BIAC contribution to the

OECD Working Party on State Ownership and Privatization Practices

29 October 2013

1. Preparing the revision of the SOE Guidelines

The OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOEs) give concrete advice to countries on how to more effectively manage their responsibilities as company owners. They have been an important international benchmark to help governments assess and improve the way they exercise ownership of these enterprises.

The fundamental objective should remain addressing the challenge of finding a balance between the state’s responsibilities for exercising its ownership functions, while refraining from imposing undue political interference in the management of the company, and ensuring that there is a level playing field so that private companies can compete with SOEs in a competitively neutral manner. We agree with the Draft Roadmap for the revision of the Guidelines that, in the areas currently covered by the SOE Guidelines, standards should not be lowered.

Since the SOE Guidelines were developed as a complement to the OECD Principles of Corporate Governance on which they are based, the review process of the Principles should closely inform the update process of the SOE Guidelines to ensure continued compatibility. With regard to the suggestion to streamline multiple references to the Principles (replacing them with a clause saying “SOEs should be held to the same standards of corporate governance recommended by the Principles”), we recommend that if this approach is adopted, the main text of the Principles should be added as an annex.

BIAC has identified a number of issues which should be considered in the review of the Principles and which might also be relevant to the SOE Guidelines. These issues include, among others: (i) encouraging effective Boards, recognizing that good governance starts at the top; (ii) considering issues such as board composition, director qualifications and training, skills and experience (including commercial experience), and diversity of thought in the Boardroom as well as in the nominee selection processes; (iii) emphasizing the importance of independence of thought and objectivity of Board members in decision-making; (iv) strengthening the concept of risk oversight and management (including the setting of performance parameters against which the entity will report); and (v) acknowledging developments in the areas of disclosure and transparency with regard to corporate reporting to provide a sound basis for decision-making by boards or investors.
We welcome the fact that the revision of the SOE Guidelines will be informed by previous analysis by the OECD, including papers on *Boards of Directors of SOEs, Balancing Commercial and Non-Commercial Priorities, Accountability and Transparency* as well as the major 2012 OECD publication on *Competitive Neutrality – Maintaining a Level Playing Field between Public and Private Business*. In light of this, we believe that additional attention could be given to the following issues:

- **Fostering competitive neutrality** should be one of the key objectives. The annex to the SOE Guidelines should tackle ways to address the implementation gap noted in the OECD publication on competitive neutrality. It should provide constructive guidance on how to implement competitive neutrality practices, especially in a cross-border context, highlighting the importance of effective enforcement mechanisms in remedying non-neutrality practices. Specific issues that could be considered include, among others, the importance of being subject to the same taxation framework as private businesses, providing further details on the importance of debt neutrality, and fair procurement policy.

- **The SOE Guidelines should highlight the importance of an effective board nomination framework**, facilitating the participation of non-government shareholders in the nomination process, deterring the restriction of board membership to nationals, enhancing transparency of the process as far as is practicable, “depoliticizing” SOE boards and highlighting the importance of commercial and financial expertise as crucial qualifications in the board composition process. Boards must be accountable and therefore not be subject to too much political interference.

- **While the SOE Guidelines convey that Boards should carry out an annual evaluation to appraise their performance**, additional detail might be provided on modalities of on-going performance review or on a need to benchmark performance.

Additional issues to be further highlighted could include:

- **Rights of shareholders** (in transactions which represent a fundamental change to the company, cross-border voting for shareholders);

- **Managing risks and performance through robust internal control and strong public financial management**, as well as a strong recommendation for an audit committee and an emphasis on its role in monitoring and communicating with the external auditor (bearing in mind that risk management is a ‘management’ activity and a board activity, as the board should be overseeing risk management policies, processes and reporting). In addition to the country reviews already carried out, it would be helpful to have similar detailed studies in emerging market economies;

- **Distinguishing clearly between governments’ role as shareholder in SOEs, control of SOE management and interference in daily SOE operations**;

- **Strong visible commitment to integrity, ethical values and the rule of law as well as openness and transparency**, including adoption of a robust internal compliance program;

- **Implementing good practices in transparency and reporting to deliver effective accountability**; and

- **Defining outcomes in terms of sustainability benefits**.
2. Introductory discussion of the OECD program of work 2015-2016

BIAC appreciates the opportunity to contribute to discussions on the future program of work early in the process. In view of the growing importance of SOEs, in part due to the rapid growth in emerging countries and rescue operations during the financial crisis, it is essential to keep continued focus on SOEs and how they interact with other companies and countries in a global environment.

BIAC therefore supports proposed next steps for future empirical and analytical work, including the proposed sector-based analysis, and encourages the OECD to shed further light on the governance challenges raised by SOEs, especially in key emerging markets. Sector-based analysis would be valuable in regards to management of performance and of measuring performance. In this context, we offer continued support for the OECD’s on-going efforts to assist in SOE reform and for close involvement of non-member countries and regional networks. We would further support a review on how different countries have determined the groups of SOE companies that should be subject to full reporting and corporate governance requirements, similar to listed companies.

We welcome that the paper refers to the importance of the OECD’s strategic orientations set by the Secretary General for 2013 and beyond, which among other things highlights the importance of horizontal cooperation with other OECD bodies and that OECD outputs should have an “impact” in terms of informing national policy priorities. While implementation and impact should be important guiding principles for all OECD projects going forward, these factors are particularly important in discussions on the revision of the SOE Guidelines. We agree that outreach and review of implementation of the SOE Guidelines, once they are finalized, should be an important pillar of the program of work going forward.

We note that the paper mentions that it is not yet certain whether member countries will decide to take the project on competitive neutrality to a new phase. In this context, BIAC would like to reiterate its continued support for further work in this area, also considering on-going discussions in the OECD Trade Committee, which is preparing a business survey on the nature, extent, and effects of government-granted advantages which impact the competitive positions of SOEs and privately-owned enterprises in international markets. BIAC appreciates and is actively involved in this exercise.

In BIAC’s view, the OECD is well placed to provide a better understanding of key challenges and opportunities facing SOEs, while fostering capacity building by sharing its analysis with emerging economies and engaging in a constructive dialogue with them. As mentioned above, implementation is particularly important and the implementation gap could be addressed, in part, by consideration of specific examples. This should be a practical follow-up to the OECD’s report on “Competitive Neutrality: National Practices in Partner Countries,” including the Secretary General’s recommendations for impact and implementation. We would also be interested in further work on addressing ways to reconcile competitive neutrality and national development policies and further analysis on how SOE’s access to finance is handled.

In addition, we would like to reiterate our previous recommendations for continued work in the following areas:
Continued work on benchmarking to address how well SOEs operate in a comparative manner, highlighting areas for improvement. It may be valuable to cite particular cases that can demonstrate successful management of state assets and their corporate governance.

More prominent explanation of how national policy choices can be pursued by governments through SOEs in a competitively neutral fashion. The emphasis here should be that the company does not receive beneficial treatment compared to their private sector competitors.

Analyzing the experience of private business in industries crowded by SOE competition (e.g., energy, telecommunication and natural resources).

Addressing the question of how effective enforcement mechanisms have been to remedy non-neutrality and to what extent the enforcement is primarily public (i.e. self-enforced by the state) or private (e.g. lawsuits by private business).

Analyzing how different governments have distinguished commercial SOEs from the other SOEs, which because of social obligations or strategic importance are likely to remain under direct state control.

3. Listing of SOEs in stock exchanges

On the occasion of the last meeting, BIAC expressed its appreciation for the OECD work on the practice of listing of SOEs in the context of the arrangements for broadening the ownership of SOEs and supported fact-based analysis, through an initial stocktaking of national experiences in OECD and partner countries.

We appreciate the comparison of national experiences of India, Poland and New Zealand in the practice of listing SOEs, which could be usefully complemented by additional case studies if other countries are interested in becoming involved. We also reiterate our recommendation to conduct further analysis on the benefits of listings of SOEs and the subsequent impacts on those listed SOEs. It would be helpful to provide a transparent overview of the various corporate governance changes required when preparing for listing, which are necessary to attract investors at the listing stage.

4. SOEs in the development process

We have noted that the next meeting of the Working Party in April will be followed by a one-day workshop on SOEs in the development process to be held on 4 April. BIAC would like to express its interest in getting involved in the workshop, which could also make a useful contribution to updating the SOE Guidelines.

5. The Working Party’s global engagement

BIAC welcomes the Working Party’s outreach efforts to the regional networks and other non-member countries. In light of the growing economic importance of the SOE sector, we strongly
support continued international dialogue and international experience sharing. In this context, BIAC believes that the Working Party should prioritize relations with partner countries with large SOE influence. The regional roundtables have a key role to play in this area, and we would like to reiterate our interest in being kept informed on the range of regional roundtables so that we can explore the opportunity to make a contribution.

6. National approaches to financing state-owned enterprises

BIAC welcomes the Working Party’s paper on approaches to financing SOEs, particularly the extent to which the OECD involved partner countries and considered the experiences of emerging growth economies like Chile and Estonia. We support the stock-taking efforts of the Working Party as it pertains to the terms and conditions surrounding equity and debt financing of SOEs, including how they compare with private competitors.

As an area for further analysis, BIAC suggests that the Working Party more specifically explore the mechanisms to neutralize SOE’s potential financial advantages. In this regard, we note that the data collected in Table 7 reveals that lenders in several respondent countries offer preferential terms for commercial loans to SOEs. Although most of the respondent countries reported no evidence of SOE benefits from advantageous financing conditions, we recognize that the group of respondents was limited and therefore may not be representative of global practices.

Furthermore, we note that, based on the findings of this paper, only one country (Australia) reports putting in place explicit debt neutrality mechanisms. Therefore we encourage the Working Party to further analyze the mechanisms which exist to neutralize inadvertent cost advantages to SOEs via a more narrowly tailored survey aimed at both OECD and partner countries, and include suggestions for implementation by national authorities.

7. Fundamental policy issues related to SOEs

BIAC has other important policy questions and concerns related to SOEs. We urge the Working Party and other relevant OECD bodies to address fundamental issues such as the following in their ongoing work on SOEs:

- When do governments choose to use SOEs instead of government agencies to provide goods and services? What is their motive in making this choice? Is there market failure? Is it driven by social or industrial policy?
- Are the SOEs providing wholly public goods and services, or a mix of public goods and services that compete with private sector offerings? Where (by country and kind of activity) do we see each of these forms?
- What is the trend in use of SOEs? Are SOEs growing in importance (considering national markets, globally, by sector and as a share of GDP) or shrinking?
- To what extent do SOEs compete internationally, or are they confined generally to domestic operations?
• What are the effects on private business (not just “crowding out” in three sectors)?
• Does the “competitive neutrality” approach to SOEs that some OECD members have been using domestically effectively address cross-border (i.e. trade and investment) aspects of ensuring a level playing-field when private companies compete with SOEs?

8. Involvement of stakeholders

BIAC appreciates the opportunity to provide input to the discussions of the Working Party during the consultations and would be interested in exploring mechanisms to gather feedback on how our comments have been addressed in the meeting of the Working Party and how they can be reflected in the OECD work going forward. BIAC follows the activities of the Working Party with great interest and looks forward to further enhancing our contribution to the Working Party discussions.