STATE OWNED ENTERPRISES AND COMPETITIVE NEUTRALITY

OECD GLOBAL FORUM ON COMPETITION
SESSION III

PARIS, 16-17 FEBRUARY 2012

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INTRODUCTION

- Malaysia Competition Commission established in April 2011 and fully functional June 2011
- Competition Commission Act 2010 came into force April 2011
- Competition Act 2010 came into force 1 January 2012 (18 months moratorium)

COMPETITION ACT 2010

The Prohibitions
- Section 4 - anti-competitive agreements horizontal and vertical
- Section 10 - abuse of dominant position
- No merger regulation
SCOPE

• All commercial activities
  - ownership and status irrelevant
  - includes those carried out by GLCs and SOEs

• Extra – territorial application

NATURE AND SCOPE OF SOEs IN MALAYSIA

Government ownership can be:
• Both direct and indirect
• At Federal or State level
  – If direct – through a Ministry or department
  – If indirect – through an investment holding company, statutory body or public sector agency
TYPES OF SOEs

- MoF Inc Cos
- Government-linked corporations (GLCs)
- Government-linked investment companies (GLICs)
- State-level GLCs
- State-level GLICs
- Statutory Bodies

ROLE OF SOEs IN ECONOMY

Size in economy
- Total market capitalisation – 36%
- Domestic investment – 13%
- Employs 5% of national work force

Excludes
- State-level GLCs and GLICs
- Statutory Bodies

Industries
- Varied – financial, telecommunications, trading, infrastructure, social, medical, public facilities, housing
ROLE OF SOEs IN ECONOMY (cont)

SOE Regime in Malaysia - Government has multiple roles:

• Developer and provider of public goods
• Investor, owner and operator of the production of goods and services
• Regulator to provide level playing field in the market

COMPETITIVE NEUTRALITY PRINCIPLE – APPLICABLE TO MALAYSIA?

• Partial privatisation with issuance of special or golden shares for government
• Establishment of sector regulators
• Implementation of GLC Transformation Programme
• Introduction of generic competition legislation
CONCLUSION

• Many ways to regulate SOEs
  - GLC Transformation programme (though not comprehensive)
  - Competition Law 2010

• Challenge
  - state SOEs
  - need for a compensation mechanism

MALAYSIA NOT READY FOR A COMPETITIVE NEUTRALITY PRINCIPLE – AT LEAST FOR NOW

THANK YOU