Consultation with the
OECD Working Party on State Ownership and Privatization Practices
27 October 2015
BIAC Comments


- BIAC congratulates the OECD on the final adoption both of the OECD/G20 Principles on Corporate Governance and the OECD SOE Guidelines. The update was an important step to ensure that the Guidelines remain up-to-date and are strengthened as a global benchmark for SOE governance.

- We appreciated that we were an active partner in the review and that the contribution of the formal stakeholders is recognized in the revised Guidelines. We particularly welcome the new chapter on SOEs in the market place, which underlines the importance of maintaining a level playing field between SOEs and private enterprises and of avoiding market distortions. In addition to ensuring that SOEs operate with similar efficiency as good practice private enterprises, the SOE Guidelines should play an important and visible role in ensuring that competition between SOEs and private enterprises is conducted on a level playing field.

- We welcome the discussion on promotion, communication and dissemination of the revised SOE Guidelines as outlined in the OECD background paper for this meeting and encourage the OECD to make this a key part of their future program of work. Having Guidelines in place is one thing, but equally important is the active implementation of the recommendations in both OECD and non-OECD countries.

- As mentioned in the background paper, the most obvious first step should be the wide promotion and dissemination of the Guidelines. We support the proposed workshops and missions to member and non-member countries, and would also suggest the development of short and user-friendly communication tools, such as a policy brief on why the SOE Guidelines matter. We would also like to raise the question if a formal launch event is being planned or if related high-level conferences are taking place at which the Guidelines could be duly highlighted.
• Another way to raise awareness of the SOE Guidelines is active participation of the Working Party in other “horizontal activities”, such as the “SOEs in global marketplace” project, further discussed below as well as the trust and business project.

• Most important, there needs to be a well-structured and well-functioning process to **review implementation** of the Guidelines, including regular **peer reviews**, and we welcome that the Recommendation encourages the Working Party to report back to the Council no later than 5 years following its adoption.

• As a first step, and to ensure credibility of the process and the Guidelines, it is essential that they are implemented in **member countries**. However, in view of the importance of SOEs in **emerging economies**, this needs to be accompanied by an active dialogue with these countries, as well as by analysis, capacity building and peer reviews.

• We note that major emerging economies do currently not adhere to the Recommendation accompanying the SOE Guidelines. The ultimate objective should be to encourage **additional adherence** to the Recommendation, which should be encouraged both in the OECD accession process and in the cooperation with key partners.


• We appreciate the preparation of a report mapping the challenges that arise when SOEs expand across borders. The fact-finding report, which is based among others on two complementary **surveys**, is an important first step to address these challenges. We particularly appreciate that this is a **horizontal report**, bringing together the analyses of OECD corporate governance, competition, investment and trade experts.

• Such a study is particularly important in view of the fact that the impact of SOEs in the global economy is on the rise, and that SOEs make up a significant part of **major emerging economies**. A key question is therefore how to ensure that these countries come to the OECD table and implement OECD recommendations.

• The **first comprehensive OECD report on competitive neutrality** in a transnational context was undertaken in 2011. We would like to recall that many of the proposed recommendations (summarized on page 84) including the importance to ensure that SOEs operate in the same tax and regulatory environments, with debt neutrality, as well as competitive and non-discriminatory public procurement, still remain valid and need to be addressed in practice.
• A wealth of information is available in the **OECD Database on National Practices and Regulations**, which compiles information on the different practices and regulations which may impact the competitive position of state enterprises in international markets. We underline the importance of such factual information, an area where the OECD has a unique role.

• The report correctly highlights **concerns in the areas of a non-level playing field** – among others due to direct subsidies, preferential access to finance, low rate-of-return requirement, and tax concessions. Some SOEs also enjoy a preferential position in their domestic market that they can potentially leverage when they expand into other markets (e.g. access to resources and preferential treatment to public procurement).

• While the report notes that privately owned companies may also enjoy some benefits, the preferential treatment of SOEs is particularly problematic because rules can be harder to enforce. This is in particular an area of concern in the context of competition litigations: the possibility to obtain transparent information on the SOE’s financial structure in the context of enquiries, or to implement remedies wherever necessary, will greatly depend on the good will of the foreign authorities and governments concerned. This should therefore be an area of focus in future OECD works on international cooperation.

• While we appreciate the extensive report and support active follow up work in this area, we believe that **some of the language should be strengthened** (frequent use of the term *may* throughout the report, e.g. “concerns may arise as to preferences towards SOEs in domestic public procurement”). We would like to reiterate that many of the concerns mentioned are very real and concrete concerns to business, so we encourage the OECD to strengthen the key recommendations and we support further research to substantiate some of the comments.

• As one way forward to address these concerns, the report suggests fully implementing the newly updated **OECD SOE Guidelines**, recognizing that the Guidelines are the first international recommendation to help governments improve the governance of SOEs. However, the Guidelines are set at a **high level of aspiration** and have not yet been fully implemented by most OECD countries. Most important, many non-OECD countries that are hosts to most of the world’s internationally active SOEs are not OECD members. Additional efforts are therefore needed to translate high-level recommendations into practical action on the ground.

• As recommended by BIAC, one of the most important novelties in the new SOE Guidelines is a separate chapter on the **need to maintain a level playing field**, which was inspired by previous OECD work on competitive neutrality. The specific recommendations summarized again on page 96 of the report must be implemented.
The report therefore includes two important recommendations, which we support, i.e.:
- **Encourage emerging economies to adhere to the Guidelines**
- Establish a mechanism for **reporting and monitoring the implementation** of the Guidelines, both in OECD member and non-member countries.

We therefore call upon the Working Party to put in place a **well-functioning process to review implementation** of the Guidelines, including country **peer reviews** and horizontal peer reviews focusing on specific challenges identified in the report. This should be included as a key point in outreach efforts and dialogue with non-member countries.

**Directions and content of the future program of work (DAF/CA/SOPP(2015)5)**

- We appreciate the opportunity to contribute to discussions on the future program of work. First of all and as mentioned earlier, the **implementation of the SOE Guidelines** should be at the top of the Working Party’s agenda. Ensuring that SOEs operate in a sound competitive environment is essential for open trade and investment. Implementation gaps need to be addressed, in part by considering specific examples.

- The growing importance of SOEs, in part due to growth in emerging countries, underlines the increasing importance of this work, but also the need to increasingly work with non-member countries. Work on implementation of the SOE Guidelines should therefore be accompanied by **active outreach efforts to key non-member economies**.

- 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. We are therefore interested in the proposal to create a **knowledge center for SOE information**, as suggested in the background paper, including a comprehensive mapping of SOE sectors in OECD and partner countries. In this context we are also interested in the new **OECD Factbook**, which is being proposed and which is intended to provide synthesized information about selected key areas.

- We are also interested in the third new work area suggested for the future program of work, i.e. **privatization and broadening of SOE ownership**. We look forward in receiving further information on the proposed work stream on best practices with privatization and partial sell-offs of SOEs and are interested in being actively involved in these discussions.