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Competitive Neutrality: Challenges of Application for Vietnam

Tang Van, Nghia
Foreign Trade University (FTU), Vietnam
nghiatv@ftu.edu.vn

The growing importance of competitive neutrality in the national and global market-place has given rise to concerns about how to ensure a level playing field – where state-owned enterprises and private entities compete. The paper aims to clarify the issue of competitive neutrality in general and current challenges faced by Vietnam policy makers committed to the level playing field between public and private business enterprises in particular. It is also to serve as an inspiration to governments that confront similar challenges and a contribution to establish the competition regime based on principles of competitive neutrality. This paper also aims at establishing a comprehensive overview of Vietnam's Competition environment and Competition Law as well as presenting a representative picture of Vietnam's State-owned enterprises and challenges for the application of competitive neutrality in Vietnam, from that recommendations will be made. It is carried out as a study in the field of competitive neutrality that promotes the efforts of governments and policy makers committed to the level playing field between public and private business enterprises.

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**COMPETITIVE NEUTRALITY:
CHALLENGES OF APPLICATION FOR VIETNAM**

Tang Van, Nghia

Foreign Trade University (FTU), Vietnam, email: nghiatv@ftu.edu.vn

Nguyen, Thuy Anh

Former Student at Foreign Trade University (FTU), Vietnam,
email: ngthanh19@gmail.com

Le, Thanh Thuy

Foreign Trade University (FTU), Vietnam, email: thuylt@ftu.edu.vn

Le, Thi Thu

Foreign Trade University (FTU), Vietnam, email: thult@ftu.edu.vn

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Abstract

The globalization trend has led to dramatic penetration of enterprises to every corner of the world economy demanding for a level playing field so that all economic entities are in equal positions to compete with the others. Establishing a level playing field is needed in developed market economies, but it is even more demanding in the developing part of the world where the legal system is still being completed and not strictly complied by market participants. Also, a level playing field is greatly concerned in the economies where government-owned sector is relatively large and inefficient compared with the private sector. Vietnam is one of such countries as the need for a level playing field is not only acknowledged by national policymakers but is also reflected in international voices.

Keywords: competitive neutrality, a level playing field, competition law and policy, state-owned enterprises.

LIST OF ABBREVIATIONS

ADB	Asian Development Bank
AGCNGO	Australian Government Competitive Neutrality Complaints Office
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
AVG	Audio Visual Global (The TV Provider of Vietnam)
BIT	Bilateral Investment Treaties
CAC	Commonwealth Authorities and Companies
EU	European Union
EVN	Electricity of Vietnam
FTA	Free Trade Agreement
GOC	Government-owned Corporation
MIC	Ministry of Information and Communications
OECD	Organisation for Economic Co-operation and Development
PTA	Preferential Trade Agreement
SOE	State-owned Enterprise
TTP	Trans-Pacific Partnership
UNCTAD	United Nations Conference on Trade and Development
VAT/GST	Value Added Tax/ Goods and Services Tax
VCA	Vietnam Competition Authority
VCAD	Vietnam Competition Authority Department
VCC	Vietnam Competition Council
VCL	Vietnam Competition Law
WTO	World Trade Organization

I. INTRODUCTION

1. Rationale

The concept of competitive neutrality could be understood as a regulatory framework (i) within which public and private enterprises face the same set of rules, and (ii) where no contacts with the State bring competitive advantages to any market participants SOEs, which may also be known as public enterprises, referring to the economic entity which is owned by the government rather than by the private sector (OECD, 2009). Typically, the establishment of SOEs followed the politically orientated decisions of the governments rather than by the commercial interests (Sappington/Sidak, 2004). With strong financial status and tremendous growth, some contemporary SOEs are now the biggest multinational companies (Kowalski/Büge/Sztajerowska/Egeland, 2013). However, with great dependence on the unfair advantages given by the governments, this economic sector has also been notorious for anti-competitive practices and lagged business performance (Drexl/Bagnoli, 2015). From the competitive perspective, a healthy competition environment for all market participators is vital for sustainable development of the economy (Kumar, 2008). In that sense, SOEs do not only hold the whole economy back from development by its low levels of operational efficiency but also by the practices that go against the development of a fairly competitive economy.

Over the previous years, limited amount of research has been conducted on the significant roles of SOEs to the international market as well as shedding light on the exact nature of the unfair preferences given to SOEs over other business sectors virtually due to their state ownership (Christiansen, 2011). However, together with the globalization trend, which is the primary reason behind the expansion of business activities in the international arena, maintaining a vigorous and fair competition environment to create a level playing field for all economic sectors supporting such an expansion trend has also become a highly concerned issue all over the world. Promoting healthy competitive environment in the global economy in general and in different economies in particular, or in other words, encouraging competitive neutrality has been highlighted in a huge number of academic papers as well as global conferences of international organizations such as OECD, UNCTAD, WTO, etc. (OECD, 2014). An increasing amount of attention for competitive neutrality is also shown through a number of international economic agreements with which competitive neutrality is emphasized as one of the top economic issues in a global scale (Jin, 2015).

Regarding the vital roles of competitive neutrality issues under the light of competition policy, it is crucial to have a deeper assessment and analysis, concerning opportunities and challenges which countries over the world in general, and Vietnam in particular, must face. Therefore, researching and analyzing the strengths and weaknesses, in both theoretical and

practical aspects, of competitive neutrality issues are necessary for later application of policies among countries, and practical suggestions to Vietnam.

2. Literature review of research

Competitive neutrality has been an increasingly concerned topic for long in an international scale, however, it has only officially come into the legislative field worldwide since 1996 with the adoption of competitive neutrality law and policy in Australia. Looking at this topic from the view of developing countries, a range of academic papers which have explored different areas of competitive neutrality in the light of competition policy and liberalization movement will be reviewed below.

Firstly, the literature review of competitive neutrality research starts with the contributions of OECD as it is one the leading international economic organizations that place heavy emphasis on the establishment of a level playing field in the national economies of the developing world. Among a lot of documents OECD published about competitive neutrality, the two following has drawn great attention: *“Policy roundtables: State-owned Enterprises and the principles of Competitive Neutrality”* (OECD, 2009) and then later *“Competitive Neutrality: Maintaining a level playing field between public and private businesses”* (OECD, 2012). The latter one focuses on presenting competitive neutrality distortions and current problems confronted by policy makers committed to obtain competitive neutrality between market participants in the national economy of OECD countries including Vietnam. From that, it presents a range of common national practices that demonstrate the implementing of competitive neutrality and emphasize some types of difficulties that may be experienced (OECD, 2012).

UNCTAD also expresses their concerns about the potential impacts of government interference on the operation of the markets through *“UNCTAD research partnership platform: Competitive Neutrality and its application in selected developing countries”*. In this volume, UNCTAD concentrated on the enforcement of competitive neutrality policy, addressed the existing problems of competitive neutrality in many parts of the world including Vietnam, and the possibility of future practices of competitive neutrality in these jurisdictions (UNCTAD, 2014). The approach of Australia in the issue of competitive neutrality has existed for a long time, more than a decade; however, it does not mean that this method is suitable for all other jurisdictions.

Next, a roundtable on the implications of antitrust law to government owned companies, controversy on corporate governance and the principle of competitive neutrality for the public sector (United States, 2009) asserts that *“Competition among private entities has been and remains the current norm for the U.S. economy”*. The article has successfully revealed a representative picture of the USA economy without the existence of “state-owned enterprise” term in US legislation or laws. Basically, the public sector is a special part of the

economy due to the uniqueness in their ownership, governmental control, and participation of government; and the degree of competition between the public and private sector is mainly indirect, negligible or non-existent.

Another paper that is worth mentioning here is "*Competitive neutrality and State owned enterprises in Australia: Review of practices and their relevance for other countries*" (OCED, 2011). This volume presents a detailed summary of the legal implementation of competitive neutrality of individual States as well as Australian Government as a whole. Based on that, it demonstrates the evaluation the effectiveness of Australia's competitive neutrality framework and the ability to apply to other countries in order to achieve competitive neutrality in their own economies.

Pin-guang Ying (2013) provides current trends and development in the reform of state-owned enterprises in the direction of setting up competitive neutrality placing heavy emphasis on such contents in the economic context of China. With proper awareness of the opportunities that competitive neutrality brings to the national economy, China has put more efforts on leveling a playing field. Furthermore, the author also presents a comprehensive understanding on the basic position that China has taken in competitive neutrality as well as the measure of competitive neutrality in real enforcement.

Pham (2014)¹ provides a depth analysis of competitive neutrality practice in Vietnam in a relationship with fundamental notions such as competitive neutrality principles in Competition Law of Vietnam, competition law tools in response to competitive neutrality issues of SOEs, international experience of competitive neutrality principle applications. It means that the author examines the basic theories of competitive neutrality principles in the relationship with practices of a developing country; and simultaneously proposed some recommendations to fulfil Vietnam's policies which is still in a long way of achieving competitive neutrality.

Later, Wendy Leutert (2016) continued on competitive neutrality issues with an investigation in the current situation of SOE reform in China. Chinese government has significantly reduced the exercise of government protection to SOEs in the market, however, the structural transformation in China is still far from completion, demanding for more efforts on this. Three challenges imposed in the way of competitive neutrality establishment are: identifying the right time to give market forces a greater role; aligning managerial incentives with business performance and corporate governance priorities; overcoming difficulties at the company level.

To sum up, competitive neutrality is still a relatively new concept in most countries, however, the broader issues such as public-private competition; and the role of the state in

¹ Alice Pham, *State-owned enterprises & Competitive neutrality principle in Vietnam*, in Rosenau/Tang Van, (eds. 2014) *Economic Competition Regime: Raising Issues and Lessons from Germany*, Nomos, Baden-Baden (Germany).

the market place have been largely controversial subjects in most jurisdictions, and are increasingly drawing the attention of policy-makers. A more comprehensive review of competitive neutrality has been required to help policy makers and law keepers to have more effective economic policies. Because Vietnam is facing a large number of existing problems concerning a level playing field, a deep research with synthetic nature is essential for Vietnam to propose more practical suggestions to improving this situation.

3. Methodology

In order to gained the above stated goals and objectives, a wide range of research methods will be combined and used simultaneously with the target of efficiency maximization for this research. The research is planned to start by going through a number of empirical studies regarding competitive neutrality in general with special focus on the developing world in general and Vietnam in particular. Then, the literature review will be finalized with the main contents are formed as well. Next, more reading will be carried out to acquire deep insights of each contents with details of relevant case studies of each theme be collected.

Firstly, it should be noted that the research was built upon information input from both primary and secondary sources. This research used secondary research which are widely available to the public from numerous sources: law documents and competition reports from specialized government departments like VCA, academic papers from international organizations such as OECD, WTO, UNCTAD, etc. informative articles about real case studies relating to competitive neutrality from newspapers and other media means from numerous Vietnamese and foreign experts, reliable grey literature (coming from other sources in the Internet rather than from the government or other traditional distribution channels). In addition, a small proportion of detailed primary data will be derived from participant observations of the operation of SOEs in the relevant markets and in Vietnamese national economy as a whole.

Secondly, qualitative comparative analysis will be conducted throughout the research on the collected facts, also information withdrawn from countries will draw a vivid picture of the complex world of competitive neutrality and highlight Vietnam case.

Lastly, improvements to the research will be made from careful check and practical advice from experts in this field. It should also be noted that some other methods such as interpretation, demonstration, brainstorming and synthesis are also applied in the process of research completion.

4. Expected research results

The ultimate goal of this research is to promote the development of competitive neutrality from the theoretical perspective with great focus on the challenges imposed on the establishment of a level playing field in the unique economic context of Vietnam.

Furthermore, it should also be stressed that the most important contribution of this research is the principal recommendations for the real applications of competitive neutrality. The expected research results are to lay a comprehensive background for the applications of competitive neutrality for Vietnamese government and policy makers in making efforts for a level playing field. It is expected that this research will have great impacts on the establishment and the implementation of the competitive neutrality regime, which intended to remove resource allocation distortions arising out of public ownership of significant business activities and to improve competitive processes.

In the conceptual framework of research, the authors aim at having an article published in peer-reviewed journal.

II. THE FUNDAMENTALS OF COMPETITION LAW, COMPETITIVE NEUTRALITY

1. The Fundamentals of Competition Law

a) The concept of competition

Competition appears in every corner of life, long before the formal study of competition started. It is said that competition stays in the opposite side of cooperation. Competition occurs when there are two or more parties trying to achieve something beneficial which cannot be shared (Keddy, 2001). During the history of competition study, it is well known that competition has both positive and negative impacts. Competition is the driving force for further improvements as competition makes all participants strive to be better, and that is underlying reason of development, with evolution is one of undeniable proof for the power of competition. On the other hand, the detrimental effects of competition come from the losses and damage as well as the waste of resources used for competition process while they can be put to better use such as training and education. The study in this field is expected to utilize competition through minimizing its undesirable outcomes while maximizing the possible benefits at the same time (Keddy, 2001).

In economic context, competition refers to the rivalry among competitors for business relating benefits in favor of commercial gains such as profits, market share, sales volume, etc. In other words, competition can be understood as the independent attempts of two or more parties to secure the business of a third party through offering the advantageous conditions for business transactions (Merriam-Webster, 1828). Competition is an inevitable factor of any economy; therefore, economists study competition in order to get the best out of an element that has long been attributed to negative attitude in any playing field. Competition can be the motivation for efficiency and fairness in the economy, leading to changes, innovations and development (Graham/Richardson, 1997). In contrary, competition can

hold the whole economy back from development when competition is distorted and all market participants compete in an unfair manner. So as to take advantage of the power of competition in the drive to an effective economy, competition law is established as a means of the government to control and orientate competition in the economy.

b) The concept of competition law

The history of competition law can be traced back to the Roman Empire indicating the attempts of official authority to set out rules for competitive markets of goods and services. With increasing awareness of the paramount importance of competition law by governments all over the world, competition law has dramatically spread on an international scale since the twentieth century (Topping, Tweedale, 2014). Competition law is defined as a system of regulations to build up market competition through controlling and eliminating anti-competitive practices of enterprises (Li/Li, 2013). The implementation of competition law is carried out through both public and private enforcement (Moerllers/Heinemann 2007).

Competition law's presence is quite different in various parts of the world. In the past, trade practice law in United Kingdom and Australia is considered as the early form of competition law. Differently, it is regarded as anti-trust law in the United States and European Union, while in China and Russia it is referred as anti-monopoly law (Taylor, 2006). Now, there are more than 130 competition law systems existing in the world with several other countries are in the process of adopting their own competition law and policies (Rodger/MacCulloch, 2014). So far, most nations in the world has already enacted their own competition law with the two biggest and most influential competition law systems are of United States antitrust law and EU competition law (Taylor, 2006).

c) Framework of competition law

Under unique economic circumstances of particular countries, the implications and enforcement of competition laws can be very different. However, with the same general goal of establishing and maintaining healthy competition in the economy, the fundamental framework of competition law is quite similar from country to country all over the world. In general, the two primary contents of competition law are the law against unfair competition and the law against restraints of competition (Tang Van, 2013).

- The law against unfair competition is generated as the central content of competition law as it is under the principal goal of competition legal framework. This law aims to create a fair competitive environment for all business entities, protecting the more vulnerable ones from the powerful ones in the relevant markets. From that, this content prevents all anti-competitive behaviors ensuring that all rights and interests of market participants are safeguarded by competition law. The abuse of dominant market position is one of the major unfair competitive acts that competition law deals with, which refers to the acts taken by

several enterprises owning the dominant market share in the relevant markets. As large amount of market share belongs to one or just some companies, it is totally possible for them to take advantage of their market power to carry out harmful actions to the fair competitive market in order to maintain and strengthen their position before other smaller competitors in the market (Rodger/MacCulloch, 2014).

- The law against restraints of competition is the second major content in competition legal framework, which appears in all competition law systems in the world. Competitive restraining acts happen with the ongoing development of the economy, when enterprises see the correlative relationship between market power and the accumulation of capital or market share. In the modern times, the law against restraints of competition is an inseparable part of competition law, known as Cartel Law which regulates the economic activities built up from the collaboration of a group of enterprises in the same market which hinder the implementation of free competition. For example, anti-competitive agreements - one of the most common types of restraints of competition acts - as it is called, refers to the agreements made and followed by market participants in which they agree to take actions together so that they got the advantage to compete with other competitors who do not attend the agreement. When some enterprises in the same relevant market collaborate together, the agreement creates significant market power for them to limit other competitors outside the agreement (Rodger/MacCulloch, 2014).

d) The goals of competition law

Competition law has become increasingly ubiquitous all over the world when it can be found in all continents, all regions, all kinds of economies – regardless of large or small, continental or island, developed or developing, industrial or trading or agricultural, liberal or post-communist. In an economy, competition law is created following the existence of rivalry between market participants, therefore it interferes with all economic sectors under the fundamental rule of the freedom of competition. Competition law is normally issued with the general objective of generating a legal basis for the establishment and long term maintaining of healthy competition for all business entities in the market mechanism. In order to fulfil its function, competition law control competitive relating practices through regulation of behavior model for the business entities as well as legal punishment for all business entities contravening the stated rules of competition, which is in the direction of main specific objectives as below.

- *Protecting competition process:* Many economists hold the same view that the primary purpose of competition law is to act as the driving force of effective competition process. In other words, competition law lays the background for competition relating regulations applying to rivalries in the market. The root cause of mounting concern for protecting competitive process can be traced back through the long history of economic development.

In the beginning, each economy was quite like a close circle in which it produced and consumed its products by itself, and it could be seen that there is not much competition among economies. However, when it comes to the next stage of development, countries could see that they can all benefit from trading, therefore, economies come closer and be more open to exchange. Thanks to advanced technology the movement of goods and service has become quick and easy enabling the emergence of the globalization trend which brings economies closer to others with all economies enter a global economy where competition is inevitable. That is when government interference to back up the position of nation economy in the international arena can be seen clearly than ever. Economic study and real historic lessons have widened the horizon of the whole world that free market system or free competition is the perfect way for the market to function and that is mostly the case in the real world. The intervention of the official authority is only needed when the free market system fails, otherwise, it can hold the whole economy back from development, or even worse, hinder the growth of the economy. On the other hand, a perfectly functioning competitive process in the market lead to maximization of resources, resulting in allocative and productive efficiency maximization, and finally, that is maximization of social welfare (Moisejevas/Novosad, 2013).

- *Protecting consumer*: Beside the principal objective of protecting competitive process, protecting consumer is another main aim of almost all countries adopting competition law. Once, in the beginning stage of competition law, it was based on a variety of rationales, such as protecting small businesses before dominant market participants, putting all business entities in an equal footing in legal terms, etc. However, now, competition is not only about competitors in the relevant markets, consumers which are also an important part of the market are now at the central of competition law (OECD, 2008). The interface between competition law and consumer protection lies in consumer welfare reaching the optimal point, in which consumer benefits are ensured through price and product choice. Government can use competition law as an official tool to set up the ceiling price in a particular market making sure that such products are always at reasonable price for normal consumption. Also, competition law creates the certainty for a wide range of product choices for consumers, except for some markets where monopoly is necessary. It should also be noted that in the market where competitive process is perfectly functioning, the enhancement of consumer welfare can also be reflected through the improved quality of the products (Buttigieg, 2009).

- *Protecting competitors*: When protecting competitors is carried out in the real world as one of the cornerstone of competition law, that helps enhancements to market structure. With reference to protecting competition process, rivalries in the market are the subjects that directly take competitive actions, hence, only when all competitors are treated in an equal manner, the competitive process can be activated to reach its maximum potential bringing enormous benefits to the economy. With reference to protecting consumers, while

competitors are protected, all market participants have no choice but competing through improving the goods and service that they deliver, as a result, consumers have access to high quality products. The main role of competition law is also to protect small and medium-size enterprises before unfair competitive practices of monopolists and cartels (WIPO, 1994). Small and medium-sized competitors belong to the vulnerable group, which can be negatively affected by aggressive competition from bigger competitors. These competitors will be protected by the tools of competition law.

- *Redistribution*: While it can clearly be seen that economic efficiency is heavily stressed throughout competition law, this law does not ignore economic equity as it does pay significant attention to wealth redistribution from big corporations to small companies, or from producers to consumers in the market (Dunne, 2015). Under the general goal of creating healthy competition for all enterprises in the market, the accumulation of economic power and wealth in one or a few business entities can put the fair competition at risk of collapsing. Therefore, redistribution, along with the other main objectives, they do not only support each other but they also increase the effectiveness of competition law together.

e) Competition Policy

Having been through long history of evolvement and development, competition policy, until now, is still on the way of completing itself to fit the given economic context. It is not easy to define competition policy (or which is often called anti-trust law in the US) as there are so many controversial opinions about this issue, even competition policy has been a subject of economists' attention for quite a long time. Competition law might be referred to as "*the set of policies and laws which ensure that competition in the marketplace is not restricted in the way that is detrimental to society*" (Motta, 2004). The introduction of competition policy was inspired by a number of objectives considering the huge impacts of a perfect competition mechanism on optimizing market efficiency. The principal targets of competition policy include:

- *Protection of the process of competition*: Similar to the goal of competition law, competition policy is designed to promote competition and to protect the process of competition (rather than individual competitors) in a free market economy.

- *Economic welfare*: Competition policy contributes to the productivity and efficiency of market operation. All enterprises in the relevant market will really have to strike to perform better and gain more market share.

- *Consumer welfare*: The healthy competition in the market, which is encouraged and promoted by competition policy also helps to protect the benefits of consumers.

- *Defense of smaller firms*: In the market, when only one or a few companies obtaining the dominant market share, it is apparent that they have competitive advantage to compete

and it would surely be a difficult situation for smaller firms. Basically, competition policy aims at creating a fair competitive environment for all market participants (Motta, 2004).

2. The theory of competitive neutrality

a) The emergence and development of competitive neutrality issue

Technological innovations, globalization trend and increasing number of international trade agreements between countries have turned the history of the world economy into a new page (Hormats, 2011). While advanced technology and globalization trend opens up opportunities of new promising markets, trade agreements in a regional, continental and international scale helps to eliminate trade barriers among nations all over the world. In that given situation, open international competition has become the dominant trends in the global economy (Welfens, 1999). This calls for the establishment of fair competition in the markets so that all market participants are in equal positions to compete. Being encouraged by this notion, governments all over the world have paid more attention to competition issue with the aim of setting up a level playing field in their own national economy. Regarding competition issues, competition law is one of the most powerful means in the government's toolbox. However, the problems emerging from the establishment of a level playing field also come from the official authority who has been exercising the protection of SOEs for long.

Strengthening the economic position of the country in the international arena is not the only reason for the foundation of government owned sector and for the support of the official authority to them. So far, in most parts of the world, SOEs which are owned by the government significantly represent state orientations in the marketplace, delivering the socialist instructions of the government to the national economy (World Bank, 2014). In order to fulfil their responsibility, SOEs are given incentives and even unfair advantages over the private sector. The protection of governments to their SOEs is not only being driven by commercial interests but also due to non-commercial priorities such as providing vital public service obligations, promoting national champions through industrial policy, protecting fiscal revenue derived from SOEs, reacting to market failures and other politically sensitive issues such as safeguarding the political influence of ministries and protecting public sector jobs (Muir/Saba, 1995). However, there is a growing concern for SOEs to take advantage of their favorable position to take into anticompetitive actions in the market environment (Chang, 2004). The dramatic development of SOEs has risen the broad issue of competition between public and private bidders being a topic of tense discussions, causing increasing concern as a "21st century issue" (OECD, 2013). With the support from governments, SOEs are emerging as fierce international competitors representing their own countries in a number of strategic markets. On the other hand, SOEs are seen with insufficient performance benchmarks and corporate governance, problems of inefficiency and monopoly position bringing from

financial governmental supports, and the lack of competitiveness (CHIA⁺, 2013). Such situation calls for a legal framework to maintain a fair competitive environment for all business entities of the economy, which is officially referred in competition law documents as “competitive neutrality” (Drexl/Bagnoli, 2015).

Competitive neutrality, in the beginning, normally appears in the context of competition law. In Competition Law, public restriction of competition is the content preventing SOEs from restrictions and distortions of competition, which, in other words, means competitive neutrality (Whish/Bailey, 2012). Competitive neutrality was enacted as an independent separate law for the first time in 1996 in Australia (Lane, 1997). Since then, competitive neutrality has become increasingly ubiquitous wide spreading all over the world receiving great concern from a number of governments. Competitive neutrality aims at treating public and private enterprises in an equal manner and relations with the States do not bring any competitive advantages to any market participants (Khosrow-Pour, 2007). Together with that, an effective legal framework is required to not only ensure the continuous contributions of SOEs to sustainable economic development but also to maintain competitive neutrality between publicly owned enterprises and private entities in the economic environment.

b) The concept of competitive neutrality

So far, most nations have agreed that competitive neutrality is a sound notion and that they take actions to put this idea into practice in their national competition regime. So, it is obvious that the concept of competitive neutrality has become a widespread term in the global economy. However, the interpretation of competitive neutrality concept in various parts of the world still contains differences.

Regarding the definition of competitive neutrality, OECD – a very proactive international organization in encouraging a level playing in its member countries has given out several versions. The fundamental ideas for the concept of competitive neutrality published by OECD is to promote a level playing field where no business entities enjoy any advantages or suffer from any disadvantages due to its ownership. A typical example of competitive neutrality concept given by OECD is said “*Competitive neutrality can be understood as a regulatory framework (i) within which public and private enterprises face the same set of rules and (ii) where no contact with the state brings competitive advantage to any market participant*” (OECD, 2009). In a strict sense, competitive neutrality can be understood as a legal and regulatory environment in which all enterprises, public or private, face the same set of rules, and government ownership or involvement does not bring unjustified advantages to any entity. In a wider sense, competitive neutrality can be referred as a market framework within which relations with the state do not bring any competitive advantage to any market participants. With reference to the situation of mixed markets, competitive neutrality between public and private enterprises is defined as following “*Competitive neutrality occurs where*

no entity operating in an economic market is subject to undue competitive advantages or disadvantages". (OECD, 2012). There are two points to clarify here from this definition which are: "*undue advantages or disadvantages*" and "*operating in an economic market*". For the first one, advantages may be granted to business entities in compensation for countervailing obligations, which would generally not imply a departure from competitive neutrality. For the second one, an enterprise may be cannot enter the market due to invisible market barriers created by companies who are already operating in the market, which can normally be considered as violation of competitive neutrality.

Similarly, Australia adopted the concept of competitive neutrality as business activities do not enjoy net competitive advantages over their private sector competitors (or potential competitors) simply by virtue of their public-sector ownership (Capobianco/Christiansen, 2011). The definition indicates Australia's stress on the fair competitiveness between public and private sector of the economy. Government businesses, whether they are Commonwealth, State or Local Government, should operate without the competitive advantages over other businesses as a result of their public ownership.

In summary, competitive neutrality is still a rather new phase in the global economy, which highlights the efforts of government in the direction of the efficiency (allocative, productive and dynamic efficiency) arising out of public ownership of significant business activities and to complete the competitive process. Therefore, competitive neutrality means that state-related firms/entities and private firms compete on a level playing field in order to use resources effectively within the economy and thus to achieving growth and development.

c) Objectives of competitive neutrality

- Creating the fair competitive environment

One of the primary objectives of competitive neutrality is to promote the creation of healthy competitive environment in the economy through eliminating or offsetting all the unfair advantages enjoyed by the public sector owing to their public ownership. Fair competition means that all commercial entities which are operating in the same market are in equal positions to compete regardless of their ownership or their relations with the State. In other words, competitive neutrality regime generates a legal environment ensuring the implementation of fair competition by dealing with business practices that do harm to the competitive environment in the market.

The reason for the support of governments to a level playing field in the international arena, in general and in their national economy, in particular lies in the fact that a fair competitive environment is beneficial for the continuous and sustainable improvement of market operational efficiency. In a fairly competing economy, enterprises can only win market share from their competitors by their internal growth, which means improvements in their productivity and business performance. As a result, the economy and society as a whole get

huge benefits from that, especially comparing to the situation of a market that is stagnated by the dominance of inefficiently performing SOEs. With high expectation from the desirable outcomes of a fair competitive environment, competitive neutrality is widely used as one of the most powerful tools for governments to achieve that.

- Domestic economic development

It has been proved that the process of competitive neutrality and the development of domestic market have a positive correlative relationship. To be more specific, competitive neutrality acts as the driving force to the domestic economic development. When government-owned sector and private entities compete in a level playing, in order to create competitive advantage over other competitors and gain market share, there is no way but to improve themselves to be better. As a result, resources are used more effectively within the economy in the interest of huge growth and development leading to booming results in the production of goods and services leading to sustainable economic growth and poverty reduction.

In addition, when competitive neutrality is achieved in an economy, small and medium-sized enterprises are no longer affected by unfair competitive practices of big companies in the relevant markets. It is apparent that the booming of small enterprises acting as the push for creativity and innovations in the market can significantly contribute to the success of market mechanism instead of holding the whole economy back from development. Therefore, the existence of fair competition creates great opportunities for them to compete in an equal footing with stronger firms, or even dominant companies in the market.

- Social welfare and equity considerations

Social welfare refers to the benefits that the economy receives as a whole, while equity considerations mean that all business entities will be treated in the same manner from legal perspective. Competitive neutrality helps the governments to achieve both above mentioned objectives through the enforcement of competitive neutrality law and policies. In terms of social welfare, society benefits from a perfectly functioning competitive mechanism, well performed enterprises, consumers' interests are guaranteed, improved quality of goods and services, and so on. Through promoting a healthy competitive environment in the economy, competitive neutrality legal framework does not only provide motivations for enterprises in the market to improve their performance but also give incentives for potential firms to enter the market with new ideas and innovations. As a result, consumers also get mounting benefits from high quality products coming at a reasonable price and wide-range choices. In terms of equity considerations, it is clearly reflected in the primary goals of competitive neutrality that fairness would be maintained among all commercial entities irrespective of their relations with the government.

- The interests of consumers generally or a class of consumers

Competitive neutrality law aims at promoting and establishing a level playing field for all commercial entities, in which none of them has competitive advantage over their competitors virtually because of their ownership status. This results in a fair competition environment in the markets, and market participants are not the only ones who benefit from that. Consumers in general, and relevant consumers of that market in particular are also in the position of directly benefiting from that.

Competitive neutrality enables the increasing practice of market contestability which brings huge changes to the markets that traditionally dominated by state-owned sector. When all enterprises compete with each other, under heavy competitive pressure they will all have to follow customers' desire and needs so as to gain more market share over their competitors. This situation puts all market participants in a position that they never stop improve their product quality as well as offer the lowest price possible to win more customers. As a result, consumers will benefit from increasing competitive pricing practices and improved quality of goods and services.

- Increasing the competitiveness of enterprises

SOEs are granted undue advantages and preferential treatment to support them in fulfilling their responsibility claimed by the official authority. The market power of the government owned sector to make significant changes in the relevant markets does not come from its internal growth but from the support of the government. Although that helps the state to achieve its goals through the business practices of SOEs, it does have harmful effects to the ability to compete of them. It is mostly the case in a number of countries in the world that as depending too much on the protection of the government, the public sector loses its competitiveness over the private one. Competitive neutrality promotes the fair competition between all kinds of business entities and when relations with the government is no longer in place to bring competitive advantages to the government owned sector, it is put in the position where it has no choice but to enhance their competitiveness. In other words, competitive neutrality law forces the SOEs to come out of its comfort zone and compete with its real ability, which can be considered as the motivations for increasing the competitiveness of them.

- The efficient allocation of resource

It cannot be denied that resource scarcity is the common situation in nations all over the world. Therefore, the effectiveness of resource allocation in a way that still maintains fairness being implemented in the society is one of the highly concerned issues of governments. The legal framework of competitive neutrality is also created under this umbrella with reference to the efficient allocation of resource.

In a number of countries in the world, SOEs are still the dominant sector of the economy playing the role as a vital part of the economic development. Acting as the leading business entity in the market delivering the socialist and political idea of the government, the public sector is given incentives and, sometimes, even unfair advantages to support the completion of its responsibility. However, it is not a rare case in the world that governmental sector is not the most productive part of the economy, in compare with the private one. Hence, competitive neutrality law and policies is put in place with the aim that those scarce resources of a country are distributed in the most effective manner. In order to do that, competitive neutrality regime directs the whole economy towards the equity in the sense that national resources will be provided and utilized by the enterprises who can make the best out of them and the public sector will only be granted enough preferential to fulfil its responsibility.

d) Law and policy towards competitive neutrality

According to the basic principle of competitive neutrality, any competitive advantages or disadvantages originated from virtue ownership status of government business enterprises over their private competitors in the market must be excluded. Under that, competitive neutrality aims at effective resource allocation and enhanced competitive processes, resulting in the ultimate economic efficiency and welfare maximization. A competitive neutrality policy contains a wide range of measures, consisting of advantage neutralizing regulations applied to public business in the area of debt financing, eliminating anti-competitive cross-subsidization between commercial and non-commercial activities, regulation and taxation and the establishment of commercial rate of return on the public capital used. It does not mean that competitive neutrality prevents the public sector from successfully competing with the private sector or hinders SOEs from meeting its public service obligations and other given responsibilities. Competitive neutrality is in place to ensure a level playing field where government businesses can only win other market participants through their own efforts and intrinsic growth, not as a consequent outcome of being a government-owned business entity.

Since the first time being implemented in Australia in 1996, competitive neutrality has become ubiquitous being widely adopted all over the world (Lane, 1997). Some modern competitive neutrality disciplines recently have been established in a wider context of a small number of nations in a particular region like PTAs or BITs. However, most competitive neutrality frameworks so far have been created just for domestic markets, or in other words, between government business enterprises and private businesses operating in the same national economy only such as OECD Guidelines, national competition laws, WTO agreements etc. There are numerous sources of information for governments to build their own competitive neutrality frameworks which have different requirements. While some can be regarded as references without compulsory binding such as National Competitive Neutrality

Framework (Australia, the United Kingdom and the United States are highly successful overall), OECD Guidelines, etc. some must be legally binding by the member nations like the WTO, Preferential Trade Agreements (PTAs) and Bilateral Investment Treaties (BITs)². Therefore, it is clear that the implementation of competitive neutrality in a given country is affected by two legal sources, which are the international agreements from the organizations that country commit to; and the national legal framework concerning competitive neutrality of that country. In which, normally agreements referring to competitive neutrality from international organization lay the fundamental background for a level playing field while the competitive neutrality law and policy of that particular country exerts a comprehensive legal regime with detailed statements and provisions for real implementation. From that, the efforts to achieve competitive neutrality are divided into three methods, which are (1) to gain competitive neutrality by domestic legislation; (2) to stimulate competitive neutrality through "Best Practices" or "Guidelines" published by international organizations (mainly OECD/UNCTAD/ICN, etc.) in an international scale; (3) to form binding competitive neutrality regulations through Regional Trade Agreements (RTAs) or Free Trade Agreements (FTAs).

III. BRIEF ASPECTS OF COMPETITIVE NEUTRALITY

Given different economic contexts of countries in the world, the way governments approaching and addressing competitive neutrality in their market varies from nation to nation. The competitive neutrality between public and private entities is established through eight elements mostly based on the Working Paper of OECD (OECD 2012a).

1. Streamlining the operational form of government business

The operational practices and the legal form under which the state-owned sector operates have significant indications for competitive neutrality. It will be easier for competitive neutrality to be implemented if business activities are carried out by independent commercial entities that are less affected by the directions of the general government. However, competitive neutrality law is defined as a regulation system which aims at setting up a level playing field for all market participants regardless of their ownership status, therefore, SOEs which are founded under political orientation of the government may impede the applications of competitive neutrality. The pursuit of competitive neutrality through the separation process can be standardized into four stages. Firstly, a structural separation of competitive from non-competitive operations where feasible and efficient should be carried out. It means the division of a previously integrated entity into competitive and non-competitive parts, normally in terms of technologies, capital equipment, human capital, etc. Secondly, it

² Agreement between JAPAN and VIET NAM for the liberation, promotion and protection of Investment, Art 4, 1 (g), retrieved from: <http://www.mofa.go.jp/region/asia-paci/vietnam/agree0311.pdf>; or EU-Vietnam Free Trade Agreement, Chapter 8: Trade in Services, Investment and E-Commerce, retrieved from: http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154210.pdf.

is equally important to come up with an optimal form for government business activities. The ‘optimal form’ of government business will be decided depending on the commercial activity’s level of integration with the public institutions as well as the careful consideration on the boundary between the government-oriented role and purely commercial activities of SOEs. The third step is setting out clear objectives to increase transparency and accountability. The first two steps are carried out to transform the operation of government business, under that general goals, specific objectives must be set up for the new business entity to follow. Finally, the fourth stage is periodic review of continued government stake in business activities in order to maintain the effectiveness of the separation process.

With reference to the operational form of government business, the public sector has experienced contrasting development trends recently. It is the case in almost all countries in the world that there are clear improvements in the completion of the corporatization of commercial activities. It is supported by real evidence that an increasing number of public institutions ranging from government departments, statutory corporations, and joint - stock companies to stock market listing have all taken actions in the direction of enhanced transparency and accountability. On the other hand, a number of business activities have been exerted with competitive economy due to market liberalization, especially in the utility sector and network industries (for example, telecommunications, postal service, electricity and transport) that were traditionally considered as natural monopoly.

Structural separation of business activities is a ubiquitous trend among governments all over the world, in which the competitive and non-competitive parts of government business are separated and competition in the market segments of the competitive parts will be encouraged. From this point of view, the process of structural separation is clearly in favor of the establishment of competitive neutrality. However, in the real world, this process may not always possible as it cannot be applied in some kinds of particular markets, for instance, intertwined production processes or dependence on the same physical or human capital. Sometimes, the separation process cannot be carried out as an adequate level of public services needs to be kept in order to response to market failure or fulfil the given public policy function. Besides, even when the separation process is feasible, it cannot be put into action when it does not satisfy the efficiency grounds meaning that the cost does not outweigh the benefits it brings back to the economy.

2. Identifying the costs of any given function

Competitive neutrality can only be achieved when the remuneration for public service obligations are calculated based on clear targets and objectives meaning that the public sector will only be paid a reasonable amount of money for fulfilling the responsibility given by the government. In order to achieve that, all costs arising from the business activities of SOEs

must be recognized through high standards of transparency and disclosure. When it is possible to identify the costs of any given function and to develop appropriate cost allocation mechanism, competitive neutrality also becomes possible as the compensation provided for SOEs cannot be used as conduit to cross-subsidies commercial activities.

When commercial and non-commercial activities are integrated in the government business, they usually share the costs, and/or assets, liabilities, which can result in unfair competitive advantages in the markets. The compensation for public service obligations of SOEs can be utilized not only in the relevant markets, but also in other markets that the public sector enters. The financial support from the authority, together with lowered costs of business operation due to scale of economies allowing the SOEs to price more aggressively than their competitors. It obviously goes against the principle of competitive neutrality, hence, identifying the costs of any given function is one of the central aspects of competitive neutrality implementation.

In order to identify whether the costs emerging from competitive or non-competitive business practices, competitive neutrality must follow certain budget principles of general business activities. In fact, there are 3 rules which are given by OECD and are carefully followed by its members. The first rule to government business is that commercial and non-commercial activities are integrated, fully disclosing of direct and indirect shared costs and assets should be required and taken into account. The second rule refers to the transparency of surrounding costs in terms of where are they going to and how they are going to be used. When public enterprises are granted access to the public funds in the direction of services of general public interests, the source and usage of them should be made transparent. The third rule suggests that in order to gain competitive neutrality in the market place, any costs advantages or disadvantages originated from the public ownership status should be removed.

The ability to identify the cost structure of SOEs is not only correlative with the theoretical principles of competitive neutrality but it also enhances the effectiveness of competitive neutrality legal enforcement. The process to identify all the costs of any given function in the direction of competitive neutrality law and policies contains 4 following stages. The first stage involves the transparency and disclose of the cost structure of the targeted corporatized business entity. It should also be noted here that the use of public resources to cover the costs of business activities of government-owned enterprises be disclosed to the relevant regulatory authorities and to the general public to the largest extent possible. In the second stage, under the scrutiny of both the official authority and the public, the separation of costs and assets for commercial and non-commercial activities should be clearly scrutinized. The third stage is when all the liabilities of the government business are clearly attributed. This is not an easy task as the liability structure of a SOE operating in both public

service and other activities is more complex than a private enterprise as it may include various kinds of liabilities which may never appear in a private entity. Finally, the fourth stage completes the competitive neutrality goal of the whole process, coming close to the implications of competitive neutrality by controlling and making cost neutrality adjustments. The level of transparency and accountability will be maintained to ensure the information output for cost-neutralizing decisions being given in the changing economic context.

3. Commercial rate of return

When government businesses are put under social pressure of satisfying the community service, the requirements for their operational efficiency is not so high in order to compensate for the obligation that they have to carry. However, competitive neutrality implementation which is for a level playing field for commercial entities in the market demands a reasonable rate of return from the business activities of SOEs. Adopting a set of commercial rate of return for separate line of commercial activities of governmental enterprises can prevent the distorting cross-subsidization practices while that also plays the role as a tool of healthy competition in the economy. To the markets where government-owned businesses present the social and political orientations of the official authority, relevant rate of return should also be set to ensure the effectiveness of the performance. A set of market-consistent rates of return is required for commercial and non-commercial activities of government businesses in practice to justify the long-term retention on assets and capital from the public funds. Nonetheless, it should also be noted that it is never an easy task to determine the appropriate rate of return for a targeted government business. The adequate rate of return has to balance the level of risk of the particular business and the standardized commercial rate of return of that industry over a sufficient period of time. Given the particular economic context, the difficulties in determining the appropriate rate of return also come from the availability and credibility of accounting information concerning the business operation of government-owned enterprises.

Setting a commercial rate of return target helps to examine the competitiveness and assess the performance ensuring that competitive neutrality principles be followed so that the public sector is operating under the same pressure as comparable businesses. The process of achieving a commercial rate of return includes 3 stages. The first step is to identify the government businesses where commercial activities involve because they will be the objects for commercial rate of return targets to be set. In the second step, before the commercial rate of return to be enacted, commercial and non-commercial part of business practices of SOEs have to be made transparent. All kinds of government business activities may be required to complete their responsibilities rather than to pursue the maximization of profit. The transparency between competitive and non-competitive business activities excludes the possibility that commercial rate of return target keeps SOEs in line with competitive neutrality law without undercutting actual or potential competition. Lastly, the third

step stresses on the fact that commercial rate of return is based on benchmarks across industry standards, however appropriate adjustments can be made taking into account public service obligations that the targeted public business entity have to meet in the given economic environment.

4. Accounting for public service obligations

Governments have a number of ways to support their owned enterprises with the compensation methods depending on the country, the kind of public service and the business entity delivering such service. Normally, the most noticeable mode of compensation for public service obligations is payments that are directly derived from the public funds as the financial aids for the additional costs arising from non-commercial requirements of the government. Moreover, there is also a concern that compensations for the supply of public service can be abused as a conduit for unintended cross-subsidization of commercial activities by the same entity. Hence, despite the good will behind such compensations for public service obligations, that imposes challenges for competitive neutrality implications to accurately calibrate compensation to minimize any distortionary effects on the market.

Although thorough evaluation of the performance of public policy function can have enormous impacts on the implementation of competitive neutrality, it is not an easy task to any official competitive authority in the world. In order to take into serious consideration the role to provide public services of SOEs in the direction of a level playing field, countries are advised to follow the four following steps. The first step is to ensure a sufficient degree of transparency and accountability around government businesses' use of public budget to satisfy public service needs. A sufficient degree of transparency and disclosure surrounding the use of public budgets will be the input information for budget oversight and monitoring. Then comes the second step of ensuring that adequate compensation is provided in the discharge of public service obligations entrusted to SOEs. In the third step, compensation for public service obligations should be made disbursed and spend in a manner which can be accounted for separately. Lastly, the fourth step makes it clear that, with reference to competitive neutrality, public service suppliers should neither be put at a competitive advantage, nor have their competitive activities effectively subsidized by the state.

As mentioned earlier, accounting for public service obligations should be considered as one of the essential elements to countries committed to competitive neutrality. Therefore, in the efforts of promoting healthy competitive environment all over the world, OECD has suggested 3 approaches in achieving accounting neutrality (OECD 2012), which are: (i) determining adequate compensation in fulfilling public service obligations; (ii) ensuring that compensation does not amount to undue subsidies; and (iii) determining a neutral compensation methods to follow. Equal consideration should be given to not only above mentioned issues such as streamlining the operational form of government business, identifying the

costs of any given function, setting commercial rate of return, and accounting for public service obligations, but also other aspects of competitive neutrality as below.

5. Tax neutrality

Tax advantages for the public sector is also one of the major challenges of the implementation of competitive neutrality. It is the common situation in many countries that public, private and other sectors face different tax treatment owing to their ownership status or legal form. Tax advantages or tax disadvantages come from a wide range of direct or indirect tax regime including corporate/ income taxes, value-added taxes (VAT), property taxes, registration, and other special taxes. Preferable tax treatment can often be seen in SOEs to compensate for the social and political responsibility that they have to meet. When tax advantages are spotted, usually in the form of lower tax rate or tax exemption, the official authority have to understand to what extent these tax advantages cause distortions or restraints of open competition in the marketplace. From that, governments can take appropriate actions in the efforts of setting up a level playing field in their economy.

If tax advantages significantly exert harmful effects to the fair competition in the market, which is mostly the case of a number of nations in the world, tax neutrality will be required to set up and maintain. Following is the three fundamental principles of tax neutrality proposed by OECD with heavy focus on value-added taxation system, which are used by economies targeting the establishment of competitive neutrality not only as a legal framework but also in real practice. Firstly, in cross-border trade, businesses in similar situations carrying out similar transactions should be imposed similar levels of value-added taxation from OECD International VAT/GST Guidelines³. Secondly, in cross-border trade where specific administrative requirements of foreign businesses are deemed necessary, value-added tax should be administered in a way which does not create disproportionate or inappropriate compliance costs for business from the same OECD source. Thirdly, it should be made that transparency surrounding tax exemptions and rectify possible advantages are associated with them.

Although, tax neutrality is another tough aspect of competitive neutrality, it is totally worth considering and making efforts. The establishment of tax neutrality will substantially enhance the implementation of competitive neutrality as all business entities regardless of their ownership structure will be treated in an equal manner in terms of tax. In other words, tax neutrality ensures that the public sector faces the same tax burden as their competitor's counterpart. In order to achieve that, there are two approaches, which are: (i) evaluating the direct and indirect taxes with reference to compensation for public service obligation; (ii) adopting tax neutrality adjustments and other forms of compensation.

³ OECD International Guidelines on Neutrality 2015, retrieved from: <https://www.oecd.org/ctp/consumption/international-vat-gst-guidelines.pdf>

6. Regulatory neutrality

The concern for uneven regulatory treatment between public and private sectors has been widespread to all parts of the global economy for quite a long time. Government businesses can abuse the regulatory incentives that they are granted to compete with their competitors in an unfair manner causing restraints or even distortions to the perfectly competitive environment. Further problems can also emerge when competitive neutrality implementation deals with unincorporated government entities (or entities incorporated according to a tailored legal framework) as the regulatory advantages for such entities come from their integration with the executive power. The provisions of restrictive business practices under enforcement applied to SOEs and to other sectors. Other types of regulatory advantages conferred to SOEs consist of preferential treatment in terms of disclosure or conforming with other requirements, sovereign immunity laws, bankruptcy laws, compliance with start-up administrative requirements and favorable access to land. Regulatory preferences are usually disguised under 2 reasons which are (i) the concerned government business operates in an area involving a natural monopoly; (ii) preferential regulatory treatment is needed to compensate SOEs for public service obligation.

The existence of regulatory differences between public and private business practices can totally be a serious obstacle to the implementation of competitive neutrality. Therefore, together with above mentioned contents, it is apparent that achieving regulatory neutrality is mutually consistent with competitive neutrality law and policy, which will be illustrated through the fundamental principles of regulatory neutrality. The first and maybe, the foremost principle of regulatory neutrality is that an equal regulatory treatment should be ensured between the public and private businesses. Although regulatory exemptions can be granted to SOEs to compensate for their public service responsibility, competitive neutrality is in place to ensure the same treatment for other types of businesses. The second competitive neutrality rule relating to regulatory neutrality is that the participation of the government in the market should be evaluated periodically. Given the changing nature of the global economy in general and of the national economy in particular, government participation should be adjusted according to the changes in the market. The third principle reflects competitive neutrality policy that regulatory preferences have to be consistent and neutral regardless of ownership status. Finally, regulatory measures are not the only tool of achieving regulatory neutrality, a multi-disciplinary approach also acts as a decisive factor.

7. Debt neutrality and outright subsidies

So far, due to the globalization trend and the commitment to international agreements, the financial support of the state to enterprises of its ownership has been dramatically reduced, especially the apparent financial assistants such as the outright subsidies to commercial activities of SOEs. Public companies are subject to the same regulatory frameworks and

lending conditions as private sector firms. However, it cannot be denied that government-owned businesses still benefit from a few exceptions applied to this sector, as to some loss-making public companies or other kinds of government-controlled entities which are too big to fail, the official authority has to grant the financial aids to sustain their commercial operation. The effects of debt neutrality and outright subsidies to the government-owned sector is not only being represented through official written regulations but also come from unwritten rules in the market. Owing to government backing, which can be in the form of implicit, explicit or perceived guarantees or in the kind of exceptional case laws, the real benefits for SOEs from government financial support are very hard to measure, for example they are offered lower interest rate in the financial market. As a consequence, undesirable outcomes to the competitive environment emerge when loans for SOEs are available below market interest rates or against collateral or securitization that is unacceptable situation under purely commercial terms.

Like the above-mentioned aspects of competitive neutrality, the establishment of debt neutrality and outright subsidies among all market participants irrespective of their ownership relations or legal forms requires some rules to be followed. The first essential principle of debt neutrality is that preferential treatment from financial perspective should not be granted to SOEs in the first place. Equally important, it should also be noted that debt neutrality adjustments should be put into practice whenever unfair financial favor is spotted under the particular economic situation. The principles of debt neutrality and outright subsidies are obviously reflected in the approach to achieve that not just in paper but in the real world. Given different economic context, the debt neutrality situation of countries in the world varies from countries to countries, therefore, any governments who wish to pursue competitive neutrality have to assess their debt on neutral term by their own. When debt neutrality situation cannot be accessed, governments can put into practice a system of debt neutrality adjustments. For instance, SOEs may be required to pay for “debt neutrality charge” which is the difference between the real interest rate and the cost of the debt that they have to pay for.

8. Public procurement

Close relations with the government have powered the SOEs’ voice resulting in their significant impacts on a number of processes in the market mechanism such as outsourcing, tendering, concessions, and other forms of public-private partnerships). Hence, in order to open the fair competition in the marketplace between the public sector and other sectors, national public procurement policy is the option that was chosen by most countries. Under perfect competitive process, the existence of unfair advantages that incumbents or in-house providers may have in the bidding process clearly has negative influences to the competitive environment. These advantages consist of the following: a stronger position to negotiate their business transaction where a given SOE has already set up a track record; government

businesses also benefit from access to confidential information such as service levels and costs; and lower start-up and transitional costs compared with potential entrants – particularly when contract period is limited. Other more serious problems which are illicit practices have also been claimed for instance, corruption, bid rigging, abusive related party transactions and other unethical behavior by sellers in public procurement.

Public procurement is the last one in eight crucial elements of competitive neutrality chosen to be presented in this paper. However, the role of public procurement in competitive neutrality implementation is not less important than any above-mentioned factors. There are several principles for public procurement in the direction of competitive neutrality. Firstly, public procurement should be a fair competitive process under perfect market mechanism to ensure the original goal of public procurement that is public welfare maximization. Secondly, it has to be made clear from public procurement policies and procedures that transparency and equitable treatment have to be maintained through clear selection criteria and fair consideration. Thirdly, all public entities, including in-house bidders, participating in a bidding process should operate according to standards of competitive neutrality. Fourthly, and also lastly, moral values are vital in public procurement processes. From that, the approaches to competitive neutrality from public procurement perspective have to follow all these principles:

(i) Public procurement processes satisfy the following criteria being consistent with competitive neutrality which are equal treatment, non-discrimination, transparency, proportionality, mutual recognition.

(ii) Public procurement procedure acknowledge and take into consideration all the differences between participated bidders.

(iii) It is necessary to set up ex-post complaints mechanisms and correcting measures to deal with non-neutrality discovered after a public procurement process has been initiated.

IV. EXPERIENCE OF COMPETITIVE NEUTRALITY IN SELECTED COUNTRIES

1. Competitive neutrality in Australia

a) The competitive neutrality policy and principles of Australia

In the early 1990s, in order to contend with the present problems from the harmful practices of government business enterprises to the healthy competition in the market, Australian Government decided to set up an official legal framework controlling state business activities (Loundes, 1998). Thus, it is stated that by 1996 each party of the Australian Government be required to enact a policy statement on competitive neutrality which is most compatible with its current circumstance with assistance from the Council (Hollander, 2016).

Being formally adopted in 1992 by the Commonwealth, States and Territories, the National Competition Policy is a legal set of reforms with the aim to improve Australia's competitiveness in the international arena. Competitive neutrality is one among 7 cornerstones of the National Competition Policy of Australia. From Australian Government's legal framework, competitive neutrality is defined as a level playing field where significant business activities should not take advantage of their net competitive advantages over other market participants solely because of their government ownership⁴. "Significant business activity" is defined as the business activity of significant business organizations which are all publicly owned entities and their subsidiaries, other share-limited trading companies, and all designated business units. To be considered as a "business activity", three requirements have to be met: the user pays for the goods or services, it is illegal to limit the choices of users, the product price can be decided to some extent by managers of the business activity (Ray, 2000). The goal of maintaining competitive neutrality in the market is to eliminate the manipulations of resource allocations granted to publicly owned enterprises carried out significant business activities. However, it is also clearly stated that the competitive neutrality policy and principles only apply to business activities of SOEs, not for non-business or non-profit activities of them (Fels, 1996).

The competitive neutrality legal framework of Australia has been generated with strict policies and principles. They are enacted with detailed guidelines and methods to measure their effectiveness of a particular Australian Government. Australian Government can choose the most appropriate set of competitive neutrality policies to apply and they are required to report about the implementation of competitive neutrality annually as well. There are three policies in the implementation of competitive neutrality in Australia, which are corporatization, commercialization and full cost-reflective pricing (Eggers, 1998).

Corporatization is the method of gaining competitive neutrality applied for the councils which possess and run the main trading businesses. After being corporatized, publicly owned entities are regarded as government-owned corporations (GOC). To be more specific, the method of corporatization is the separation out of the business unit which is the monopoly element of the whole government business enterprises, creating a separate legal entity. As a result, corporatization helps to neutralize the excessive power of government business enterprises in the market while the business activities and financial performance of the new GOC are better controlled by the Australian Government.

The true essence and fundamental principles of corporatization and commercialization are the same but the difference is a matter of degree (Commonwealth Secretariat, 2004). While the corporatization reform generates a separate legal entity, commercialized activities can only lead to the establishment of internal business units. In fact, commercialized

⁴ Commonwealth Competitive Neutrality Statement, 1996, retrieved from: <http://archive.treasury.gov.au/-documents/275/PDF/cnps.pdf>

activities can be conducted during the process of corporatization as a transitional stage. There are three steps in the commercialization method: creating a general business environment between customers and suppliers; generating official trading relationships in a tied playground; and lastly, forming a commercial environment where customers have more considerably free to make their choice of suppliers (Harman, 1996).

The third competitive neutrality measure is the full cost-reflective pricing which apply for neither GOCs nor wholly commercialized business units. The underlying principle of the full cost-reflective pricing policy is that the councils' target should be to accurately estimate the full costs of their business activities, which includes all the costs to produce the goods or services and the costs of advantages and disadvantages of their ownership. By that, competitive neutrality is ensured as GOCs and separate business units face the same structure of cost as their private competitors in the market, meaning that they are under the same pressure of competition.

In Australia's competitive neutrality legal framework, competitive neutrality is maintained with the objective of limiting any net advantages that SOEs enjoy as a result of their state ownership. In order to achieve competitive neutrality, Australian Government has adopted competitive neutrality principles to make sure significant business activities having the prices that fully reflect the costs in comparison with other market sectors.

There are 5 competitive neutrality principles enacted that influence the cost structure of significant business activities in that direction.

- *Tax neutrality*: The main objective of the tax neutrality principle is that significant business activities and other business activities are treated in equal manners in terms of tax. In other words, government business enterprises and other business entities have to take into account the same proportion of tax payment in their price. Under competitive neutrality regime, there are 3 broad kinds of tax: i) direct taxes; ii) Commonwealth indirect taxes; and iii) State taxes (including local government taxes). There are also 3 methods that Australia governments can use to neutralize tax advantages of government business enterprises: Actual tax, Taxation Equivalent Regime, Taxation Neutrality Adjustments (Deitz, 2012). The first system is applied for Commonwealth Authorities and Companies (CAC) Act bodies only, while private sectors have to pay for Commonwealth, State and local taxes, the government makes arrangements to make sure government business enterprises are subject to the same tax burden (Department of Finance and Administration, 2004). Tax equivalent regime is subject to all Business Units, significant business activities of Financial Management and Accountability Act agents and not-for-profit CAC Act bodies, CAC Act bodies that receive tax exemptions. The second tax neutralizing system that requires government business activities to pay an equivalent tax payment which eliminates their tax advantages. The last system is for all public sector bids and others to make sure all market participants are under equal

tax liabilities. Taxation Neutrality Adjustments impose taxes based on the baseline costing with the aim of fair tax burdens on all market testing activities (Deitz, 2012).

- *Debt neutrality*: When a publicly owned enterprise asks for a loan, based on the sources there are 2 kinds of debts, which are budget debt and market debt. When a GBE makes a request for a debt from the Commonwealth Budget through the Department of Finance and Administration that is a budget debt. If the debt is granted from the financial market which can be the banks, financial markets or other financiers, it is regarded as a market debt (Department of Finance and Administration, 2004). Due to the explicit government assurance and the conception of implicit government help, significant business activities are often granted the preferential treatment. The principle of debt neutrality is subject to all kinds of obligations entailing government business activities consisting of term loans, overdrafts, commercial paper and bonds, and finance leases (Department of Finance and Administration, 1998). As government business enterprises receive the favorable interest rates for their debts due to their status of public ownership, debt neutrality principle based on eliminating the difference between the real interest rate and the actual cost of debts significant business activities would be charged without being owned by the state. Debt neutrality charges which are applied for market debts of significant business activities are determined by their shareholder Minister (the shareholder Minister of a significant business activity is identified by credit rating advice). To budget debts, no debt neutrality charges are imposed to SOEs, however, the interest rates are decided by the Department of Finance and Administration of Australian Government (Deitz, 2012).

- *Regulatory neutrality*: As numerous regulatory preference granted for SOEs have severely restrict the healthy competition in the market, causing inefficiencies in the economy, regulatory neutrality is also an important content of Australia's competitive neutrality framework (Williams, 2013). The term of regulatory neutrality means that all business entities are equal in the sense of regulatory legal framework. The regulatory advantages can be identified as the exemptions which free a business entity from the obligations to make a payment or to carry out certain activities (Department of Finance and Administration, 2004). In the situation that it is impossible to put all market participants under the same legal environment, regulatory adjustments could be implemented to neutralize the present regulatory advantages. There are 2 methods of regulatory neutrality for Australian Government to choose the most appropriate one under their particular circumstance. The first option is to amend the regulatory framework so that all business entities are subject to the same set of policy and principles. The second method is that the government imposes a charge to maintain regulatory neutrality based on case-by-case calculations (Deitz, 2012). In detail, there are 3 regulatory neutralizing adjustments which can be imposed to charge significant business activities (OECD, 2012):

(i) Taking the actual regulatory payment or complying with the actual regulatory obligation;

(ii) Accepting an equivalent payment to the Official Public Account;

(iii) Intentionally adding the regulatory payments to the business activity's cost base, and hence price by a relevant amount to the regulatory advantages they enjoy due to their favorable position.

- *Commercial rate of return requirements:* in terms of rate of return requirements, competitive neutrality is achieved when government-owned businesses are required to gain a commercial rate of return in a reasonable duration of time. In other words, they have to compete with their competitors in a level playing field to make a sufficient rate of return. The rate of return is required to at least cover the costs on the assets they use for their business activities and the dividends to Australia's national budget (O'Faircheallaigh/Wanna/Weller, 1999). The required rate of return is decided by Minister for Finance and Administration and the responsible portfolio Minister with the consultation from The Treasurer of Australia using one among 3 following methods. The first way is "Weighted Average Cost of Capital" which finds out a business's cost of capital and sets it as the lowest amount the business has to gain. When it is impossible to carry out the first method, the Minister for Finance and Administration can consider the "Risk broad-banding" method – determining the reasonable rate of return based on evaluating a business's level of market risk. In the third way, the most appropriate rate of return is determined on the set level of return upon the assets provided by the business unit.

b) The competitive neutrality complaints mechanism of Australia

Taking the issue of competitive neutrality into serious consideration, the Australia Governments have established an official mechanism for competitive neutrality complaints. When competitors of government enterprises in the market identify the negative effects to the fair competition from significant business activities, these entities can make complaints to the Australian Government Competitive Neutrality Complaints Office (the AGCNCO) or the Competitive Neutrality Complaints Unit. Agencies and local governments can get consultation from the AGCNCO – an autonomous unit of the Productivity Commission or the Complaints Unit located in the Department of Treasury and Finance, if they require assistance in this regard (Little, 2000). The AGCNCO as well as the Complaints Unit, which is both called the Complaints Unit in general, is required to deal with all complaints in an unbiased independent careful manner and provide the fairest answer based on the available information.

In the very first stage, the Complaints Unit will play the role as an arbitrator discussing with the affected enterprise and directly approaching the complained government business for a solution. If the two parties cannot come to a solution, the complaint will then be put in

writing which clearly states the breach of competitive neutrality policy of the SOE. After the complaint has been lodged, the Complaints Unit will ask the government business enterprise for confirmation of the mentioned violation of competitive neutrality. When it is necessary, an official investigation will be carried out by the Complaints Unit with notifications being sent to both relating parties. After the conclusion has been reached, if either party is not satisfied with the result, they can send request for further investigation to the Complaints Unit. The Complaints Unit will conduct further investigation if new evidence relating to the complaint comes to light. If any acts of government businesses which are not compliant with competitive neutrality policy and principles are found out, the Complaints Unit then inform the relevant Departmental Secretary, or the Chief Executive Officer of the breach for further progress in the complaint (Australian Government Competitive Neutrality Complaints Office, 2014).

c) The effectiveness of the competitive neutrality regime of Australia

The Hilmer report in 1993 provided a huge range of useful recommendations for the introduction of competitive neutrality in general and the structural reforms of government business enterprises in particular in Australia (Arup and Wishart, 2002). Three years later, the competitive neutrality regime was set up as a content of the policy platform - Australia's National Competition Policy (Merrett, 2014). After about 30 years of implementation, despite some remarkable achievements, Australia's legal framework for competitive neutrality still continuously improve its effectiveness and keep in line with the changes in the economy. Suggestions to amend competitive neutrality policy and revise regulatory restrictions are constantly given out and considered by Australian policy makers, consisting of benchmarks, occupational licensing, and planning and zoning rules that can enable small business to compete more effectively (Harper, Anderson, Mccluskey and O'Bryan QC, 2015). With continuous efforts of the government, among all nations in the world, the competitive neutrality of Australia is regarded as one of the most advanced policies with long-time adoption and considerable achievements. A number of international organizations such as OECD, UNCTAD have recently stated the success of Australia in establishing a level playing field through an effective legal system being implemented with detailed guidelines and complaint-handling mechanism (Harper, Anderson, Mccluskey and O'Bryan QcC, 2015).

The approach of Australia to the issue of competitive neutrality is viewed as a successful model as it has gained remarkable success in three different aspects (Pearson, 2014):

(1) Australia's competitive neutrality framework has deepened the reform of government enterprises sector in Australia

Reforming the public business enterprises is one of the top priorities through all three phases of the microeconomic reform process of Australia (Quiggin, 2002). In the 1990s, the

efficiency of Australian government business enterprises is low in comparison with the private sectors in the relevant market and even equivalent SOEs in other countries (Arup and Wishart, 2002). The reform of Australia public sector is carried out aiming at improving productivity of this sector with competitive neutrality is one of the underlying principles. The competitive neutrality policy requires government business enterprises to compete in an equal footing with their present or potential competitors in the market by neutralizing the unfair advantages that they are enjoying. Competitive neutrality framework has greatly contributed to the gains of the microeconomic reform in Australia. Since 1990s, with growing attention given to SOEs, the information on their performance has been increasingly available and better recorded. The reform of public sector has resulted in enhanced operational efficiency, comparable prices, beneficial influences on the financial budget status of Australian Governments as well as the broad economic background of Australia. Hence, not only government business enterprises improve their competitiveness and restructure their debt levels but Australian Governments also benefit from a healthier competition environment and reduced budgetary deficits. Essentially, these achievements did not occur with the sacrifice in the service levels, the levels of service in Australia actually grew in both quantity and quality at the same time (Marsden and Associates, 1998).

(2) All economic entities have to comply with competitive neutrality framework including major government businesses which resulted in considerable efficiency gains.

The reform of government business enterprises was mostly implemented based on privatization and corporatization with the amendments in the regulatory legal framework as well. As being carried out by major public businesses which occupied significant market share, this reform has had great impacts on the national economy. Firstly, major SOEs could no longer take advantage of their market power in its favor as a huge number of structural reforms were carried out with the aim to eliminate the abuse of market position and create a fair competition environment. The structural reforms in publicly owned enterprises in major industries including electricity, gas, water utilities and telecommunications are prime examples of this point (Marsden and Associates, 1998). Secondly, in compliance with the competitive neutrality regime, government business enterprises had to compete in a comparable manner with other market participants, giving customers more choices at reasonable prices. For instance, after reform of public enterprises in the electricity industry, the price that final consumers had to pay actually reduced in real terms (OECD, 2008). Last but not least, the most important achievement of this reform is the increasing productivity of government business enterprises resulting in higher levels of service, quality and safety. In addition, Australian's SOEs, in general, also became more productive in compared with SOEs in other developed countries in the world. For example, the electricity service of Australia has become more reliable with greater stability and advanced technology.

(3) Australia's competitive neutrality framework has substantially eliminated the preferences of publicly owned sector

As one of the key contents of Australia's National Competition Policy reform, the competitive neutrality policy was adopted with the underlying principle of neutralizing all the advantages that government business enterprises enjoyed solely due to their ownership (Kinnear, Charters and Vitartas, 2012). The attempts to eliminate all the advantages granted to publicly owned enterprises are illustrated through the set of 4 competitive neutrality principles: regulatory neutrality, debt neutrality, tax neutrality and rate of return. All the unfair preference biased commercial interests in SOEs' favors are replaced, simplified or charged. In addition, structural reforms were accelerated to limit the number of government business enterprises with excessive market power while the operation of existing SOEs is better controlled (Cooper, Funnell and Lee, 2012). The control of governmental sector was tightened with a number of preferential regulatory provisions were amended. Operational efficiencies as well as the productivity of government business enterprises were boosted to meet the required rate of return enhancing their competitiveness. Australian governments benefited from increasing tax paid and reduced subsidies as advantages in terms of tax and debt for government-owned enterprises were eliminated (OECD, 2008).

2. Competitive neutrality in China

a) Principles of competitive neutrality policy in China

The first principle that Chinese Government strictly follows in the conduct of competitive neutrality is neutralizing on commercial opportunities for all kinds of business entities. To be more specific, one of the most fundamental implications of competitive neutrality is that Chinese Government must ensure all commercial entities are offered equal trading opportunities on having access to resource allocation. Acting as a precursor element to the establish of competitive environment, it is required that neutrality must be maintained on trading opportunities. Neutrality on trading opportunities among all kinds of businesses in China is most practiced in 2 areas: market entry and government purchase (Maozhong, 2015). Maintaining competitive neutrality in terms of market entry requires that the government put all economic sectors before the same barriers of market entry. It means that they all encounter the same set of regulations on business license, expansion of business operation and conclusion of commercial contracts, so that companies can only break into the target market by its internal capacity. Competitive neutrality implementation from the perspective of government purchase implies that equal opportunities are created for all market participants regardless of their ownership status. In details, the procedure on the identity of participants, form of participation, information disclosure and evaluation mechanisms must be clearly and systematically enacted without any unreasonable exceptions for any enterprises.

The second competitive neutrality principle applied in the context of Chinese economy is to neutralize all operating burdens (Maozhong, 2015). Basically, it represents the demand of neutrality on the operating burdens of participants in allocation of market resources ranging from compulsory burdens unilaterally imposed by the government, e.g. taxes, regulation, social responsibility, to negotiable burdens such as loans and financing, default liabilities and tort liabilities. It is apparent the operating burdens that directly or indirectly emerging from trading opportunities will be added into the operating costs. Notwithstanding, the increases in the operating costs can surely act as hinder to successful business performance of the company. Hence, to set up a level playing field where all enterprises competing in an equal footing over their competitors, competitive neutrality is required to balance compulsory burdens and reduce of negotiable burdens.

The third principle in the conduct of competitive neutrality of Chinese Government is neutrality in terms of investment return (Maozhong, 2015). Chinese Government must levy fair investment returns on the use of market resources for relevant market participants. One of the criteria for the effectiveness of companies in winning trading opportunities over their competitors or lessening operating burdens is the return on investment. Although the investment return, in many cases, is heavily influenced by internal factors such as the company's ability to foster innovations, the company's financial situation, etc. external factors in which government interference cannot be taken lightly. Chinese Government's efforts in neutralizing investment returns can be seen in 2 areas, which are price regulation and government subsidy. Competitive neutrality reflected in price regulations is that, to some extent, the government takes control of the market price preventing companies from "*selling commodities at unfairly high prices or buying commodities at unfairly low prices*" (Anti-monopoly Law of China, Art. 17 (1)) so that all participants are in the same situation to gain revenue. Similarly, neutrality in government subsidy requests the government to equally grant the subsidy supported by public funds, so that all companies have equal access to government subsidy.

b) Complaint and supervision system

Different from Australia, an official legal framework for competitive neutrality has not been created in China yet. The orientations from Chinese Government in the direction of competitive neutrality is demonstrated through a series of measures to reform and supervise SOEs. Therefore, it is understandable that until now, Chinese has not had a complaint and supervision system for competitive neutrality yet. The complaints with reference to competitive neutrality, however, can still be handled in an official manner by written proposals to deputies of the People's Congress, to political advisors of the People's Political Consultative Congress, or officials in some democratic parties.

The most noticeable legislative efforts of Chinese Government on competitive neutrality are seen in 2004 through two bills, proposals to eliminate systemic of economic development and foster friendly environment for Non-state-owned economy (No. 0190) and Proposals to encourage and support private enterprises to help reorganize and update SOEs (No. 2349), which were proposed by Revolutionary Committee of the Chinese Kuomintang and the All-China Federation of Industry and Commercial, respectively (Wendy, 2016). The prime goal of these bills is to set up the fairness between SOEs and non- SOEs from the legal perspective, removing heavy market entry barriers for other sectors in many industries, neutralizing all investment and financial advantages of the government owned sector, unifying the taxation system for all commercial entities, reviewing and making adjustments on the policies that constitute discrimination to the private sector, encouraging the changes in government functions and the reform of administrative system. These contents are stressed again on “Some opinions on supporting and guiding the development of non-state-owned Economy” issued by the State Council in 2005.

More recently, Chinese took one more step closer to the procedure of drafting related competition policies with competitive neutrality content is included as stated in the Anti-monopoly Law of China, Art. 9. Therefore, as long as the Anti-monopoly Commission is given the power to act as a complaints and supervision system as part of a competitive neutrality framework, it will strengthen the relationships between competition enforcement authorities and regulation maker authorities so that all unfair favors granted to the public sector will be removed.

c) General approach to the competitive neutrality policy

- *Administrative enforcement:* Chinese Government manages the implementation of competitive neutrality by ensuring that all enterprises follow the non-discrimination principle and standards established through the administrative process. In the present economic context of China, government interference in the market is considered necessary in the case of market failure, therefore, with one of the implications of competitive neutrality is governmental intervention at a reasonable level. Competitive neutrality in China, therefore indicates a fair competitive environment through the compliance of all business entities with competitive neutrality policies which are administratively regulated under proper enforcement from Chinese Government. The Report on the Business Development Environment in China 2013 demonstrates the changes in Chinese government’s awareness that the practice of their power in the market should be put after the establishment of competitive neutrality in the national economy. Hence, more efforts are required to amend competitive neutrality legal framework while powering its competition enforcement agencies to control administrative monopoly and more methods to combat it.

- *Institutional reform*: The launch of a timely institutional reform is also one of the most vital background for competitive neutrality establishment. Institutional reform has significant impacts on the implementation of competitive neutrality as in China, a number of unfair favors granted to SOEs have far exceeded the scope of competition law. Following competitive neutrality policy and principles, the institutional reform has to (i) break down the unfair market entry barriers created by governmental intervention in the marketplace and exclude all the restraints caused by these barriers (ii) and set up non-discrimination treatment in the market by the institutional system and reorganize it accordingly.

- *Competition advocacy*: Actions conducted by the competition authorities to improve the competition environment are important to promoting and providing supplements to anti-monopoly enforcement, pushing forward effective implementation of competition policy and facilitating competition awareness building (Maozhong, 2015). As competitive neutrality has not been widely aware among all enterprises over China, pertinent measures should be carried out as increasing the general awareness (competition law) building, compliance guidance and theoretical studies in the direction of fair competition to relevant authorities. Therefore, to establish competitive neutrality in the national economy, the competition authorities in China, including the National Development and Reform Commission, the Ministry of Commerce, the State Administration for Industry and Commerce and the provincial agencies authorized by them should, in addition to law enforcement, work together with the Anti-Monopoly Committee of the State Council to enrich their understanding of competitive neutrality issue and their readiness to open competition.

d) History of SOEs reform in China

1978 - 1986: The power of SOEs was decentralized and their earned profits are allowed to share. The SOEs reform of China in this period consisted of the expansion of government-owned companies in terms of operational autonomy, the profits from their business activities were shared partly for the government through tax payment and leasing systems of managerial responsibility.

1986 - 1992: Chinese Government moved their SOEs further from the protection of the state by separating ownership and management. In this stage, China has built up the contract system of managerial responsibility which clearly stated that the division of responsibility, management rights, and profits between the owner of the enterprise and relevant government authority is all agreed in a signed written contract. Another noticeable action towards competitive neutrality in this period of China is the enactment of the Law on industrial enterprises. The Law was adopted in April 1988 and took into effect in August 1988 with the main objective of laying the background for separation of ownership and managerial authority. Also, the system of the state-owned assets operation obligation was put into practice. This system did not only stimulate the diversification of ownership forms but it was also

the driving force for SOEs to act as real producers and managers in the market rather than administrative implementing tools of the government. Nonetheless, government intervention in the market could still be seen through the enactment of the General Principles of the Civil Laws in which Chinese Government still gave favorable treatments to its owned companies via the property rights.

1992 – 2002: This period is characterized by corporate restructuring process of SOEs in China leading to the establishment of a generation of modern enterprises with clear separation of power and rights, operation rights coming from other sources rather than the relations with the authority, management acts in response to changes in the market. While the performance and situation of each SOE in China vary from one to another, the government launched the strategic restructure program in the direction of the thrive of success large enterprises while invigorating the small ones.

2003 – 2011: In order to make sure that the public capital will be put into good use, the State-owned Assets Supervision and Administration Commission was set up in March 2003 to consider and distribute the capital funds on behalf of Chinese Government, authorized by the State Council. A new trend started from this period is the system of the board of directors who are empower to recruit or fire managers of the company in favor of its commercial interests. Legal actions taken in this period include the amendment of Company Law to accelerate the reform process in the national economy. Another thing that cannot be forgotten is the securitization transform of state-owned assets with the major aim of separating and reorganizing the benefits and risks of state-owned assets.

The latest achievements on the reform of China: With international pressure and domestic demands for competitive neutrality, China has continuously taken actions to address this issue. For the first time, competitive neutrality is highlighted in the report on the Eighteenth National Congress of the Communist Party of China – the official introduction in such an important written document. Competitive neutrality has remained as one of the cornerstones in the reform of SOEs as the *“Opinions on further deepening the Shanghai state-owned assets to promote the development of state-owned enterprises”* has formally put an emphasis on that. For example, SOEs in coal power of China play an essential role in this industry holding the majority of assets and financial accesses, therefore Chinese Government has come to decision of slowing down the growth of this economic sector (Morgan/Xueying/David/Uday, 2015). Apparently, with international pressure and domestic demands for competitive neutrality, China has actively taken actions to address this issue.

V. CHALLENGES OF THE APPLICATION OF COMPETITIVE NEUTRALITY IN VIETNAM

1. Overview of the competition status in Vietnam

In comparison with the surrounding nations, Vietnam history has longer war period and as a result, Vietnam's economy also suffered from "three lost decades" when the whole country risked everything to earn the independence back. Forty years have passed since the last day of war in Vietnam, and the national economy is growing at a dramatic speed. Despite a hiccup following the 1997 Asian economic crisis, the history of Vietnamese economy has turned to a new page when the Government decided to change the direction of the whole national economy from the centrally planned economy in the late 1980s into a market economy under its 'Doi Moi' (renovation) policy. The effectiveness of the new market orientation is reflected in the continuous growth at a rapid pace of the economy, marking Vietnam as one of the countries with the fastest-growing economies in Southeast Asian.

Being a fast-growing economy with outstanding economic growth rates, Vietnam has become a promising market as well as an attractive investment destination with great potential for sustainable development in the future. On the other hand, it should also be noted that quick economic growth also comes with increasing demands for a perfect market mechanism, or a fair competitive environment for all business entities to compete with each other, which Vietnamese authority is still struggling to achieve. The pressure for an effective competitive legal framework also comes from the world. Thanks to advanced technology and globalization trend, all economies in the world have been brought closer in a same arena called the global economy where all economies compete in a fair manner. The global economy has opened the opportunities for enterprises to move across borders and establish their business activities at any corner in the world. Moreover, rapid economic growth experienced by an economy that has a low starting point has led to the existence of a number of sectors or areas characterized by state monopoly. These trends require countries to complete the legal regulations of their national economy making sure that their economy is a level playing field for all commercial entities. This notion is strongly put forward by international organizations that Vietnam attends as an official member. The changing awareness of the Government in favor of a market economy which has been implemented through "Doi Moi" shows strong commitment of Vietnam to the establishment of a healthy competitive environment for all market participants. In order to achieve that, competition law has been drafted and then officially taken into effect in 2005 laying the foundation for an effective enforcement of fair competition in the real market.

Becoming an official member of ASEAN in 1995 marked the very first steps of Vietnam in the integration process further into the world economy following by commitment of Vietnam with international trade organizations such as WTO or other (new generation FTAs). The pressure from the global economy, along with the demand from the domestic economy

for competitiveness enhancement has pushed Vietnam to make efforts on building an effective legal regime, effectively implement competition policies, and set up an independent competition authority to ensure a fair competitive environment for both domestic and foreign companies operating in Vietnam. At that time, before the introduction of Competition Law, anticompetitive practices and monopolies in particular markets are ruled by the separate provisions in a number of legislations the Ordinance on Price, the Ordinance on Telecommunications, the Law on Credit Institutions, Commercial Law, Electricity Law, etc. Under that circumstance, in 2000 the National Assembly and the Government came to the decision of putting the Competition Law into a legislative program. Vietnam Competition Law was approved by the National Assembly on November 9, 2004, and took into effect on July 1, 2005. The Law was a result of a four-year process that saw various drafts circulated for comments from both domestic and international experts. Reviewing competition legal frameworks of more than 30 nations and receiving supports from international organizations, Vietnam's Law on Competition obtains elements of model laws and international guidelines, however, it still carries significant divergences due to the socialist-oriented direction of the national economy (Williams, 2013).

Over the past few years, Vietnam has experienced intense competition activities in the national economy of Vietnam leaving distinguishing marks in the competition situation of Vietnam. After a lot of stop-and-go efforts, starting from easy and small SOEs continuing with large and difficult ones, the privatization of government owned enterprises in Vietnam has gained remarkable results. With the government-owned sector, 2015 marks the final year of the Scheme on restructuring SOEs with the focus on Economic Groups and State-owned Corporations in the period of 2011-2015. During the first four-year period, being implemented in a concentrated manner, re-arranging the government owned sector plan of Vietnam has gained considerable achievements with the equalization of 242 SOEs, the acquisition of 6 enterprises, the merge and consolidation of 32 enterprises. The restructuring process of SOEs in 2014 – 2015 has been planned continuing with approximately 479 other enterprises in which 432 enterprises are about to be equitized; 22 ones are subjected to be acquired, dissolved, bankrupted; 25 ones are expected to be merged or consolidated (VCA, 2015). While the public sector is being reduced in both number and economic size, other part of the economy is taking their place in the marketplace. With the protection from Competition Law 2004 and the incentives given by the Government, spectacular economic growth is seen in the private sector as their operational efficiency is much higher than the public one. While the role of private business entities in the economy is increasing, foreigner companies have also boomed and expanded their activities in Vietnamese market. While the whole economy is moving too fast with a wide range of business entities involved, the demand for a level playing field for all market participants, potential and present, has attracted much attention than ever.

2. The needs for the application of principles of competitive neutrality in Vietnam

There are four underlying reasons for the establishment of SOEs in the first place. In order to gain a strong position in the international arena, every economy has to possess powerful enterprises in their major fields and that is where the first reason coming from. However, the process of setting up an outstanding business entity to compete with other competitors from different countries would be time-consuming, therefore setting up SOEs acting as a shortcut that is totally worth considering. The second reason is rooted from the low or non-profitability in the provision of (often capital-intensive) public utilities and infrastructures which was the common situation in many countries in the world in the past (Yuen/Freeman/Huynh, 1996). The third reason for the setting up of a number of SOEs not only in Vietnam but in a number of countries in the world comes from the need to raise up the development of remote and mountainous areas. Last but not least, the establishment of government-owned entities also reflects the demand of necessary industries for Vietnam's industrialization and modernization, which the private sector, at that time, due to a number of reasons in terms of financial situation and economic scale, cannot play the role of promoting. With special ownership status being of the government, Vietnam's SOEs are granted preferential access to land, capital and public procurement opportunities, they were able to use their political relations to navigate Vietnam's complex regulatory environment to gain competitive advantages. However, the prosperity of the public sector also goes with increasing disadvantages for the development of small and medium enterprises.

3. Challenges for Vietnam in introducing Competitive Neutrality

a) Common challenges for developing country

- Slow, imperfect market structures

The principle orientation of the national economy is inevitably influenced by the political directions, long-time history and time-honored culture of each nation. In the context of the developing world, normally, these countries underwent long war time experiencing various historical changes in their political system creating very unique features for their national economies. Embracing the globalization trend, developing countries have taken up the chance to gradually integrate into the world economies, taking a closer look into the market structure of developed ones, and that is when the characteristics of their economies as slow and imperfect are revealed (Louise/Judd/Amy, 2011).

From a competitive perspective, a slow and imperfect market structure refers to the imperfection of the competitive environment which takes a very long time to modify in the slow movement of the national economy. One of the most identifying features of the imperfect competition in the national economy of developing countries is the existence of monopoly or oligopoly positions, which are government-owned in most cases, in the marketplace. Being established from the political, social and economic purposes of the government,

SOEs have been the largest employers in the economy making significant proportions into the total income of the economy as a whole.

As a consequence, the open competition is severely distorted or restrained. Being the only enterprise in the market (monopoly position) or at the dominant position in the market (oligopoly position), public sector business entities can totally take advantage of their market power to harm the healthy competition (Jacques, 1995). It is the common situations in many developing countries that SOEs largely eliminate the competition among all market participants in the market. It should also be noted that they are in an ideal position to that as strong financial situation supported by the official authority enables them to take such actions and the protection of the government is strong enough to exempt them from legal consequences of such violations. When the government itself does not hold a firm determination towards a level playing field, it is very hard to fix the imperfection of the market mechanism. In addition, the economy itself of developing countries has already been slow in response to the adjustments of the government while the acceptance of the dominance of the public sector in the market has deeply rooted among all economic sectors. Therefore, in order to make competitive neutrality not just a paper term but a real practice, the slow and imperfect market structure of developing countries is a field that this developing world really needs to work more on.

- Large networks of informal markets

From legal perspective, the informal markets refer to the ones sharing the same feature that is the avoidance of government regulations and taxes (Klarita, 1990). The reason for the lack of legal governance to this sector lies in the fundamental features of this sector. In the informal markets, while the number of business transactions is not small, the form of these business transactions is also not a formal one with written documents and standardized procedure to follow. Therefore, it would be very difficult to control this informal sector. The management process would be time-consuming, costly while its effectiveness is not easy to be guaranteed.

The sheer size of the informal sector actually varies from country to country, for example, it contributes about 50% of the total nation output, attracting more than 80% of the total employment, and even accounting for 90% of newly created jobs in Africa low income countries, nevertheless it is not the same situation in Vietnam (Ahmadou, 2014). Although the power of informal markets is different in different countries, with its longstanding history, this sector has significantly contributed to the productivity and the development of the whole economy. In the context of developing countries, the existence of large networks of informal markets is common and widely recognized.

It is understandable that the operation of these markets is considered as one of the main challenges to the establishment of a level playing field in the national economy. As the

informal sector does not operate under legal governance and taxation system of the government, so it is almost impossible to control the competitiveness in these markets. When the fairness of the competitive environment is not guaranteed in these markets, it obviously goes against the principles of competitive neutrality. A level playing field indicates that all market participants will be treated in an equal manner ensuring that relations with the state do not bring any favors or competitive advantages to any business entities. Therefore, when the informal markets – a significant part of the economy does not follow competitive neutrality law and policies, the establishment of competitive neutrality in the national economy cannot be completed.

- High barriers to entry

The barriers to market entry can be divided into 3 categories, which are from financial requirements, legal regulations and existing competitors in the market (Allen/Ben, 2007). In terms of costs, a particular financial background will be required to meet before the commercial entities being legally set up. Legal regulations for a new business entity in a particular market include the pre-registration, registration, post-registration activities. Also, the process of entering a new market can encounter obstacles created by enterprises who are presently operating in the markets.

In fact, even until now, when the developing countries have become more open and they even remove a number of market entry barriers to attract foreign investments into their economy, more still needs to be done. Administrative procedure can be an apparent hinder for potential market participants as the bureaucratic administrative system in developing countries is normally slow with time-consuming and complicated requirements. The competitive pressure from competitors which are presently operating in the target markets is also remarkable, as the appearance of a new enterprise in the marketplace can be real threat to the existing market participants so they may take actions to prevent that to happen (Theodore, 1998).

Competitive neutrality refers to a fair competitive environment for all enterprises regardless of its ownership, including the ones that are operating in the markets, and also the ones that potentially play in these markets. It is obvious that when companies have to cross high barriers to break into the target markets, they are in disadvantageous position to compete with other enterprises, which is totally against the fundamental policy of competitive neutrality. Therefore, high barriers to enter markets in developing countries implies another difficulty that governments of such countries will have to deal with in the way of setting up a level playing field.

- Severe shortage of trained professionals to enforce the principles of competitive neutrality

Since the first time being implemented in Australia in 1996, competitive neutrality has become ubiquitous being widely adopted all over the world (Lane, 1997). It means that the notion of “*competitive neutrality*” has received great concern in the international arena for about 2 decades, but the situation is not the same in the developing world. In fact, competitive neutrality has only gained attention from policy makers, economic researchers and enterprises in developing countries for about several years. In other words, while the phase “a level playing field” has appeared in these countries for long, the term “competitive neutrality” is still fairly new. As a result, the academic paper on this topic is still limited and most of them do not give much in-depth content on the core topic. The legal framework for competitive neutrality has not existed yet or still in the very beginning stages of drafting. All of these things reflect the shortage of trained professionals on the enforcement of the principles of competitive neutrality. Hence, in order to establish a level playing field in the national economy, developing countries, in general and Vietnam, in particular should take immediate actions to tackle this problem.

b) Particular challenges of Vietnam

- Lack of a competitive neutrality legal framework

Until now, a number of countries in the world have already adopted a separate legal framework for competitive neutrality, however, Vietnam is not one of such nations. Under the given circumstance that competitive neutrality is still a rather new term in Vietnam, it is understandable. Competitive neutrality is not even officially named in the official law system of the country, but the general idea of competitive neutrality – a level playing field is referred in a number of relating laws such as State Enterprises Law 1995, Law on Enterprises 2005/2014, Commercial Law 1997/2005 etc. in which competitive neutrality is presented most clearly in the Law on Competition 2004. Regarding State Enterprises Law 1995/2003, the general principle is that SOEs have to make the best use of the preferences they receive to fulfill their responsibilities without much concern about competitive neutrality. In Law on Enterprises 2014, the transparency and accountability of SOE’s business activities have been highlighted however, the governance of competitive relating practices of government owned businesses has not been shown in this law. With reference to Commercial Law 2005, being influenced by the non-discriminatory principle, this Law demonstrated more considerations to competitive neutrality stating that it is one of government’s responsibilities to treat all business entities in an equal manner irrespective of their ownership relationships and economic areas (Article 10, Commercial Law 2005). SOEs can practice their monopoly position but only for a limited period of time within a specific list of goods, services and areas provided by the government (Article 6, Commercial Law 2005).

As stated above, the fundamental principles of competitive neutrality are mostly given in Law on Competition 2004. Before the promulgation of the Competition Law, anticompetitive acts or monopolies in some specific areas had been regulated by separate and scattered provisions in a number of legislations such as the Ordinance on Price 2002, the Ordinance on Telecommunications, the Law on Credit Institutions 1997, Commercial Law 1997, Electricity Law 2004, etc. (Trinh Anh, 2013). Enterprises operating in certain markets are required to comply with the law subject to that particular market, therefore, competitive neutrality relating regulations may still take into effect, to some extent. Nonetheless, it should be noted that because of the very limited amount of content on competitive neutrality, the lack of proper awareness among target business entities and the inadequacy of strict enforcement in practice, these law systems have not contributed much to the implementation of competitive neutrality.

- Competitive neutrality in framework of Competition Law

As non-discrimination is one of the fundamental principles of Competition Law, this Law deals with all kinds of competitive relating activities of all business entities, state and non-state sector, domestic as well as foreign invested enterprises in Vietnam. Competitive neutrality, therefore, is the content of Competition Law controlling the agreements in restraint of competition, the abuse of dominant market position and monopoly position, economic concentration activities and unfair competitive practices of all economic sectors in general and of government ownership sector in particular. So far, Vietnam has put more efforts in neutralizing the advantages accruing to SOEs, however, the protection of the state to companies of its own has not been fully taken down. To be more specific, Law on Competition prevents government owned businesses from abusing their state power to take into competitive restriction actions in the market (Article 6, Law on Competition 2004). Competition Law declares to prohibit economic agreements that restrict the fair competitive environment in the market, however, it also gives exemptions for such agreements to be legally executed if they promote consumers' benefits (Article 10, Law on Competition 2004). It means that economic restriction agreements can be allowed to carry on if the state agrees that they fall into one of the exemption cases. Thus, from this perspective, SOEs can easily gain advantages due to the support of government to classify enterprises of its ownership as exemption cases. Another Competition Law's provision particularly relating to competitive neutrality is the one concerning governance of enterprises operating in State monopoly sectors and of enterprises engaged in production or supply of public utility products or services (Article 15, Law on Competition 2004). This could as well be considered as Vietnam's government attempts to continue granting undue advantages to SOEs over other market participants.

- Government interference under the label of "state economic management"

It was stated in Vietnamese Constitution that Vietnamese Government plays a pivotal role in socio-economic management (the Government shall carry out overall management of the work for the fulfilment of the political, economic, cultural, social (...) Article 109 Constitution 1992). Hence, state economic management in the markets is taken for granted in the economic context of Vietnam. However, the centralized economic state management which was established with the aim of not only dramatic economic growth but also strengthening the economic role of the state in the national economy brought undesirable outcomes which are the economic stagnation and the inefficiency of the state sector itself. Paying the heavy price for its emphasis being placed too much in the “state economic management”, Vietnamese Government has changed its understanding of government interference level in the markets (Porter, 1993). The national economy has been orientated into the direction of a market economy where government intervention only takes place when there is market failure and state economic management is necessary to fix that.

On the other hand, it is obvious that it takes quite a lot of time to transfer from the changing awareness of Government of Vietnam about their roles in the markets to a decisive shift in the economic management policy and implementation (Tomasic, 2016). That is reflected in the fact that the protection from the government to SOEs is still carried out to maintain the leading economic role of the public sector in the national economy. One of the most concrete evidence is that government-owned companies have not fully complied with the official law and policies of Vietnamese Government. These two following examples which have currently happened in Vietnam will be convincing demonstration for this point.

The acquisition of EVN (Electricity of Vietnam) Telecom which was made by Viettel - the military-run telecommunications company in late 2011 is a prime example for the wide spreading notoriety that SOEs are immune from the legal governance of Vietnam’s Government. EVN Telecom is a business unit of EVN which is forced to separate from the parent company as it is not compatible with the core business of a state monopoly in electricity (Nguyen, 2014)⁵. At that time, Viettel has already occupied 37% of the telecommunication market, hence, the combined market share of the two company would definitely exceed 30% meaning that this economic concentration must be notified to VCA. In addition, it should be noted that the Government only gave 4 mobile operators the permission to supply the 3G service, which are: Viettel, Vinaphone, MobiFone and EVN. Thus, as Viettel has already held more than 50% of the national 3G’s frequent resources, the acquisition would strengthen the excessive power of Viettel in the 3G supply market where only 3 participants remain (Consumer Unity and Trust Society International, 2011). From these perspectives, the acquisition would definitely do harm to the healthy competition in Vietnam. However,

⁵ Nguyen Thuy, Anh, *Economic Concentration: Raising Problems from the View of the Competition Law*, in Rosenau/Tang Van, (eds. 2014) *Economic Competition Regime: Raising Issues and Lessons from Germany*, Nomos, Baden-Baden (Germany).

no prior notification was sent and in fact, Government of Vietnam agreed for this acquisition to be successfully implemented (Consumer Unity and Trust Society International, 2011).

More recently, the public has been once again concerned about government interference in the case of MobiFone - a limited liability company with 100% state capital after being separated from VNPT (Vietnam Posts and Telecommunications group) – the mother state-owned company. In December 2015, Ministry of Information and Communication has accepted the proposal of MobiFone to invest into the project of television service as a decisive step in their strategic business plan. After that, the acquisition of AVG joint stock venture company has been implemented by MobiFone. According to some previous unofficial information source, MobiFone has bought 95% of AVG, notwithstanding, the precise information has not been released despite the request from the public. It can be considered as a violation practice of MobiFone to Decree 81/2015/ND-CP, hence the Government has started an investigation on this case, but all the information will still be kept confidential (Ly, 2016).

- The legal enforcement of competition authority is still limited, lack of control power and decisive impacts.

In fact, the legal enforcement of Vietnam's Competition Law is implemented by VCA and Competition Council. In which, VCA only takes the responsibility of investigating, collecting and searching for evidence relating to a case, while Competition Council is in charge of sentencing, handling, making decision, settling complaint relating to the received complaints. Given the uniqueness in the characteristics of Vietnamese economy, together with the incompleteness in the legal framework and the inexperience of a country that has put their efforts on competitive issues for the first time, the official competition authority in Vietnam are facing certain difficulties and inadequacies.

The first difficulty for VCA stays in the limitations of their human capacity. It should be stressed here that Vietnam Competition Authority is the state management agency in 3 domains: Competition, Consumer Protection and Trade Safeguards, therefore, the complex and large-scale nature of the process of handling competition complaints requires their staffs to work independently and actively, indicating the shortage in the number of government officials. Besides, staffs working in VCA are also required to have sufficient expertise to work in almost all economic fields while over 80% of its officers working have graduated within 5 years implying their limited work experience. The second difficulty of VCA comes from the lack of legal basis to use funds for professional work, completing assigned political tasks. Taking into account the fact that the agency has just newly established with new functions, it is understandable that administration budget for its operation is not appropriate, even inadequate to fulfil their responsibilities.

In terms of inadequacies, when the case of SOE is investigated and handled by the members of Competition Council (Vietnam Competition Council has 11 members representing many ministries) who are also under the same Ministry, it will be difficult to maintain the fairness and objectivity of the final conclusion on the given case. In addition, as the investigation and collection of proof are carried out by VCA, it surely takes time for members of Vietnam Competition Council to reach a thorough decision for the case, prolonging the case handling process. Moreover, another problem that should also be brought to light here is that the integration of 3 domains: Competition, Consumer Protection and Trade Safeguards in VCA can certainly reduce its effectiveness due to their different work nature (Rosenau/Tang Van 2014).

- Information is not available due to the lack of transparency and accountability in allocation of resources.

The disclosure of precise information in a timely manner can have tremendous impacts taking into account the leading role that SOEs play in the national economy. The revelation of corporate information by the public sector provides a solid background for the transparency of state-owned sector, the control of operational efficiency as well as the compliance of laws and regulations. In a broader sense, the disclosure on the performance of government-owned entities gives investors a closer look into the real capacity of SOEs, gives the public the right to get access to the distribution and usage of public funds, gives Government of Vietnam the ability to hold SOEs accountable for the final results. Moreover, improving information disclosure of the public sector is considered as a requirement for its own sake as it acts as the driving force for the enhancement of its overall efficiency. Such desirable outcomes from better control on information disclosure have been proved through the real process in Malaysia and Lithuania prompting Government of Vietnam to take actions immediately.

The most current efforts of Government of Vietnam on improving transparency and accountability of SOEs can be seen from Decree No. 99/2012/ND-CP dated back to November 15, 2012 on *“the Implementation of the Rights, Responsibilities and Obligations of State Owner for SOEs”* (Smith et.al., 2014). It should be stressed here that SOEs are imposed with little obligation to public disclosure on financial and non-financial information. Also, the regulated disclosure is mostly internal and public disclosure is largely voluntary. Besides, the regulations on the disclosure of SOEs are fragmented, hence, if government owned companies attempt to follow them, it would be a huge administrative burden.

In fact, the situation of information disclosure implemented by SOEs in Vietnam is quite disappointing. Actually, improving information disclosure among the government-owned sector is one the top priorities due to the alarming results from a survey in 2012 on the transparency of the State Budget in Vietnam. Information disclosed by SOEs can be found

through 3 main resources which are (i) primary data and analysis; (ii) existing literature review; and (iii) anecdotal information from interviews, workshops and meetings. With the first source of information, many SOEs have a functioning website, however, it is used mostly as a marketing tool rather than as a channel of information disclosure. From these two last sources mentioned earlier, it is also found out that most information disclosure is carried out internally rather than externally or publicly. For example, about 95 percent of SOEs in Vietnam presents reports in the written form to the owner line-ministries⁶/agencies and to the board of director; 70 percent even release financial statements concerning production performance such as profit and loss statement and balance sheet; on the other hand, only 7 percent of all SOEs make their reports available to the public and 9 percent use mass media in their information disclosure. While transparency and accountability have not been achieved in the national economy yet, it is surely a significant challenge to the establishment of competitive neutrality in Vietnam.

VI. RECOMMENDATIONS FOR VIETNAM IN APPLYING COMPETITIVE NEUTRALITY

1. Reforming legal framework toward competitive neutrality

As mentioned above, competitive neutrality principles are only indirectly referred in several relating economic laws without having its specific legal regulation system. In order to make competitive neutrality a reality in Vietnam, the promulgation of competitive neutrality regime is considered as one of the most useful tools. By establishing a competitive neutrality legal framework, the control of business activities of publicly owned sector would be tightened. This paper is going to give recommendations on the most essential contents of competitive neutrality law under the current circumstance of Vietnam's economy:

The scope of governance: While the competitive neutrality policy of Australia only applies to significant business activities, in the situation of Vietnam the competitive neutrality law should be subject to all business activities of SOEs. So far, Vietnamese Government's owned businesses have not only focused on the industries of their responsibility but also expanded to other non-core business areas. SOEs have used preferential treatments from the government to compete with competitors from other sectors, negatively affecting the fair competition of all the markets that they participate including the non-focused ones (McLure, 2013). Hence, with the subject of competitive neutrality law, the governance scope should be all business activities of this economic entity.

⁶ In principle, SOEs are free to conduct business and compete with each other on the market. But their business activities are strictly run by the owner line ministry. This depends on the specific field governed by the competent ministry.

Tax neutrality: Taxation system is the issue recommended as one of the key principles in setting up competitive neutrality policy in Vietnam. In the Reform, Vietnamese Government has made progress on improving the taxation system, however, more still needs to be done as the competition in the market is still negatively influenced by the abuse of a number of tax advantages of SOEs (Leonard, 2013). The aim of tax neutrality is to impose an appropriate amount of tax which promotes government-owned businesses to fulfill their responsibilities in the relating market and the public benefits while eliminating the adverse impacts of tax advantages granted to them on the competition at the same time. Tax calculated in a case-by-case basis as Australia is also recommended for Vietnam due to its effectiveness.

Debt neutrality: SOEs in Vietnam gain advantages over private sector in terms of debt through favorable interest rate of loans or governmental subsidies. Therefore, in order to ensure an equal treatment to all business sectors in this regard, Vietnamese Government must tighten its control of charging its owned sector in using the national capital. SOEs should be required to pay reasonable interest rates which give them proper incentives to perform their political roles but cannot use them to harm the healthy competition in the market. The state subsidy should also be reviewed whether it is granted for the right enterprises so that it can reach its goals without going against the concept of competitive neutrality. Under Vietnam's present circumstance, it is recommended that the interest rate of debts and governmental subsidies be set up from industry to industry.

Regulatory neutrality: After the expiration of the Law on SOEs 2003, until now, there is no official law specified for business activities of the government owned sector in Vietnam (Nguyen, 2011). Without competitive neutrality framework, SOEs have abused the exemptions or the flaws in the regulatory regime to compete against their present and even potential competitors causing reduction and distortion to the economic competition. It is suggested that the Government carefully goes through all the laws which apply to SOEs to make adjustments on regulatory preferences they are going to enjoy and the ones that will be removed. In addition, the legal provision and documents applied for SOEs in particular areas of the national economy should also be thoroughly reviewed to update with changes in the market as well as to be in compliance with competitive neutrality policy.

Rate of return requirement: The rate of return on the state capital has been brought as an essential issue of the adjustments of Financial Policy in the Reform of Vietnam (Wolff, 1999). In order to create a legal environment that promotes fair competitive business, it is impartial that while private enterprises operate on their own, SOEs are required to meet the rate of return on the preferential treatment they receive to use the national budget (International Monetary Fund, 2004). However, as the performance of SOEs in Vietnam is still viewed as inefficient and wasteful, more efforts should be put to improve the regulations on the rate of return on the state equity of SOEs. In compliance with competitive neutrality policy, the appropriate rate of return is required to take into account the social obligations

of government-owned sector while forcing SOEs to fairly compete with other competitors by enhancing productivity without relying on support from the Government. In fact, as the number of SOEs in Vietnam have been reducing currently, the rate of return calculated in a case-by-case basis as in Australia is feasible to apply.

2. Raising Awareness of Competition Law and competitive neutrality

While Competition Law has only been enacted in 2004 and competitive neutrality law adoption is still under consideration, they are not only new to the official authority, policy makers and economic researchers but also to the public. When the general public do not have much understanding of Competition Law and competitive neutrality, they will not have the appropriate attitude towards the implementation of them. As a consequence, an effective enforcement of competition regime will be almost impossible to be achieved as its subjects do not thoroughly evaluate the value of Competition Law and competitive neutrality let alone having comprehensive understanding of them. Hence, one of the top priorities in the way to achieve effectiveness of competitive neutrality enforcement is to raise up the awareness of the general public, especially enterprises from all economic sectors on Competition Law and competitive neutrality.

3. Improving Governance of SOEs and redefining the role of SOEs

The third suggestion for the establishment of competitive neutrality in Vietnam is that the Government should tighten the control of their owned sector, together with making adjustments on the responsibilities of SOEs in the economy. Improving governance of SOEs can be achieved through an effective complaints mechanism which plays a crucial role in strengthening the power of relating laws in real implementation. Hence, together with adopting a legal framework and enacting detailed guidance on the implementation of competitive neutrality, setting up a complaints mechanism is a valuable suggestion for Vietnam as well. The VCA can perform the responsibility of dealing with complaints about breaches of competitive neutrality policy. However, in order to reach that goal, there should be a clear set of financial fines and rigorous procedure of investigation when dealing with competitive neutrality complaints.

To refine the particular role of the public sector in the market, guidance on the implementation of competitive neutrality law and policy should be implemented representing the orientations of the government in the operation of its own sector. Moreover, the economic law system is often general and broad so the introduction of binding precedent system or guidance to support market participants in the real implementation is essential. In fact, the existing laws supporting the reform of Vietnam such as Enterprise Law 1999, State-owned Enterprise Law in 2003, Law on Foreign Investment 2005/2014 etc. has not helped the reform to gain the best results due to the lack of adequate guidance on implementation

(UNCTAD, 2014). Competitive neutrality guidance is recommended to clarify the controversial definitions, the measures to carry out competitive neutrality principles, the merits and demerits of each measure, under which circumstances each measure is applied, etc. From that, the rights and obligations of Government owned enterprises are clearly stated by the State to the awareness of all kinds of commercial entity.

4. Transparency and accountability in allocation of resource

As presented above, the lack of transparency and accountability in how the resources are distributed among the economy is one of the most serious challenges to Vietnamese Government in the way of achieving competitive neutrality. Only when the allocation of resources is clearly revealed, all the advantages and preferential that SOEs receive from its Government will be excluded leaving a fair competitive environment for all market participants. For all favors that the government-owned sector being granted as compensation for the public service obligation that they have to bear, the transparency and accountability of such information creates the platform for applications of competitive neutrality. In general, with the availability of information of resource allocation, the implementation of all five principles of competitive neutrality can be put into real practice. To be more specific, when it is revealed how much of the public fund is used by SOEs, all the calculations on the tax neutrality, debt neutrality and rate of return will be worked out. The difference in the treatment of the Government between public sector and other sectors will also be seen. Regulatory neutrality will be gained from this as well. All of them build up an ideal background for the implementation of competitive neutrality, therefore this is a recommendation that Vietnamese Government should give put into serious consideration.

5. Evaluate the reform program of SOEs of Vietnam

The process of the reform of SOEs in Vietnam has taken off since 1992 with a lot of continuous and noncontinuous efforts, transforming the structure of hundreds of companies under government ownership. This reform of SOEs is a crucial pillar of the Government's structural reform and productivity agenda (ADB, 2015). Rising international economic integration speeded also up this process. Furthermore, the new program aiming to restructuring SOEs and to strengthening the effect of equitization of SOEs had been launched over the years (Sjöholm 2006) due to the performance of SOEs. The Vietnamese experiences over the last three decades have shown that most of the SOEs equitized through this process were small unprofitable enterprises, with the larger SOEs occupying the majority of economic activity and employment remaining intact (ADB, 2015). Although the performance of SOEs has been still limited, it cannot be denied that reforms of SOEs have gained results in improving competitiveness and operational efficiency of this special sector.

Because the reform and the equitization of SOEs are a challenging and continuing process, the evaluation of this process from a practical perspective of Vietnam is necessary. It

is time for Vietnamese Government to look back on the strategy of state economy group and make evaluations of the outcomes before continuing carrying out this program. This should contribute not only to strengthening the performance of SOEs but also to expanding the private sectors, which prepare crucial preconditions for further applying competitive neutrality in Vietnam.

VII. CONCLUSION

Globalization trend, together with advanced technology has made the world smaller than ever as geographical distance is no longer an obstacle. The global economy has become a playing field for all countries in the world regardless of their position or economic status. From that, the demand of a level playing field for all business entities has been imposed not only for the international economy, but also for the national economy of countries in the world. This current situation calls for the notion of competitive neutrality which is relatively new to the world emerging as “A 21st Century Issue”. For the past several decades, competitive neutrality has drawn significant amount of attention among developed countries, nevertheless, not many legislative efforts have been put by developing governments so far to address this issue. Especial, the common circumstance of most developing countries is the dominance of the inefficient state-owned sector in the market hampering the healthy competitiveness in the economy. Therefore, even though competitive neutrality still appears as a rather new term in most countries all over the world, it has become a real necessity for the developing nations.

Competitive neutrality is so essential in the context of developing economies as it plays an important role for keeping the appropriate competition regime. In other words, competitive neutrality is of paramount importance to the open competition between SOEs and private owned ones as it helps to promote a fair competition mechanism for both sectors. To the government-owned companies, competitive neutrality does not only prevent them from taking actions that do harm to the healthy competition in the market but also acts as the driving force for enhancement in their productivity and competitiveness. To the private owned sector, competitive neutrality regime protects them from the unfair competitive practices of the public sector allowing them to fully develop and reach their maximum potential. It is mostly the case in developing countries that private owned sector is the more active than the public one, therefore through competitive neutrality implementation, the law fosters their development, innovations and thrive.

With the ultimate goal of creating and maintaining a level playing field for all market participants, competitive neutrality acts as the driving force for SOEs doing business more efficiently and fosters domestic economic growth and consumer welfare, directly and indirectly. With reference to SOEs, competitive neutrality regime pushes the government-

owned sector to compete by their internal capacity and business efficiency. To be more specific, strictly following the principle of non-discriminatory, the legal enforcement of competitive neutrality treats enterprises from all different economic sectors in a fair manner. It means that no market participants, even SOEs, can use their relations with the government to get away with their contravention of the fair competitive environment. Therefore, in order to compete, SOEs have no other choices left but to increase their operational efficiency, improve their business performance and enhance their competitiveness. SOEs directly benefit from a perfect competitive mechanism, the national economy and consumers are the subjects who indirectly benefit from the implementation of competitive neutrality. With reference to consumer welfare, competitive neutrality support the completion of the competitive economic environment allowing them to benefit from wider product range with higher quality at a more reasonable price. With reference to the domestic economy, instead of holding the whole economy back from development with their low productivity and lagged business performance, SOEs boost national economic growth in the new playing field levelled by competitive neutrality legal regime.

Given the unique circumstance of Vietnam, while competitive neutrality still remains a relatively new phase in our country and as a result, its implementation has not been thoroughly carried out, Government of Vietnam should take into serious consideration the establishment of competitive neutrality policy. Under requirements for a level playing field from the country itself, along with the pressure of fulfilling its commitments to a number of international economic organizations, the government should take into action to tackle problems in the face of adversity from unfair competitive practices of SOEs. As mentioned, after a lot of stop-and-go efforts, the reform process in Vietnam has gained moderate success but it is still on the way of completion. It is strongly recommended that Government of Vietnam places heavy emphasis on restructuring and reforming SOEs as well as speeding up the privatization processes. With unceasing efforts, proper methods and strong determination, competitive neutrality is surely an achievable goal for the Government of Vietnam.

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