

Meeting of the OECD Council at Ministerial Level

Paris, 6-7 May 2014



**LEVELLING THE INTERNATIONAL
PLAYING FIELD BETWEEN
PUBLIC AND PRIVATE BUSINESS:
WHAT HAVE WE LEARNT SO FAR?**

**Levelling the International Playing Field
Between Public and Private Business:
What have we Learnt so Far?**



Competitive neutrality occurs where no entity operating in an economic market is subject to undue competitive advantages or disadvantages (OECD, 2012a)

A mandate...

1. In their 2012 Ministerial Council Statement, Ministers “welcome the OECD’s work to ensure competitive neutrality between public and private owned-businesses” [C/MIN(2012)10]. In his Summary, the Chair noted that “the OECD was asked to expand this work...and to engage in a dialogue on policies by home and recipient¹ countries related to state-controlled enterprises’ international trade and investment, to promote a level global playing field, to fight protectionist practices and support growth and development” [C/MIN(2012)19].

...and its fulfilment.

2. This work represents a joint undertaking by the Competition, Corporate Governance, Investment and Trade Committees. In May 2013 an overview report was provided to the OECD Meeting of the Council at Ministerial Level, calling for further evidence on the extent of international operations by state-owned enterprises (SOEs) and for additional analysis of SOEs’ impact on their competitors in international markets [C/MIN(2013)18]. The present document provides an update to that report. It is intended to assist delegates’ consideration of competitive neutrality issues in advance of the 2014 OECD Council Meeting at Ministerial Level.

1. Summarising the issues

A need for both public and private investment.

3. Investment in productive capacity and infrastructure can contribute to exit from the crisis and strengthen the recovery. Policy makers need not face a choice between public and private sector investment – in most cases both sources of finance will need to be tapped and complement each other. The challenge will be to enhance the positive inputs of the State while creating conditions for the private sector to invest.

The State intervenes in the markets in many ways.

4. State intervention takes multiple forms, including regulation, public subsidies and exclusive rights granted to private enterprises, industrial policy, and direct ownership participation. The focus of the present report is on enterprises in which the State holds a non-trivial ownership share. In the remainder of the report they are referred to as state-owned enterprises (SOEs) although in some cases the State may not be the majority owner.² However, it bears mentioning that other forms of state intervention, including aids extended to privately-owned enterprises, can have similar effects on international commerce and investment. They should be the continued subject of analysis and monitoring by OECD.

5. As demonstrated below, the weight of SOEs is in the global economy is significant and on the rise. To a large extent this role of the State reflects the

¹ “Recipient countries” refer to economies in which a foreign SOE conducts business (whether by investing or by exporting into the country).

² For the purpose of data collected in this report, SOEs are defined as companies in which the state controls at least 10% of the voting capital. 10 per cent is the benchmark generally used in OECD and international investment statistics and agreements to define investments made with the objective of establishing a lasting interest in an enterprise.

SOEs are increasingly prominent in the global market place...

growth and internationalisation of a number of emerging economies which maintain state ownership in broad segments of their productive economy. It is, however, also influenced by the recent commercialisation and internationalisation of state-controlled public utilities within the European Single Market. Most recently, in response to the financial crisis, a number of governments have provided public aid and even temporarily acquired significant ownership stakes in large failing companies in banking and other industries.

...which is not a reason for concern, provided they compete on a level playing field.

6. A growing role for the State in the commercial economy is not in itself a reason for concern. However, SOEs have become increasingly internationally oriented and some concerns about safeguarding a level playing field (also known as “competitive neutrality”) across jurisdictions have arisen. As such enterprises expand their commercial activities internationally they would contribute to building mutual trust and confidence by committing themselves to basic principles of competitive neutrality. This would help minimise the negative impacts of state intervention that might create unfair commercial advantages for selected firms and the risk of a protectionist response in partner countries which could undermine economic growth and development.

Competitive neutrality brings benefits throughout the domestic economy.

7. For countries home of SOEs, competitive neutrality is also in the best interest of their own economic development. The main rationale for a level playing field between private and publicly owned businesses is that it enhances efficiency throughout the economy. When certain economic agents are put at an undue disadvantage, goods and services are no longer produced by those who can do it most effectively. As a growing number of countries strive to develop world-class industries and SOEs are assigned important roles in the pursuit of economic and social development objectives in many of them, they need to give increasing attention to ensure that resources flow to those sectors that can make best use of them. By giving adequate attention to competitive neutrality, governments may minimise the risk of competitive activities being “crowded out” and promote their own private sectors’ development, job creation and growth.

2. State-owned enterprises and their impact on the global corporate landscape: The evidence

2.1. The importance of SOEs in the global competitive landscape

SOEs have become more prominent in the global economy over the last decade.

8. Much of the recent debate concerning what has been termed “state capitalism” and its impact on the international competitive landscape has focused on the increasing presence of wholly and partly state-owned enterprises in the global corporate landscape. Indeed, the most recently published Forbes Global 2000 list – which ranks companies according to an average of their valuation, sales, profit and asset value – the economic weight of SOEs is non-negligible: of the world’s 2000 largest companies, 282 are found to be SOEs. This is the highest number recorded in the last decades. The State in various countries yields majority or significant influence in at least 22 of the world’s 100 largest corporations³ (Table 1).

³ Dominant or significant influence is determined based on the level of state ownership. This includes companies with over 50% State ownership, and companies which are partly state-owned (i.e. between 10 to 50% state-ownership).

Table 1. The world's largest 25 SOEs in the business year 2012-13 (USD billion)

Global rank	Company	Sector	Domicile	Market value	Sales	Assets	State ownership
1	ICBC	Banking	China	237.3	134.8	2813.5	Majority
2	China Construction Bank	Banking	China	202.0	113.1	2241	Majority
8	Agricultural Bank of China	Banking	China	150.8	103.0	2124.2	Majority
10	PetroChina	Oil & Gas	China	261.2	308.9	347.8	Majority
11	Bank of China	Banking	China	131.7	98.1	2033.8	Majority
14	Volkswagen Group ⁴	Auto industry	Germany	94.4	254.0	408.2	Minority
17	Gazprom	Oil & Gas	Russia	111.4	144	339.3	Majority
20	Petrobras	Oil & Gas	Brazil	120.7	144.1	331.6	Majority
22	BNP Paribas ⁵	Banking	France	71.3	126.2	2504.2	Minority
26	Sinopec-China Petroleum	Oil & Gas	China	106.9	411.7	200.0	Majority
29	China Mobile	Telecom	Hong Kong	213.8	88.8	168.7	Majority
30	ENI ⁶	Oil & Gas	Italy	86.3	163.7	185.2	Majority
38	Statoil	Oil & Gas	Norway	78.1	126.8	140.2	Majority
47	NTT	Telecom	Japan	58.2	126.9	226.0	Minority
54	Bank of Communications	Banking	China	56.7	43.5	846.4	Minority
59	Rosneft	Oil & Gas	Russia	73.2	68.8	126.3	Majority
61	Sberbank	Banking	Russia	73.3	36.1	441.1	Majority
67	Banco do Brasil	Banking	Brazil	37.9	69.0	552.2	Majority
74	EDF	Electricity	France	35.3	95.9	325.2	Majority
87	Vale	Iron & Steel	Brazil	92.7	45.7	130.4	Minority
94	Saudi Basic Industries	Chemicals	Saudi Arabia	74.8	50.4	90.2	Majority
95	GDF Suez	Utilities	France	45.0	128.0	268.9	Minority
101	China Merchants Bank	Banking	China	44.1	28.4	547.0	Minority
106	China Life Insurance	Insurance	China	79.9	63.2	304.6	Majority
111	CNOOC	Oil & Gas	Hong Kong	84.3	39.2	73.2	Majority

Source: Forbes 2000 and OECD (2014b)

This rise is not only attributable to emerging economies, but also sizeable minority stakes held by governments in OECD countries

9. This large and increasing presence of SOEs mostly reflects the growing importance of emerging economies where the State continues to play a dominant role in the commercial economy. Of the top-10 companies in the world (measured by a combination of their global sales, profits, assets and market value), six are Chinese, one is Brazilian and one is Russian. However, an interesting dichotomy between OECD and emerging economies is becoming visible. The governments of OECD countries may have relatively few large SOEs,⁷ but many of them retain minority stakes – and in some cases continue to wield dominant influence – in important sectors of their national economies. The top-25 partly-state owned enterprises, in addition to the ones listed in Table 1, in 2012 included firms such as Nordea Bank (Sweden), EADS (pan-European), ENEL (Italy), France Telecom and Japan Tobacco.

⁴ The regional government of Lower Saxony holds a minority stake in Volkswagen which includes certain blocking rights.

⁵ The Belgian government retains a 10% shareholding in BNP Paribas which dates back to the rescue operation of Fortis Bank.

⁶ ENI is 30% state-owned, but the Italian government is entitled to appoint the majority of board members (Christiansen and Kane, 2013).

⁷ Nevertheless, across the OECD area, majority-owned SOEs account for a combined 2,111 enterprises, valued at over 2 trillion USD and employing about 6 million people, representing an average of 2.5% of total non-agricultural employment (OECD, 2014b).

SOEs are likely to continue to grow in the short to medium-term.

10. The trend toward a growing role for SOEs is likely to continue in the short and medium-term future. A mechanical factor for this is the fact that the economies, and business sectors, of those emerging and post-transition economies that have large SOE sectors are projected to grow more briskly than in most other parts of the world. Although several of these countries have ambitious privatisation programmes, so far their growth rates have outpaced their processes of asset divestment.

2.2 The internationalisation patterns of SOEs

The internationalisation of SOEs...

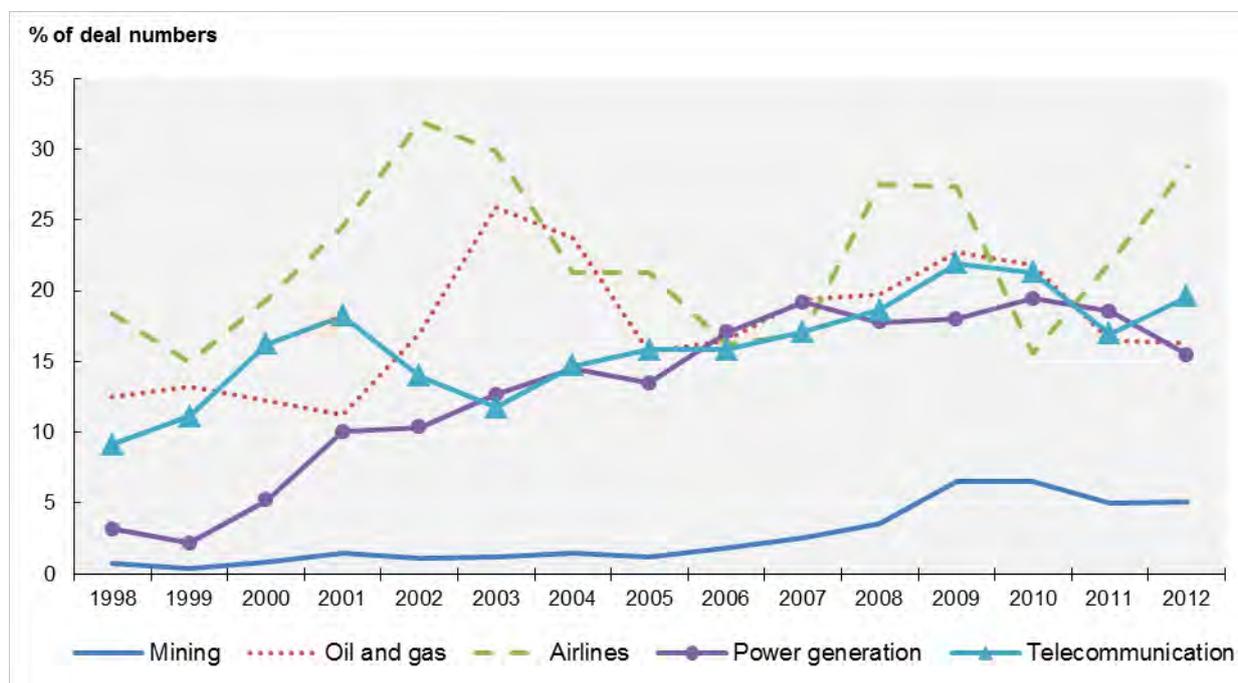
11. The fact that SOEs are becoming bigger and increasingly prominent does not in itself imply that they are also becoming increasingly active in the international marketplace – and indeed some of the largest SOEs are domestic legal or natural monopolies. How important this presence is can be measured by the extent to which SOEs compete with foreign companies in international trade, invest in foreign jurisdictions, and compete in third markets. Whether or not there need to be concerns about a level playing field depends on whether there is a growing presence of SOEs in the global marketplace that might be related to undue competitive advantages.

...may not differ much from private companies in similar circumstances...

12. An earlier OECD study indicated that despite their economic heft, and a number of high-profile examples of international investments by SOEs, the actual internationalisation of SOEs has been in line with global business trends. SOEs have generally tended to be internationally active if they are located in sectors where cross-border transactions are the commercial norm. However, recently there have been some indications of a growing number of SOEs undertaking international investment. Figure 1 shows the SOE share of total cross-border mergers and acquisitions (M&As) in five sectors that are characterised by widespread state ownership.⁸

⁸ The ownership threshold includes deals where the State is either majority (over 50%) or minority shareholder (i.e. from 10-50%).

Figure 1. Share of international M&As with a state-owned acquirer



Source: OECD, 2014c.

...though they may have grown in importance as international investors.

13. The figure indicates that the trends in some sectors have been toward a slight increase in the share of international transactions affected by SOEs. This may, moreover, be a low-end estimate since the figure includes only investment in extant enterprises, whereas much recent attention has been given to greenfield investment in the resource-based industries.⁹ It further bears mentioning that, in most sectors, domestic transactions continue to outstrip international mergers and acquisitions by a wide margin (OECD, 2013b). Thus SOEs are making themselves increasingly felt among international investors, but international investment by SOEs is nowhere near being a driving force in M&A activities worldwide.

Growing activity in the utilities sector, originating in OECD countries...

14. At the sectoral level, an increase in state-driven international investment in some of the public utilities sectors has occurred – notably in power generation and telecommunication. Interestingly, most of this investment originated within the OECD area. European SOEs, in particular, taking advantage of European Union (EU)-mandated market liberalisation, have been active investors in other member countries of the EU Single Market. In these sectors, over the last fifteen years there has been no particular upsurge in overseas M&As by SOEs located in emerging market countries (OECD, 2014c).

...whereas emerging economies are

15. One sector in which a growing SOE involvement is attributed to companies located in emerging economies is the mining industry. Here, SOEs have grown to 5-6% of total international M&As from almost zero share prior to the 21st century – a development driven by companies domiciled in China and

⁹ Moreover, the figure is based on the number of deals, whereas the size of individual transactions tends to be larger where SOEs are involved.

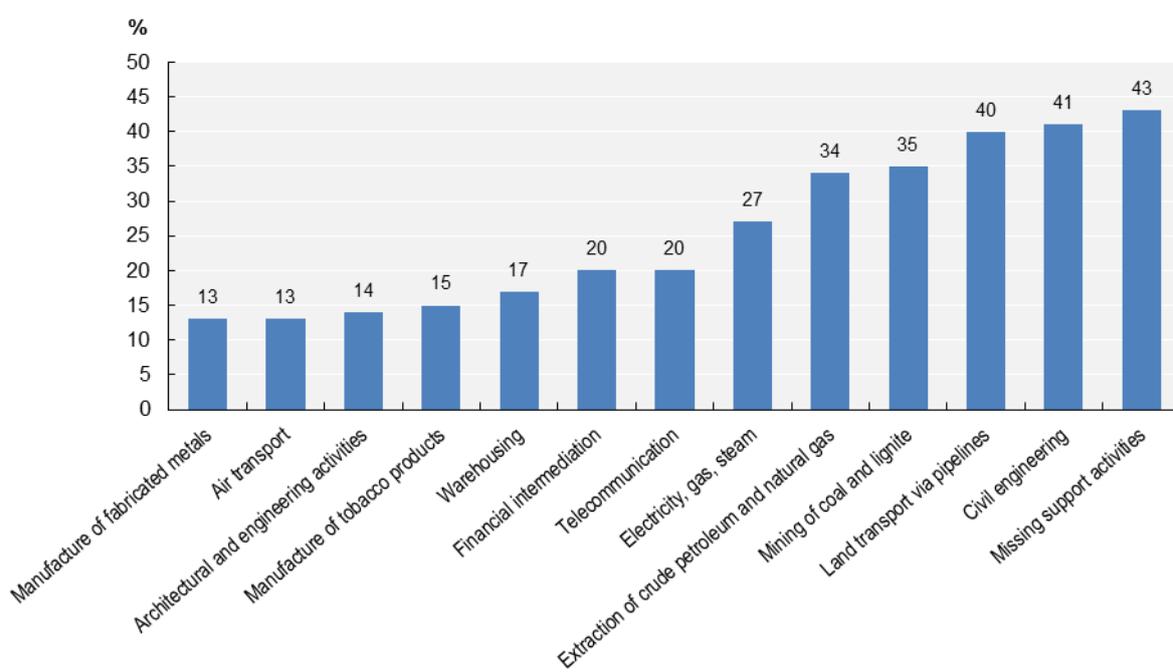
increasingly active in the mining industry.

other emerging economies¹⁰ (OECD, 2014c). This still represents an internationally low share of transactions with the bulk attributed to private mining companies domiciled in a handful of advanced economies. However, if current trends continue in the future, state-controlled mining companies operating from emerging economies are set to become an important international factor.

SOE are active players in international trade.

16. Most of the economies with a particularly high share of SOEs among their largest enterprises are important players in international trade in goods and services. Moreover, those segments of the raw materials, manufacturing and services sectors that have the strongest SOE presence account for significant shares of world trade (Figure 2) (OECD, 2013c).

Figure 2. Global share of SOEs among the world's largest enterprises by sector



Note: Only sectors with shares above 10% are shown.

Source: OECD (2013c).

2.3 The consequences

Increasing international investment and trade by SOEs has given rise to concerns about economic efficiency...

17. Increasing international investment and foreign trade by SOEs may to some extent simply reflect that they have been more resilient than their private counterparts during the recent financial crisis. However, it has also given rise to questions about whether they might be driven by undue advantages and thus create economic distortions. When this is the case, goods and services may end up being produced not by those who can do it most efficiently but by those that receive the greatest advantage. The rationale for—and the benefits of—international trade and investment could in that case become questionable.

¹⁰ This may be a low-end estimate because the investment by, for example, integrated metal producers in the mining sector are not included.

...and the pursuit of national priorities ...

18. Part of the discussion has focused on a perception that trade or investment by SOEs and similar entities may be driven by “political” goals rather than commercial considerations. One of the most frequently cited concerns has been that SOEs may be acting on behalf of their government owners to secure control over scarce resources in the broader national interest. Another concern has been that SOEs may be buying into foreign technologies and knowhow with the purpose of diffusing them widely in the domestic economy. However, while there has been occasional anecdotal evidence that could be taken to suggest such motives, if this were a more widespread practice one would expect SOEs to regularly outbid private companies in corporate acquisitions. Recent OECD research found little evidence to support this (OECD, 2014c).

... largely from the non-commercial priorities of SOEs.

19. A more likely point of contention arises from the fact that a number of SOEs that are active in economic markets continue to pursue commercial as well as public policy objectives, and that the division between the two is not always transparent. This goes to the heart of the debate, because if governments make a conscious decision to own an enterprise then it must be assumed that this enterprise is under some circumstances required to act in a different way from private companies. Usually the motivation is the delivery of public service obligations such as, for example, universal coverage and general affordability in the utilities sector. A number of emerging economies also assign an active role to state-owned enterprises in their development strategies and in industrial policy. Finally, a more “defensive” agenda considers that some governments make use of SOEs as “employers of last instance” – possibly reflecting political difficulties in laying off public employees (OECD, 2011).

SOEs’ non-commercial activities may be justified by the pursuit of the domestic public interest...

20. In return for accepting such non-commercial tasks, SOEs are generally granted certain compensations by their government owners. According to prevailing OECD consensus, compensation should take the form of carefully calibrated fiscal transfers and be fully transparent. However, SOEs are often granted regulatory exemptions (e.g. allowed to maintain monopolies), given access to cheap finance (OECD, 2014a), granted tax concessions, etc. Insofar as this is done in the interest of the public good and subject to adequate accountability and other safeguards then there is, from a domestic policy viewpoint, no reason to raise objections.

...but this can create concerns if they expand their activities internationally.

21. However, as SOEs expand into the competitive economies of other countries, problems arise. Indeed some of the alleged advantages granted to SOEs by governments (or provided to private firms via SOEs) have been contested as creating anti-competitive effects in the global market place. Again, such effects may be by accident or by design. Poorly designed compensations schemes are not uncommon whereby SOEs are granted advantages that are proportional with their business volume rather than their public policy objectives – which gives them both an incentive and an edge in foreign expansion. Some development strategies include compensating SOEs for market failure such as economies of scale, which almost by definition implies assisting them against foreign competitors. Even a highly reactive effort to stave off the default of an ailing SOE may be perceived negatively by foreign observers, from whose perspective this prevents the disappearance of a competitor.

Specific concerns arise when SOEs compete in “third markets”.

22. Finally, it bears mentioning that the challenges in maintaining a healthy competitive environment are not merely bilateral. For example, in some cases national authorities have actively welcomed inward investment by foreign SOEs even though they were thought to be subsidised by their home government. Among the arguments employed by the authorities were the advantages conferred by the foreign SOEs as a source of funding or knowhow that were not available locally. Most such cases have occurred where there were no domestic competitors to the foreign SOE. In other words, authorities generally see little economic incentive to enforce a level playing field when all competitors are foreign. This, in turn, implies that efforts to safeguard a healthy competitive environment should be the result of a multilateral understanding to ensure that the interests of third parties are also brought to the table.

3. Ensuring competitive neutrality: Challenges in international trade and investment

Governments have several options for addressing the concerns...

23. How then may authorities assure that SOEs participate in the global economy consistent with commonly observed commercial practices? At least three possible options are possible: First, a unilateral credible commitment on the part of the government owners, including through national legislation, to operate according to commonly-agreed high standards of ownership and governance, as a way to ensure competitive neutrality. Secondly, a shared international commitment to ensure a level playing field could be developed and implemented, through mutually agreed sets of standards and principles for competitive neutrality. Thirdly, countries can take individual action through international trade and investment treaties.

Box 1. Proposing a framework: Seven good practices for a level playing field

The OECD recently developed a “best practice report” identifying priority areas for policy makers that are committed to competitive neutrality (OECD, 2012a). The report was based on a large body of earlier OECD studies, guidelines and best practices which, while not directly addressing competitive neutrality, have a bearing on the subject (OECD, 2012c). The main conclusion is that governments wishing to obtain and enforce competitive neutrality need to focus attention on the following seven priority areas:

- Streamline government businesses either in terms of corporate form or the organisation of value chains. An important question when addressing competitive neutrality is the degree of corporatisation of government business activities and the extent to which commercial and non-commercial activities are structurally separated. Separation makes it easier for commercial activities to operate in a market-consistent way. Incorporating public entities having a commercial activity and operating in competitive, open markets, as separate legal entities enhances transparency.
- Ensure transparency and disclosure around cost allocation. Identifying the costs of any given function of commercial government activity is essential if competitive neutrality is to be credibly enforced. For incorporated SOEs, the major issue is accounting for costs associated with fulfilling public service obligations (if applicable). For unincorporated entities, problems arise where they provide services in the public interest as well as commercial activities from a joint institutional platform.
- Devise methods to calculate a market-consistent rate of return on business activities. Achieving a commercial rate of return is an important aspect in ensuring that government business activities are operating like comparable businesses. If SOEs operating in a commercial and competitive environment do not have to earn returns at market consistent rates then an inefficient producer may appear cheaper to customers than an efficient one.

- Ensure transparent and adequate compensation for public policy obligations. Competitive neutrality concerns often arise when public policy priorities are imposed on public entities which also operate in the market place. It is important to ensure that concerned entities be adequately compensated for any non-commercial requirements on the basis of the additional cost that these requirements impose.
- Ensure that government businesses operate in the same or similar tax and regulatory environments. To ensure competitive neutrality government businesses should operate, to the largest extent feasible, in the same or similar tax and regulatory environment as private enterprises. Where government businesses are incorporated according to ordinary company law, tax and regulatory treatment is usually similar or equal to private businesses.
- Debt neutrality remains an important area to tackle if the playing field is to be levelled. The need to avoid concessionary financing of SOEs is commonly accepted since most policy makers recognise the importance of subjecting state-owned businesses to financial market disciplines. However, many government businesses continue to benefit from preferential access to finance in the market due to their explicit or perceived government-backing.
- Promote competitive and non-discriminatory public procurement. The basic criteria for public procurement practices to support competitive neutrality are: (1) they should be competitive and non-discriminatory; and (2) all public entities allowed to participate in the bidding contest should operate subject to the above standards of competitive neutrality.

Source: OECD, 2012.

...including “self-regulation” by the owners...

24. There is a broadly held consensus within the OECD, as expressed through standards such as the *Recommendation of the Council on OECD Guidelines on Corporate Governance of State-Owned Enterprises* [C(2005)47] (hereafter “Guidelines”), that SOEs can be operated according to similarly high standards of governance, transparency and efficiency as stock-market listed companies. If this recommendation is properly implemented, then the only residual concern for foreign authorities relates to the non-commercial objectives that governments may impress on their SOEs. Since the expectation is that these will be properly accounted for and disclosed, regulatory action can, when deemed necessary, be easily undertaken. Adherence to the Guidelines by a wider range of countries should therefore be encouraged.

...as increasingly recognised well beyond OECD’s membership...

25. An increasing number of countries have come to share a commitment to the recommendations made in the Guidelines. Mostly they have been motivated by domestic reform agendas aimed at reducing inefficiencies in the SOE sector and securing a healthy domestic competitive environment. In particular a growing number of Asian emerging economies, as they approach what has been termed “mid-income levels” of development, have implemented reforms consistent with OECD standards, in some cases citing the Guidelines as a point of departure (OECD, 2010b). For example, recently the Chinese leadership has announced wide-ranging reform plans to expose its SOEs to greater competition and improve their management.

... and an agreed framework for competitive neutrality in international trade and investment.

26. Another way of addressing these challenges would be a widespread commitment to a competitive neutrality framework for companies engaged in international commerce, as proposed by the OECD. Such a framework would ensure that no company, purely as a result of its ownership, is at a competitive advantage or disadvantage in the marketplace (Box 1). Only one OECD country has fully implemented such a framework in its domestic business environment, but a wide range of OECD and partner countries have implemented elements in their domestic legislation and regulation (OECD, 2013a). In a cross-border context an overarching commitment to competitive neutrality might eliminate almost all concerns about the operating conditions of foreign SOEs. However, it would need to rely on a strong element of self-regulation by enterprise owners, as well as transparency, monitoring and peer review mechanisms, as the ability to enforce domestic competitive neutrality frameworks extraterritorially might be limited.

Competitive neutrality is currently being discussed by treaty negotiators...

27. Ongoing negotiations of international trade and investment treaties have grappled with the role of SOEs, and one of the topics for discussion has reportedly been whether it would be more efficient to concentrate on subsidised SOEs operating abroad rather than aim for broader neutrality commitments. At issue is first and foremost the difficulty in assessing and regulating intangible advantages that an internationally active SOE may enjoy such as, for example, regulatory forbearance and a privileged position in the domestic economy. In this context, again, transparency of the state sector has been one of the central points of discussion.

...and needs to continue serving as a guidepost for OECD dialogue on SOEs.

28. Hence, competitive neutrality is a useful reference point for self-regulation, assessment of current practices and international trade and investment discussions. Competitive neutrality will continue to serve as a guidepost for OECD countries' self-assessment as well as consultations with partner countries. It will further help inform the negotiations toward the revision, during 2014, of the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*. The revision process is open to participation by all non-OECD G20 members on an equal footing with OECD countries.

3.1 Investment policy frameworks

International investment by SOEs faces restrictions in a number of recipient countries.

29. The vast majority of OECD countries recipient of foreign SOEs' investments have investment regimes which do not treat SOEs less favourably than other categories of foreign investors, but some countries do. OECD data¹¹ shows that nine OECD and G20 non-OECD countries have provisions in domestic laws and regulations that specifically restrict foreign government-controlled investments in selected sectors or across the board. These restrictions are either carved out by invocation of national security safeguards or reflected as reservations to liberalisation obligations under these countries' international investment treaties.

¹¹ [OECD Inventories of Investment Measures](http://www.oecd.org/daf/investment/foi) (15 November 2008 - 15 September 2013) and related documents available at: www.oecd.org/daf/investment/foi.

The majority of international investment agreements do not distinguish between investors on the basis of ownership.

30. At the international level, most investment frameworks, including OECD instruments and the majority of international investment agreements (IIAs), do not distinguish between investors on the basis of ownership. An OECD survey which reviewed how investors are defined in 1 814 IIAs shows that 84% do not explicitly mention SOEs. However, recent agreements are more likely to explicitly include SOEs in their coverage so as to ensure that they are protected by these agreements.¹² Approximately 6% of IIAs include governments as such in the investor definition. At the same time, there have been very few investor-state disputes involving SOEs. However, it is too early to tell how or even whether future IIAs will begin to develop new types of provisions specific to international investments by SOEs.

The Freedom of Investment Roundtable hosted by OECD discourages investment protectionism against SOEs while addressing competitive neutrality concerns.

31. The Freedom of Investment Roundtable hosted by the OECD actively exerts surveillance over the extent to which countries honour their commitments to keep markets open to foreign investment, including by SOEs, and has been mandated by the G20 since 2008 to public report on potentially protectionist investment measures. To do so, the OECD uses as benchmarks its Code of Liberalisation of Capital Movements and its National Treatment instrument as well as the OECD Declaration on Sovereign Wealth Funds and Recipient Country Policies [C/MIN(2008)8/FINAL] and more specific guidelines relating to national security which were developed and adopted in tandem with the “Santiago Principles” for SWFs. By and large OECD surveillance has so far succeeded in discouraging new discriminatory measures against foreign SOEs. At the same time, the Freedom of Investment Roundtable is an effective platform to discuss recipient countries’ concerns about distortions which may be created by undue advantages to SOEs when they operate abroad, and to advance mutual understandings around the issue of competitive neutrality.

3.2 Trade policy frameworks

Views on how to obtain a level playing field in the international trade context differ.

32. Multi-stakeholder discussions on trade by SOEs hosted by the OECD¹³ revealed different views across countries and experts on how to obtain a level playing field in the international trade context. For example, since SOEs and private firms alike can be favoured by the state, some argue for *ownership-neutral* rules and advocate disciplining the use of various state-granted advantages that can influence the competitive position of firms engaged in commercial activities rather than focusing on ownership per se. Yet, ownership implies certain interests, rights and obligations characteristic to an owner, and may effectively mean that the government combines the roles of a regulator, regulation enforcer and business owner. From the latter perspective there is a case for a *state ownership-specific* approach to regulation. It is not yet clear which will be the dominant approach in future trade agreements.

¹² For example, all five of the IIAs concluded in 2013 and three IIAs out of four concluded in 2012 explicitly mention SOEs in the definition of investor.

¹³ First round of such discussion has been held at the [OECD Workshop on Competition between State-owned and Privately-owned Enterprises in International Markets](#) on 18-19 October 2012.

Current WTO rules are generally ownership-neutral.

33. WTO rules are generally ownership-neutral. The disciplines which they impose with respect to government regulations and actions do not distinguish between situations where the provider of the goods or services covered by the regulation or action is a public or a private entity. For example, the Subsidies and Countervailing Measures Agreement (SCMA) prohibits or disciplines various forms of trade-distorting financial preferences irrespective of whether they are granted to state or independent firms. Yet, the current WTO subsidy rules do not cover services or investment as well as they cover goods trade, and it is not clear to what extent SOEs can themselves be considered as grantors of subsidies. Also, GATT Art. XVII on State Trading Enterprises (STEs) and its understanding aim to limit the degree to which such enterprises are used as vehicles to influence international trade. However, in its current interpretation it covers a relatively narrow range of potentially anti-competitive behaviours (OECD, 2013c).

Some trade agreements (RTAs) depart from the ownership neutral approach.

34. A number of recent regional trade agreements (RTAs) depart from the ownership neutral approach of the WTO and include state enterprise-specific provisions. Some of them explicitly specify that their provisions apply similarly to state enterprises, clarify some of the definitional lacunae in the WTO context, or include additional provisions pertaining to services and competition policies (OECD, 2013c). For example, in NAFTA state enterprises are obliged by the same non-discriminatory obligations as the governments themselves. US-Singapore FTA has additional transparency provisions, prohibits direct government influence on state enterprises, collusion and other anti-competitive activities and foresees a progressive reduction in the number of Singapore's SOEs. State enterprise provisions are currently included as an area for discussion in the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) talks.

The OECD Trade Committee is undertaking new work to improve transparency of national practises as regards SOEs.

35. The OECD Trade Committee is currently pursuing two exercises with a view of informing this debate (OECD, 2013e). A *business survey* on state influence on competition in international markets will provide further insights on the nature of competition in mixed international markets and help to identify possible trade-distorting practices (OECD, 2013f). The associated process of developing a *regulatory database on national practices and regulations* which may have a bearing on the competitive position of SOEs in international markets can be thought of as a transparency exercise where governments will have the opportunity to objectively inform each other about regulations and practices in place (OECD, 2014d).

4. Moving the international dialogue forward

Trade and foreign investment by SOEs appears to be on the rise...

36. International trade and investment by SOEs, and associated policy responses, are still in the early stages of development. International trade and investment by SOEs is likely to increase as countries with significant SOE sectors grow and their SOEs become more internationalised – even though nascent privatisation programmes in some countries pull in the opposite direction. A better understanding of the implications of SOEs’ trade and investment activities for the functioning of international markets is needed to help governments formulate informed, balanced policy responses, and to ensure mutually beneficial outcomes for countries home of SOEs and recipient countries.

...creating challenges for both their owners and their partner countries...

37. Home governments that see a role for their SOEs as agents of public policy need to give due attention to, first, avoiding an inefficient resource allocation in their domestic economy, with weak enterprises crowding out potentially more efficient ones; and, second, preventing an unsustainable competitive situation from arising in the international market place. At the same time, it is important that third countries recipient of SOEs’ trade and investment maintain their commitments to market openness and non-discrimination.

...which OECD offers a forum for addressing.

38. Governments may wish to consult on how to translate a shared vision for competitive neutrality in the long-term into short- and medium-term implementable priorities. OECD offers an ideal forum, as well as the needed expertise and experience in relevant policy areas, for taking this dialogue forward. A useful starting point would be the active participation of all Key Partners and G20 countries in the revision of the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*.

Deepening the dialogue.

39. There is a need for a dedicated forum to (1) gather further evidence on the internationalisation of SOEs; and (2) provide a consultation mechanism for countries that wish to discuss concerns about SOEs operating abroad. This forum would bring together relevant OECD committees and representatives from G20 and other interested partner countries. The dialogue process could draw from the valuable experiences of the International Working Group of Sovereign Wealth Funds and the Freedom of Investment Roundtable hosted by the OECD, which worked together to produce a mutually beneficial package of commitments for countries home of SWFs and countries recipient of their investments.

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OECD WEEK 2014

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