



**Asia-Pacific
Economic Cooperation**

2017/SOM3/CTI/WKSP1/005

Opportunities and Challenges in the Acceptance of a Chapter on Competition in FTAs

Submitted by: Philippines



**Free Trade Area of the Asia-Pacific Capacity
Building Workshop on Free Trade Agreement
Negotiation Skills on Competition
Ho Chi Minh City, Viet Nam
19 August 2017**



Opportunities and Challenges in the Acceptance of a Chapter on Competition in FTAs

Isabela Villamil
Division Chief, Economics Office
Philippine Competition Commission

Outline

1. Free Trade Agreements of the Philippines
2. Opportunities arising from a Chapter on Competition
3. Challenges in the acceptance of a Chapter on Competition
4. Disciplines on State-Owned Enterprises



FTAs of the Philippines

Agreement	Signed	In Effect
ASEAN Free Trade Area	Jan 1992	Jan 1993
Japan-Philippines Economic Partnership Agreement	Sep 2006	Dec 2008
ASEAN-People's Republic of China Comprehensive Economic Cooperation Agreement	Nov 2004	Jul 2005
ASEAN-[Republic of] Korea Comprehensive Economic Cooperation Agreement	Aug 2006	Jun 2007
ASEAN-Japan Comprehensive Economic Partnership	Apr 2008	Dec 2008
ASEAN-India Comprehensive Economic Cooperation Agreement	Aug 2009	Jan 2010
ASEAN-Australia and New Zealand Free Trade Agreement	Feb 2009	Jan 2010
Philippines-European Free Trade Association Free Trade Agreement	Apr 2016	Pending
Regional Comprehensive Economic Partnership	Negotiations launched May 2013	
ASEAN-Hong Kong, China Free Trade Agreement	Negotiations launched Jul 2014	
Philippines-EU Free Trade Agreement	Negotiations launched Dec 2015	

Source: Asia Regional Integration Center (ARIC), 2017



FTAs with Competition Provisions

AFTA	JPEPA	AANZFTA
<ul style="list-style-type: none"> Other Areas of Cooperation 	<ul style="list-style-type: none"> Promotion of Competition by Addressing Anti-competitive Activities Cooperation on Promoting Competition by Addressing Anti-competitive Activities Non-Application of Chapter 15 (Dispute Avoidance and Settlement) 	<ul style="list-style-type: none"> Basic Principles Cooperation Contact Points Non-Applicability of Chapter 17 (Consultations and Dispute Settlement)
PH-EFTA FTA	RCEP	PH-EU FTA
<ul style="list-style-type: none"> Rules of Competition Cooperation Consultations Dispute Settlement 	<p>Negotiation for the Chapter on Competition are ongoing.</p>	<p>Negotiation for the Chapter on Competition are ongoing.</p>



Opportunities

Competition provisions have become integral to modern FTAs.

A Chapter on Competition is now recognized as an important element to ensure that the potential benefits of an FTA can be fully realized.



Competition Provisions in FTAs

Competition-related chapters and provisions cover a range of issues, including:

- 1) Obligations to promote competition
- 2) Obligations to adopt or maintain competition laws
- 3) Obligations to regulate designated monopolies, SOEs, and enterprises entrusted with special or exclusive rights
- 4) Obligations to regulate state aid and subsidies
- 5) Provisions that lay down competition-specific exemptions
- 6) Provisions that abolish trade defenses
- 7) Provision that set forth competition enforcement principles
- 8) Provision that set forth cooperation and coordination mechanisms
- 9) Principles governing the settlement of competition-related disputes

Source: Competition Policy within the Context of Free Trade Agreements (Laprévôt, Frisch, and Can, 2015)



Benefits

Benefits from the inclusion of competition-related provisions in FTAs:

- Preserve gains made through trade liberalization
- Foster further cooperation and convergence in enforcement matters
- Reinforce internal reform and advocacy
- Prevent strategic enforcement
- Vehicle for incremental harmonization of competition laws and policies



ASEAN Regional Cooperation Agreement

- The need for regional cooperation between AMSs on CPL is formally recognized in the **ASEAN Competition Action Plan 2016-2025**
- A **Regional Cooperation Framework** will serve as an interim, non-binding agreement prior to a formal **Regional Cooperation Agreement by 2020**

Five Main Areas of Cooperation:

1. Sharing resources
2. Exchange of information
3. Technical assistance and capacity building
4. Enforcement cooperation
5. Cooperation in merger investigation



Challenges

- Differences in competition laws and policies
- Differences in capacity and level of development in the area of competition policy and law



Convergence/Divergence in CPL

Issues	2008 Study	2016 Update
Laws, regulations and institutions	Requirements for the maintenance or adoption of measures to counter anticompetitive activities and an enforcement agency.	Same as 2008, but obligations in 6 FTAs are mandatory. 4 FTAs do not include such provisions.
The implementation of competition policy and law	Some FTAs include obligations to ensure non-discrimination, transparency, procedural fairness, and provide opportunity for judicial review. Details vary.	All except 1 FTA (Chile-Hong Kong, China) include these obligations.
Designated monopolies and state enterprises	Some FTAs include requirements, for example, to avoid acting in a manner inconsistent with the obligations of the agreement and to act in accordance with commercial considerations.	6 FTAs include these obligations.
Cooperation and consultation	Most FTAs contain such provisions.	All except 1 FTA (Chile-Hong Kong, China FTA) include the obligations.
Cooperation on consumer protection	Most FTAs contain such provisions.	Only 5 FTAs include such provisions.
Dispute settlement	Many FTAs exclude dispute settlement from the chapter on competition policy.	7 FTAs exclude dispute settlement from the chapter on competition policy.

Source: *Collective Strategic Study on Issues Related to the Realization of the FTAAP (APEC, 2016)*



Challenges

- New agency
- Confidentiality and exchange of information
- Jurisdiction over subsidies and state-owned enterprises (SOEs)



State-Owned Enterprises

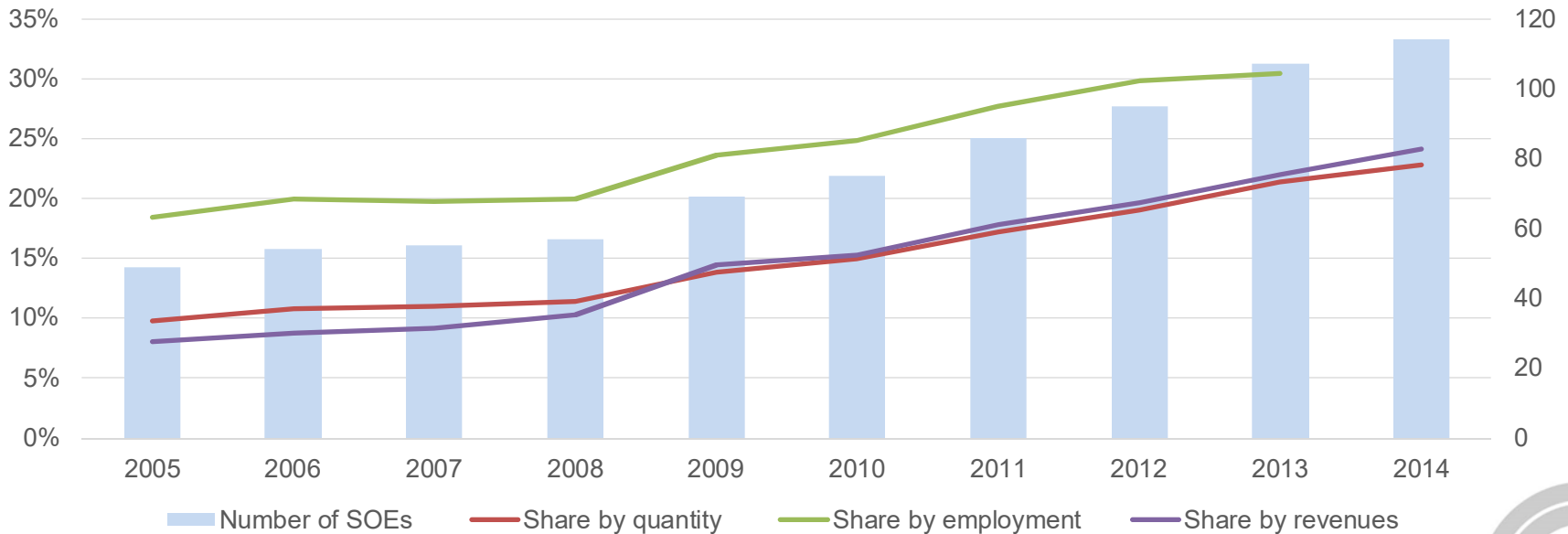
- Many of the world's largest firms are state-controlled companies
- SOEs have grown beyond national borders and expanded their activities globally
- There has been a surge of SOE-led international M&A activity over the last decade

Source: State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity? (OECD, 2016)



Importance of SOEs

Number and shares of SOEs on Fortune Global 500



Source: *State-Owned Enterprises in the Global Economy* (Kwiatkowski and Augustynowicz, 2015)



Concerns Related to SOEs

Potential anti-competitive conduct from privileged position of SOEs:

Predation

Margin squeeze

Raising rivals' costs and raising barriers to entry

Increased market power through anti-competitive merger

Price fixing, market allocation, or output restrictions

Source: State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity? (OECD, 2016)



Concerns Related to SOEs

Other considerations that can have an impact on competition:

Commercial and non-commercial objectives of SOEs and impact on incentives to compete

Entrenched positions

Subsidies and public services obligations

SOEs and industrial policy

Source: State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity? (OECD, 2016)



Addressing Concerns through CPL

- Antitrust enforcement to address anti-competitive behavior of SOEs
- Merger control in transactions involving SOEs
- Other non-enforcement powers (e.g., advocacy)
- International enforcement cooperation
- Competitive neutrality frameworks

Source: State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity? (OECD, 2016)



Benefits

An FTA can discipline policies that give SOEs an unfair advantage over private firms.

- Businesses trading with SOEs would benefit from an obligation to ensure that an SOE does not use its position to engage in anti-competitive practices
- Non-discrimination helps ensure certainty and a level playing field for businesses when they are trading with SOEs
- Transparency and greater access to information would enable businesses to make more informed decisions about operating in APEC markets



Challenges

- **Enforcement/institutional challenges**
- **Conceptual/substantive challenges**
- **Political/practical challenges**

Source: State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity? (OECD, 2016)



An aerial photograph of a dense city skyline, likely New York City, with numerous skyscrapers and buildings. The image is overlaid with a semi-transparent dark blue filter. The text "Thank you." is centered in the middle of the image in a white, sans-serif font.

Thank you.

Contact Us



Email:

bela.villamil@phcc.gov.ph



Mailing address:

2nd Floor, DAP Building, San Miguel
Avenue, Ortigas Center, Pasig City



Telephone:

+632 635 6522



Website:

<http://phcc.gov.ph/>

