Consultation with the OECD Working Party on
State Ownership and Privatization Practices

Paris, 11 March 2013

BIAC Comments

BIAC appreciates the opportunity to cooperate with the Working Party on State Ownership and Privatization Practices (SOPP) under its new leadership. BIAC would also like to record our thanks to the previous Chair for his leadership in the important work of the Working Party and for involving BIAC in its discussions.

1. Importance of Corporate Governance in SOEs

BIAC follows the discussion on SOEs with great interests, recognizing the importance of the practice of good corporate governance of SOEs. The business community considers the competitive environment when making important investment decisions. In this regard, BIAC observes certain factors which contribute to corporate governance weaknesses in SOEs, such as when:

- Government officials act to intervene directly in day-to-day operational decisions, such as whom to lend to, on what terms to lend and when to forgive indebtedness.

- Executive managers act with near autonomy, pursuing unintended objectives and operating in a manner contrary to sound business practices and public financial management principles.

- Board members lack the independence, professional skills and experience necessary to properly undertake their duties.

- Internal and external financial reporting is incomplete or inaccurate, which does not provide a basis for decision making by boards, governments or investors.

In the recent financial crisis, some of the aforementioned issues were also observed in developed countries. They lead to inefficient or ineffective business and, in the case of
financial institutions, can pose a threat to financial stability and retard economic development.

Good corporate governance, on the other hand, can ensure that SOEs pursue the objectives for which they were established and can facilitate the ability of the government to attract private capital for development and perhaps eventual diversification and even privatization.

2. Competitive neutrality

BIAC would like to express its continued strong support for a robust, broad-based OECD work program on competitive neutrality, which should bring together corporate governance, competition, trade and investment considerations. BIAC would like to congratulate the OECD for demonstrating leadership in the area of competitive neutrality, which is of crucial importance to business. We offer strong support for further work and would be pleased to remain closely involved.

Ensuring competitive neutrality is a key issue for the OECD business community. BIAC has repeatedly expressed its strong support for OECD work in this area and has actively contributed to discussions in the Working Party on State Ownership and Privatization Practices, the Competition Committee, the Trade Committee and the Investment Committee. In particular, BIAC welcomed the OECD report “Competitive Neutrality: Maintaining a Level Playing Field between Public and Private Business”, which was published last year. BIAC appreciates the fact that the work in this important area continues.

While it is critical to look at the nexus of competitive neutrality and SOEs going forward, it is important to have a solid conceptual and analytical framework to deal with the increasing instances where government owned/controlled/championed entities are competing directly with private entities. We all need ‘fair and transparent’ rules of the road.

In understanding the role SOEs play, especially in emerging markets, transparency is one important tool. So in the work going forward, we support activities that would shed some light on current practices and which would highlight good practices.

BIAC would also like to highlight that the treatment of ‘public service obligations and how they are funded’ in commercial SOEs remains opaque in many countries, as does the manner in which many countries distinguish which SOEs are determined as commercial, non-commercial and even strategic. Private enterprise requires this information in order to better understand the competitive environment.

The OECD is well placed to make an important contribution by providing a deeper and wider understanding of key challenges and opportunities, while fostering capacity building by sharing its analysis with emerging economies and engaging in a constructive dialogue with them. BIAC therefore welcomes the fact that the OECD has expanded its analysis by including non-member countries.
Specific suggestions for further work

BIAC supports the proposed next steps for future empirical and analytical work and would appreciate if the OECD could help shed further light on the governance challenges raised by SOEs, especially in key emerging markets.

In addition, BIAC would like to propose further work to be carried out in the following areas:

- We recommend continued work on benchmarking to address how well SOEs operate in a comparative manner, provide comparative information generally and highlight areas for improvement.

- BIAC supports further analysis to better address the implementation gap, including by considering specific examples. The recent OECD report “Competitive Neutrality: National Practices in Partner Countries” suggests that there is a sizable gap between competitive neutrality national policies and implementation in many of the partner countries surveyed.

- As noted in the above-referenced OECD report, some countries contend that implementation of competitive neutrality practices may interfere with or impede necessary economic reform and development priorities, thereby excusing lack of neutrality.

- Therefore, it would be helpful to include a more prominent explanation of how various national policy choices can be pursued by governments through SOEs in a competitively neutral fashion. If competitive neutrality and national development policies are not necessarily in conflict, further explanation on this point would be useful.

- We recommend further work to include the experience and perspective of private business in industries crowded by SOE competition (e.g., energy, telecommunication and resources).

- BIAC supports further analysis of practices on SOE access to finance in countries that actively pursue competitive neutrality (e.g. Denmark, Finland, Norway, US, UK, Canada, Australia and New Zealand).

- We feel the discussion on competitive neutrality would benefit from analysis of how SOE rates of return benchmarks are set, how they are calculated and transparency on the ‘real’ rates of return achieved by state entities.

- We recommend addressing the question of how effective enforcement mechanisms have been to remedy non-neutrality; how frequently they are used in partner countries; and to what extent the enforcement is primarily public (i.e. self-enforced by the state) or private (e.g. lawsuits by private business).
3. Paper on SOEs: the Trade Effects and Policy Implications

BIAC welcomes the paper and supports its declassification. BIAC supports the co-operation across OECD Directorates in the work of SOEs and continues to encourage the OECD to take a horizontal approach in this respect. Further work should prioritize those countries that include sectors with large SOE shares (i.e., as noted on page 5, the 10 countries with the highest Country SOE shares (CSS) and also the 8 countries where SOEs collectively make up 20% of world trade.)

4. Listing of SOEs in stock exchanges

BIAC welcomes the OECD paper on the practice of listing of SOEs in the context of the arrangements for broadening the ownership of SOEs. BIAC supports the OECD’s proposed steps which indicate that the final report should be based on fact-based analysis, through an initial stocktaking of national experiences in OECD and partner countries. We also encourage the OECD to conduct further analysis on the benefits of listings of SOEs and the subsequent impacts on those listed SOEs. It would be beneficial to make transparent the various corporate governance changes required when preparing for listing (and necessary to attract investors at the listing stage).

5. SOEs in the development process

The OECD paper provides a useful summary of ongoing political discussions and recent developments of the role of SOEs. BIAC appreciates that the paper draws case examples from concrete SOEs and state owned financial institutions which have placed an important role in the development processes. The example of Mauritius, cited at the end of the paper, could further highlight the disciplined approach to reform required over a period of time in order to achieve these results and that being a small country is no barrier to development of SOEs. We believe that the paper serves as a good starting point for its discussion of possible future work and the conference leading to the publication of a book would be useful. It is likely to contribute well to the process of updating the SOE Guidelines on Corporate Governance of State-Owned.

6. Ongoing work with partner countries

BIAC welcomes the Working Party’s outreach efforts to the regional networks and other non-member countries. Given the relatively large share of SOEs in the largest emerging economies, where government activities weigh heavily in total GDP, the Working Party’s outreach efforts to major economies, as well as to partnering countries, are particularly important. In light of the growing economic importance of the SOE sector, we strongly support continued international dialogue and international experience sharing. BIAC believes
that the Working Party should prioritize relations with partner countries with large SOE influence.

In this context, BIAC would like to offer strong support for the organization of regional roundtables and hopes that sufficient funding for the Asian Roundtables can be found to facilitate continued work on the SOEs in this area. It is a region with major SOE presence and which is contributing well to global growth. BIAC would be pleased to be actively involved in this process.

We would also like to take this opportunity to inform the Working Party that BIAC has significantly stepped up its own outreach activities. We now have observer business organizations in 9 countries, including most of the OECD key partner countries: Argentina, Brazil, Colombia, India, Indonesia, Latvia, Morocco, Russia, and South Africa. BIAC would be pleased to help facilitate participation and dialogue with business in non-member countries related to activities of the Working Party when OECD plans missions and events in these countries.

7. Update of the OECD Guidelines on Corporate Governance of SOEs

The OECD Guidelines on Corporate Governance of State-Owned Enterprises give concrete advice to countries on how to manage more effectively 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, which often constitute a significant share of the economy. Their development and implementation should be supported by a process of dialogue and exchange of experience.

With regard to the envisaged update of the Guidelines, BIAC would like to be closely involved and provide constructive input early in the process, as we do for the update of the OECD Corporate Governance Principles. BIAC believes that it is important to closely involve the business community in further discussion on possible new issues to be considered, such as:

- Risk governance and the disclosure of material risk factors;
- Controlling shareholders, including state shareholders;
- Rights of shareholders (in transactions which represent a fundamental change to the company, cross border voting for shareholders); and
- A strong recommendation for an audit committee and an emphasis on its role in monitoring and communicating with the external auditor

We look forward to discussing further the aforementioned issues within our membership and with the OECD.
8. Involvement of stakeholders

BIAC greatly appreciates the opportunity to contribute to the discussions of the Working Party. In this context, we welcome the fact that the Working Party is discussing its working methods, and we welcome the increased involvement of non-member countries.

In the context of these discussions, we recommend considering how to best benefit from the contributions of stakeholders. This could involve a discussion on how to make the stakeholder consultations more interactive and review the experiences of other OECD Committees and Working Groups, bearing in mind that there is a wide range of different ways of how OECD Committees and Working Parties involve stakeholders.

We would also like to express our interest in exploring ways of expanding our input to the Working Party beyond the stakeholder consultations, e.g. by setting up focused expert meetings on high-priority topics, facilitate contacts with business organizations both in OECD and non-OECD countries, and facilitate participation of experts in regional roundtables. BIAC follows the activities of the Working Party with great interest and would be pleased to explore opportunities with the Secretariat on how to further enhance our contribution to the Working Party discussions.