BIAC contribution to the
Consultation with the OECD Working Party on
State Ownership and Privatization Practices
Paris, 31 October 2012

1. The Working Party’s global engagement

In line with the OECD’s broader strategy of enhanced engagement of major non-member economies, BIAC welcomes the fact that the OECD Working Party on State-Ownership and Privatization Practices (SOPP) is discussing its global engagement strategy. 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 are particularly important. In light of the growing economic importance of the SOE sector, we strongly support continued international dialogue and international experience sharing. The findings from increased work involving non-member economies can also make a contribution to the OECD Development Strategy, which among others will look at fostering sustainable sources of growth and development, while addressing governance issues.

In this context, BIAC would like to express its appreciation for the opportunity to participate in the meeting of the OECD Network on the Governance of State-Owned Enterprises in Southern Africa, which took place in South Africa on 8-9 October. BIAC looks forward to participating in future meetings whenever possible.

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 the following countries: Argentina, Brazil, Colombia, India, Indonesia, Latvia, Morocco, Russia and South Africa, which are becoming increasingly active in our policy work. BIAC has also organized meetings in major non-member economies, including in Brazil, India and China. BIAC would be pleased to help facilitate participation and dialogue with business in non-member countries related to activities of the WP SOPP when OECD plans missions and events in these countries.
2. Russia

Russia has been making important progress on the road to becoming an OECD member, illustrated by WTO membership and its adherence to the OECD Anti-Bribery Convention. Eventually, Russia’s membership should help to leverage and promote important reforms to improve the Russian business environment. The progress made by Russia to align to the OECD standards is welcomed by the business community. At the same time, it remains indispensable to underline the need for effective implementation of reforms.

While recognizing that Russian accession discussions are confidential, the OECD has on several occasions expressed its wish to receive business input. BIAC has therefore submitted papers in 2008, 2009, 2011 and 2012, highlighting specific issues needing improvement in the Russian business environment. In particular, we would like to draw the Working Party’s attention to our most recent paper issued in May 2012, which among others includes a section on corporate governance.

While Russia adopted a corporate governance code in April 2002, it was felt that respect for and compliance with the code has often been lacking. As a result, foreign investor confidence in the ability of Russian companies’ level of governance compliance has been affected. With regard to SOEs, the BIAC paper refers to the initiative to raise Corporate Governance standards, which has led to the appointment of independent directors on a large number of SOE boards of directors, a trend which BIAC wholeheartedly supports.

BIAC has also expanded its cooperation with Russian business and was pleased to welcome this year the Russian Union of Industrialists and Entrepreneurs (RSPP) as a new BIAC observer organization. RSPP has a membership base of over 120 regional alliances and industry associations representing key industries of the economy.

We would be pleased to contribute to further discussions as appropriate. We would also be pleased to help facilitate meetings with the business community – both Russian and OECD based companies active in Russia – on the occasion of future OECD missions.

3. Competitive neutrality

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 WP SOPP, the Competition Committee, the Trade Committee and other policy groups. In particular, BIAC
welcomed the OECD report “Competitive Neutrality: Maintaining a Level Playing Field between Public and Private Business”, which was published earlier this year. We believe that the report provides an excellent analysis and meaningful guidance for governments to address their relationship with SOEs with a view to establish competitive neutrality between SOEs and privately capitalized firms.

While the WP SOPP should, of course, continue to play an important role in this area, we also strongly support that the OECD expands its work to incorporate trade and investment dimensions of competitive neutrality and fosters a cross-cutting approach within the Organization.

In this context, BIAC was pleased to contribute to recent discussions of the OECD Investment Committee. Policies that permit subsidies or favored terms for credit for SOEs, favorable regulatory treatment, forced location of foreign investment, etc. may provide SOEs with an unwarranted competitive advantage. The involvement of the Investment Committee in a robust, broad-based and evidence-based OECD work program on competitive neutrality, which would complement work carried out by other parts of the Organization, would be welcomed. Such work could include, for example an inventory of state aid practices and an analysis of their effects on investment. This should detail financial, non-financial and other advantages which accrue to SOEs by virtue of their ownership by the state. We would also like this work to continue reviewing the issues at the national level and at sub-national and local levels. Business interfaces with all of these.

Activities on this issue should not be limited to OECD countries. Business is global and cross-border. Much of global growth is in emerging markets and so the work and solutions provided should be global and globally applicable as far as possible. The EU State Aid Directive may provide a possible starting point.

Additional work needs to be undertaken to better understand the role of the state in the development of enterprises and the point at which they become independent competitive organizations as it is up to this point that some state support and assistance may be required. Considerable further work is recommended on the desirable disclosures associated with the provision of government required goods and services, their measurement and costing.

BIAC was also pleased to participate in the workshop organized by the OECD Trade and Agriculture Directorate on 18-19 October recognizing the growing importance of SOEs which increasingly expand across borders. BIAC also submitted comments on the OECD Interim Report on “State-Owned Enterprises: Trade Effects and Policy Implications”, which provides an important contribution to the emerging body of
knowledge about the role of SOEs in trade, trade obligations and trade policy concerns.

In summary, BIAC would like to express its strong support for a robust, broad-based OECD work program on competitive neutrality, which would bring together corporate governance, competition, trade and investment considerations. The OECD can 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 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.

4. Board Practices in SOEs

The OECD paper provides a useful summary of the practices of governments in OECD and other countries in dealing with the boards of directors of SOEs. We welcome the sharing of best practice, bearing in mind that they depend on legal and administrative traditions which vary across jurisdictions. Nevertheless, we believe that the sharing of best practices can make an important contribution, recognizing that the quality of corporate governance closely depends on the quality of the board of directors.

In general, we support the principle, outlined in the OECD paper, that structures and policies supporting the SOE governance framework should emphasize the strategic role that boards of directors can play in driving corporate performance. For SOE boards to do this, however, they require strong, qualified and independent directors. BIAC supports structures that insulate SOE boards from direct political influence, and that empower independent decision-making at the SOE level. Support for local SOE director associations, with an emphasis on promoting professionalism among SOE directors, may also be worth consideration. Director associations have been useful elsewhere in promoting adoption of best practices in director evaluation, training, and boardroom efficiency, among other areas.

Further, BIAC supports the ‘Good Practice’ recommended by the OECD paper to involve the incumbent SOE board in the nomination process in an advisory capacity. The SOE board may be in a privileged position to know which skills, backgrounds and competencies the business needs to drive corporate performance. The Board nomination process must involve the recipient board at the early stages at the very least. A Nominations Committee is required to handle this interface and to have in place a board succession plan. It will also be the conduit for board/shareholder communications on this issue. The Canadian experience with ‘board profiles’ is
exemplary, as is the role of SOE board chairman in many countries in advising government ministers in appointments.

Shareholders are also key to leading and setting the right tone for an entity’s governance and to ensuring management accountability. In this respect, we would like to recommend that the company/board of directors consider balancing the needs of the government with shareholder inputs. There is likely no single approach that will work across all geographies, yet practices like cumulative voting, minority shareholder votes on related-party transactions and direct engagement with minority shareholders during the process of director nomination are all worthy of debate. Consideration should also be given to minority shareholders, where they exist.

Board remuneration is an issue as it should be sufficient to attract and keep quality directors. However, in SOEs and in the public interest, the remuneration should not be market leading and should reflect reasonable recompense for the seniority of the appointees and the time input to the board. In the paper, when explaining the board role and the board role in strategy, insufficient attention has been placed on the board role in risk management, that is the risk of not achieving those strategies.

While the OECD has received responses from 31 countries to the questionnaire, including several non-member economies, it would be helpful to include the contributions of additional major emerging economies in future analysis. We also recommend sharing the final report both with OECD and non-OECD countries.

5. Balancing commercial and non-commercial priorities for SOEs

The review of the 5 countries in this paper is helpful to the discussion of the topic. BIAC encourages the OECD in continuing to develop knowledge in this important area. Further work of this style would be welcome, especially in understanding the purpose of state ownership in a wider range of OECD countries, and, importantly, in non-OECD countries.

Fundamental to this topic is clarity on the nature of the SOEs we are considering. We are considering SOEs that are owned or predominantly owned by the state, which may have to fulfill other state activities in the provision of goods or services. In this environment, the views and policies of the state and any state ownership entity must be clear. The expectations of the state should be explicitly expressed in general terms and in specific objectives for each entity. The expectation of profitability in commercial enterprises and commercial activities should be explicitly stated. All these should be in a state ownership policy. We would support further research into the various approaches to ownership policies with a view to
establishing and disseminating best practices. BIAC supports the dissemination of this document.

6. 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 in 2014, BIAC supports and would like to be closely involved and provide constructive input early in the process.