



**Asia-Pacific
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**State-Owned Enterprise Reform, Competition Law
and New Generation Free Trade Agreements in Viet
Nam**

Submitted by: Viet Nam



**Free Trade Area of the Asia-Pacific Policy
Dialogue on Competition Related Provisions
from a Business Perspective
17-18 September 2020**



SOE REFORM, COMPETITION LAW AND NEW GENERATION FTAs IN VIET NAM

APEC 2020 Policy Dialogue
on Competition Related Provisions

BUI NGUYEN ANH TUAN – VIETNAM COMPETITION COUNCIL

CONTENT

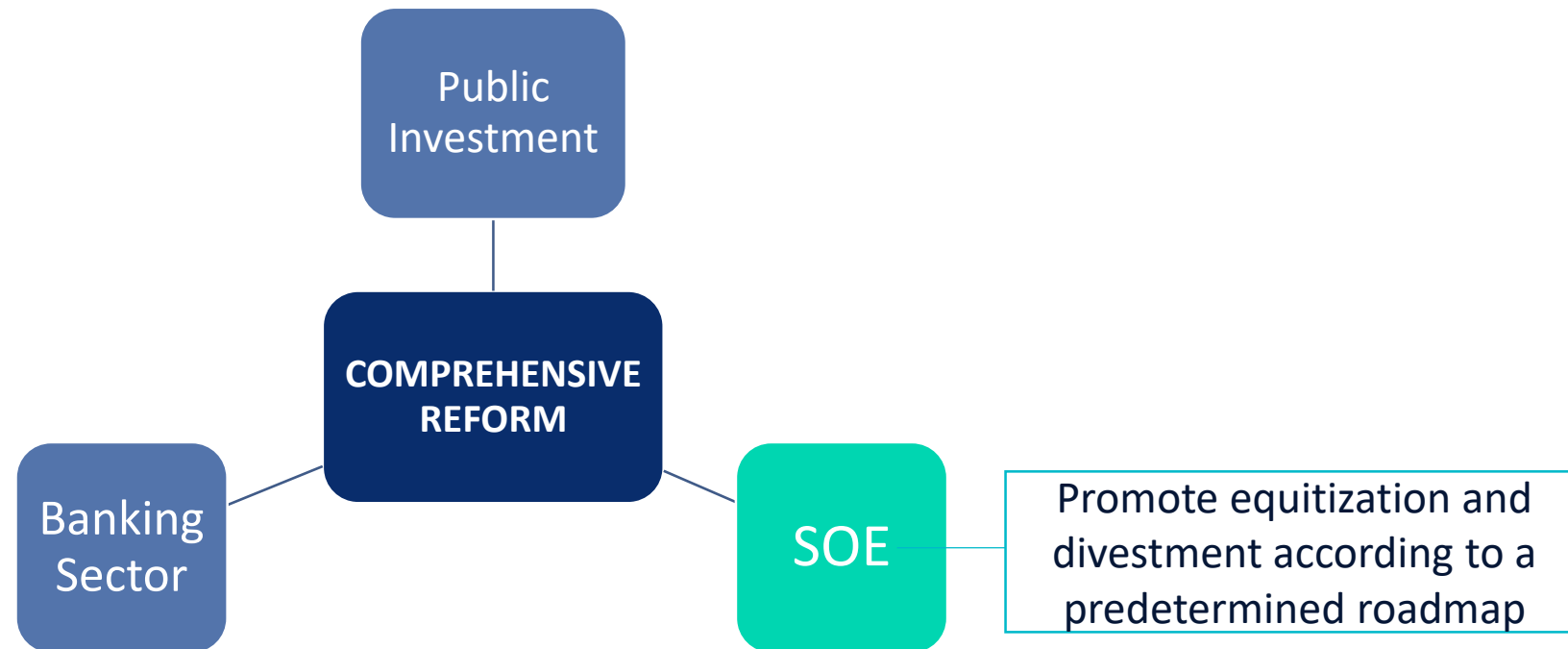
- I. **SOE REFORM IN VIET NAM**
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Disclaimer: The content and opinions expressed in this presentation are solely of the presenter and not necessarily those of governmental agencies that the presenter is associated with.

SOE REFORM IN VIET NAM

I. INTRODUCTION

- ◆ Doi Moi (Renovation) Policy since 1986 - First round of SOEs reform
- ◆ Comprehensive reform of the economy:

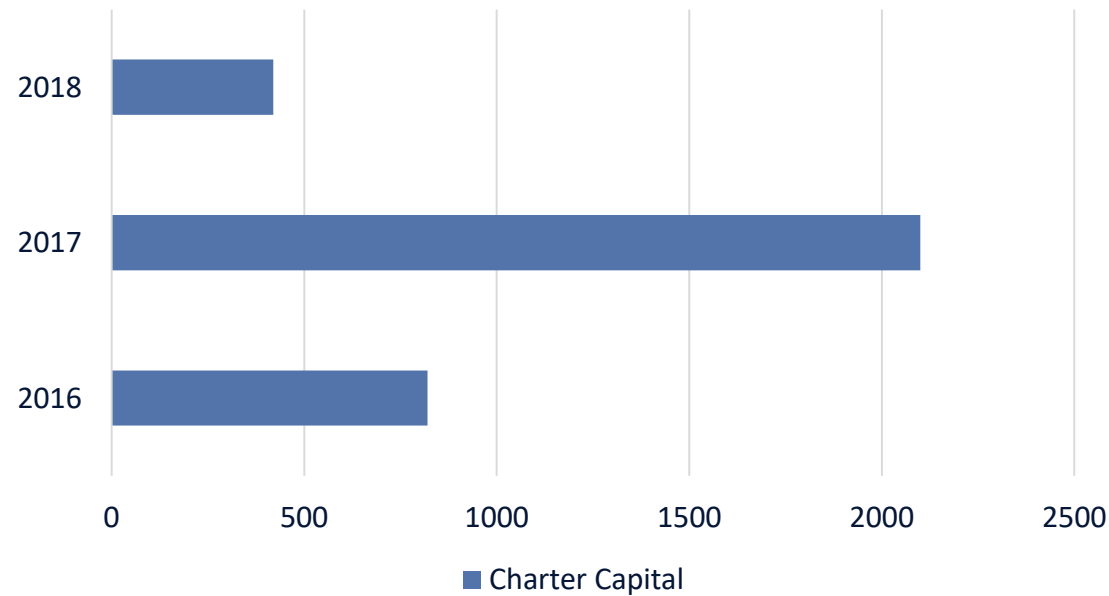


◆ Strategies:

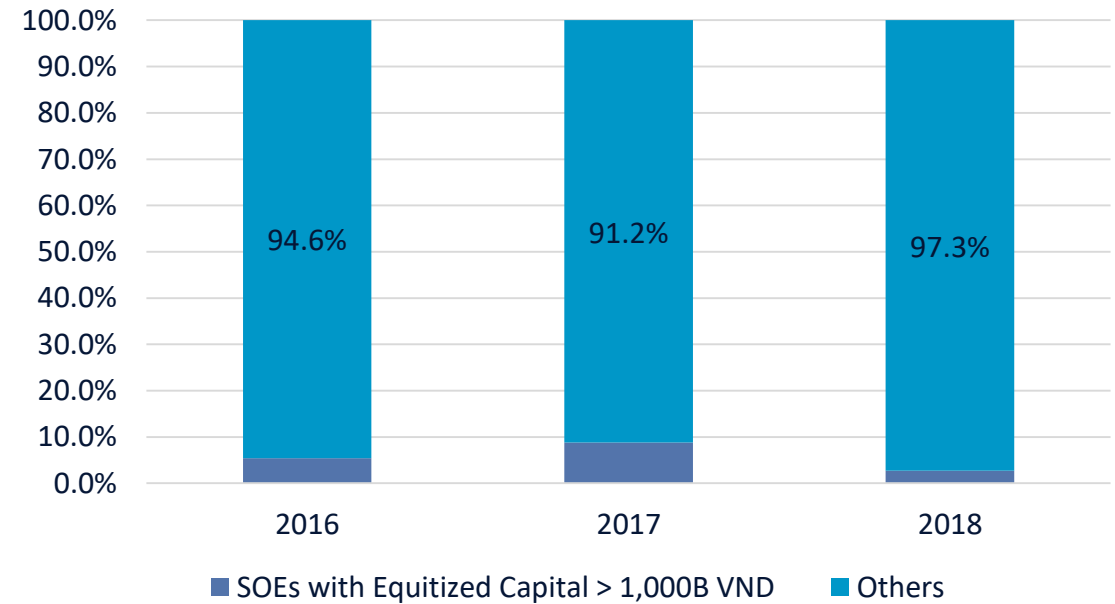
- Gradually equitizing and diversifying ownership
- Embracing modern business models
- Starting from SMEs to large-scale enterprises

◆ 2016 - 2020: larger size SOEs are equitized/divested

Average Charter Capital of Equitized SOEs



SOEs with Equitized Capital > 1,000B VND



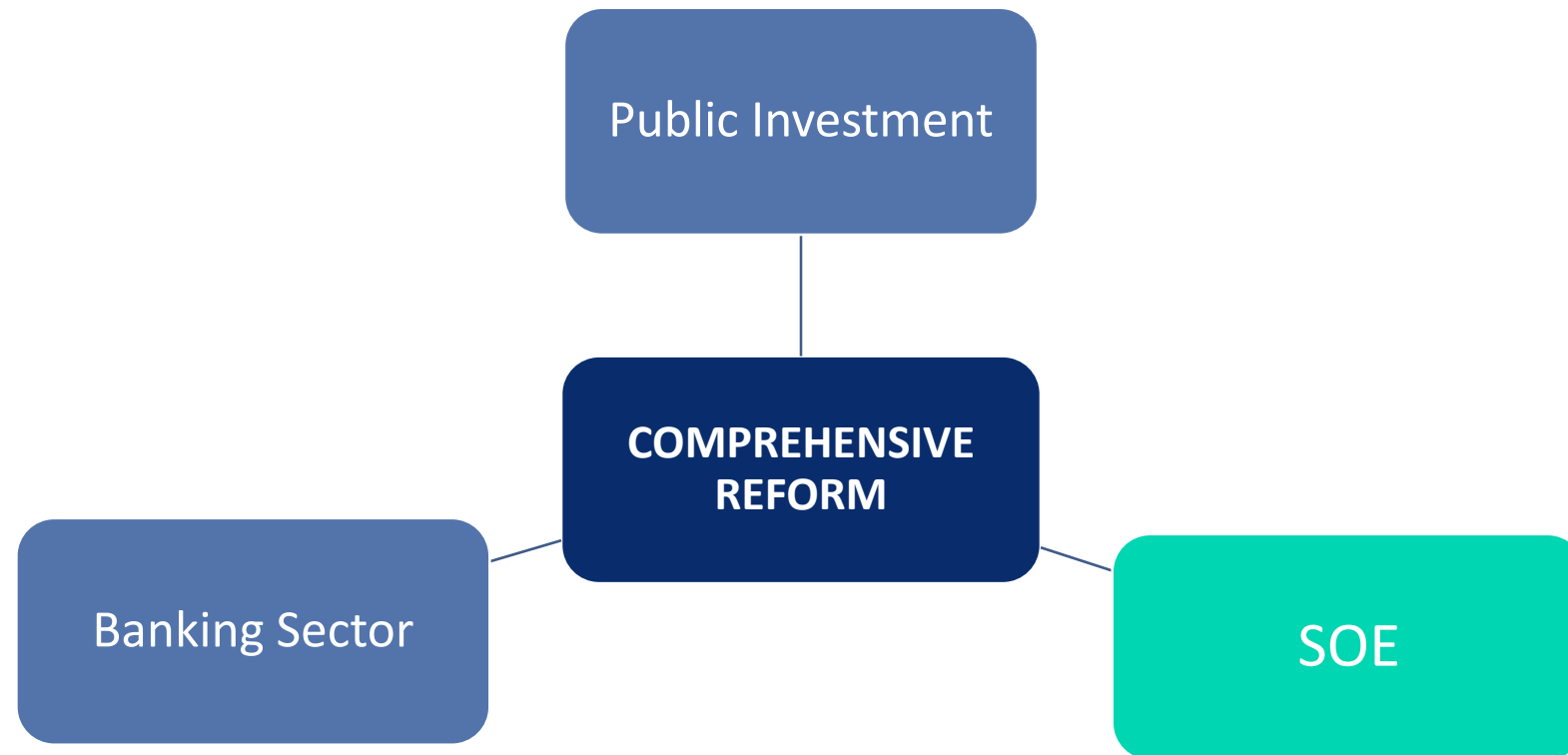
(Source: Ministry of Finance)

II. FACTS AND FIGURES

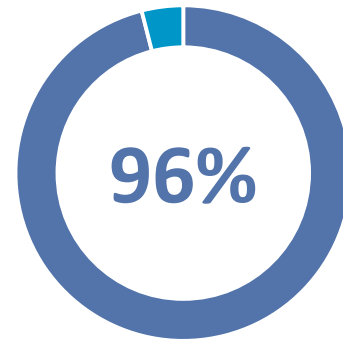
1. 2011 - 2015

◆ Five-year Socio-economic Development Plan 2011 - 2015

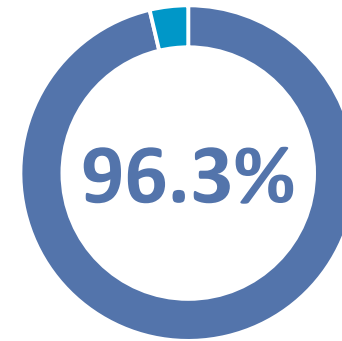
Overall Objective: "To achieve rapid and sustainable economic development associated with transforming the growth model and restructuring the economy towards higher quality, effectiveness and competitiveness"



◆ **Achievements:**

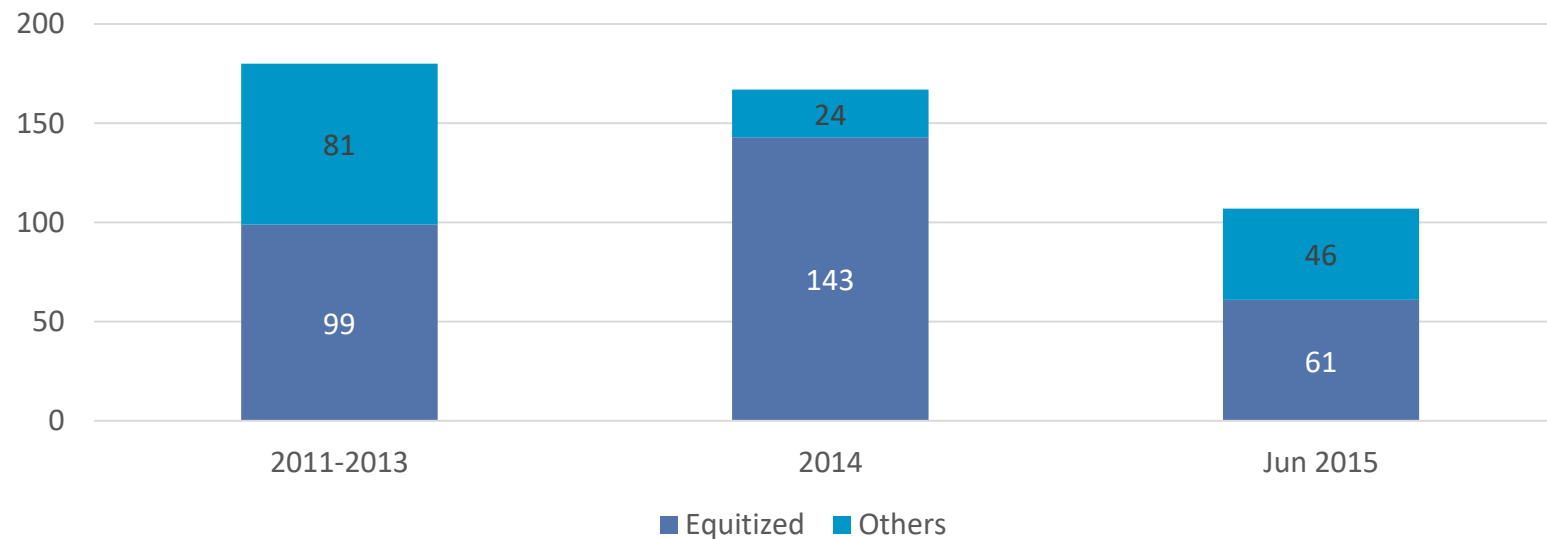


of SOEs were restructured
(accumulated total: 5,950 SOEs)



of SOEs were equitized
(accumulated total: 4.460 SOEs)

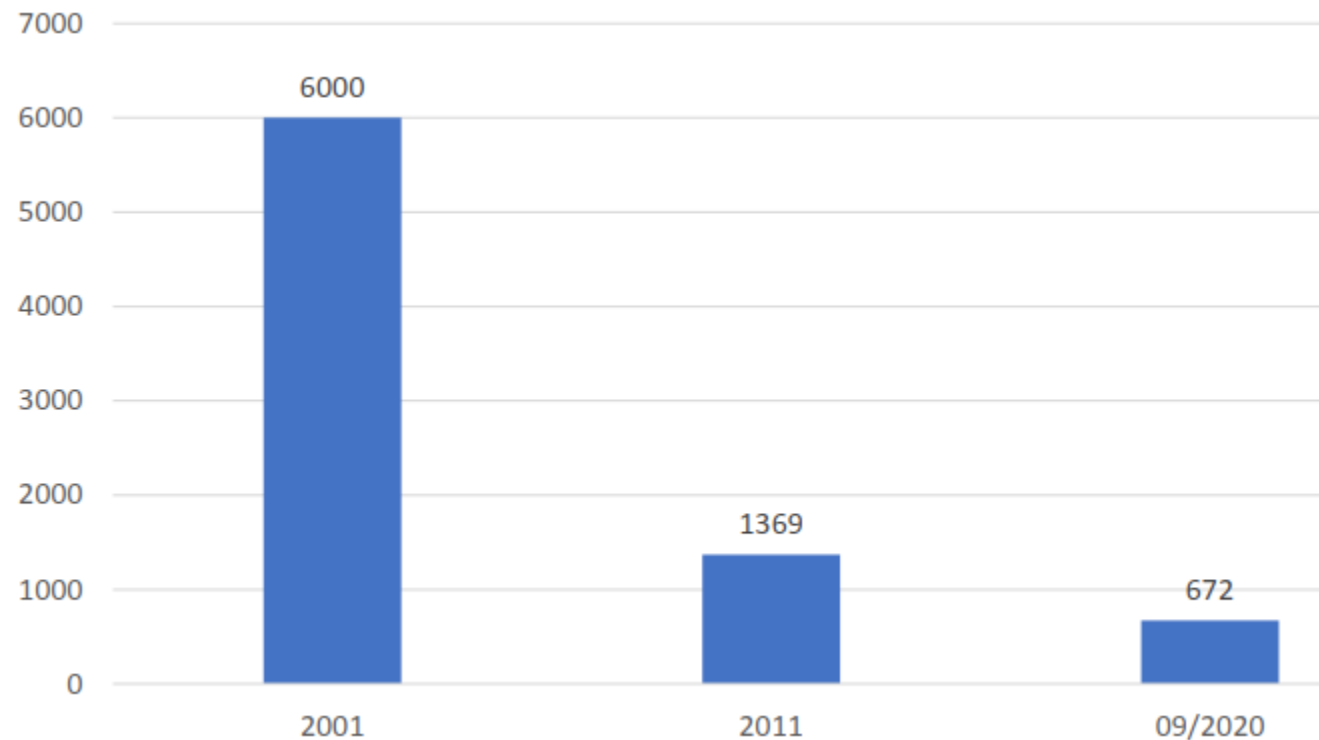
The Number of Restructured SOEs during 2011 - Jun 2015



(Source: The Ministry of Finance of SRV)

2. 2016 - 2020

- ◆ Accelerate the restructuring of large-scale, wide-scope, multi-sector SOEs with complex financial situations.



(Source: The Ministry of Planning and Investment)

◆ The Program on "Restructuring SOEs, Focusing on Economic Groups and State-owned Corporations for 2016 - 2020"

137 SOEs to be equitized

103 SOEs with 100% state capital

(According to the List of state-owned enterprises to be restructured for the period 2016 to 2020)

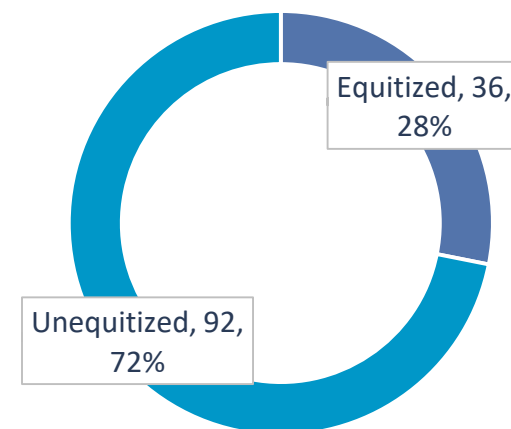
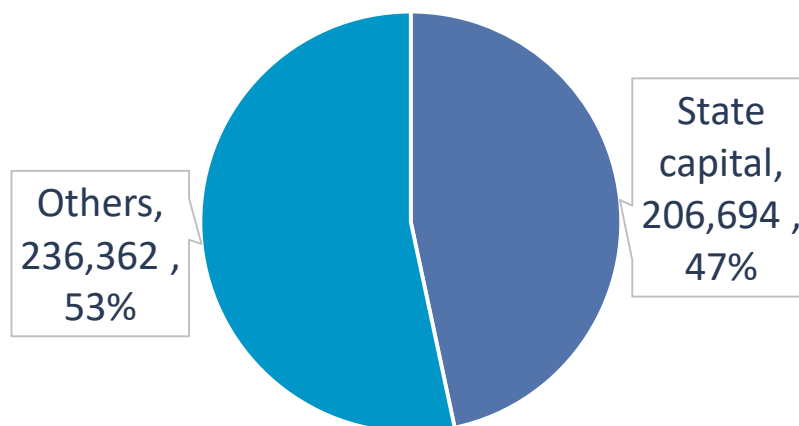
◆ **Equitization (2016 - 2020):**

Total Enterprise Value (bil. VND)

Enterprises on the List of SOEs to be restructured for the period 2016 - 2020

168

SOEs with equitization plan approved by competent authorities

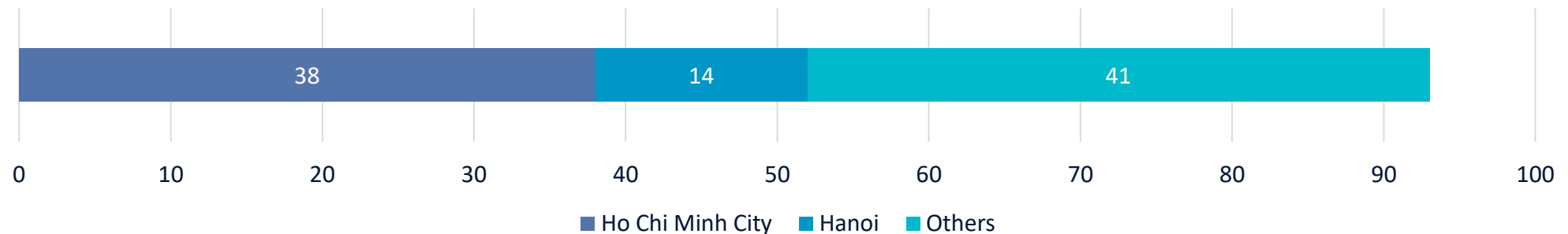


(Source: Office of the Government of Viet Nam)

● **Notable issues:**

Little to no action from administrative agencies with SOEs on the List of SOEs to be restructured for the period 2016 - 2020.

SOEs on the List of SOEs to be restructured for the period 2016 - 2020 supervised by provincial level

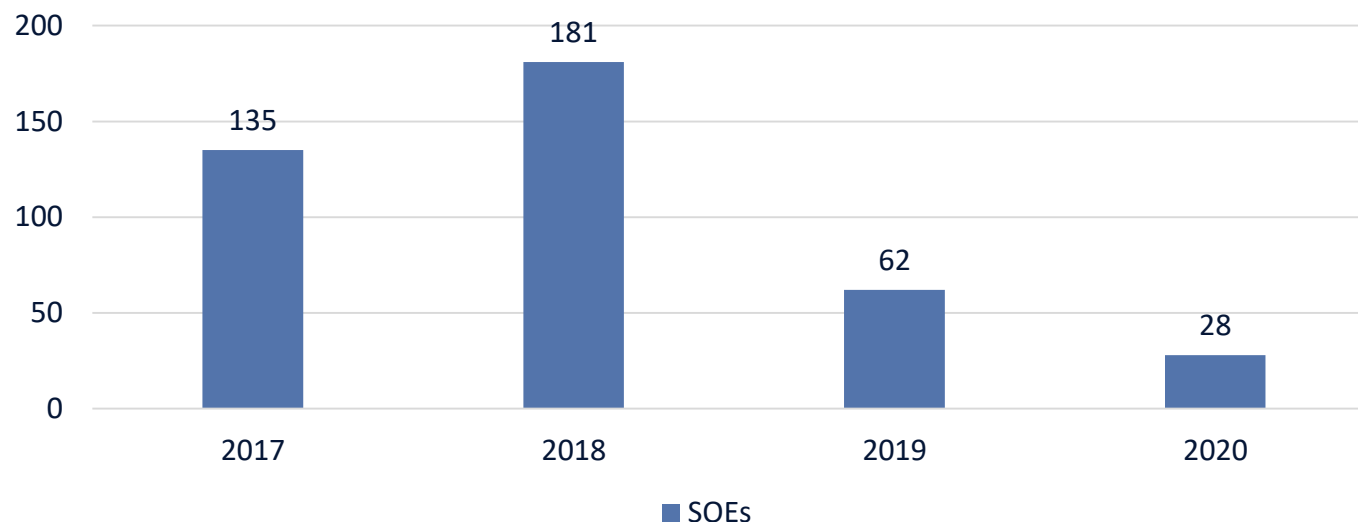


(Source: CPV Online Newspaper)

◆ **Divestment (2017 - 2020):**

(According to Decision No. 1232/QD-TTg providing approval for List of state-invested enterprises undergoing divestment in 2017-2020 period)

SOEs Undergoing Divestment during 2017 - 2020



● **Accumulation from 2017 to 2020:**

SOEs in Decision No. 1232

92 entities completed divestment

Book value: **4,704B VND**

Collected **8,946B VND**

SOEs outside Decision No. 1232

Book value: **3,785B VND**

Collected **110,392B VND**

(Source: Ministry of Planning and Investment)

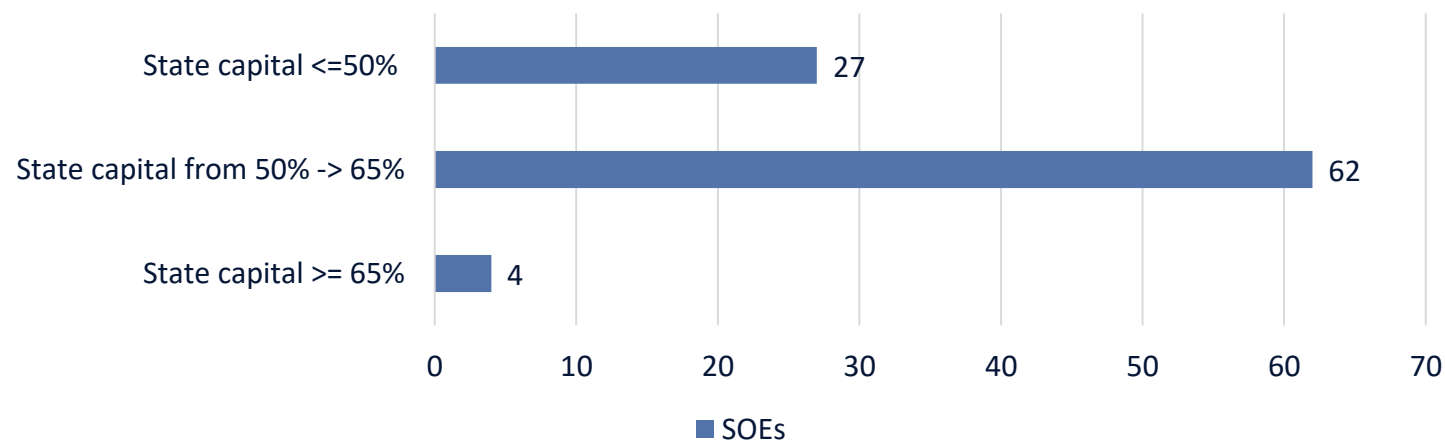
III. SOE REFORM - ON-GOING PLAN

- ◆ Gradually establishing a relatively synchronous legal framework system towards creating an equal environment, regardless of economic sectors.

- 28 Dec 2016** ● Decision No. 58/2016/QĐ-TTg on **Criteria for classification of SOEs**
- 17 Aug 2017** ● Decision No. 1232/QĐ-TTg giving approval for **List of state-invested enterprises undergoing divestment** in 2017-2020 period
- 16 Nov 2017** ● Decree 126/2017/ND-CP on **conversion from state owned enterprises into joint-stock companies**
- 15 Jun 2018** ● Resolution No. 60/2018/QH14 regulating the **management and use of state capital and assets in enterprises and the equitization of enterprises**
- 30 Jan 2019** ● Decree No. 10/2019/NĐ-CP implementing **rights and responsibilities of state owner's representatives**

- 10 Apr 2019** ● Decree No. 32/2019/NĐ-CP stipulating the assignment, ordering or bidding for the supply of public goods and services using the State budget from regular expenditure sources
- 11 Jun 2019** ● Circular No. 34/2019/TT-BTC providing guidelines for initial offering of shares and management and use of proceeds from equitization
- 15 Aug 2019** ● Decision No. 26/2019/QĐ-TTg regarding **List of enterprises under equitization**

SOEs Undergoing Equitization according to Decision No. 26/2019/QĐ-TTg



Law on Enterprises 2014 - The New Legal Framework

- Enterprise Management
- Rights and Responsibilities of SOEs

Law on Enterprises 2020

- Entering into force on January 1, 2021
- Redefining SOEs
- Additions:
 - Rules of centralized control
 - Handling conflict of interest
 - Ensuring transparency and publicity

◆ **Orientation for SOEs Reform in the period 2021 - 2030**

2021 - 2025

SOEs, mainly economic groups and state-owned corporations, operating in the manufacturing and commercial sectors, will be converted into joint-stock companies with state-owned capital and listed on the domestic stock market.

2026 - 2030

SOEs operating in the manufacturing and commercial sectors are joint-stock companies and are basically listed on the domestic and regional stock markets.

IV. CHALLENGES



Large-scale, wide-scope SOEs with complex financial situation and large amount of land owned.



A stricter legal framework, which prolongs some stages in the implementation process



Seeking strategic investors with the same visions, long-term engagement and experiences in restructuring the enterprises



The market capability in absorbing a relatively huge amount of capital subject to float, given the current size of Viet Nam's capital market.



The time-consuming process to ensure a balance between different goals: helping SOEs operate in a more efficient and disciplined direction, secure social benefits, etc.



The lack of discipline; as well as the lack of determination and proactivity from a number of heads of SOEs and competent authorities.

VIET NAM COMPETITION LAW (2018)

– KEY CHANGES (1)

- * Extra-Territorial Reach
- * New Regulator – National Competition Commission
- * Relevant Market
- * Prohibited Restrictive Agreements
 - Per se Prohibitions*
 - Other Prohibitions*
- * Narrower Scope of Exemptions

VIET NAM COMPETITION LAW (2018)

– KEY CHANGES (2)

Mandatory Pre-Merger Notification

Expanded criteria for notification.

- Notification required if the following thresholds are met:
 - either party's total assets in the Viet Nam market (≥ 3000 Bn VND);
 - either party's total turnover (≥ 3000 Bn VND);
 - the value of the transaction (≥ 1000 Bn VND); or
 - the combined market share of the combining entities in the relevant market is 20% or more.

VIET NAM COMPETITION LAW (2018)

– KEY CHANGES (3)

Merger Prohibition based on effect

Removed prohibition solely based on market share

- Prohibits concentration that causes or is capable of causing the effect of significantly restricting competition in the Viet Nam market
- Factors to consider when assessing the positive impact of economic concentration:
 - positive impact on development of industries, science and technology in accordance with State strategies and masterplans
 - development of SMEs
 - enhance Vietnamese enterprise's competitiveness in the international market

COMPETITION POLICY IN FTAs

VIET NAM'S APPROACH

- ◆ Competition Policy is an **effective tool** to regulate markets, protect consumers and support new industries, especially SMEs
- ◆ **A sound design of CP** which is in accordance with economic conditions **would promote growth**. Viet Nam's approach with regards to CP model in FTAs takes into accounts the domestic conditions, policy objectives and certain level of flexibilities.
- ◆ **Viet Nam commits** to CP in most of recent FTAs, including new generation ones.

COMPETITION POLICY IN FTAs

PRINCIPLES

NON-DISCRIMINATION

TRANSPARENCY

DUE PROCESS

COMPETITION POLICY IN FTAs

NEW-GENERATION FTAs with CP CHAPTERS Which Viet Nam is a Party of

1
AANZFTA

2
JVEPA

3
VCUFTA

4
VKFTA

5
EFTA

6
EVFTA

7
CPTPP

8
RCEP

COMPETITION POLICY IN FTAs

MAJOR ELEMENTS

1. Objectives
2. Principles and Institutional Issues
3. SOEs and Designated Monopolies
4. Notifications
5. Consultations
6. Exchange of Information, Confidentiality
7. Dispute Settlements
8. Technical Assistances
9. Cooperations and Coordinations
10. Procedural Fairness
11. Non Discriminatory Treatments
12. Private Right of Actions
13. Consumer Protection

COMPETITION POLICY IN FTAs

PROVISIONS ON SOEs AND DESIGNATED MONOPOLIES (CPTPP)

1. SCOPE OF APPLICATION
2. COMMERCIAL CONSIDERATIONS
3. NON-DISCRIMINATORY TREATMENT
4. NON-COMMERCIAL ASSISTANCE
5. TRANSPARENCY
6. PUBLIC POLICY CONSIDERATIONS

An aerial photograph of a city skyline at dusk. The sky is filled with dramatic, dark clouds with hints of orange and purple from the setting sun. In the foreground, a wide river flows through the city, with several small boats visible. The city buildings are silhouetted against the twilight sky, with some lights beginning to glow. The overall mood is serene and professional.

THANK YOU FOR YOUR ATTENTION

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