



Retrospective

Controversial Business Practices in 2021

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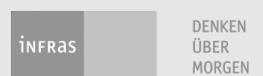
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Executive Summary

Inrate manages a database with more than 16'000 controversial business practices of over 4'000 companies. The companies are part of major indices such as MSCI Developed Markets, MSCI Emerging Markets or the Swiss Performance Index. Data on controversial events has been collected over the last 10 years. News articles are screened on a daily basis, recorded, categorised as well as assessed in detail.

As the year draws to a close, it is time again for a reflection on the most controversial business practices of the past year. The following retrospective includes five controversies, all of which stood out particularly in 2021, albeit for varied reasons. The controversies have been selected due to their significance and impact on the environment and society as well as stakeholders' perception of the events. All of the controversies were subject to internal discussion in 2021, and some have yet to come to a close.

The COVID-19 crisis continued in 2021, which challenged not only the public, but also companies in many regards. Such a crisis reveals a lot about a company's culture and its behaviour towards its stakeholders. The pandemic has not only been a call on global solidarity, but also exposed shortcomings in the economic and social system. Topics such as climate change, biodiversity and social inequalities have increasingly gained attention. Companies are obliged to contribute their fair share to tackle global issues as well as look after its employees and support the communities in which they operate. Still, 2021 witnessed misconducts by businesses across a wide range of topics while bringing a number of ESG issues to light.

A historic court ruling against Royal Dutch Shell required the company to substantially reduce their CO₂ emissions, including those along their entire value chain. While the ruling sent out positive signals, it also showcased the unwillingness of some industries to shift voluntarily towards a low carbon economy. Even more so, as the company challenged the court ruling by filing an appeal. In addition, Shell's shareholders backed the decision to move the headquarters to the United Kingdom, which has been criticised by some as a response to the court ruling.

A tragic train accident happened in May 2021, when a subsection of a metro overpass collapsed in Mexico City despite the fact that it was only built few years ago. 26 people lost their life and several more were injured. An investigation confirmed previous observations putting political figures and companies, such as Grupo Carso, on the spot. The project was criticised for its mismanagement and construction defects since its inauguration in 2012.

A mass panic at a music festival left 10 people dead and a number injured. The festival organisers, including Live Nation Entertainment, faced lawsuits as the company's inadequate security measures and safety plans were criticised. This puts the company's integrity in question, even more so as it has had a track record of safety violations.

A report published in 2020 revealed details about the supply chain of diverse western companies sourcing from the Xinjiang region in China. Subsequently, several lawsuits were launched as the companies were accused of tolerating forced labour conditions of Uyghurs in their supply chains, an ethnic minority in China. Despite mounting political pressure, a number of companies proved to be reluctant to implement effective measures to prevent human rights abuse in China.

Lastly, China Evergrande Group, one of the largest real estate company in China, announced indebtedness in the range of USD 300 billion this September. The company's liquidity issues could have major consequences on the Chinese economy, as well as other stakeholders such as employees and suppliers, eventually leading to social instability.

All of the abovementioned controversies are examples of corporate irresponsibility resulting in far-reaching consequences for stakeholders involved. Moreover, such accidents pose considerable reputational as well as financial risk for the respective businesses.

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Royal Dutch Shell

Landmark court ruling to reduce emissions

Topic: Environmental impact of products or services

Amidst a surge in lawsuits seeking to hold fossil fuel companies accountable for their role in climate change, a landmark ruling was issued against Shell in the Hague in May 2021. The environmental organisation Friends of the Earth, along with 17'000 individual plaintiffs, argued that the company had violated the Dutch civil code and the European convention on human rights. The company was said to be infringing the plaintiff's right to life and family life, as it continues to extract fossil fuels despite being aware of the consequences for the climate and future generations (The Guardian 2021a). Shell contested that their activities are a response to continuing demand for oil and gas and that if they were to reduce their emissions, other oil and gas companies would simply take over their share (The Guardian 2021b).

Shell's sustainability policy and its target to reach net zero by 2050 and to reduce the carbon intensity of products by 20% by 2030 were found to be insufficient by the court (The Guardian 2021b). These efforts would still have a significant impact on the climate and consequently on human life. Shell has been ordered to not only cut its scope 1 and 2 emissions by 45 % by 2030 (baseline 2019) but importantly also its scope 3 emissions, which include the use of products and emissions in their supply chain. This marks the first time in history a company is required by law

to reduce its emissions and the first case to use human rights as a basis of the ruling (The Guardian 2021b).

In July 2021, the company announced that it would appeal the court ruling in the Hague. While the company agreed that urgent action is needed to combat climate change, Shell maintained that rather than sanctioning a specific company, a collaborative approach would be necessary (Shell 2021).

In December 2021, a majority of Shell's shareholders backed the company's proposal to rename the company to Shell PLC and to move headquarters to London, UK. Shell has been criticised for allegedly deciding this in reaction to the court ruling in May, although this was denied by the company, which maintained it was merely a corporate structure change (Reuters 2021).

Inrate's view: Inrate considers this controversy to be significant given the historic importance of the court ruling. It is the first of its kind, legally requiring a company to reduce its carbon emissions along the entire value chain. Shell continues to extract fossil fuels and annually contributes 1% of global emissions despite a scientific consensus that fossil fuel extraction is a key driver of climate warming (The Guardian 2021a). This is characteristic of an industry in which companies have been unwilling to shift voluntarily to a low carbon economy and whose activities have long gone without repercussions. This underlines the importance of this case as it could set the scene for similar legal proceedings against other oil companies around the world.

Grupo Carso, Alstom, Construcciones y Auxiliar de Ferrocarriles

Collapse of metro line 12 (Mexico)

Topic: Public impact of products and services

In May 2021, a Mexico City metro overpass collapsed as a train was crossing. The tragic incident left 26 people dead, while dozens were left injured. Immediately after the collapse, a crane was sent to the scene amid concerns that the carriages could fall onto the road (BBC 2021a). The metro system of Mexico City is among the busiest in the world. The collapse of the section occurred on a train line only built 10 years ago by a consortium around Grupo Carso, together with one of Mexico's largest construction companies, Ingenieros Civiles Asociados (ICA), and Alstom Mexico (El Pais 2021a; Mexico Business News 2021).

Shortly after the incident, an external investigation was announced by the city's Mayor. The public demanded answers as the metro line had been controversially discussed due to alleged cost overruns, corruption as well as conflict of interest from the start (ABCNews 2021).

After its inauguration in 2012, the tracks had to be closed several times for urgent corrections due to the risk of derailment. In 2014, the overpass, which was at the center of the incident, was closed again for repairs. Three years later, the line suffered the most damages of the metro system as a result of an earthquake (El Pais 2021a).

The chief executive officer (CEO) of Grupo Carso admitted that using ceramic material around the bolts was not optimal but denied statements of an internal government document showing that the overpass had structural faults. Several experts rejected the CEO's explanation promptly (The New York Times 2021a). The construction company ICA pointed out in a statement that a number of previous train cancellations were caused by the incompatibility of the rails with the rolling stock. The rail manufacturer, Construcciones y Auxiliar de Ferrocarriles,

however, replied that the rails met all requirements stipulated by the authorities (Noreste 2021).

In September 2021, an independent auditor's report confirmed earlier indications. According to the report, deficiencies such as the lack of functional bolts over a significant stretch led to a structure that wasn't designed to bear the required weight. Moreover, the earthquake from 2017 was not identified as a considerable cause of the failures that led to the accident. The consortium of companies has not yet responded to the report (swissinfo.ch 2021). The owner of Grupo Carso, construction magnate Carlos Slim, recently announced to carry out the reparation work. As of October 2021, the criminal charges against the companies involved were still pending (APNews 2021).

Inrate's view: Inrate considers this controversy to be significant due to the devastating impact of the collapse that caused several fatalities and severe injuries. This incident revealed poor planning and execution of a relevant public infrastructure project, which was criticised for various reasons since its inauguration. The final report incriminated the government personnel as well as the companies involved, such as Grupo Carso. The companies will have to take the responsibility for construction defects and product flaws of the train line section eventually leading up to the collapse.

Live Nation Entertainment

Concertgoers killed due to improper planning of festival (US)

Topic: Health impact of products and services

In November 2021, a tragedy occurred during the annual Astroworld Festival in Houston, Texas, which hosted several thousand participants. The concert grew into a mass casualty, with 10 people dead and several injured or traumatised by the sight of concertgoers trampling over lifeless bodies in the chaos of escaping the area (Forbes 2021).

The festival was organised by the company Live Nation Entertainment, one of the world's largest

live event operators, and rapper and producer Travis Scott (NPR 2021).

It was alleged that security measures in place were not sufficient to ensure the health and safety of the audience. Furthermore, it was suggested that the mass casualty could have been avoided if the organiser had stopped the concert in time when the first injuries were reported, instead of letting the concert continue for further 40 minutes (CNN 2021).

A number of lawsuits have been filed on behalf of 125 attendees against various organisers as well as Apple Music, which had streaming rights, and other artists. It was reported that the lawsuits were seeking USD 750 million compensation for mental and physical distress (Forbes 2021; RollingStone 2021). Live Nation Entertainment faced allegations as the main organiser of the event. The company as well as Travis Scott denied all allegations (RollingStone 2021).

The company has repeatedly been faced with lawsuits concerning safety violations at concerts and among employees. Tragic incidents already took place at previous concerts organised by Live Nation Entertainment, ranging from an intruded suicide bomber to a mass shooter, as well as a stage collapse, or various fatal employee incidents at work (NPR 2021).

The planned dates for the festival were cancelled, and both Live Nation Entertainment and the artists have been cooperating with investigations (Forbes 2021). This event could change the way, in which festivals and their security issues are organised in the future, depending on the outcome of the investigation, as well as potential monetary damages that the alleged parties would need to provide to the victims (Pitchfork 2021).

Inrate's view: Inrate considers this controversy to be significant as 10 people died, and several emerged injured. Moreover, Live Nation Entertainment has an apparent history of similar tragedies, which shows that little improvement was implemented over the years. The company did not guarantee appropriate security measures considering the peculiarities of the concert that took place, knowing about the artists' past behaviour and previous incidents. Nevertheless, chance and random circumstances need to be considered in this

event. Moreover, investigations have just opened and negligence and culpability still need to be proven.

Multiple

Forced labour of Uyghurs minority in Xinjiang province (China)

Topic: Forced labour among contractors

As early as December 2018, the first investigation by the Associated Press (2018) described forced labour conditions of the Uyghur minority native to the Chinese Xinjiang region. According to the Investor Alliance for Human Rights (2021), a fifth of global cotton and almost half of worldwide polysilicon, used in the manufacturing of solar panels, stem from Xinjiang. More than one million Uyghurs were estimated to be imprisoned or sent to re-education camps.

According to a report by the Australian Strategic Policy Institute (ASPI 2020), they were withheld from practicing their religious traditions, subject to ideological training, limited in their right of free movement and under constant physical or electronic surveillance. In December 2021, an unofficial UK tribunal indicated crimes against humanity allegedly executed by the Chinese government, which amount to an act of genocide. According to the tribunal, the crimes against the Uyghur minority involved indoctrination, torture and apparently also the systematic oppression of births in various ways (The Guardian 2021c). In September, the Biden administration declared a genocide of Uyghurs and the US Congress recently passed an import ban on products from the Xingjiang region (The New York Times 2021b; BBC 2021b). The UK tribunal now urged the British Members of Parliament to follow suit (The Guardian 2021c).

The ASPI report (2020) also brought to light the mass transfers of around 80'000 Uyghurs which had to work under supposedly coerced labour conditions in factories, manufacturing products for multiple global brands including Nike, Asics and Apple.

In February 2021, the Association of Uyghurs filed a lawsuit against Nike. The accusations against the company included sub-contracting of Chinese

factories, which coerced Uyghurs to work in their factories. Nike denied relationships to any companies named in the ASPI-report (Business & Human Rights Resource Centre 2021a). A few months before, Nike - together with Coca-Cola and Apple - had unsuccessfully lobbied against a bill which was aimed at preventing manufacturing in China using forced labour of Uyghurs (BBC 2021b; Business Insider India 2020). In April, another lawsuit was filed by three NGOs and an afflicted Uyghur woman, among others against Inditex, the owner of Zara, and a part of Fast Retailing, Uniqlo. Uniqlo's products were even banned from US markets over suspicions that they used cotton produced by coerced labour (Charged 2021). In June, investigations into Bombardier's (WAtoday 2021a) and Alstom's (WAtoday 2021b) supply chains questioned the exploitation of Uyghurs manufacturing components under forced labour conditions for an Australian metro train project. Nike and several other US and Netherlands fashion brands were accused in another complaint in December by the European Center for Constitutional Human Rights to be directly or indirectly associated with using forced labour of the Uyghurs (Republic 2021). It was reported that companies including Hugo Boss and Asics declared that they would continue to source cotton from China which might come from the Xinjiang region (Business & Human Rights Resource Centre 2021b).

Inrate's view: Inrate considers this controversy to be relevant given that suppliers of several companies have been found to be complicit in the Chinese government's widespread and grave violation of human rights against an entire ethnic minority by using forced labor of Uyghurs. Moreover, this particular issue of forced labour conditions is not limited to one business sector but stretches across industries and end products. Although not being comprehensive the foregoing paragraph gives an impression of the global interconnectedness and dimensions. While no verdicts have been declared against any of the companies, this case underlines the importance of implementing effective human rights due diligence processes in the supply chain. Furthermore, it shows that companies operate in an increasingly globalised world where they are confronted with issues, for which they must take responsibility and

aim to uphold modern international norms and standards.

China Evergrande Group

Unpaid liabilities and debts (China)

Topic: Governance Practices

In September 2021, China Evergrande Group (Evergrande), which is one of the largest residential property developers in China, announced that it was not able to sell properties and other assets fast enough to service its massive USD 300 billion in liabilities, as debt deadlines were closing in. This makes Evergrande one of the world's most indebted companies (The Guardian 2021d). Consequently, investors gathered around the company's headquarters demanding their invested money to be repaid (NZZ 2021a).

Fueled by years of unlimited access to fresh loans from state-protected banks to fund rapid real estate growth (NZZ 2021a), Evergrande was dependent on a constant cash flow to support its ever-growing debt. The planned growth failed to materialise in recent months for two reasons. First, the Chinese population was buying fewer flats in the past months. Second, the Chinese government seemed to be willing to officially deflate the property bubble through more stringent measures (NZZ 2021b).

As reported, major consequences might be triggered by this situation. It was assumed that a potential snowball effect on the wider Chinese economy is to be expected, as the company owes money to more than 300 domestic banks and other financial firms (The Guardian 2021e). Moreover, it was presumed that there are further real estate companies in China, which might be in a similar situation. The Government reportedly feared the message it would send to other heavily indebted companies in case it would keep Evergrande from default (The Guardian 2021e; NZZ 2021a). On the other hand, the Government also feared the effect of Evergrande's bankruptcy on other economy sectors as well as the lost jobs in construction and design contracting companies or material suppliers suffering if it would decide not to provide financial aid (BBC 2021c; The Guardian

2021d). While some analysts maintained that the impact on the Chinese banking sector would be manageable (The Guardian 2021e; NZZ 2021a), buyers of several hundred thousand unfinished flats would be heavily affected (The Guardian 2021d).

After announcing indebtedness, the share price of the company reached a record low. There was no guarantee that the group would have sufficient funds to continue to perform its financial obligations (The Guardian 2021d). As of December 2021, the company had failed to meet a key payment deadline (NZZ 2022).

Inrate's view: Inrate considers this controversy to be significant as the company's governance has not only affected the financial interests of shareholders, but also may have societal consequences due to the impact on the entire Chinese economy, potentially causing a snowball effect on various sectors. Although consequences from the exceptionally high debts are not clear, the company's integrity in this case needs to be questioned. Depending on how the government treats Evergrande's case, it may serve as an example and help to prevent a similar fate for other companies that are part of China's investment-based growth model.

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