



TRADE UNION ADVISORY COMMITTEE  
TO THE ORGANISATION FOR ECONOMIC  
COOPERATION AND DEVELOPMENT  
COMMISSION SYNDICALE CONSULTATIVE  
AUPRÈS DE L'ORGANISATION DE COOPÉRATION  
ET DE DÉVELOPPEMENT ÉCONOMIQUES

Consultation with the OECD Working Party on State Ownership  
and Privatisation Practices  
**TUAC Submission**  
Paris, 29 March 2011

1. TUAC welcomes the opportunity to comment on the documents that are for discussion at the 16<sup>th</sup> session of the OECD Working Party on State Ownership and Privatisation Practices. As shown below, our comments relate to:

- Item 4: “Competitive neutrality and state-owned enterprises” including working papers DAF/CA/SOPP(2011)1 (hereafter ‘paper 1’) and DAF/CA/SOPP(2011)3 (‘paper 3’);
- Item 5: “Balancing commercial and non-commercial priorities for SOEs” including working paper DAF/CA/SOPP(2011)4 (‘paper 4’); and
- Item 6: “Good practices for SOE boards” including working paper DAF/CA/SOPP(2011)5 (‘paper 5’).

2. In addition, TUAC would like to share its concerns about the positions adopted by OECD business groups on corporate governance in the on-going negotiations on the ‘update’ of the OECD Guidelines for Multinational Enterprises.

***Items 4&5: Competitive neutrality papers and balancing commercial and non-commercial priorities for SOEs***

3. The concept of competitive neutrality is much broader than that of the “level playing field”, as referred to in the OECD Guidelines on corporate governance of state-owned enterprises, Chapter 1. It goes beyond existing competitive markets to include competition within governments and between different levels of governments, including between central and local government entities (paper 1 #4, paper 3 #2 & annex p10). The OECD approach also appears to be largely inspired by the Australian experience (DAF/CA/SOPP(2011)2) for which the definition of “government businesses” (paper 3 #4) – which is key to considering competitive neutrality – includes many government entities and administrations that otherwise would not qualify as commercial enterprises. The importance attributed to the Australian experience in shaping the OECD thinking on SOEs and competition is of concern: Australia has no listed SOEs any more and ranks 19 in terms of number of workers employed by state corporations (paper 6 # table1). TUAC therefore questions the choice of the Australian experience as a model.

4. The OECD papers draw extensively on a separate report prepared for the OECD Competition Committee (DAF/COMP(2009)37). Key recommendations by the OECD include:

- Generalised corporatisation of “government businesses” (paper 1 #49, paper 3 #5) and the application of private corporate law regime to public entities “to the largest extent feasible” (paper 3 #11);
- Splitting SOEs between business and non-business activities (paper 1 #50, paper 3 #6);
- Establishing performance criteria and cost allocation mechanisms to measure non-business output and avoiding cross-subsidising of commercial activities by public service activities (paper 1 #51, paper 3#7); and
- Aligning government businesses with private sector performance financial criteria, including:
  - o enforcing a “market-consistent rate of return” to avoid SOEs having lower margins than the private sector (paper 3 #8);
  - o Eliminating access to cheaper finance stemming from government guarantees (paper 3 #12).

5. The perspective given in the papers is that of the private sector and of enhancing government-sourced opportunities for businesses through greater competition. Missing from the papers is the public governance perspective on the implications of competitive neutrality for public administration and public services efficiency. On the latter, the Public Governance Directorate issued a report in 2008, “Regulation Inside Government” (GOV/PGC/REG(2008)3), which includes a review of various public management tools, including competition within government and with the private sector. Competition is often associated with a large amount of reporting and increasing compliance costs and administrative burden (#169). The report further notes that competition leads to “disaggregation” of government institutions into smaller more fragmented entities which runs against recent developments toward “reintegration of government services” and “whole-of-government approaches” (#56).

6. We also have the following remarks to share:

- The information contained in papers 1 #9 according to which public-private partnerships (PPP) are growing is incorrect. Across the OECD since 2007 there has been a reduction in the number of PPP deals. Several OECD governments have introduced government guarantee programmes to help PPPs recover from the crisis– including France and Korea.
- The causality link that is suggested in papers 1 #7 and in papers 4 #6-7 between SOEs and so called “national champions” as barriers to competition needs to be amended. The creation of large financial and non-financial groups does not necessitate state ownership, as evidenced in the recent G20 discussion on financial conglomerates that are “too big too fail”. Many industrial groups across OECD have no state-ownership but nevertheless carry such considerable weight in the economy in which they are headquartered that they exercise substantial influence over government decision-making.
- As reported in early contributions to this WP, the approach that is suggested regarding Corporate Social Responsibility (CSR) and the alleged “higher expectations” for SOEs (which in turn would amount to “non-commercial priorities”) is not in line with the general approach to responsible business conduct. Neither the ILO MNE Tripartite Declaration nor the OECD Guidelines for Multinational Enterprises, both of which embody core International Labour Standards nor other international CSR-related norms and standards place greater responsibility or “expectations” on SOEs than other companies.

7. In sum, this project in our view is not balancing government efficiency and private sector objectives as it should. It is biased toward private business interests only and has potentially deep implications for government and public services, which have not been taking into account. We would also like to remind the WP that it has yet to take action on the

effective upholding and implementation of the SOE Guidelines of 2005. Priority should be given to implementing the existing Guidelines before drafting new ones.

#### ***Item 6. Good practices for SOE boards***

8. We have the following remarks to share:

- Methodological concerns: this paper (n°5) is the outcome of a survey a group of 20 people with SOE Board experience. As a matter of transparency, we recommend disclosing the name of the companies.
- Several parts of the paper are not focussed on the specifics of SOE boards (“Added value” #32-33, “Thinking strategically” #34 et al) or they are too vague and general to be applied in a concrete manner (suggested “best practices” in section IV #82 et al.).
- The paper calls for the elimination of politically appointed officials on SOE boards (which is recommended by the SOE Guidelines) but also of civil servants in their capacity as representatives of government (#40). At the same time the paper stands in favour of “individuals with political experience” (#41-42). This is disturbing because it offers no solution to active state ownership in the board, and at the same time – as it is drafted – it opens the door to all forms of opaque political networks, if not cronyism.
- Equally disturbing is the opposition to regulating gender diversity on boards (#47) on the ground that a voluntary approach would achieve better results. Evidence would suggest precisely the opposite: men are not inclined to give up their privileges for women, hence there is a need for binding regulation, as is the case in the Nordic countries and until recently in France.
- As in previous OECD papers, the allegation according to which board level employee representative “may pose irreconcilable conflicts” is unfounded (#48).
- The positive stance of the paper on the separation of the CEO and chair positions is strongly welcomed (#56).
- The discussion on the risk for governments requesting unsustainable dividend levels from the SOEs is a useful one (#71). However, such short termism surely is not specific to state ownership. We encourage the OECD to investigate the topic further, including with other categories of shareholders (institutional investors and activist hedge funds among others).
- The acknowledgement that lower director pay does not in itself constitute a barrier to attracting “talent” is welcome (#78).

#### ***Opposition of business groups to better corporate governance during the review of the OECD ‘MNE’ Guidelines***

9. The TUAC, alongside NGOs and business groups, have taken an active part in the negotiations on the ‘update’ of the OECD Guidelines for Multinational Enterprises. These Guidelines constitute one of the ‘flagship’ instruments of the Organisation. In the course of the negotiations, OECD business groups have taken an unhelpful, and rather surprising, stance *against* the inclusion of stronger corporate governance provisions in the Updated Guidelines. Indeed, as documented in OECD Investment Committee paper DAF/INV/WP/RD(2011)2, OECD business groups objected to:

- Referencing the SOE Guidelines in the preface of the text (amendment to #8, p7);
- Expanding good corporate governance principles “throughout enterprises groups”, i.e. including subsidiaries (amendment to G. n°6 ch. General policies, p10);
- Disclosing the “implementation process” of the company’s corporate governance code (amendment to G. n°3h ch. Disclosure, p11);

- Releasing “annual independent audit” of the company’s accounting (amendment to the Commentary to the Disclosure ch., #28, p34);
- Inserting SOE Guidelines VI.D on board employee representatives (Ch. Employment, new G. n°9, p69).

10. The above suggests that OECD business groups are not in favour of better corporate governance practices and greater visibility of the SOE Guidelines. This is of concern.