Consultation with the
OECD Working Party on State Ownership and Corporate Governance

BIAC Comment on the future Program of Work

Implementation of the Guidelines on Corporate Governance of State-Owned Enterprises

- Following the update of the OECD SOE Guidelines in 2015, the first priority of the OECD Working Party should be the promotion and dissemination of the Guidelines. 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.

- We support the awareness-raising workshops in 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. Other ways to raise awareness of the SOE Guidelines should also be considered, including webinars, active participation of the Working Party in other “horizontal activities”, etc.

- 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 emerging economies do not currently adhere to the Recommendation accompanying the SOE Guidelines. The ultimate objective should be to ensure additional adherence to the Recommendation, which should be encouraged both in the OECD accession process and in the regular cooperation with key partners.

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

Other comments on the program of work

- BIAC supports the renewal of the mandate of the Working Party, recognizing that there is still work to be done to improve corporate governance of state-owned enterprises and practices for
implementing privatisation policies, provide expertise with regard to the implementation of privatization practices, encourage and assist the application of the OECD SOE Guidelines and Principles, and in this context, to promote transparency and a level playing field. Goal 3 should include additional language addressing the role and participation of the G20 and other non-member countries as well as developments in SOE governance and privatization.

- The growing importance of SOEs, in part due to growth in emerging countries, underlines the importance of the OECD activities, but also the need to increasingly work with non-member countries. Future work on state ownership and privatization practices should be cognizant of including G20 and partner countries especially key emerging market countries.

- There should be additional acknowledgement of the specific concerns SOEs can create for private companies, if SOEs benefit from undue advantages, as well as of the costs that inefficient or monopolistic SOEs can impose on the economy. These concerns should be more fully acknowledged in the program of work as well as in future work going forward. For example, paragraph 3, which encourages policy makers to “balance competing policy objectives” including “allow[ing] governments that wish to use SOEs as an active ingredient in their policies toward inclusive growth to continue doing so” leaves out discussion on privatization of SOEs.

- In the context of SOEs as part of the economy, the program of work should give additional attention to the topic of privatization. Work on privatization is one of the possible outcomes of the regular reviews of each state’s ownership policy as recommended by Section I of the Guidelines. We are interested in the report taking stock of recent developments in the area of privatization and broadening of SOE ownership and support follow-up work on good practice based on the findings of the report. The issue of why economies prefer SOEs over private actors should be further discussed as it relates to competition.

- A close connection between the Working Party and the OECD Corporate Governance Committee should be maintained; hence we support the development of the Compendium in parallel with the development of the Factbook. The OECD has an important role as a knowledge center for SOE information, as it currently has the only global stock-taking of national SOE sectors. We therefore support the proposal to have annual updates of this information. The output and work products of the Working Party should be made widely available.

- In this context, it should be remembered that not all SOEs are alike and there should be transparency regarding the diverse types of SOEs with diverse levels of state influences. It is most important that there is transparency and a clear understanding of those SOEs expected to operate similarly to private sector companies and which fulfil the role of the state as a shareholder in each case. There should therefore be additional emphasis in the work program on making the precise roles the state plays in the business of each SOEs more transparent. Reaching out to the governments only is insufficient. Key business organization in each country should also be consulted to get a balanced view. There should also be more clarity for the investor on the role of the state (stated and actual) in particular with regard to SOEs. Currently
this is not sufficiently clear in many jurisdictions. Paragraph 5 seems to indicate the work on competitive neutrality is advanced, which is not everywhere the case, especially in BRIC countries. The Compendium shows the lack of real details, underlining the importance of additional work.

- With regard to the issues mentioned in paragraph 2, we emphasize the need for mutual commitment on the parts of the government and the SOE to good governance, competitive neutrality and pro-competitive reforms. Whilst these are stated objectives of the OECD work and respective jurisdictions, it is also often not adhered to in individual cases.

- It should be considered that SOEs which are in competition with the private sector will attempt to crowd out the private sector if there is not a level playing field and at least full transparency. Competing investors need to know the environment they are entering. Without this, investors are reluctant. BIAC underlines that the required changes will be challenging without some independent oversight of certain SOEs, oversight accountable for the public interest not the government interest.

- Much of the content of Box 1 about possible implementation of the work on New Approaches to Economic Challenges (NAEC) is about economic governance and not the governance of entities (SOEs). Work on SOE governance is important in order to yield more complete and comprehensive work.

- Regarding specific areas of work going forward, BIAC underlines the importance of:
  - Implementation of the SOE Guidelines, seeking active involvement and buy-in of non-member countries where SOEs play an important role;
  - Work on the methodology for the implementation of the SOE Guidelines (in cooperation with the World Bank, which has developed expertise in this area);
  - Work on privatization and broadening SOE ownership;
  - Update of the accountability and transparency guide;
  - Annual development of a compendium of SOE practices, including more G20 and partner countries;
  - Continued development of best practices in SOEs on competition issues, including highlighting poor practices when they are evident and public;
  - SOE reform, through thematic peer reviews on topics such as the independence of the unit operating for the state as shareholder. A survey of Chairmen, independent directors and CEOs of SOEs on company/state relationships might also be helpful.

BIAC encourages publication and dissemination of OECD reviews, beyond the reports that are available at OECD Working Party or Committee level, which should be accessible to business organizations and the investor community.