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## Working Party No. 3 on Co-operation and Enforcement

# DRAFT SUMMARY OF DISCUSSION OF THE ROUNDTABLE ON CORPORATE GOVERNANCE AND THE PRINCIPLE OF COMPETITIVE NEUTRALITY FOR SOE

**20 October 2009**

*The Draft Summary of the Roundtable Discussion on Corporate Governance and the Principle of Competitive Neutrality for SOE is circulated to Competition Delegates FOR APPROVAL BY WRITTEN PROCEDURE. Delegates are requested to submit any proposed changes by 9 April 2010.*

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# CORPORATE GOVERNANCE AND THE PRINCIPLE OF COMPETITIVE NEUTRALITY FOR SOE

## *Summary of Discussion*

1. The Chair opened the session and noted that the discussion on corporate governance and the principle of competitive neutrality for SOEs is closely linked to the roundtable on the application of antitrust rules to state-owned enterprises (SOEs), which took place in the morning. In addition, the discussion also offers an opportunity to bring up to date the conclusions of a 2004 roundtable on regulating market activities by the public sector.

2. In a many countries, the public sector carries out a variety of commercial activities and SOEs can represent a significant part of important markets. Due to their government ownership, SOEs often enjoy a number of advantages when compared with their private counterparts. These include but are not limited to lower costs of capital, lesser tax burdens, and lower risks of takeover and bankruptcy, which are not necessarily addressed through competition law enforcement. Therefore, some OECD countries have adopted measures focused on corporate governance and competitive neutrality, which are aimed at levelling the playing field between public and private firms. This roundtable should serve as a catalyst for clarifying many of these issues.

3. There are three speakers who will introduce the discussion, Prof. Damien Geradin, professor of competition law and economics at Tilburg University in the Netherlands, Dr. Howard Shelanski, Deputy Director of the Bureau of Economics at the US Federal Trade Commission and Gary Sturgess, Executive Director of the Serco Institute.

4. Mr. Shelanski and Prof. Geradin jointly presented some of the issues that the principle of competitive neutrality raises with respect to SOEs.

5. In terms of what competitive neutrality is **Prof. Geradin** outlined two possible ways of thinking about its meaning and how to achieve it. First, there may be a common legal regime for private firms and SOEs, which eliminates the various statutory advantages that SOEs may enjoy. Corporatization of SOEs partly achieves this goal as corporations, regardless of whether private or public, are generally subject to the same rules. Since this process often requires legislative changes, competition agencies should focus on competition advocacy and promotion of the principle of competition neutrality. A second possible meaning of neutrality is to ensure a level playing field for SOEs and private enterprises. However, states should be able to invest in their corporations just as a private investor can. In this respect, EU law has developed the principle of market economy investor, under which states should be free to provide funds to state-owned corporations provided they do so as a private investor would in a market economy.

6. **Mr. Shelanski** pointed out that while there is often the implicit assumption that government involvement brings only competitive advantages, it may also have negative consequences. Therefore, neutrality does not necessarily mean limiting as much as possible the government's role in SOEs.

7. The case of France Telecom is an example of the possible disadvantages that government ownership may entail. In this case of France Telecom, the amount of information about its costs and operations it shares with the government exposes it to greater government scrutiny and regulation if compared with private operators. As regards incentives, it may perhaps be a bit of an overstatement to say that an SOE has zero incentives to innovate, however its incentives are weaker than those of a private company due to the differences in management compensation schemes between public-owned and private corporations. Thus many SOEs work with an institutional and incentive structure that may make them weaker and less competitive than private enterprises. The public goods and other social objectives that SOEs are often mandated to achieve can also impose disadvantages on SOEs. When discussing cross-subsidization, the common perception is that an SOE uses its monopoly rent in one area to subsidize its activities in a competitive market. However, regulated functions of an SOE are often costly while the unregulated functions are sources of profit. Hence an SOE may cross-subsidize regulated functions. These examples show that whether non-neutrality is an advantage or not is a complicated question and therefore it is useful to keep it in mind when considering the issue of competitive neutrality.

8. **Prof. Geradin** highlighted that while neutrality is a valid objective, there are circumstances in which staying neutral and achieving objectives, such as universal service obligations, will be difficult. Governments need to find the right balance between providing universal services of good quality at affordable costs and avoiding distortions in the market. An important question in this respect concerns the funding of universal service obligations. For example, the postal service has to ensure delivery to all areas of the country, and there are areas that are scarcely inhabited where complying with this obligation is very costly. Unless one wants to eliminate such services in unprofitable areas, there has to be some system of compensation. The question however is how to compensate, as it is very difficult to know the real cost of universal services. One option is to use auctions or reverse auctions, which have in fact often been used for public transportation services contracted by local authorities. It is conceivable to solicit bids from market actors for providing a public service obligation. Bidding, however, is only the beginning of the whole process. The government would then have to ensure that the services are properly defined and that there are effective mechanisms for monitoring performance and enforcing the contracted obligations.

9. Government ownership is not the only factor relevant for neutrality considerations, and as **Mr. Shelanski** pointed out, government as a customer can also play an important role. There are many ways in which this can play out. One example may be the doctrine of derivative Crown immunity mentioned by the Australian delegation in the morning roundtable on application of antitrust rules to SOEs. By contracting with the government a private corporation can get immunity from antitrust laws with respect to some of its activities, which puts it at an advantage in relation to its competitors. Eliminating distortions such as this one is therefore very important. There are, however, other ways in which having the government as a customer can confer an advantage to a private corporation. One of the most obvious is a hidden subsidy through pricing, where a price for a product or service is above competitive levels. In this respect it is important to ensure that procurement policies prevent such distortions. But hidden subsidies are not the only ways that can lead to non-neutrality. Contracting with a government can confer advantages of economies of scale on a winning bidder that are not replicable by others. It can also bring major reputational advantages to a firm. It is thus important to keep in mind that there may be neutrality concerns in areas where the government acts as a customer as well as a provider.

10. Another question that the presentation of **Prof. Geradin** and **Mr. Shelanski** focused on whether neutrality is always desirable or even possible. They focused on three issues. First, whether state intervention may be needed in times of crisis and whether there should be limits to such intervention. Second, whether state intervention is appropriate to solve some market failures, and third, showing some examples about the education market.

11. **Mr. Shelanski** addressed the first two issues. Concerning state intervention in times of crisis, good examples are the bank bailouts in the current financial crisis. When banks begin to fail and demand public funds to survive, the government has to decide, in view of its resource limitations and keeping in mind various factors, such as the systemic importance of each bank for the financial system, which banks to bail out and which to allow to fail. To require complete neutrality in such circumstances would be very limiting on the government's ability to respond effectively to an economic crisis.

12. With respect to market failures, there may be instances of market structures that do not function well because private enterprises are protected through a variety of rules. In such scenarios, government intervention on non-neutral terms can greatly enhance consumer welfare. One such example is the US health care system where the introduction of a government funded health insurance option is currently discussed. The insurance companies' often voiced concern is that such an option would drive their prices down. However, that is precisely the point, that a government intervention would drive prices down, which does not mean that it is non-neutral or undesirable. Therefore, government action through a state enterprise has the possibility of improving market structures.

13. As regards the education system, **Prof. Geradin** discussed whether there are also possibilities of market solutions to the provision of education, which is not a universal service but still is an essential good for a number of citizens. The education market has both private and public actors and the state may wish to further intervene. Under EC law, some of these activities may fall outside the scope of competition law if they do not fit within the notion of an undertaking as defined by the European Court of Justice. It is, however, possible to ask whether it is necessary for states to create public universities or schools at all. One may consider again a system of reverse auctions whereby education providers would submit bids relating to the cost of education per student. Such a system, coupled with vouchers given by the government to students for use in private universities, could produce competition and lead to cheaper and more effective results than investing in public schools. However, a proper balance must be found in order to achieve the overarching goal of offering the best service at the lowest price.

14. The Chair thanked Prof. Geradin and Mr. Shelanski for their very interesting contribution, which resonated with a recurring question on how best to achieve the goals that a society values: through state intervention or through market mechanisms? He then turned to Mr. Sturgess and invited him to comment.

15. **Mr. Sturgess** noted that over the past decade the United Kingdom had sought to create a mixed economy in public services where the public, private and voluntary sectors would compete to supply public services. This process is very complex and raises a number of level playing field concerns. A range of newly competitive markets has been created where public, private and voluntary providers did not previously compete. Although the former public monopolies are often at an advantage, there are also instances in which the advantages lie with the private sector. Where the advantages lie may often depend on rather small details, for example, the way in which services are provided. Another issue that will have to be addressed, in which competitive neutrality plays an important role, is the recent emergence of hybrid enterprises, combining public, private and voluntary elements.

16. The reason why competitive neutrality is required as a policy issue is that in the process of creating markets in areas dominated by public monopoly providers, it is often unclear to what extent competition law and regulation can apply. Often the question is how to break up the existing public monopolies and that is where the government's active involvement is necessary to enable the emergence of competitive structures. An example where competition law showed its deficiencies when faced with emerging markets is the prison management system in the UK. About seven years ago 8% of prisons were managed by private companies, the remaining 92% by a public provider. There was a merger of two companies within that 8%, which was subjected to a competition inquiry. This seemed extraordinary to the

two merging parties in view of the presence of another provider with a 92% market share, which in their view, had behaved anticompetitively in the past.

17. Mr. Sturgess said that the private sector believed that there were several remaining sources of unfair advantage that public companies enjoy in the UK public services market. The principal concern at present is public pensions. These are greatly subsidized and public providers do not fully account for that subsidy when submitting bids. That leads to an obvious advantage over their private sector competitors. A second distorting factor is taxation, both corporation and value added tax. There are instances of markets that have disappeared following a ruling by a tax authority that public authorities who contract with public providers were not exempt from value added tax. Other potential distortionary factors include lack of objective cost comparison, since public providers often do not have a good understanding of the cost of providing a particular service, and public procurement policies, which may historically favour public providers.

18. Concerning the policy framework, an overall approach to competitive neutrality is lacking in the UK, according to Mr. Sturgess. The principles are addressed in different policies, largely in a reactive fashion, which results in gaps. The main area in which competitive neutrality is addressed is public procurement. However, important competitive neutrality issues such as pensions and taxation are not being addressed through this policy framework. In the recent past this has begun to change and there has been an increased focus on how to design markets to ensure neutrality. The Office of Fair Trading (OFT) has undertaken several reviews and identified, in particular with respect to public service markets, competitive neutrality as one of the major issues that needs to be addressed. The UK treasury also prepared a report, which is not public yet. However, it appears to be reluctant to squarely look at issues of pensions and taxation, which both fall within its portfolio. On the other hand, a lot of work has been done in the Department of Health, which has a statement of principles that includes fair competition. The Ministry of Justice has also looked at the issue in relation to prison management where private and public providers will begin to compete fully very soon.

19. Mr. Sturgess concluded his overview of the situation in the UK by pointing out that an area that will need attention in the near future is the municipal sphere and the provision of social services. There appears to be an uneven playing field between the newly established social enterprises, formerly public, and private providers, which has not been widely looked at so far. He concluded by noting that the issue of competitive neutrality is very important in discussions in the UK because of its inherent importance for the government's chosen policy of creating a mixed economy.

20. The Chair thanked Mr. Sturgess for his interesting presentation. He asked the panellists to comment on the often implicit assumption among competition enforcers that competition and competitive neutrality are the most important goals, in particular, in view of what has been mentioned in relation to the US health services market, which although private appears not to be functioning well.

21. **Mr. Shelanski** commented that one issue is liberalising a traditionally government function, where the preconditions for its existence have disappeared and where it is very important to have a coherent neutrality policy. Another issue is the instance of non-functioning private markets dominated by oligopolies, such as the health services market in the US. There, it may be in the consumers' interest that the government intervenes. However, it should do so on neutral terms in order not to displace private providers, which could lead to the recreation of public monopolies that would have to be confronted again in the future.

22. In response to the Chair's question as to whether there are ever instances where neutrality is not desirable, Mr. Shelanski noted that one example may be that of government intervention in times of crisis, which had been discussed earlier with respect to bank bailouts. There, strict neutrality may hamper the

government's ability to act effectively. Another example is where firms have an inefficient, legacy type technology and in an oligopolistic market structure may not have the incentives to invest in new infrastructure. A government-induced creation of state-of-the-art facilities, which existing firms may not build as quickly, can greatly benefit the consumer. It is thus clear that there are areas in which complete neutrality is not always desirable. Those are, however, exceptions to the general rule of the desirability of competitive neutrality.

23. On these points **Prof. Geradin** commented that breaking up an oligopoly by stimulating public entry may often be the only alternative as tacit collusion is very difficult to establish. However, his concern was that this could be potentially problematic in the absence of a limiting principle, which would define the boundaries of when such intervention would be permissible. Markets for essential goods like health services may fall within such boundaries but the situation is not as clear with respect to other markets, for example electricity or bread. Concerning crisis interventions, Prof. Geradin noted that while it is indisputable that in such cases the government needs to intervene it should still do so under certain limitations to minimize distortions to the market. In this respect the EC Treaty provides useful rules in Articles 86 and 87 on state aids.

24. The Chair asked Mr. Sturgess to comment on the usefulness and the limits of the principle of competitive neutrality in the framework of the transition to a mixed economy in the UK that he had discussed earlier.

25. **Mr. Sturgess** noted that the present situation is that of gradual emergence of competitive markets in areas that were, until recently, dominated by public monopolies. There are still large swaths of the economy where the government has a monopoly or monopsony. In this setting, it is his opinion that it is premature to discuss limitations on competition.

26. The Chair thanked the panellists for their very interesting presentations and opened the floor for discussion among the delegates on their experiences with competitive neutrality and corporate governance, focusing on three themes: (i) competitive neutrality policies and their scope, (ii) monitoring of competitive neutrality policies and (iii) rules of corporate governance of SOEs. He turned to the EC delegation to present its contribution.

## 1. Competitive neutrality policies and their scope

27. The **EC** delegation explained the legislative framework within which it operates. First with respect to general antitrust rules it uses Article 86 EC relating to public monopolies in combination with Article 82 EC, which deals with abuse of dominance. The theory of harm being that a member state would infringe these articles if a public monopoly, merely by exercising its monopoly right, was unable to avoid or was induced to abusing its dominant position. Legislation could lead to abuse of dominance in many ways, for example, through giving incentives to cross-subsidization, leveraging of monopoly upstream or exploitation through supply limitation. The European Commission used these articles in the area of liberalisation of certain markets in the 80s and 90s, in particular with respect to transport, energy, telecom and postal services. Since liberalisation has greatly progressed since then, there has been lesser need for intervention, and consequently the Commission is less active in that arena. However, when there is a problematic situation, the Commission does not hesitate to act. For example, in 2008 it adopted a decision against the Slovak Republic concerning its decision to extend the postal monopoly to the area of hybrid services, in which there had already been effective competition from private actors.

28. Concerning state aid discipline the EC delegation pointed at Article 86(2) EC, which dictates that public or private entities that are entrusted with the operation of services of general economic interest (SGEI) or have been granted a monopoly shall be subject to competition rules in so far as the application of

these rules do not obstruct the performance of the particular tasks assigned to them. In particular, entities which are entrusted with a SGEI should not be overcompensated for providing public services. The Commission has developed a number of rules aimed at preventing overcompensation. Public authorities are obliged to define what the public service obligations are, determine in advance objective parameters to calculate compensation and establish mechanisms to ensure the recovery of overcompensation if there are deviations. One interesting aspect is that overcompensation will be deemed not to occur where public procurement procedures are used to select the provider. This is a powerful incentive for public authorities to select the most efficient provider of public services. Despite these rules there may still be overcompensation and the EC delegation pointed to the powers of the Commission to pronounce such overcompensation illegal state aid and demand its recovery.

29. As regards general conclusions from these rules, the EC delegation pointed out that much of their efficacy is derived from the supra-national character of the EU system. The rules may be transplantable to a federal system as well, but in a more unitary setting, their implementation may be more difficult. However, even absent such strong enforcement powers, authorities may still wish to look, before granting monopoly rights or engaging in compensation for services of public interest, at the same issues that the Commission looks at in application of these rules. The questions to focus on may be whether the monopoly is strictly necessary, whether it is proportionate or whether the compensation is fair.

30. The Chair thanked the EC delegation for its contribution and asked Turkey, which has no separate competitive neutrality policy in place, to describe how its liberalisation and privatisation policies are working to level the playing field for SOEs and private enterprises.

31. According to the **Turkish** delegation there has been a significant privatisation effort since the late 1980s through which the government withdrew from most manufacturing sectors and private enterprises have been given the opportunity to compete. State involvement in strategic industries, such as steel, telecom, electricity, petroleum and port operations has also been reduced by privatisation of majority shares of public enterprises. As a result, the SOE share of GDP has fallen from 23% in 1985 to 8% in 2007. It is expected to fall further to 3% by the year 2013. In areas where public capital remains a determinative factor, liberalisation has taken place and independent bodies have been created to take over the regulatory functions from former state monopolies. Liberalisation efforts in the area of public services, such as postal service and railways, are also under way. The Turkish delegation stressed that in its opinion these policies will help to achieve at least part of the competitive neutrality principles outlined in the Secretariat's Background Paper.

## 2. Monitoring of competitive neutrality policies

32. With respect to how competitive neutrality principles may work in practice, the Chair turned to Spain, which had recently introduced a royal decree on competitive neutrality between private and public enterprises, and asked to describe its provisions and application.

33. The **Spanish** delegation explained that the decree implemented a law adopted three years ago. However, as it has not yet entered into force and, therefore, there is no experience with its application so far. The goal of this legislation is to promote efficiency, good management and competition in markets where public enterprises operate. Public enterprises are obliged not to leverage their monopoly position from certain areas where they provide public services to areas where they compete in the market. Furthermore, the law aims at increasing transparency by requiring public enterprises to make public all relevant non-confidential information about their business activities, annual accounts and activities linked to the provision of public services. Under the recently adopted royal decree, the Ministry of Economy will have the authority to oversee public enterprises, determining the additional costs associated with the provision of public services, estimating the advantages with respect to access to finance and the income

that the state should receive from SOEs as compensation for the amounts invested and taking account of the public service obligations and the financial and regulatory advantages previously calculated.

34. The Spanish delegation emphasised that since this legislation is not yet in effect, it is hard to estimate its impact. However, it stressed that it believes that the new law will contribute positively to achieving a level playing field. It also remains to be seen what the role of the competition authority will be in this area. In terms of further steps, the Spanish delegation noted that obliging public enterprises to separate their accounts related to public services from those related to the activities in which they compete in the market would be welcome.

35. The Chair observed that the experience of the UK may be of particular interest in this respect, since the Office of Fair Trading recently undertook a study on the use of information by public sector entities and whether it leads to advantages over private enterprises with which they compete. He invited the UK delegation to comment.

36. The **UK** delegation explained that it had conducted this study in response to a number of complaints by private organizations about the difficulties they faced when trying to access a variety of data held by public agencies with the aim of commercializing them. In the UK various public bodies collect and hold vast amounts of information. For example, mapping data collected by a body called Ordinance Survey, driving license details collected by the Driver and Vehicle Licensing Agency and real property data collected by the Land Registry. The holders of the information often did not appreciate its value nor understand how to commercialize it, while private entities could not gain access to it. The report found the market to be worth 500 million pounds annually, and if properly commercialized, up to 1 billion. The report also found that if private parties had access to this data, they could be expected to offer new services and products to consumers. The report proposed certain principles for ensuring more effective access to this information. Under these principles, private parties should have access to raw data that the holder chooses to commercialize, there should be at a minimum an accounting separation within the collecting body between data provision and any commercial use of that data, access should be granted on a non-discriminatory basis and prices for the data should be no more than full cost recovery including any rate of return applicable both to refined and raw data. The UK delegation noted that there has been a significant follow-up to the report as this topic is of particular relevance due to the fact that a number of data collecting public bodies are being considered for privatisation.

37. The Chair turned to Norway, where the government has the authority to draw attention to anticompetitive measures and to encourage entry into markets, and asked its delegation to describe its experience in this respect.

38. The **Norwegian** delegation explained that in Norway competition law applies fully to both public and private enterprises. With respect to public measures the Competition Authority is authorized to supervise competition in various markets and to draw attention to anticompetitive effects of public measures in writing and orally to the respective public bodies. If the Competition Authority considers it necessary to promote competition in specific markets, it can propose that the Ministry of Government Administration and Reform intervene against terms, agreements or actions that constrain or may constrain competition. The Norwegian delegation mentioned an example of waste management in the Bergen area where a letter of concern issued by the Competition Authority led to positive changes in the way the local public waste management authority operated. Following the letter, the company made a clear distinction between its activities in areas where it did not face competition and those where it did so that the risk of cross-subsidization was removed.

39. The Chair asked Sweden to comment on the recently adopted rules to ensure competitive neutrality between the public and private sector.

40. According to the **Swedish** delegation, there have been many complaints about public interventions in recent years, which is likely at least in part due to a fairly extensive public sector in Sweden. While competition law applies to both public and private entities, it is sometimes not sufficient to deal with certain issues of concern, for example on the municipal level where demonstrating dominance can be very difficult. To remedy this situation, the Swedish government has proposed a bill amending the Competition Act which contains provisions aimed at achieving competitive neutrality. The bill is expected to be adopted in November 2009. Under these provisions the Stockholm district court can, on application by the Competition Authority, or in its absence by application of the enterprises concerned, prohibit measures and conduct by municipal and local authorities that may impede or distort competition, unless they are justified by public interest.

41. The Chair turned to Romania and asked its delegation to describe some of the measures outlined in its contribution that deal with public procurement and are meant to address competitive neutrality.

42. The **Romanian** delegation explained that with respect to public procurement there is developing cooperation with the public procurement agency, which will in the future also include exchange of information. Furthermore, the OECD Guidelines for Fighting Bid Rigging in Public Procurement have been very helpful and were distributed to all public authorities. Directly concerning competitive neutrality, the Competition Authority is engaged in active advocacy of its principles. A related issue is that of financial transparency where the Competition Authority is responsible for monitoring financial relations between public authorities and enterprises that provide public services. In cases of inconsistencies it can request explanations; however, it has no power to impose sanctions.

### 3. Rules of corporate governance for SOEs

43. The Chair asked Brazil to describe its institutional and legislative framework with respect to corporate governance of SOEs.

44. The delegation from **Brazil** explained how the important functions on state-owned enterprises are assigned to the relevant ministry, which ensures that the companies operate in line with the government policies applicable in that area. Further, in January 2007 the Brazilian government established the Inter-ministerial Commission on governance. Among other things, it has the power to implement strategies for the state's corporate ownership, to establish criteria to appoint the director and government representative on the board, and to establish standards of ethical conduct. The government believes it can be an active and informed owner while at the same time promote transparency and accountability and protect minority shareholders. The Bank of Brazil and Petrobras are examples of this model of governance. One key remaining issue is the allocation of voting power among shareholders. Best practices recommend 'one share one vote' but Brazilian law allows two classes of shareholders with disproportionate voting rights. Converting would be problematic because it is the current system that allows the state to maintain majority control. In contrast, Brazilian corporate law recommends the participation of minority shareholders through, for example, a system of cumulative voting.

45. The Chair then turned to the US delegation for its views on the principles necessary for effective governance of SOEs.

46. The **US** highlighted four. First, it must be clear and transparent to competitors what privileges SOEs enjoy due to their government ownership. Second, the government should strive for competitive neutrality such that when favourable treatment is occasioned by a public policy goal, distortions in the market are minimized to allow for full and fair competition. Third, such policy goals should be advanced by the government in its capacity as a regulator and not as a market participant. This long-standing

distinction should be maintained to the extent possible. Finally, when exigent circumstances call for government ownership, that ownership must be limited in scope and duration to its original purpose.

47. The Chair thanked the US delegation and asked Chinese Taipei to explain its approach to corporate governance of SOEs.

48. The delegation from **Chinese Taipei** explained that in 2003 a task force was established to reform corporate governance, particularly with respect to SOEs. Its efforts resulted in the adoption of six principles, which are, in short, strengthening internal audit systems, creating sound accounting systems, increasing the efficiency of governing bodies, improving supervisory functions, enhancing transparency, and promoting the rights of shareholders and stakeholders.

49. The Chair invited Finland, which has both principles and a government resolution with respect to corporate governance of SOEs, to comment on their application.

50. With respect to governance the **Finnish** delegation observed that the current government policy with respect to SOEs is to act as any other shareholder. Consequently, it expects dividends comparable to those that would be received by shareholders of a private corporation. Accordingly if an SOE carries a public service obligation, its costs should be fairly compensated. As regards competitive neutrality specifically, there is a bill pending that would ban the use of the state enterprise corporate model in competitive markets. Municipalities and local governments have taken a step in a similar direction by adopting a memorandum that aims at achieving the same end with respect to entities created by them.

51. Before turning to the panellists for their concluding remarks the Chair invited any interested delegation to add to this topic.

52. The delegation from **New Zealand** mentioned two issues. First, New Zealand has gone through extensive privatisation and liberalisation underpinned by the principle of competitive neutrality. However, recently the government used state ownership as a means of intervention in the retail banking market, which was perceived as not contributing to consumer welfare due to the fact that banks competed on quality and not price. It therefore founded a state-owned bank to compete with the existing banks. This has been quite successful. However, there is an ongoing debate as to whether there is an implicit subsidy in the rate at which the state-owned bank can borrow. Second, while electricity markets are unbundled, some of the state-owned electricity generation companies enjoy positions of market power. Thus, there have been discussions as to whether to shift assets between the actors in the generation market to improve competitiveness at the retail level. However, concerns were voiced about the message such an action would send to the markets and the debate is therefore still ongoing. In its concluding remarks, the New Zealand delegation stressed that while there are ongoing discussions about the appropriate role of government in markets, the importance of the principle of competitive neutrality is widely accepted.

53. The **BIAC** delegation drew the delegates' attention to the OECD Guidelines on Corporate Governance of State-Owned Enterprises adopted in 2005, whose recommendations were, in its opinion, still valid for the topic of this roundtable. They were reaffirmed by the OECD in its paper on Corporate Governance and the Financial Crisis issued earlier this year. In particular, as state ownership has been necessitated by deficiencies in the corporate governance of private enterprises, exemplary corporate governance is more important than ever. BIAC recognized that organizing corporate governance of SOEs is not within the scope of activities of competition authorities; however, it emphasized the important advocacy role they can play in promoting the principles recognized in the aforementioned OECD documents.

## 4. Panellists' closing remarks

54. **Mr. Shelanski** observed that from the various delegations' presentations it is clear that there is a common set of problems that countries face with respect to neutrality. He noted from the discussion a positive general trend towards competitive neutrality and sound principles of corporate governance of SOEs.

55. **Prof. Geradin** noted that this discussion showed the importance of experience sharing between jurisdictions as most are confronted by the same problems and try different ways of countering them. Gradually, best practices will shape and be possibly applied across the globe. He went on to observe that competitive neutrality is the responsibility of the state, which should look at creative solutions for ensuring provision of public services outside the framework of traditional public involvement as had been noted in his and Mr. Shelanski's earlier presentations. Concerning the role of competition authorities, some are better equipped to deal with problematic issues, such as the EU. However, even those with more limited powers can play an important role in promoting competitive neutrality, for example, by applying strictly competition rules to all private or public enterprises, by assisting other government agencies in adopting appropriate measures, by assessing the competitive effects of various subsidies, by helping the appropriate agencies craft suitable responses and last but not least by engaging in public advocacy.

56. **Mr. Sturgess** observed that his presentation had been concerned with public services, since the manufacturing and utilities sectors had been largely privatised in the UK abd competitive neutrality issues were no longer an issue. The public service industry – that part operated by private and voluntary providers - covers a significant part of the UK's, (and some other countries') GDP. However, this is an area where competitive neutrality is not yet in place. There has been much work done so far, but the process is ongoing and requires continued effort and attention.

57. The Chair thanked the panelists and the participants and closed the roundtable discussion.