse impact of these tech giants on our society and specifically on human rights are also steadily growing. For example, the online and offline behaviour of users of Meta and Alphabet's services is constantly being tracked. After all, the revenue of these companies is derived almost entirely from ads that are served up to users of these services. The more data these tech companies compile, the more familiar they are with their target audience and the more targeted ads they are able to feature, which in turn leads to more profits. Through this surveillance-based business model, big tech companies now hold the personal information of billions of people over the world.
Although data may at first seem abstract and intangible, it is not without reason that in recent years large tech companies have taken over from oil companies as an important profitable sector. As a consequence, among investors, it is also a sector that is widely invested in. This also carries risks, which we have mapped out and raised concerns about in this particular case of a big tech company. Readers who would like more information on the Dutch Pension Funds Agreement on International Responsible Investment, please see the background section.

The approach

Selection of the company and aims concerning this case

After making an inventory among the parties that form part of the Agreement, it became clear that there was a great deal of interest in the issue of technology and human rights. It remains a sector which pension funds invest their assets in and which differs in terms of ESG risks from more familiar malpractices, such as those associated with mining, palm oil and other raw materials. As such, an important aim of this case was to raise awareness about the risks at stake in the tech sector. Bearing in mind the expertise of the parties to the Agreement and the investments of pension funds, a big tech company was ultimately selected to take a closer look at. After this big tech company was selected, we started making an inventory of the ESG risks in this case. To gain a better picture of the ESG risks and their severity, a meeting was organised with an expert in the field of tech & human rights. In the wake of this, the following targets were set:

- The big tech company accepts its responsibility with regard to respecting human rights and exercising due diligence;
- The big tech company undertakes to improve its human rights policy in order to mitigate any adverse impacts;
- The big tech company undertakes to improve its internal culture when it comes to reporting concerns and malpractices;
- The big tech company undertakes to improve its external communications regarding due diligence;
- Raising more awareness about the power of tech companies and the risks to human rights.

A significant obstacle for investors to commit to effective engagement in this case is due to the dual voting share system, which is used by many tech companies. This is a structure for shares that comprises two classes of shares whereby a disproportionate share of voting rights is given to one group of shareholders, usually the founders. Whereas in most companies one share equals one vote, companies with a dual-class structure typically have a special group of shareholders who have 10 or more votes per share. Under this system, it is practically impossible for investors to secure a majority of votes at shareholder meetings. This particular big tech company also uses this type of share structure. Based on this share structure and previous experiences with engagement among big tech companies, a scenario in which no dialogue would be established was anticipated in advance. An additional aim of this case is thus to provide pension funds with pointers on how to deal with investments in (tech) companies where engagement is hardly possible, if at all.

Steps towards engagement

Engagement efforts first got underway in December 2021 in the form of questions submitted for the ESG Investor Call that the big tech company organises a couple of times each year. At these meetings, a selection of submitted questions is answered. This was how the subject of the present case also came up.

In January 2022, a more detailed outline of the questions followed in a letter addressed to Investor Relations. The big tech company did not send a response until several months later. In its reply, the company promised that contact on a more substantive basis would be made at a later date. To date, this substantive response has not yet been received.

In tandem with the above, various options to escalate the matter were explored and (after failing to engage in dialogue) also resorted to. For its part, the pension wing (as an active shareholder) submitted questions for the General Meeting of Shareholders ('AvA' in Dutch). Also, submitted resolutions that touched on the subject of the underlying case were closely scrutinised.

Lessons learned

The most important lessons learned from this case are as follows:

It is worth recommending – besides the information that the (tech) company itself publishes – that multiple sources should be included in the investigation of sector- and company-specific risks. A key reason for selecting this case study was that risks in the tech sector are underexposed. Oftentimes, the severity of the risks only becomes clear upon further investigation. The Business and Human Rights Resource Center is a useful place to turn to for more information on specific ESG risks and malpractices at companies. Also, NGOs are usually listed there that have written reports on them or are taking action against them. As well as information from the company itself – and information from peers to identify (best) practices. In this case, complex matters are involved (e.g., the nature of algorithmic systems) and there is a lack of transparency from the company. For this reason, it is advisable to include input in the investigation from key stakeholders, such as NGOs (e.g. Amnesty) with specific expertise on this issue. The reports from Ranking Digital Rights also form a valuable source of information. This is an organisation that conducts annual investigations into how the world's largest tech and telecom companies safeguard human rights and ranks them according to their performance. Likewise, information/expert advice from the government when it comes to defining recommendations and expectations can also bolster levels of engagement.

Acquiring specific expertise, sharing knowledge and working together on engagement can be done more effectively in an engagement collaboration such as those within certain cases of an agreement.

Establish a clear engagement strategy. It is imperative to define a clear strategy at the beginning of any engagement effort that takes different scenarios into account. Make an inventory of which means to escalate matters are on hand should the big tech company fail to make any or insufficient progress on the predetermined (interim) targets. In this case, it emerged from the inventory that – in the absence of sufficient progress – expanding influence through collaboration was an obvious next step. In view of the share structure within the big tech company, it is difficult to exert any influence as an (individual) investor. In this case, we learned that by joining forces and utilising various engagement tools (letters, submitting questions at ESG investor calls and at the AvA), a firm request for bettering itself is nevertheless made to the company. While initially the company did not respond to our request for engaging in a dialogue, eventually the pension funds involved did receive a promise that it would provide a more substantive response to the letter. Within the framework of joining forces, joining existing initiatives is also possible. For instance, the Investor Alliance for Human Rights handles engagement matters with the company on behalf of an alliance of investors. Investors can join this alliance free of charge and thereby join forces with other investors on a range of issues. This not only saves time for investors, but also provides an effective way to boost their influence.

Formulate a clear message and/or a question addressing the company. Inside the tech sector, this often involves companies that receive a lot of requests and feedback from various stakeholders. In order to raise the chances of having a fruitful dialogue, it is therefore important to formulate any questions put to the company as concretely and specifically as possible. Also determine in advance when answers to the presented questions are considered satisfactory. In this regard, be specific about expectations ("what does a good answer look like?") and pay plenty of attention to this in joint discussions with partners.

Background information on the agreement (SER)

About the Agreement: The Dutch Pension Funds Agreement on Responsible Investment was signed in December 2018 by 73 pension funds, the Federation of the Dutch Pension Funds, six NGOs, three trade unions and three government ministries. The objective of the Agreement is for the Parties to prevent and tackle the adverse social and environmental impact of investments by pension funds. The number of signatory pension funds is 84 with EUR 1,600 BLM AUM. This is 94 percent of the total assets invested by Dutch pension funds.

In this agreement, the signatory pension funds have chosen an approach to identifying, prioritising and addressing risks for society and the environment based on the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights (UNGPs).

Under the agreement, the funds cooperate with the Dutch government, NGOs and trade unions, which in turn share their knowledge and experience and the knowledge and experience of the parties' local partners. This gives the pension funds a better understanding of where risks may occur – for example, human rights violations or environmental damage – and enables them to use their leverage to solve problems and mitigate risks. The ultimate aim is to have a positive impact on the practices of the companies in which they invest. For more information on the Agreement, please visit the website.

Collaboration in cases

The agreement has a 'Wide Track' and a 'Deep Track'. The Wide Track concerns all signatories. Its aim is for all the Dutch pension funds to adopt an approach that will speed up implementation of the OECD Guidelines and the UNGPs in their investment policy and practice.

In the Deep Track, the pension funds work with the Dutch government, trade unions and NGOs on specific cases. They select cases on the basis of the selection criteria specified in advance in the Agreement:

- The adverse impact of the case must be severe.
- The joint investigation should provide added value for the case and allow different parties to contribute their specific expertise.
- The case must address actual and potential adverse impacts on fundamental labour rights and human rights, such as freedom of association, forced labour and children's rights. Cases must act as examples and be instructive, so that the investigation has a broader relevance for the entire pension sector and other Delegations.

Working group members

Pensioenfondsen
Danielle Essink, Robeco *representing Rabobank PF*
Frank Huitema, Stichting Mediahuis Pensioenfonds
Martine Kruitbos, MN *representing PME and PMT*
Anna Pot, APG-AM *representing ABP, bpfBOUW and SPW*
Rogier Snijdewind, PGGM *representing pfZW and BPF schilders*

Amnesty International
Hanna Riemersma

FNV
Jacqueline van Leeuwen

Ministerie van Buitenlandse Zaken
Guus van Zwoll

SER Secretariat
Laura Abels
Martijn Huijnen

Social and Economic Council

Bezuidenhoutseweg 60
P.O. Box 90405
2509 LK Den Haag
+31 70 3499 525
communicatie@ser.nl
www.imvoconvenanten.nl/en/pension-funds
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