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# The Competition Neutrality in Malaysia: Challenges and Policy Options

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*Abstract — Competition law (CL) prevents anti-competitive conducts but does not ensure fair competition or level playing field with respect to State-Owned enterprises (SOEs). Hence, the principle of competitive neutrality promotes that government related business activities in competition with the private sector should not have a competitive advantage or disadvantage simply by virtue of government ownership and control (UNCTAD). Therefore, specific policies and legal rules is essential for achieving competitive neutrality. The Malaysian, Competition Act 2010 (CA2010) subjectively restricts and excludes some government linked enterprises. However, the some economic or, legal policy and political reasons limits CLs applicability and dictates its scope subjectively. In these context exemptions, de facto or de jure, direct or indirect state aid and restrictive licensing requirements impairs competition to benefit the domestic economy or national champion. This practice impacts the true spirit of market competition among rivals. Although Malaysian SOEs recognised as government's toolbox for societal and public value creation but its future should to be more actively owned and managed to avoid competing unfairly on enterprises that can deliver more efficiently and effectively the goods and services that citizens need and want. In this context, three principal questions from the international trade perspective is analysed on (1) How important is state ownership within Malaysian context (2) What types of advantages should be granted to SOEs (or disadvantages afflicting them) and (3) What policies required to enhance effective competition among all market participants? The paper reviews the state of SOE with respect to exemptions and exclusions policy with respect to governance, independent decision-making, accountability and disclosure policy to improvise the level playing scope between SOE and private sector within the competition law perspective in Malaysia.*

*Keywords - anti-competitive, competition neutrality, state owned enterprises (SOEs), exemption and exclusion*

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## 1. Introduction

Competitive neutrality (CN) means state-owned and private businesses compete on a level playing field (OECD,2012) as an essential way to use resources effectively within an economy to achieve growth and development. CN implies that significant government business activities which are in competition with the private sector should not be given a competitive advantage or disadvantage simply by virtue of government ownership and control (UNCTAD,2014). In achieving regulatory neutrality, in most countries, incorporated government businesses are subjected to the same regulatory treatment as private sector businesses. Exemptions for exceptions are usually laid out in market regulation (e.g. where natural monopolies are concerned) or in the statutory/enacting legislation usually with respect to competition laws applications. In cases where the commercial activities are integrated with general government, controversy are bound to arise as to its applicability or exemption from regulations which may otherwise be applicable to private sector businesses. The principle of CN although gaining

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wide support in the call for market liberalizations its implementation in practice is challenging (OECD,2012).

The mere enactment of Competition Laws (CL) is insufficient because the extent to which competition laws actually apply to the activities of government is the threshold issue. Competition law (CL) prevents anti-competitive conducts but does not ensure fair competition or level playing field with respect to State-Owned Enterprises (SOEs). Hence adoption of CN principles in some form of policy or legal instrument between the public and private owned entities is essential in the context of the CL perspective. The Malaysian, Competition Act 2010 (CA2010) was introduced in Malaysia, in fulfillment of ASEAN Economic Community (AEC) agreement. The CA 2010 subjectively restricts and excludes application on some government linked enterprises. Although best practice requires CL application to all industries, agreements and entities but certain economic, legal and political reasons limits its applicability and dictates its scope subjectively. The need to observe plurality and diversity of views has led the policy makers and legislatures to take an approach driven by political ideals on the proper functioning of market competition system very subjectively. In these context exemptions, de facto or de jure, direct or indirect state aid and restrictive licensing requirements are channels that impair competition and benefit the national champion. SOEs favor them and indirectly disfavor actual or potential rivals. These rivals market further impacted by the growing integration via trade and investment which developed SOEs that was traditionally oriented towards domestic markets to increasingly compete with private firms in the global market place Although SOEs recognised as government's toolbox for societal and public value creation in Malaysia but its future is stressed by the author to be more actively owned and managed to avoid competing unfairly on enterprises that can deliver more efficiently and effectively the goods and services that citizens need and want. In this context, three principal questions from the international trade perspective is analysed on (1) How important is state ownership in the global economy; (2) What types of advantages granted to SOEs by governments (or disadvantages afflicting them) are inconsistent with the key principles of the non-discriminatory trading system; and (3) What policies and practices support effective competition among all market participants? The paper reviews the state of SOE and proposes exemptions and exclusions policy with respect to governance, independent decision-making, accountability and disclosure policy to improvise the level playing scope of competition law in Malaysia.

## **2. SOEs Impact and Challenges within Competition Law**

### **2.1 Definition of SOEs**

SOEs defined by Organisation for Economic Co-operation and Development (OECD) as an enterprise where the state has significant control through full, majority, or significant minority ownership. SOEs is known by many names such as government corporations, government business enterprises, government-linked companies, parastatals, public enterprises, public sector units or enterprises and so on. The definition of SOEs also found to differ across countries (PWC,2015). SOEs in Malaysia may be owned by the central or federal government, as well as by regional and local governments. This implies that indirectly SOEs have government intervention in the consumer market and market share. In Malaysia, we do not usually use the term state-owned enterprises (SOE) but mostly referred as government-linked companies (GLCs) or government-linked investment companies (GLICs). Hence it was stated that it's not simple to define GLCs and GLICs because it come in various forms and structures; or simply means GLCs are companies owned by GLICs, who in turn are used by the Government to manage government investments (Wan Saiful Wan Jan,2017, 27 August)

### **2.2 Nature of SOEs**

SOEs creation is historically influenced by the past wars, to increase output and secure self-sufficiency in certain key industries. Historically, the private sector was found to be unable or unwilling to affordably provide needed services. Therefore, such needs could not be independently left to the market or private interests. SOEs generally found to have emerged under colonial rule, due to "market failure" as the private sector could not meet the needs of colonial capitalist expansion. Thus, the establishment of government departments, statutory bodies or even government-owned private companies were deemed essential for maintaining the status quo and to advance state and private, particularly powerful and influential commercial interests. SOEs created in some situations to stimulate investment and employment at the end of war to remedy the aftermath of war to redirect resources unemployed. Hence, SOEs emerged, often under colonial rule, due to such "market failure" as the private sector could not meet the needs of colonial capitalist expansion. Thus, the establishment of government departments, statutory bodies or even government-owned private companies is deemed as essential for

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maintaining the status quo and to advance state and private, particularly powerful and influential commercial interests (Sundram, J.K, 2018, 8 November).

SOEs initially had a major role in the coal, steel, automobile, and shipping industries, which later extended its state ownership intensively in the banking and manufacturing sectors. This had caused monopoly power or large capital investments which later developed on to other industries like telecommunication, transport, energy, water, and sewerage. In later development as, new technology and sophisticated capital markets weakened the reasons for state ownership and encouraged privatization. Their market monopolization justifications was left open in the process of privatization (Toninelli, 2000.).

Governments initially created and invested in SOEs because markets were formally imperfect or unable to accomplish the critical societal needs, such as effectively mobilising capital or building enabling infrastructure for economic development e.g. a nationwide electricity grid or water system and other critical sector such as oil and gas which contributes to their economy. This neoclassical economic theory was critical on this selective industrial policy on the basis that differential support for activities distorts the allocative efficiency of markets. Markets deemed to encourage the creativity of individuals who take personal risks in the pursuit of profits. Therefore, competition among firms with different business concepts rewards efficient entrepreneurs and drives less efficient ones out of the market. This process of entry, innovation and exit in a competitive environment believed to drive productivity growth and determines where firms, regions, or countries comparative advantages. However, this bureaucratic approach could be improbable to anticipate the outcome the process. Where by, the noble attempts to channel resources into activities they believe to be potentially competitive are also likely to lead to less efficient resource allocation. (Altenburg, 2011)

### **2.3 Impact of government Intervention on market competition and private sector**

Government generally have substantial impact on markets when laws and regulations designed to promote important public policy goals by distorting the markets and affecting the competition (Sokol, 2012). In this sphere the government linked bodies evidently enjoy more competing advantages (compared to the private companies) even when competition laws apply to them by way of leading prices which does not fully reflect the cost of resources. This distorts decisions on production, consumption and investment by government bodies, private competitors and potential competitors (Haley, 2014). Industrial policies allow state intervention in markets to influences demand and supply or by restructuring or other regulations aimed at influencing the market. Therefore, the existing market competition law and/or policy (CLP) becomes a subordinate instrument to the national political systems and their policies. The government on the flipside justifies their interventions to facilitate market competition and help the respective market to achieve national policy objectives. In this context the government policies and interventions in reality addresses more than the objective of "rationalising" trade, which ultimately results in efforts to make marketing practices conform mechanically to a modern model. Whereby, the government in their noble attempts to replace free market systems found to be more often end up raising the costs of marketing which ultimately injures the consumers welfare by distorting resource allocations and damaging the economy. So, policy makers view on such trading as a necessary and socially desirable activity is unreality carried out in an environment of risk. (Addis Ababa, 1995).

Generally, the relevant government agencies or bodies are not concerned to ensure a level playing field for competition between government businesses and private enterprises. Hence, the policy undertaken to reduce government intervention and its advantage over private enterprises was undertaken by way of introducing corporatisation, privatisation, effective governance and improving independence, accountability and disclosure. Alternatively, the *ex post* laws such as European Union Art. 106 and related provisions or the *ex-ante*, implementation of a competitive neutrality framework (UNCTAD 2014) important as a means to address its repercussion. Adoption of a CN policy brings other benefits to an economy in addition to fostering a more competitive environment. CN could force government businesses to be more efficient by increasing government transparency and addressing private competitor concerns about equity and the level playing field. It will assist government to assess realistically whether it should continue in a particular business. Arguably, CN is a minimum condition for effective markets where the government businesses are competing.

### **3. SOEs Impact on Competition, consumer welfare and private enterprises**

The motivation for government to intervene and overinvest on the local SOEs is driven by the aim to improve their domestic economic growth specifically in the regions with slow marketization pace, or performance growth is relatively poor. As the governmental interventions become stronger and the problems of local SOE over

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investment are likely to be more severe (Tang, Zhou & Ma Rujing (2010) Furthermore the government interventions do not change with the variety of SOE shareholding style. This may so because the SOEs indirectly controlled by government have the same level of overinvestment as those SOEs controlled directly by government. This indicates that the advantages granted to SOEs by governments (or disadvantages afflicting them) are inconsistent with the key principles of the non-discriminatory trading system. Whereby, the motivations for state ownership can wax and wane over time, but SOEs remains as an enduring feature of the economic landscape and have influential force globally in the years to come. As such, it is very important, irrespective of whether the SOEs is held nationally, regionally or locally to ensure their investments and objective to deliver the desired societal outcomes by way of adopting some level of competition neutrality in its application. So, the next question is what policies and practices required in place to support effective competition among all market participants?

Restraints caused on competition, specifically in developing nations by certain state policy and laws. Hence, Competition law (CL) enforcement is limited to the area defined within the scope of the CL itself. Therefore, to some extent the state-related action and entities is beyond the reach of competition authority purview in Malaysia. The underlying rule of law which applicable to control the restraint or the anti-competitive conducts depends on the extent to which the space is given for competition vis- a -vis space for state discretion. In the context there is no clear or sufficient guidance for working out a principle for establishing a rule of law in the management between the competition law application and the state power or authority on the effected business sector. Generally, the reasons for the government to act in the legitimate public interest cases and compromise competition varies from one jurisdiction to another according to their political economy considerations.

SOEs privileged position undoubtedly and potentially can impact competition negatively. Therefore OECD (OECD, 2009) stresses the importance to ensure that SOEs role is consistent with their public service responsibilities and should be subjected to similar competition disciplines as private enterprises. Although enforcing competition rules against SOEs presents enforcers with many challenges, competition rules should, and generally do, apply to both private and state-owned enterprises, subject to very limited exceptions. On the same point of view OECD also emphasised that CL solely not sufficient for ensuring a level playing field for SOEs and private enterprises. The presence of CN policies is essential and must be adopted as part of the 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. The presence of competitive neutrality policies has claimed more importance in recently liberalised sectors, where they play a crucial role in levelling the playing field between former state monopoly incumbents and private entrants. Equally important is also their effective monitoring and enforcement (OECD 2009) mechanism.

#### **4. Scope and Role of SOEs in the Malaysian Economic Plethora**

##### **4.1 Nature of Malaysian SOEs**

The Malaysian SOEs ownership can be directly or indirectly owned by the Federal or State government. Direct ownership is facilitated through a Ministry or department and indirect ownership is by an investment holding company, statutory body or public sector agency. The Malaysian SOEs also categorised as Minister of Finance Incorporated or MoF Inc (SME bank, Agro Bank, Exim Bank, Bank Pembangunan and Bank Simpanan Nasional), Government-linked investment companies (GLICs), State-level GLCs, State-level GLICs or Statutory Bodies. Malaysian government in the context of SOEs plays a multiple role i.e. as the: Developer and provider of public goods, Investor, owner and operator of the production of goods and services and as well as the regulator to provide level playing field in the market or industry (Wikipedia)

They could be grouped by first category comprised of companies that were making money and consistently declared dividends to the government, secondly, companies that continuously lose money, increase their debts and don't give benefits to the government and third category as companies that MOF Inc needed to keep despite them making losses. It includes companies involved in infrastructure development, like MRT Corp Sdn Bhd and Prasarana Malaysia Bhd.

##### **4.2 Importance of SOE in the Malaysian Economic Perspective**

In Malaysia, state owned enterprises (SOEs) are also referred to as Government Linked Companies (GLCs). As part of its GLC Transformation Program, the Malaysian Government aims to reduce its shares across a range of companies and to make the companies more competitive. Among the notable divestments of recent years, is when the Khazanah, the largest GLIC, was offloaded its stake in the national car company, Proton to DRB-Hicom

Bhd in 2012. In 2013, Khazanah, divested its holdings in telecommunications services giant Time Engineering Bhd. In 2015, Khazanah cut its equity ownership of national utility company, Tenaga Nasional from 31 percent to 29 percent. Khazanah's annual report for 2015 noted only that the fund had completed ten divestments that produced a gain of RM 2.9 billion (OECD, 2015). Malaysian SOEs have notably contributed towards government revenue and play a very significant role in the Malaysian economy. SOEs have been used to spearhead infrastructure and industrial projects. The government owns approximately 36 percent of the value of firms listed on the Bursa Malaysia through its seven Government-Linked Investment Corporations (GLICs), including a majority stake in a number of companies. Only a minority portion of stock is available for trading for some of the largest publicly listed local companies. Khazanah, the government's sovereign wealth fund, owns stakes in companies competing in many of the country's major industries. The Prime Minister chairs Khazanah's Board of Directors. PETRONAS, the state-owned Oil and Gas Company, is Malaysia's only Fortune Global 500 firm.

SOEs with publicly traded shares required to produce audited financial statements every year and submit filings related to changes in the organization's management. The SOEs that do not offer publicly traded shares only required to submit annual reports to the Companies Commission. This public reporting requirement on their financial standing and scope of activities has increased their transparency in consistent with the OECD's guideline for Transparency and Disclosure. Although many SOEs prioritize operations that maximize their earnings, the close relationships between with senior government officials often blurs the line between strictly commercial activity pursued for its own sake and activity that has been directed to advance a policy interest. For example, Petroliam Nasional Berhad (Petronas) is both an SOE in the oil and gas sector and the regulator of the industry. Malaysia Airlines (MAS), in which the government previously held 70 percent but is now 100 percent government-owned, required periodic infusions of resources from the government to maintain its large numbers of employees. The airline is still undergoing a restructuring, and the stated goal of the country's largest sovereign wealth fund, Khazanah, which holds all of the airline's shares, is scheduled to re-list the airline as early as 2017(Export.gov ,2017).

Under the sovereign wealth funds program the Malaysian government established government-linked investment companies (GLICs) as vehicles to harness revenue from commodity-based industries and promote growth in strategic development areas. In this, category Khazanah is the largest of the GLICs, and the company holds equity in a range of domestic firms as well as investments outside Malaysia. The other GLICs includes Armed Forces Retirement Fund (LTAT), National Capital (PNB), Employees Provident Fund (EPF), Pilgrimage Fund (Tabung Haji), and Public Employees Retirement Fund (KWAP) which also executes similar investments but are structured as savings vehicles for Malaysians. Khazanah is recognised to be following the Santiago Principles and participates in the International Forum on Sovereign Wealth Funds (Export.gov ,2017).

Khazanah was incorporated in 1993 under the Companies Act of 1965 as a public limited company with a charter to promote growth in strategic industries and national initiatives. As of December 2015, Khazanah reported "realizable" assets of RM 150 billion (USD 38 billion) and a pre-tax profit of RM 1.2 billion (USD 308 million). The sectors comprising its major holdings include telecommunications and media, airports, banking, real estate, health care, and the national energy utility. According to the company's 2015 annual review, 81 percent of Khazanah's assets are invested in Malaysian-headquartered companies. Although the company generally manages its investments with the objective to produce strong companies and high returns, Khazanah often undertakes investments that are deemed government policy priorities, as with the purchase of Malaysia Airlines publicly traded shares (as noted above) (Export.gov ,2017).

SOEs are most likely to remain as an important instrument or tool which the government will probably use for societal and public value creation given the right context, collaborating with other stakeholders for this purpose in the 'penta helix' of private companies, not-for-profit organisations, academia, public sector and citizens. For instance, increased global competition for finance, talent, and resources may mean that countries may increasingly turn to SOEs as a tool to better position themselves for the future in the global economy. However, it also important to keep this entity on check to ensure a fair balance with the private enterprises in the country or otherwise their competitive neutrality.

Malaysian SOEs contribute significantly to government revenue through dividend payment to the government (as a shareholder) and through various forms of tax including corporate tax, petroleum tax and petroleum export duties. For example, Khazanah Nasional Berhad and PETRONAS paid RM3 billion and RM28 billion worth of dividend respectively to the government in 2012 (between 2009 and 2011, they each paid dividend worth RM3.6 billion and RM105.3 billion respectively). Between 2009 and 2011, Khazanah Nasional Berhad and PETRONAS also claimed to have paid RM3.8 billion and RM80.2 billion worth of corporate tax to the government. The national Oil and Gas Company had also provided a total of RM400 million in subsidies for the provision of rural air services in East Malaysia. This included RM250 millions of subsidies to AirAsia, a non-SOE airline, between

2006 and 2007 (Borneo Post (2011), Jala, Idris (2013), Treasury (2012). SOEs also claimed to have contributed to other forms of government revenue including petroleum tax and export duties. The total figures for these were RM31.96 billion and RM2.39 billion respectively in 2012. The MOF did not provide specific examples of SOEs with guaranteed government debts so this data was claimed to have been taken from the national debt summary provided in the Treasury Economic Report 2012/2013. 343 AG (2013).

### **5. Scope of Competition Law 2010 application on SOEs and state of competitive neutrality**

The regulation to control and protect free market competition in Malaysia is done predominantly (certain sectors are excluded) via Competition Act 2010 (CA) and Competition Commission Act 2010. Although the enactment of CA is a very significant step towards liberating Malaysian market competition but it is subject to a number of exemption and exceptions. The enactment of the Competition Act 2010 in Malaysia is consistent with the ASEAN Economic Community Blueprint, pursuant to which ASEAN member states had committed to introduce competition policy by 2015 and to “establish a network of authorities or agencies responsible for competition policy to service as a forum for discussing and coordinating competition policies”. The key objective of the CA was to “promote economic development by promoting and protecting the process of competition” (CA 2010). The CA2010 came in force on 1 January, 2012 after overcoming various enforcement hurdles and adjustment for enforcement, which includes lengthy period of advocacy.

The very essence of the Act was aimed to protect consumer welfare which is enhanced by prohibiting anti-competitive business conduct. However certain areas and sectors are exempted or excluded, including merger control. CA application is excluded on the communications, petroleum and energy sectors. This sector is regulated by their sector specific regulations namely, Communications and Multimedia Act 1998, Energy Commission Act 2001 and Commercial Petroleum Development Act 1974 and the Petroleum Regulations. An individual exemption also available by application to the Malaysian Competition Commission (MYCC) subjected to certain conditions, obligations and for a limited duration as set out in Section 5 of CA (Ramaiah, 2015). In an economy where there are many concurrent directorships the law omits interlocking directorships and the scope of the law is also open to debate, with such issues as the interaction between the general and sectorial competition laws, the locus standi of final consumers vis-à-vis the enterprises that infringe the law. The true measure of the CL success is not measured by merely enacting the statute but lies in the efficacy of its enforcement. Thus, the enforcement process of CA cannot be taken for granted. Theoretically, CA 2010 applies all commercial activities irrespective of its ownership and status, which includes those carried out by GLCs and SOEs.

However, the foundation of the national competitiveness must be built without compromising the basic competition principles enshrined in the CA 2010 because competition and stability is not at odds (Siti Norma Yaakob, 2012). Secondly, CN emphasises that no business entity is advantaged (or disadvantaged) solely because of its ownership.

Even though Malaysian SOEs contribute significantly to government’s revenue, the need to adopt CN policy is seen as way forward to fully embrace anti-competition law and its true essence. Hence it is important to create a fair balance between the advantages and disadvantages afflicted through government aid with respect to non-discriminatory trading system. What types of policies are due and should be put in place to bring about this competitive neutrality, level playing and fair competition is the key research and discussion in this paper. The paper reviews and discusses the Malaysia CL scope of application and challenges on SOEs in Malaysia henceforth proposes some policy options to neutralise its negative impact.

The Competition Act prohibits cartels and abuses of a dominant market position, but does not create any pre-transaction review of mergers or acquisitions. Violations are punishable by fines, as well as imprisonment for individual violations. The Acts established a Competition Commission with broad investigative and enforcement powers, as well as a Competition Appeals Tribunal (CAT) to hear all appeals of Commission decisions. The CAC has since completed investigations and issued rulings since the Competition Law took effect. In the largest case to date, on September 6, 2013, the CAC found national carrier Malaysian Airlines and budget airline AirAsia to have breached the CA and fined both airlines of USD 3.33 million each. The airlines are appealing against the decision, which will be the first case brought before the CAT.

State-owned enterprises play a very significant role in the Malaysian economy. Such enterprises have been used to spearhead infrastructure and industrial projects. The government owns approximately 36% of the value of firms listed on the Bursa Malaysia through its seven Government-Linked Investment Corporations (GLICs), including a majority stake in a number of companies. Only a minority portion of stock is available for trading for some of the largest publicly listed local companies. The government has indicated increasing interest in restarting its privatization efforts through the New Economic Model reforms. Khazanah, often considered the government’s sovereign wealth fund, owns stakes in companies competing in many of the country’s major industries. The Prime

Minister chairs Khazanah's Board of Directors. PETRONAS, the state-owned oil and Gas Company, is Malaysia's only Fortune Global 500 firm.

In July 2011, the Government stated that 33 government-linked companies were ready for divestment, but did not identify them by name. Under the plan to rationalize the portfolio of government-linked companies (GLCs) in Malaysia, the Government will reduce its stakes in some of these companies, list a few others and sell the rest. In the first quarter of 2012 Khazanah offloaded its stake in the national car company Proton to DRB-Hicom Bhd. In Sept 2013, Khazanah divested Time Engineering Bhd to private sector Bumiputera owned company Censof Holdings Bhd. Nonetheless, the majority of GLCs have not been affected by the divestment plan, and GLCs will retain a major role in Malaysia's economy. Khazanah continued its divestments in 2014 but has only specified "six divestments with a gain on divestment of MYR 3 billion."

## **6. Application of competitive neutrality principle and state of readiness in Malaysia**

SOEs government link through various government linked corporation often equipped with greater opportunity or incentives to act in an anti-competitive way. Therefore, it is believed a trend to move towards more fully corporatized and commercially operating SOEs would improve overall efficiency (Capobianco & Christiansen, 2011). However, the concept of CN implies regulatory framework implies public and private enterprises must face the same set of rules and no state contacts to bring competitive advantage to any market participant (OECD 2009). So, CN neutrality may not be appropriate in cases where it hampers the achievement of important societal goals but such claims should be subject to objective determination. Methods recommended for government bodies to abstain any advantage over private enterprises include privatisation, effective governance, improving independence, accountability and disclosure. Ex post laws such as EU Art 86 can assist. Ex ante, the implementation of a competitive neutrality framework is an effective means of addressing the issue. In adopting the CN, Malaysia has already applied the concept of partial privatisation with issuance of special or golden shares for government and through establishment of sector regulators through the implementation of GLC Transformation Programme and the generic competition legislation. So, CA in this sense has been introduced timely and is applicable irrespective of its linkage or private enterprises (CA2010). As a matter of law, the Competition Commission does not have separate standards for foreign and domestic companies.

In 2004, the government began a 10-year SOE Transformation Program. Under this program, SOEs is defined as companies in which sovereign wealth funds (SWFs), referred to locally as government-linked investment companies (GLICs) and held a majority ownership stake. During the period, the SWFs supervised the management, structural, and disclosure changes of the many companies in which they were shareholders. The transformation ultimately extended to the SWFs, which now provide annual financial statements and publish quarterly reports on their efforts to make SOEs more effective. With respect to SOEs corporate governance guidelines the SOEs or GLCs are called upon for publicly traded shares to be an audited financial statement every year. These SOEs must also submit filings related to changes in the organization's management. The SOEs that do not offer publicly traded shares are required to submit annual reports to the Companies Commission. The requirement for publicly reporting the financial standing and scope of activities of SOEs has increased their transparency. It is also consistent with the OECD's guideline for Transparency and Disclosure. Moreover, many SOEs prioritize operations that maximize their earnings. However, the often-close connections that SOEs have with senior government officials blurs the line between strictly commercial activity pursued for its own sake and activity that has been directed to advance a policy interest. For example, Petrolia Nasional Berhad (Petronas) is both SOE in the oil and gas sector and the regulator of the industry. Malaysia Airlines (MAS), in which the government previously held 70% but now holds 100%, required periodic infusions of resources from the government to maintain the large numbers of the company's staff and senior executives. The airline is currently undergoing a restructuring, and the stated goal of the country's largest sovereign wealth fund, Khazanah, which holds all of the airline's shares, is to re-list MAS in the coming years.

On the management of the sovereign wealth fund, the development of corporate social responsibility (CSR) in Malaysia was moving to higher levels and many larger companies had CSR programs and activities. In 2006, Malaysian stock market regulator, the Securities Commission, published a CSR Framework for all publicly listed companies, which are required to disclose their CSR programs in their annual financial reports. In 2007 the Women, Family and Community Ministry launched the Prime Minister's CSR's Awards to recognize companies that have made a difference to the communities in which they are active through their CSR programs (Investment Climate Statement, 2015)

The definition of 'privatization' in Malaysia was so broad that it includes cases where private enterprises are awarded licenses to participate in activities previously the exclusive preserve of the public sector, as in the case of television broadcasting from 1984. Contracting out of services, especially by municipal authorities (e.g.

involving garbage disposal and parking), and private ownership or even contracted leasing of public properties – e.g. enabling the imposition of tolls on roads previously built by the Public Works Ministry or the Malaysian Highway Authority (Lembaga Lebuhraya Malaysia, or LLM) – are also frequently considered to be privatization. In Malaysia, when a SOE legally formed as a government department or statutory authority, is privatized, it necessarily first entails corporatization, or the formation of a limited company incorporated under the Companies Act, 1965. On the other hand, the privatization of a SOE that has been constituted as a limited company would merely entail a transfer in share ownership from the public to the private sector without any change in the legal form of the enterprise (Jomo and Tan, 2005)

While acknowledging poor and inefficient management of very many Malaysian SOEs, the key question should be whether such inefficiencies are necessarily characteristic of public ownership and hence cannot be overcome except through privatization. The impressive performance of SOEs in Singapore, which used to be part of Malaysia, or of Malaysia's well-run Petronas underscore this point. Perhaps less politics, ethnic based criteria for recruitment, appointment, promotion and accountability, as well as greater SOE autonomy, transparency and organizational flexibility would radically improve SOE performance (Mustapha Johan & Shamsul Bahriah 1985).

In the context of Malaysia's readiness to embrace CN policy, Malaysia appears more favourable to undertake partial and not full privatisation of its SOEs. Whereby, the government still holds equity shares in many of the SOEs that have undergone public listing. For instance, when MAS was first privatised in 1985, government shareholding went from 90% to 70% in the company (60% federal government; 5% Sabah government; and 5% Sarawak government). In later development on 31 March 2013, the government through Khazanah Nasional Berhad (KNB) directly owns 69.37% of MAS.

On 22 April 2011, KNB divested the government's strategic stake in the national postal service company, Pos Malaysia, totaling 32.11% to a local conglomerate, DRB-HICOM Berhad. Apart from still holding equity stakes in SOEs, the government also holds 'special shares' or 'golden shares' in some of the SOEs it considers to be operating in strategic industries and to thus have significant national interest implications.

The government reluctance to let go although due to their noble concern as to whether that the newly privatised entities is capable and have enough incentive to provide goods and services to all their consumers regardless of their geographical locations and income. For example, concerned as to whether the consumers in rural areas will be able receive the same service that they used to enjoy when the service providers were SOEs. Again, in the case of MAS, such special shares were first (KNB, 2011) 'proposed and later introduced in its privatisation in 1985. The golden share in MAS provided the government with the rights to control the board of directors, priority in capital repayment in the event of the company winding up, and MAS having to redeem the special share at any time.

The Malaysian SOEs poor performance record should be assessed whether primarily due to the nature, interests and abilities of those in charge, rather than a consequence of public ownership per se, then privatization in itself cannot and will not overcome the root problems. Privatization may improve enterprise profitability for the private owners concerned, may not necessarily benefit the public or consumers. In reality, since a significant portion of such activities are public monopolies, privatization will hand over such monopoly powers to private interests who are likely to use them to maximize profits. The privatization of public services tends to burden the people, when charges are raised for privatized services. Increase of charges are obvious because private interests are more concerned of profitable or potentially profitable activities and enterprises. This leads the government with unprofitable and less profitable activities, which will consequently worsen the overall public-sector performance, resulting in the claim of inevitable SOE or public sector inefficiency becoming a self-fulfilling prophecy.

## **7. Recommendations and Conclusion**

Acceptance and acknowledgment of CN means that significant government business should not have a competitive advantage or disadvantage simply by virtue of government ownership and control (UNCTAD, 2014). Thus, UNCTAD proposes CN policy involves analysis and implementation of steps to ensure that this advantage does not occur and SOE to compete on the same level playing field (OECD, 2012). Whereby means from the management perspective strive to achieve the objectives of public value creation and good growth. In this perspective SOE of the future recommended to be developed in the following manner:

Firstly, SOEs actively owned and managed on an established clear purpose and mission and linked to its desired societal objectives and outcomes, which should then be communicated through dialogue between the SOE's owner, governors and managers.

Secondly, SOEs active ownership and management must require those undertaking the roles, particularly the board of directors and the executive leadership to fulfil the "4 Cs" test which includes: Clarity, Capacity,



Capability and Commitment to integrity. Additionally, the state ownership status should be continually monitored and evaluated to ensure that value continues to be delivered.

Thirdly, SOEs must be made transparent and accountable through quality, timely and reliable reporting of SOEs performance. This reporting should extend beyond mere financial report to integrated reporting format, as role models for good reporting practices. This reporting will aid in building trust between the government (owner) and the citizens and other stakeholders (including other shareholders).

Fourthly, there is a need to strike an appropriate internal-external balance like any organisation. Whereby, the SOEs must strive to develop and maintain sound internal management in order to maximise efficiency and effectiveness. It should leverage technological and service innovations to deliver products and services, which meet user needs within constrained budgets (doing "better for less"), as well as achieve desired outcomes economically and socially. On the same point, SOEs should also leverage its external influence by co-creating value with other stakeholders in society and driving good growth, linked to its purpose, mission and strategic objectives. In this way, SOEs can truly become catalysts for sustainable public value creation (PWS, 2015).

Fifthly, the government policies and interventions must venture beyond mere objective of "rationalising" trade, because often results in efforts to make marketing practices conform mechanically to a modern model. Thus, marketing interventions should take into account the proven capability of the marketing network. And the policies should be aimed at working with the existing system, not at replacing it. Although government attempts to replace free market systems have often raised the costs of marketing, thereby hurting consumers, distorting resource allocations and damaging the economy but it is also important that policy makers view trading as a necessary and socially desirable activity carried out in an environment of risk.

Finally, government control or intervention should be only considered when is it really necessary and never for the sake of government control. As case studies reflect that government wisely must also consider what would happen if the intervention was removed because sometimes, in fact, market may be found to perform well when left to private entrepreneurs. As is strongly recommended that government's role-play should be confined to the facilitating activities rather than a direct role in markets. Regulatory interventions should be limited and an appropriate intervention in the indirect nature, advisably projected for three general aims, which are directed to improve market infrastructure, information and institutional infrastructure (Addis Ababa 1995).

The importance of the state ownership in the global economy is a very politically as well as a very sensitive question in Asian countries. Whereby, the political system which condones national champions also potentially kills the other equivalent players who could explore the market and make it more competitive for benefiting the consumers. Therefore, it is recommended to that it is important to review the nature and extent of state ownership from the perspective of its role in societal and public value creation. The purpose and mission of SOEs must be timely and not overstretched. The desired outcome and the associated benefits scorecards must be evaluated from time to time. The policy maker must critically evaluate the judgmental decision as to what makes SOEs similar, yet different, to their private sector counterparts and how do these nuances translated into how they are to be led, governed and controlled. In achieving this CN is a way forward to look at SOEs status in this current era where technology advancement with market competition is the future economy.

### **Acknowledgements**

An acknowledgement section may be presented after the conclusion, if desired.

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