

OECD Roundtables on State-Owned Enterprises

BIAC Key messages

19 October 2016

BIAC appreciates the opportunity to participate in the two workshops on state-owned enterprises (SOEs) on “SOEs as global competitors: how to react, how not to over-react” and “Preventing Corruption in SOEs: the role of shareholders”. BIAC would like to express again its strong support for OECD activities in this field and considers the roundtables as an excellent opportunity to exchange views on how to move forward effectively in this regard.

SOEs as global competitors

The OECD meeting is taking place at a time in which the global economy has been shaped by two decades of increasing outward investment by SOEs resulting in frequent competition between state-related and private firms. This development has given rise to concerns with respect to market distortions and protectionist policy responses. Business and all market actors need to operate and compete under equal conditions, subject to the same market forces in order to ensure the most efficient allocation of resources and maximised societal value.

The workshop therefore represents an important opportunity to reflect on (1) how to minimize any potential distortionary or anti-competitive effects created by state intervention in the global marketplace; and (2) how to keep markets open to trade and investment, regardless of firm nationality or ownership. It also presents an opportunity to promote the need for consistency of regulation and the implementation of standards. Among other issues, BIAC would like to highlight the following:

- **Enhance transparency:** There are many forms of SOEs, including state-owned or controlled, state championed firms, companies heavily backed by their national authorities, etc. Transparency including on the governance structure and the advantages they enjoy for all forms of SOEs is a crucial first step for ensuring a level playing field. This involves that reporting requirements of SOEs engaged in commercial competition exceed the reporting expected of private companies, given the fact that the SOE is likely to be promoting national goals that cause it to depart from being guided solely by commercial considerations. It is important to devise methods to calculate a market-consistent rate of return on business activities to ensure comparability to private businesses.

- **Foster good governance:** The importance of enhanced behaviour, culture and good governance should be stressed in all cases. All organizations – whether private or public – should focus on good governance, including implementation, monitoring and enforcement of relevant codes and good practices. In this respect, the OECD/G20 Corporate Governance Principles and the OECD Guidelines for Corporate Governance of SOEs are key tools to ensure good governance and must be implemented around the world.
- **SOEs in the market place:** In the updated OECD SOE Guidelines, we particularly welcomed increased emphasis on SOEs in the market place, underlining the importance of avoiding market distortions and maintaining a level playing field between SOEs and private enterprises. Issues highlighted include among others the importance of a transparent board nomination process for SOEs, harmonizing the legal status of SOEs in home and host countries, ensuring SOEs are subject to audit, clarifying business objectives and making non-commercial objectives explicit.
- **Apply competition law to all actors in the market:** Competition concerns, ranging from unfair advantages, including in the form of preferential treatment, such as preferential access to finance, to the occupation of monopoly positions, need to be addressed. Competition law should apply to all actors in the market. Exemptions should be limited to the extent possible to minimize the risk of market distortion, and should be publicly available.
- **Address market distortions:** A widespread commitment to competitive neutrality will reduce competitive disadvantage/advantage based on ownership, such as lower cost of capital or lower risk of bankruptcy. BIAC underlines the importance of OECD work in this area, which can be an important tool for governments to identify priority areas for policymakers to address market distortions, e.g. to ensure debt neutrality, subjecting SOEs to financial market disciplines as well as competitive and non-discriminatory public procurement. SOEs should operate, to the largest extent possible, in the same or similar tax and regulatory environment as private enterprises.
- **Identify preferential treatment with distortionary home market and cross-border effects:** The OECD background papers for the workshop provide a wealth of information on recent developments with regard to SOEs and include a list of examples of preferential treatment of SOEs, such as preferential financing, privileged access to information, subsidies, exemptions, and preferential regulatory treatment. Such a list should be used as a basis for scrutinizing the ways of addressing market distortions.
- **Develop tools:** BIAC welcomes the OECD initiative to develop an OECD transparency checklist for SOEs operating abroad, which should be as specific and comprehensive as possible, highlighting the various distortions that have been identified and ways to address them. Such a checklist can play an important role by providing a basis for objective assessment of SOEs and creating clear expectations of what should be considered generally accepted standards of good practices when SOEs operate abroad.
- **Trade & investment agreements:** BIAC has on many occasions underlined the importance of trade and investment agreements. SOE considerations have been included in recent discussions on trade

and investment agreements, such as the TPP. Including well-designed SOE provisions in bilateral agreements, particularly with countries where a significant portion of their GDP and economic growth comes from SOEs, can be an important way to address concerns.

- **Foster outreach and implementation:** Business increasingly faces competition from SOEs both within and outside of the OECD. Increased involvement of non-member countries in related OECD analysis, outreach, adherence to instruments, such as the OECD SOE Guidelines, is therefore important. We call upon the OECD to help governments use all available tools to ensure fair competition and a global level playing field.

Preventing corruption in SOEs

SOEs are playing an increasingly important role in both domestic and international markets. We concur with the analysis that many SOEs are uniquely exposed to corruption risks, because of their proximity to government and because they often operate in industries with high corruption risks. The focus of the roundtable is therefore highly relevant. The 2014 OECD Foreign Bribery Report identified state-owned or state-controlled enterprises as the single biggest category of foreign officials who were bribed, accounting for almost one-third of the cases of bribery covered by the report. The report therefore recommended that future work could focus on the role of SOEs or public companies as both bribe givers and bribe takers.

The roundtable provides an excellent opportunity to identify best practices and support efforts to prevent corruption in SOEs. In BIAC's view, the OECD would be well placed to undertake specific work related to SOEs exposure to corruption risk, thanks to its long-standing experience in the fight against corruption and the implementation of the SOE Guidelines. Among other issues, BIAC would like to highlight the following:

- **Establishing trust:** There have been great expectations towards the private sector, which has actively engaged in OECD work in the fight against corruption and strongly supports effective implementation of and further adherence to the Anti-Bribery Convention. Measures aimed at strengthening integrity in all public bodies are the necessary counterpart to the fight against misconduct in the private sector. An important step towards increasing trust is more transparent governance of SOEs or controlled entities. Exemplary behaviour should be demonstrated by governments, government agencies and entities as a means to display best practice, while ensuring that national jurisdictions treat public and private actors on the same footing.
- **Identify corruption risks:** A key difference for SOEs and private sector companies with respect to risks of corruption relates to the generally stronger political influences to which the former is subject. It is important that when consideration is given to addressing conflicts of interest, that conflicts relating to political influences are considered and addressed, as much as commercial and financial influences. In some cases, the connection to the state might be seized as an opportunity with respect to being able to readily report where corrupt actions are identified.

- **Ensure a level playing field:** SOEs compete with private companies and should be subject to the same high standards with regard to accounting, auditing and reporting. Beyond the requirements that apply to all companies, SOEs must be transparent about their relationship with the state to avoid risk of market distortions and conflict of interest. Specific governance challenges due to the proximity to policy makers and regulators need to be addressed.
- **Implementation of SOE Guidelines:** While pursuing wider objectives, effective implementation of the SOE Guidelines can also play an important role in fighting corruption. Among others, the SOE Guidelines include important recommendations in this field, such as recommendations related to disclosure and transparency to investors and stakeholders, integrity and accountability of SOE boards, making sure that the state acts as an owner with professionalism and effectiveness.
- **Appropriate risk management and reporting arrangements:** Having arrangements in place to monitor and enforce implementation also means having appropriate risk management arrangements – including relevant board sub committees (risk management, audit, nominations) and an internal audit function with reporting lines to people other than management. It also requires having reporting in place to publicly disclose and discuss the operation of these arrangements. Robust reporting arrangements, including a strong internal control environment are critical, in addition to strong accountancy expertise and capacity within SOEs.
- **Well-functioning compliance systems:** Compliance should be understood not just as adherence to the law, but as a key component of integrity. Both public and private organizations should be encouraged to invest in well-functioning compliance systems and support projects that work towards the creation of incentives for good performers. Compliance effort should be duly recognized and compliance incentive systems should be implemented, encouraging voluntary self-disclosure.
- **Learning from private sector counterparts:** Public-private cooperation and sharing of best practice, including in the area of compliance systems, should be promoted. There are no doubt areas where SOEs could “learn” from private sector counterparts by examining and reflecting upon the structures and arrangements that best practice, private sector companies have in place, and the reporting they provide. SOEs and their management should engage with experts in the private sector, both with regard to compliance experts and professional services to get advice on assessing and reviewing risks and controls.
- **Support education and capacity building:** BIAAC encourages the OECD to promote a culture of integrity, including cooperation with education systems and developing countries. We also underline the importance of partnerships with companies to join forces to effectively reduce corruption risks. Efforts to promote a culture of integrity should include providing companies, including SOEs, with practical guidance and tools for building their anticorruption programs.