

THE FAILURE OF ASEAN COMPETITION LAWS AND REGIONAL GUIDELINES TO ADDRESS GOVERNMENT FAVORITISM*

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ABSTRACT

State-owned enterprises (“SOEs”) and politically favored private enterprises (“PFPEs”) continue to shape the competitive landscape of Southeast Asia. While ASEAN competition laws claim to prevent anticompetitive conduct, they entrench “public-interest monopolies,” exclude sovereign acts from scrutiny, and defer oversight to specialist regulators. The ASEAN Regional Guidelines on Competition Policy stand only as soft law, omit state-aid control, and offer no means of enforcement.

This Article maps the doctrinal and institutional costs of that dual underreach. A survey of ASEAN competition laws exposes how exemptions recalibrate entry conditions and price formation. The result is an uneven playing field in which SOEs and PFPEs enjoy opaque subsidies and exclusive mandates, while private rivals absorb heavier compliance burdens. To address this, the Article proposes a treaty-level ASEAN Competitive Neutrality Framework that reclassifies unilateral state advantages as competition concerns, imposes binding transparency and subsidy rules, and links enforcement to the 2019 ASEAN Economic Dispute Settlement Mechanism. Without such reforms, ASEAN’s vision of an integrated, innovation-driven market will remain undermined by legal gaps that protect incumbents under the banner of public welfare.

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I. INTRODUCTION

Competition laws of Association of Southeast Asian Nations (“ASEAN”) Member States (“AMSs”) are crafted to promote competitive markets that stimulate innovation, enhance efficiency, and improve consumer welfare.¹ Despite these goals, existing laws and guidelines do not prevent government favoritism. State-owned enterprises (“SOEs”) and politically-favored private entities (“PFPEs”) frequently benefit from preferential treatment. This undermines competitive neutrality—a core legal standard that ensures equal competition for all market participants.² Such state-sanctioned interventions distort markets and reveal fundamental shortcomings in the prevailing legal frameworks.

¹ For a more exhaustive discussion, see Corinne Chew, *Diversity of National Competition Laws in the ASEAN Region and the Resulting Challenges for Businesses Operating in the Region*, in *THE REGIONALIZATION OF COMPETITION LAW AND POLICY WITHIN THE ASEAN ECONOMIC COMMUNITY* 59–62 (Burton Ong ed. 2018).

² See Bronwen Morgan et al., *Competitive Neutrality and the Challenge of Social Enterprise*, 25 *COMPETITION & CONSUMER L.J.* 249 (2018).

Market distortions arise from various state-conferred advantages.³ Governments extend direct financial support, such as subsidies and tax exemptions, which provide SOEs with cost advantages unattainable by private competitors. For instance, in the Philippines, SOEs—locally termed government-owned and controlled corporations (“GOCCs”)—enjoy substantial subsidies and exemptions from taxes and import.⁴ In 2022 alone, 35 GOCCs received subsidies totaling 192.97 billion pesos.⁵ Likewise, governments grant preferential financing and guarantees that reduce borrowing costs for SOEs and allow them to restructure debts with ease. In Vietnam, for example, SOEs benefit from facilitated credit access⁶ and state-backed debt restructuring,⁷ which enable them to outpace private firms that must secure financing on market terms.

Beyond financial advantages, certain SOEs hold exclusive rights or monopolies, as seen in Thailand’s energy and transportation sectors.⁸ Private companies wishing to enter these markets face significant barriers or must operate under agreements with the SOEs,⁹ which limits genuine competition. This selective allocation of benefits is not a collection of isolated examples. Rather, it reflects systemic patterns in ASEAN economies, where government-driven favoritism often subverts market-based allocation of resources.¹⁰ This dynamic not only hurts consumers by reducing competition

³ See Antonio Capobianco & Hans Christiansen, *Competitive Neutrality and State-Owned Enterprises: Challenges and Policy Options* 5–7 (OECD Corporate Governance Working Papers No. 1, 2011).

⁴ See SENATE ECON. PLANNING OFF. (SEPO), A PROFILE OF SELECTED PHILIPPINE GOVERNMENT-OWNED AND -CONTROLLED CORPORATIONS (2006), at <https://legacy.senate.gov.ph/publications/A%20Profile%20of%20Selected%20GOCCs.pdf>. This SEPO report includes individual profiles of selected Philippine GOCCs.

⁵ GOVERNANCE COMMISSION FOR GOCCS (GCG), 2022 GCG NATIONAL REPORT 15 (2022), at <https://gcg.gov.ph/files/PR2pblX4z0yNgxUhYIYC.pdf>.

⁶ LE DUY BINH & DOAN HONG QUANG, WORLD BANK, ARE THERE PREFERENTIAL TREATMENTS TOWARDS STATE-OWNED ENTERPRISES: EVIDENCES FROM PRACTICE? 25 (2015).

⁷ *Id.* at 33.

⁸ Deunden Nikomborirak, *Chapter 6: SOE Reform in Thailand: Preparing for Free Trade Agreements*, in COMPREHENSIVE DEVELOPMENT STRATEGY TO MEET TPP 130, BANGKOK RESEARCH CTR. (BRC) RESEARCH REPORT NO. 15, (Daisuke Hiratsuka ed., 2017).

⁹ Thailand’s Transport Company Limited (commonly known as Bus Company Ltd.) has an exclusive right to operate inter-provincial bus transport. Private bus companies wishing to offer similar services must engage in contractual agreements with the SOE. *See id.*

¹⁰ Wisuttisak and Fong observe that, “while SOEs play a vital role in the economy of each [ASEAN] member state, the main challenge is that the dominance of SOEs creates barriers to market entry[.]” underscoring how entrenched state-affiliated firms prevent new competitors from accessing key sectors, Pornchai Wisuttisak & Cheong May Fong, *Competition Law, State-Owned Enterprises and Regional Market Integration in ASEAN*, in THE

and raising prices, but also curtails private sector growth and contradicts ASEAN's broader integration objectives. It stands in conflict with the ASEAN Economic Community ("AEC") Blueprint 2025's vision of a "level playing field" for all enterprises.¹¹

Governments may grant these privileges for various reasons: ensuring essential services, meeting industrial policy goals, or achieving employment targets.¹² Profitable SOEs can also serve as fiscal anchors, supporting national budgets. While these policy motivations may be legitimate, they often translate into SOEs dominating domestic markets due to state-granted privileges. The crux of the problem lies in balancing legitimate policy aims with the imperative of maintaining competitive conditions.

Current competition laws and guidelines, however, are not equipped to achieve this balance. Although AMSs have rules against abuse of monopoly power or dominance, these provisions presuppose that market power arises from private conduct and natural market processes, not from unilateral government action. This "underreach" means that when a favored entity receives government-bestowed benefits—such as subsidies, exclusive rights, or regulatory exemptions—their actions frequently evade legal scrutiny. The competition laws are not framed in terms that are effective at capturing such unilateral state measures. They concentrate on preventing cartels, regulating mergers, or sanctioning private abuses of dominance, leaving state-induced distortions beyond their grasp.

REGIONALIZATION OF COMPETITION LAW AND POLICY WITHIN THE ASEAN ECONOMIC COMMUNITY 131 (Burton Ong ed. 2018).

Complementing this, Krislert Samphantharak highlights that the "prevalence of SOEs [in Southeast Asia] often leads to inefficient resource allocation [...] due to unlevelled playing fields between state-owned and privately-held enterprises, forcing the more efficient private firms out of the market or incurring them with higher cost," and further notes that these "inefficient SOEs also crowd out resources that would otherwise be available to private firms, preventing the more-efficient private firms from being established or expanding." See Krislert Samphantharak, *State Owned Enterprises in Southeast Asia* 20 (2019) (Unpublished Manuscript, forthcoming in ECONOMIC DEVELOPMENT OF SOUTHEAST ASIA), at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3388390.

¹¹ ASEAN SECRETARIAT, ASEAN ECONOMIC COMMUNITY BLUEPRINT 2025 [hereinafter "ASEAN BLUEPRINT"] 12, ¶ 26 (2015), at <https://asean.org/book/asean-economic-community-blueprint-2025>.

¹² See OECD, STATE-OWNED ENTERPRISE GOVERNANCE: A STOCKTAKING OF GOVERNMENT RATIONALES FOR ENTERPRISE OWNERSHIP (2015), at <http://dx.doi.org/10.1787/9789264239944-en>.

The ASEAN Regional Guidelines on Competition Policy (“Regional Guidelines”)¹³ also fail to bridge this gap. Though designed to encourage policy harmonization and cooperation, they are non-binding and lack enforceability. The Regional Guidelines serve as a reference point rather than a regulatory instrument capable of compelling compliance or challenging state favoritism. Absent a legal basis to confront government actions that skew markets, the existing frameworks cannot prevent government favoritism from corroding the region’s competitive landscape.

This paper examines how both national laws and regional guidelines fall short in addressing these systemic problems. An analysis of legal provisions and specific instances where government-induced distortions escape enforcement reveal that current frameworks lack the necessary teeth. Without reforms that expand the scope of competition rules to include state-induced competitive distortions, underreach will persist. The conclusion is clear: competition laws and guidelines are not fully effective if they fail to encompass forms of anticompetitive behavior rooted in government favoritism.

Addressing this underreach is salient in meeting ASEAN’s regional integration and economic objectives. To ensure that all market participants compete on equal terms, the establishment of a competitive neutrality framework (“CNF”) emerges as a salient solution. Such a framework would define clear standards for state interventions and ensure that government support does not translate into unchecked competitive advantages for favored entities. By doing so, it would promote a more dynamic, integrated, and fair ASEAN economy. This paper thus lays the groundwork for exploring substantive rules, legal remedies, and institutional and procedural reforms that would bring government-led distortions within the scope of competition law.

II. UNDERREACH OF NATIONAL COMPETITION LAWS

As previously highlighted, national competition laws in AMSs are designed to promote competition and prevent anticompetitive practices. These laws, however, suffer from a fundamental underreach, which leaves significant gaps that restrict their effectiveness in regulating government

¹³ ASEAN SECRETARIAT, ASEAN REGIONAL GUIDELINES ON COMPETITION POLICY [hereinafter “REGIONAL GUIDELINES”] (2010), at <https://asean.org/book/asean-regional-guidelines-on-competition-policy>.

favoritism toward SOEs and PFPEs. The deficiencies stem from explicit exemptions for government actions, narrow definitions that exclude state entities,¹⁴ and limitations in the scope of general competition provisions.¹⁵ These limitations prevent national competition authorities (“NCAs”) from addressing anticompetitive behaviors resulting from unilateral government actions. As a result, when a favored entity receives state-conferred benefits—such as subsidies or exclusive rights—these measures frequently escape scrutiny because the law does not apply to this particular kind of behavior.

This section explores how explicit exemptions, narrow definitions, and the limited scope of general competition provisions lead to persistent gaps that shield government favoritism from effective challenge. It first

¹⁴ Indonesia’s Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, Law No. 5 Year 1999 (1999) (Indon.) [hereinafter “Indon. Competition Law”] defines a “business actor” broadly as “any individual or business entity,” Art. 1(5), but then carves out key government-mandated arrangements by exempting “actions and or agreements intended to implement applicable laws and regulations,” Art. 50(a). Article 51 of the same law further shields state-appointed monopolies by providing that “monopoly and or concentration of activities related to the production and or marketing of goods and or services affecting the livelihood of society at large and branches of production of a strategic nature for the state shall be stipulated in a law and shall be implemented by [SOEs] and or institutions formed or appointed by the Government.” *See also* Trade Competition Act of 2017, B.E. 2560 (2017), § 4 (Thai.) [hereinafter “Thai. Competition Law”].

¹⁵ Thailand’s Trade Competition Act, B.E. 2560 (2017) (Thai.) prohibits abuse of dominance (“A business operator shall not apply its dominant position in a market in any of the following ways”), § 50, and prohibits cartel conduct—such as price-fixing, output limitations, and market allocation (“No business operator shall undertake any conduct resulting in damage on other business operators [...] including fixing prices, limiting output, allocating markets, etc.”), §§ 54–55. However, any enterprise falling within the carve-outs of Section 4(2)—which exempts SOEs and public bodies acting under law or Cabinet resolution for public interest—or Section 4(4)—which excludes entities regulated by other sectoral competition laws—escapes both abuse-of-dominance and cartel scrutiny, since such entities are not treated as “business operators” under the Act.

In Singapore, paragraph 5 of the Third Schedule of the Competition Act 2004, Cap 50B, 2006 Rev. Ed. (2004) (Sing.) [hereinafter “Sing. Competition Law”] expressly exempts from its prohibitions against anticompetitive agreements and abuse of dominance provisions, §§ 34, 47, “any agreement or conduct which relates to any goods or services to the extent to which another written law, or code of practice issued under any written law, relating to competition gives another regulatory authority jurisdiction in the matter.” In practice, this creates a dual regulatory framework: sector-specific regulators—such as the Energy Market Authority for electricity and gas, and the Infocomm Media Development Authority for telecommunications and media—exercise primary competition oversight under their own legislative regimes, complete with tailored competition provisions, thereby excluding entities subject to those sectoral laws from the general Competition Act prohibitions.

examines why existing rules against cartels or mergers fail to capture unilateral interventions by the state. Abuse of dominance provisions offer a more conceptually appropriate tool for confronting state-conferred advantages, but they remain rooted in concepts of *private* anticompetitive conduct. The section also considers the absence of state aid control mechanisms at the national level and how this omission deprives NCAs of a proper legal basis to confront government favoritism. Finally, through a case study on Indonesia's SOE favoritism, the analysis demonstrates that current legal frameworks remain too narrowly focused on private agreements and transactions, leaving unilateral and state-driven distortions unaddressed.

A. Exclusion of Government Actions and Favoritism

Competition laws across AMSs generally profess to cover both private businesses and SOEs, and aspire to maintain a level playing field where every market participant faces uniform competitive standards. Singapore and the Philippines illustrate this principle by including SOEs in their statutory definitions of undertakings or entities engaged in commerce, as shown in the Philippine Competition Act¹⁶ and Singapore's Competition Act 2004.¹⁷ These laws declare that public ownership does not exempt an entity from prohibitions on cartels, abuses of dominance, or anticompetitive mergers.

Other AMSs, while similarly claiming to regulate SOEs on paper, deploy sector-specific laws or enforcement practices that reduce the degree of real scrutiny. Malaysia's Competition Act 2010 covers "any entity carrying on commercial activities,"¹⁸ but its enforcement record, largely administered by the Malaysia Competition Commission ("MyCC"), concentrates on private-sector violations.¹⁹ Meanwhile, Thailand's Trade Competition Act

¹⁶ Rep. Act. No. 10667 (2015), § 4(h) [hereinafter "Phil. Competition Act"].

¹⁷ As clarified in an OECD report, Singapore highlights that "the Competition Act expressly excludes the conduct of the Government or a statutory body as the purpose of competition law in Singapore is to regulate market players. While [SOEs] and [GLCs] play a significant role in Singapore's economy, they are not treated differently under the Competition Act from other companies that engage in commercial economic activities." See OECD, COMPETITION LAW AND STATE-OWNED ENTERPRISES 19 (2018), at [https://one.oecd.org/document/DAF/COMP/GF/WD\(2018\)57/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2018)57/en/pdf).

¹⁸ Competition Act 2010, Act 712 (2010), art. 2. (Malay.) [hereinafter "Malay. Competition Law"].

¹⁹ A review of infringement cases under Section 40 of the Competition Act 2010 (which covers the determination of infringement) reveals that since 2012—the year which the law was enforced—only one case has involved an SOE or GLC. See *Finding of Infringement under Section 40 of Competition Act 2010*, MALAY. COMPETITION COMM'N, at

B.E. 2560 explicitly exempts certain SOEs from the coverage of the law,²⁰ effectively placing them outside core competition prohibitions. Vietnam's Competition Law 2018 likewise covers "business organizations and individuals,"²¹ yet acknowledges that SOEs hold strategic roles in some sectors, resulting in more selective oversight.²² Indonesia's Law No. 5 of 1999 similarly encompasses "business actors," including SOEs,²³ but Article 51 of the same law recognizes state-backed monopolies that serve "the livelihood of society," leaving public enterprises in strategic fields insulated from rigorous antitrust challenges.²⁴

Taken together, these national laws reveal a common pattern: they formally extend competition provisions to SOEs, promising to regulate both private and public undertakings. In practice, however, carve-outs and sectoral frameworks soften or negate competition rules for SOEs that serve broad social aims, national security, or development targets. Governments often justify these carve-outs by citing the essential services or strategic roles that SOEs provide. Consequently, although most AMSs proclaim that SOEs and private entities share equal standing under competition law, legal or regulatory exemptions frequently permit SOEs to operate with diminished oversight or reporting obligations.

The next discussion explores how these built-in exemptions manifest in each jurisdiction, clarifying why many nominally inclusive competition laws underreach when addressing the competitive impact of SOEs or PFPEs.

1. Exemptions in National Competition Laws

National competition laws across ASEAN often contain exemptions that weaken their ability to regulate SOEs engaged in commercial or strategically significant activities. These exemptions can appear as outright exclusions for SOEs or allow governments to authorize monopolistic market

<https://www.myc.gov.my/case>. Moreover, Ramaiah observes that "[t]he [Competition Act] subjectively restricts and excludes application on some government linked enterprises." See Angayar Kanni Ramaiah, *The Competition Neutrality in Malaysia: Challenges and Policy Options*, 3 J. INT'L BUS., ECON. & ENTREPRENEURSHIP 45, 46 (2018).

²⁰ Thai. Competition Law, § 4(2).

²¹ Competition Law 2018, Law No. 23/2018/QH14 (2018), art. 2(1). (Viet.) [hereinafter "Viet. Competition Law"].

²² See e.g., art. 8(1)(a).

²³ Indon. Competition Law, art. 1(5).

²⁴ Art. 51.

structures under the guise of protecting security, public welfare, or economic development. Table 1 below summarizes these exemptions and highlights their potential impact on competition. It shows how Indonesia, Malaysia, Thailand, and Singapore embed distinct exclusions for SOEs in their respective legal regimes, along with the resulting competitive implications.

Table 1. National SOE Exemptions and Their Competitive Implications (Selected AMSs)

| Jurisdiction | Governing Law | Exemption for SOEs | Competitive Implication |
|---------------------|---|---|---|
| Indonesia | Competition Law (Law No. 5 of 1999). Articles 50 and 51 exclude “actions and or agreements intended to implement applicable laws.” Law No. 19 of 2003 on State-owned Enterprises. | SOEs operating under a distinct legal mandate or specific government assignment remain beyond competition scrutiny. Monopolies in “strategic” sectors (fuel distribution, electricity) face no requirement to demonstrate minimal market distortion. | These legal authorizations permit SOEs to hold exclusive privileges in sectors deemed vital. Private entrants struggle to penetrate protected markets, limiting innovation and consumer choice. |
| Malaysia | Competition Act 2010 (Act 712). Section 3(3) excludes activities under sectoral laws (e.g., Communications and Multimedia Act 1998, Energy Commission Act, etc.). | SOEs in telecommunications, energy, or aviation may be exempted from the Act’s application. Sector regulators often balance multiple objectives (development, universal service) rather than focus on strict competitive neutrality. | Enforcement fragmentation arises; the MyCC cannot intervene in industries policed by specialized bodies. SOEs backed by statutory privileges face less risk of antitrust scrutiny, affecting market levelness. |
| Thailand | Trade Competition Act of 2017 (B.E. 2560). Section 4 exempts | SOEs can hold legal monopolies in “public utility” or “essential” sectors. Government can | SOEs shielded by Cabinet resolutions or other legal mandates may dominate key |

| Jurisdiction | Governing Law | Exemption for SOEs | Competitive Implication |
|------------------|---|--|--|
| | government entities and SOEs conducting tasks designated for national security, public welfare, or essential utilities. | justify broad SOE privileges without referencing competitive effects. | markets. Private providers face high entry barriers, potentially raising consumer prices and reducing overall efficiency. |
| Singapore | Competition Act (Cap. 50B, 2006 Rev Ed). Section 33(4) excludes activities under another regulatory authority's jurisdiction. The Third Schedule exempts services of general economic interest. | SOEs or GLCs subject to sectoral oversight (e.g., energy, telecom) may not follow general competition provisions. Undertakings with "general economic interest" or "revenue-producing monopoly" may be immune from standard antitrust rules. | A "dual regulatory framework" limits the Competition and Consumer Commission of Singapore's involvement. SOEs can maintain exclusive positions with minimal competition checks, leaving private firms at a disadvantage. |

Indonesia's Law No. 5 of 1999 offers an instructive example. It lays down general prohibitions against "monopolistic practices and unfair business competition,"²⁵ yet it carves out broad exemptions for activities carried out under applicable laws and regulations. An SOE that operates under a distinct government mandate or special legislation can thus remain exempt from competition law oversight, even if its conduct is patently anticompetitive. The key provisions are Articles 50 and 51, whose language grants wide latitude to the government. Article 50 excludes "actions and or agreements aimed at implementing applicable laws and regulations,"²⁶ and Article 51 authorizes "monopoly and or concentration of activities related to the production and or marketing of goods and or services affecting the livelihood of society at large,"²⁷ if such monopolies are defined by law and entrusted to SOEs. The combined effect is that any sector designated as vital to public welfare or national development may be placed under an SOE's exclusive control without running afoul of competition prohibitions.

²⁵ See Indon. Competition Law, ch. III to V.

²⁶ Art. 50.

²⁷ Art. 51.

Ari Siswanto and Marihot Janpieter Hutajulu contend that Articles 50 to 51 elevate formal legality over competitive impact, allowing an SOE to invoke its enabling statute as a complete defense even when the resulting market power would otherwise offend ordinary competition principles.²⁸ Their critique underscores how SOEs can lawfully suppress competition, erect barriers to entry, and insulate themselves from challenge under the formal justification of a public mission. Since Indonesian authorities frequently situate public service obligations within or around SOEs, these entities function as legally protected monopolists in key sectors such as electricity and fuel distribution. Although certain monopolies may serve strategic objectives, the inability of the Indonesian Competition Commission (Komisi Pengawas Persaingan Usaha, or “KPPU”) to review or dismantle them hinders the broader goal of fostering market competition. Legal formalities overshadow substantive economic impact, thereby discouraging private entrants and limiting consumer choice.

Malaysia’s Competition Act applies to a variety of commercial activities but also introduces notable exclusions that narrow its scope in sectors overseen by specific regulatory statutes. Section 3(3) bars the Act from applying to commercial activities governed by the laws listed in its First Schedule—the Communications and Multimedia Act of 1998,²⁹ the Energy Commission Act,³⁰ the Petroleum Development Act of 1974,³¹ and the Malaysian Aviation Commission Act of 2015.³² Each law empowers a sectoral regulator to control competition within its domain. The Malaysian Communications and Multimedia Commission (“MCMC”), for example, assumes responsibility for competition issues in the telecommunications and multimedia industries, including any involvement by state-linked operators such as Telekom Malaysia Berhad (“TMB”). This approach means that TMB, an SOE, is under the jurisdiction of MCMC instead of the competition authority MyCC. Because MCMC’s mandate extends to fostering industry development and regulating market structure, it might not emphasize purely competition-driven principles as robustly as a dedicated competition authority would.

Angayar Kanni Ramaiah posits that this fragmentation weakens the overall competition regime by allowing large SOEs or PFPEs to benefit from

²⁸ See Ari Siswanto & Marihot Janpieter Hutajulu, *State-Owned Enterprises (SOEs) in Indonesia’s Competition Law and Practice*, 8 YUSTISIA 94, 105 (2019).

²⁹ Act 588 (1998), *as amended* (Malay.).

³⁰ Act 610 (2001) (Malay.).

³¹ Act 144 (1974), *as amended* (Malay.).

³² Act 771 (2015) (Malay.).

specialized regulation that may not be as vigilant in checking anticompetitive behavior.³³ Furthermore, certain industries such as gas, energy, aviation are outside the Competition Act's direct scope, relying on their own regulatory bodies. This arrangement allows dominant SOEs to operate under frameworks where regulators must juggle multiple goals, from universal service obligations to consumer protection, rather than zero in on competitive neutrality. The outcome is a potential patchwork of regulatory approaches that hamper MyCC's capacity to address market-distorting practices by SOEs. Private competitors in these industries lack a single enforcement avenue to challenge anticompetitive conduct. Although sectoral regulators often have partial competition oversight, their rules can diverge from the Act's uniform standards, leaving enforcement inconsistent and, in some cases, minimal.

Similarly, Thailand's Trade Competition Act exempts certain government actors. Section 4 of the law lists central or local administrations, SOEs, and government agencies from competition coverage when their undertakings follow Cabinet resolutions or other legal mandates aimed at national security, the public interest, or essential public utilities.³⁴ This language allows an SOE that generates electricity, distributes fuel, or provides other important services to remain outside the Act's ambit if the Cabinet deems the activity necessary for society at large. The broad references to public welfare and security can lead to expansive interpretations, giving an SOE latitude to operate as a legal monopoly in strategic areas without incurring legal scrutiny for potential abuses of dominance. Thailand's system also exempts "businesses that are specifically regulated under other sectoral laws having jurisdiction over competition matters,"³⁵ reinforcing a dual regulatory approach that leaves entire sectors under specialized frameworks.

Pornchai Wisuttisak and Cheong May Fong argue that SOEs in essential fields, such as energy, can exploit these exemptions to secure privileges that stifle private entrants or hamper expansion by smaller local operators.³⁶ The government can issue licenses or set regulatory criteria that favor the incumbent SOE, trusting that the competition authority lacks

³³ See Angayar Kanni Ramaiah, *The Competition Neutrality in Malaysia: Challenges and Policy Options*, 3 J. INT'L BUS., ECON. AND ENTREPRENEURSHIP 45, 50 (2018).

³⁴ Thai. Competition Act, § 4.

³⁵ § 4(4).

³⁶ Pornchai Wisuttisak & Cheong May Fong, *Competition Law, State-Owned Enterprises and Regional Market Integration in ASEAN*, in THE REGIONALIZATION OF COMPETITION LAW AND POLICY WITHIN THE ASEAN ECONOMIC COMMUNITY 20 (Burton Ong ed., 2018).

jurisdiction to intervene. Such an environment promotes potential inefficiencies and can lead to inflated consumer prices, not to mention weaker incentives for innovation. Hence, the Thai legal landscape accommodates broad allowances for state-driven market control, where the largest operators enjoy near immunity from trade competition enforcement.

Singapore's Competition Act appears more comprehensive, yet it still contains explicit exclusions that minimize the law's impact on state-affiliated sectors. Section 33(2) preserves concurrent jurisdiction, but Section 33(4) withdraws the Sections 34 and 47 prohibitions from "any activity or agreement" of the government, a statutory body, or its agent unless a ministerial order re-engages them.³⁷ This approach underpins Singapore's "dual regulatory framework," where the Energy Market Authority ("EMA")³⁸ oversees electricity and gas, and the Infocomm Media Development Authority ("IMDA")³⁹ handles telecommunications and media. Each authority shapes policy with its own set of goals, which can sometimes marginalize competition concerns in favor of broader objectives like service reliability, digital transformation, or innovative growth. Although the Competition and Consumer Commission of Singapore ("CCCS") can

³⁷ Singapore adopts concurrent rather than exclusive jurisdiction, yet the statutory design still places significant state-linked activity beyond the reach of Part III's general prohibitions in Competition Act 2004. Section 33(2) affirms that the CCCS and a sector regulator may exercise parallel powers, but Section 33(4) exempts any government, statutory-body, or agent conduct from Sections 34 and 47 unless a ministerial order reinstates coverage. The Third Schedule reinforces the perimeter: Paragraph 1 excuses undertakings that provide "services of general economic interest or having the character of a revenue-producing monopoly" where full application of Sections 34 or 47 would obstruct the public mission, and Paragraph 5 removes conduct already governed by specialist statutes. Read together with the Energy Market Authority Act 2001 and the Infocomm Media Development Authority Act 2016, these clauses allow government-linked utilities and telecom operators to cite statutory duties of reliability or universal service to resist CCCS scrutiny, leaving residual enforcement uncertain.

³⁸ Energy Market Authority of Singapore Act 2001, Cap 92B (2001) (Sing.) [hereinafter "EMA Act"]. Under the EMA Act, the EMA regulates Singapore's electricity and gas sectors by establishing competitive market frameworks and preventing the misuse of monopoly power (EMA Act, § 6). The EMA enforces competition laws, oversees licensing, and sets industry standards to ensure fair and efficient market conduct (EMA Act, §§ 6–7).

³⁹ Info-communications Media Development Authority Act 2016, Act 22 (2016) (Sing.) [hereinafter "IMDA Act"]. Under the IMDA Act, the IMDA oversees the telecommunications and media industries by promoting fair competition, issuing and monitoring codes of practice, and preventing anti-competitive agreements and abuses of dominant positions (IMDA Act, §§ 5–6, 62–63).

coordinate with these regulators,⁴⁰ the dual framework may nevertheless lead to uneven oversight.

The Third Schedule similarly exempts undertakings operating as “services of general economic interest or having the character of a revenue-producing monopoly,”⁴¹ insofar as applying competition law would obstruct the tasks entrusted by the state. That exemption is intended to facilitate public services in vital sectors—telecommunications infrastructure, for instance—while acknowledging the need for consistent coverage or universal access. Though such an approach may serve legitimate aims, it creates legal space for certain SOEs to remain outside the CCCS’s direct scrutiny. The risk is that some undertakings, whether wholly state-owned or partially so, may rely on statutory privileges to stifle competition and maintain dominant market positions.

When viewed collectively, these jurisdiction-specific exemptions emphasize a core challenge: AMSs systematically permit SOEs to bypass competition laws on statutory grounds linked to national security, public welfare, or sectoral regulation. This practice arises through broad legal definitions, indefinite references to “applicable laws,” or sectoral frameworks that displace the national competition authority’s oversight. A functional comparison reveals that while some systems, such as Malaysia’s, place entire sectors in the care of specialized regulators, others, including Indonesia’s, rely on sweeping legal authorizations that prioritize formal mandates over economic impacts. Thailand’s method categorizes SOEs involved in “essential” or “public utility” services as exempt from the law. Singapore relies on a dual-regulator strategy, granting near-exclusive authority to specialized agencies rather than a dedicated competition commission.

In each instance, the result is the same: an SOE may assume a dominant market position or operate as a monopoly without risking legal challenges to its unilateral power. Officials maintain the discretion to declare certain activities vital, placing them beyond the direct scope of competition enforcement. This capacity to exclude or exempt activities promotes an environment where SOEs can impose barriers, manipulate pricing, or engage in other anticompetitive actions under a public-interest veneer. The typical justification is that these SOEs deliver essential services, preserve strategic resources, or promote industrial policies aligned with national development.

⁴⁰ *Frequently Asked Questions*, COMPETITION & CONSUMER COMM’N OF SING., at <https://www.ccs.gov.sg/faq/competition-act-and-government-agencies>.

⁴¹ Sing. Competition Law, Third Schedule, ¶ 1.

While such arguments carry weight in many contexts, the lack of scrutiny or accountability for the resulting market imbalances remains problematic.

A question thus arises about the broader objective of competition policy in ASEAN: to what extent do AMSs desire uniform enforcement that includes or restricts state-led economic interventions? The widespread presence of exemptions suggests that many governments seek to preserve the ability to direct markets through publicly owned enterprises. Some governments rely on SOEs for fiscal stability, as sources of revenue, or to implement social and developmental policies. The partial or total immunity that these firms receive for potentially anticompetitive conduct can be rationalized on the grounds of national security or societal needs. From a purely competitive standpoint, it creates a mismatch between competition principles and the reality of state intervention, contributing to the underreach that critics have noted.

The ramifications for private competitors can be significant. Where an SOE can leverage regulatory advantages, it may undercut potential rivals or stave off new market entrants.⁴² The dynamic may be especially acute in network industries such as telecommunications, energy, or transportation, which often require large capital inputs or rely on government concessions to function at scale.⁴³ A private firm cannot surmount these hurdles if the

⁴² See Matthew Rennie & Fiona Lindsay, *Competitive Neutrality and State-Owned Enterprises in Australia: Review of Practices and their Relevance for Other Countries* 30 (OECD Corporate Governance Working Papers No. 4, 2011). This illustrates precisely how an SOE can exploit regulatory advantages to disadvantage its competitors: Rennie and Lindsay referenced the case investigated by the Australian Government Competitive Neutrality Complaints Office (AGCNCO), an office operating within the Productivity Commission and responsible for handling competitive neutrality complaints. See also COMMONWEALTH COMPETITIVE NEUTRALITY COMPLAINTS OFFICE, CUSTOMS TREATMENT OF AUSTRALIA POST, INVESTIGATION NO. 5 (2000). In the said case, Australia Post, an Australian government-owned corporation that provides postal services throughout Australia, was subject to a higher customs-screening threshold than private couriers, allowing it to bypass formal inspections that slowed down rivals. AGCNCO deemed this unequal treatment unjustified, and legislation was swiftly amended to harmonize the thresholds, thus removing the SOE's unfair edge and preserving fair market entry conditions.

⁴³ Network industries are characterized by extremely high upfront costs of infrastructure, and often depend on government-granted concessions like rights-of-way or exclusive licenses. See Rodrigo Rios Dordelly & Claudia Georgina Brambilla Ramírez, *Concession*, CONCURRENCES, at <https://www.concurrences.com/en/dictionary/concession-86056>.

As the International Monetary Fund (IMF) explains, “the initial cost of building the infrastructure to provide the good or service [...] is so large that private firms may be reluctant to enter the market.” See INT’L MONETARY FUND (IMF), FISCAL MONITOR: POLICIES TO SUPPORT PEOPLE DURING THE COVID-19 PANDEMIC 51–52 (2020). Even when

state endows the SOE with preferential access to rights-of-way, licensing exemptions, or capital injections.⁴⁴ As a consequence, consumer welfare may suffer through reduced innovation, fewer service offerings, or inflated prices. Some commentators also point to intangible harms such as decreased transparency,⁴⁵ since the public often lacks insight into the rationale behind awarding certain privileges to SOEs or the full cost to taxpayers.

In sum, the legal exemptions for SOEs in Indonesia, Malaysia, Thailand, and Singapore illustrate the interplay between competition objectives and broader policy considerations. Each AMS provides ways for SOEs to claim immunity from standard competition law enforcement on grounds that range from public interest to specialized industry regulation. These rules supply a legal façade that can mask market distortions. Equally concerning, they erode the deterrent role that competition authorities ordinarily play in preventing anticompetitive tactics. Through these exemptions, governments are free to shield chosen operators from scrutiny, which diminishes the NCAs' authority to investigate or remediate abuses of market dominance. The net result is a pattern repeated across AMSs, where competition statutes stand in tension with public ownership or preferential laws, culminating in an enforcement gap for state-favored or state-run operations.

B. Underreach of General Competition Provisions

The establishment of an ASEAN CNF requires examining existing competition laws to determine their applicability to state actions favoring certain enterprises. The analysis in this subsection reveals that merger and

private concessions are awarded, they may fail due to tariff disagreements and political interference, as showed by the collapse of Mali's water and electricity concession (*see id.*, at 53–54). State-owned enterprises in these sectors also routinely require costly support: for instance, Italy's national airline has operated under bankruptcy protection with substantial government loans and transfers (*see id.*, at 58–59). Protective measures for SOEs in network industries are thus widespread (*see* Capobianco & Christiansen, *supra* note 3, at 8), and fully private provision remains exceptional, which underscores the regulatory hurdles that deter private-sector entry and expansion.

⁴⁴ For a comprehensive analysis of the competitive advantages conferred upon SOEs by privileges and immunities unavailable to their private-sector counterparts, *see* Capobianco & Christiansen, *supra* note 3, at 5–7.

⁴⁵ *See* OECD, TRANSPARENCY FRAMEWORKS FOR STATE-OWNED ENTERPRISES IN ASIA 29 (2020) at <http://www.oecd.org/corporate/transparency-frameworks-soes-asia-2020.htm>. *See also* OECD, OECD COMPETITIVE NEUTRALITY REVIEWS: SMALL-PACKAGE DELIVERY SERVICES IN MALAYSIA 27 (2021), at <https://www.oecd.org/competition/fostering-competition-in-asean.htm>.

cartel rules fall short, as they are primarily designed to address private agreements and transactions rather than unilateral government measures. They fail to capture the complex reality of a state conferring advantages upon an SOE absent any formal agreement among competitors. By contrast, abuse of dominance provisions, which prohibit dominant firms from exploiting or entrenching their market power, present a more suitable legal basis for confronting the distortions wrought by government favoritism. These rules, grounded in the principle that competition should not be unfairly restricted by actors wielding disproportionate influence, offer a channel through which to address the core competitive imbalances arising from state-sponsored advantages enjoyed by SOEs and PFPEs.

1. Inapplicability of Merger Rules

Merger control regulations aim to prevent harmful market concentrations that emerge when once-independent enterprises combine. They serve to block deals that could create or strengthen a dominant position and thereby weaken competition. Section 23 of Brunei Darussalam's Competition Act of 2015 explicitly bars mergers that cause a "substantial lessening of competition" in any goods or services market.⁴⁶ That provision defines a merger as the union of two or more previously independent undertakings; the acquisition of direct or indirect control over another entity; or the purchase of substantial assets that allow one undertaking to replace or substantially replicate another's activities.⁴⁷

Vietnam's Competition Law adopts a similar stance. Article 30 of the law prohibits economic concentrations—such as mergers, consolidations, acquisitions, joint ventures, or similar arrangements—that result in or risk producing a significant restriction of competition in the Vietnamese market.⁴⁸ The law establishes thresholds, including market share and total assets, to determine when a transaction merits review by the competition authority.⁴⁹ The central concern is the structural shift in the market when separate entities merge, potentially creating a dominant position that erodes competition.

In the scenario where a government grants favorable treatment to an SOE, these merger provisions generally do not apply because no separate

⁴⁶ Competition Act of 2015 of Brunei, Competition Order, S 1/2015 (2015), § 23(1) (Brunei) [hereinafter "Brunei Competition Law"].

⁴⁷ § 23(2).

⁴⁸ Viet. Competition Law, art. 30.

⁴⁹ Art. 33(2).

enterprises are combining their ownership or control. The SOE's position improves through unilateral government actions, not through a structural consolidation. Merger laws target transactions in which two or more independent entities integrate their assets, voting rights, or activities so substantially that they could alter market conditions. If there is no transaction—no acquisition or joint venture creation—merger rules in Section 23 of Brunei Darussalam's Competition Act or Article 30 of Vietnam's Competition Law remain dormant. The SOE's advantage stems instead from subsidies, legal exemptions, or exclusive rights conferred by the state, which do not trigger the thresholds for merger notification.⁵⁰

A potential complication arises if the SOE, already exempt from competition rules, acquires a private firm. This acquisition constitutes a transactional event, and it could be caught under existing merger provisions because one undertaking takes over another's assets or operations, possibly raising market share or dominance concerns. In that situation, the SOE cannot cloak the entire merged entity under its prior exemption without scrutiny. NCAs would examine whether the acquisition meets the legal criteria for notification and assessment. If the combined operation substantially lessens competition or results in a transfer of market power, competition law applies. Thus, while unilateral state favors alone do not trigger merger control, a subsequent takeover by an SOE might, because it changes the structural balance of the market and fits the definition of a concentration.⁵¹ In that scenario, the NCA could review the deal, require

⁵⁰ For instance, a "merger situation" is strictly limited to combinations of previously independent undertakings or asset transfers that "substantially replace" a business, and notification depends on achieving defined market-share or turnover benchmarks, Sing. Competition Law, § 54(2), (e.g., a post-merger share of "40 percent or more," see Competition and Consumer Comm'n of Sing. (CCCS) Guidelines, ¶ 6.8); or turnover in Singapore exceeding SGD 5 million or combined worldwide turnover exceeding SGD 50 million, see CCCS Guidelines, ¶ 3.5. Similarly, the Philippine Competition Act likewise requires notification only when both the ultimate parent entity's aggregate annual gross revenues or Philippine-based assets "exceed PHP 7.8 billion" and the transaction value "exceeds PHP 3.2 billion," see *Issuances on Thresholds*, PHIL. COMPETITION COMM'N WEBSITE, at <https://www.phcc.gov.ph/mergers-and-acquisitions/computing-merger-thresholds>. Because these regimes focus exclusively on defined merger events and quantitative revenue or transaction tests, unilateral state measures—such as subsidies, legal exemptions, or exclusive rights conferred on an SOE—do not contribute to meeting any notification threshold and thus escape merger-control review.

⁵¹ Many competition laws apply uniformly to both public and private entities, mandating pre-closing notification whenever parties exceed defined thresholds. As the OECD notes, these laws "are typically drafted for general application, and do not frequently have specific provisions to review merger transactions involving a SOE," yet "many competition laws require the pre-closing notification of mergers where the parties to the

conditions, or even block the merger if the new entity's exemption-based advantages pose serious threats to competition.

Merger rules are designed to address structural changes in the market that occur through the consolidation of enterprises. They require a transactional event where two or more independent entities decide to combine their operations, assets, or ownership structures.⁵² This combination must be substantial enough to potentially affect market competition,⁵³ triggering legal thresholds that mandate notification to, and possible approval from, NCAs. In this case, the SOE's strengthened position results not from a consolidation but from state intervention. The government's actions do not involve a change in ownership or control that would meet the definitions outlined in Section 23 of Brunei Darussalam's Competition Act or Article 30 of Vietnam's Competition Law. There is no acquisition of assets or voting rights from another enterprise, no joint venture formation, and no amalgamation of business activities that would constitute an economic concentration. Therefore, the legal thresholds and notification requirements embedded in merger regulations remain untriggered. NCAs have no transactional event to assess under merger control provisions. The SOE's advantage does not stem from market consolidation but from policy decisions made by the government, which fall outside the purview of merger control laws.

transaction are sufficiently large so as to surpass a threshold contained in the law." See OECD, COMPETITION LAW AND STATE-OWNED ENTERPRISES 3, ¶¶ 3, 5, DAF/COMP/GF/WD(2018)73 (2018). The European Commission's *Notice on the Concept of Undertakings Concerned under Council Regulation (EEC), 1998 O.J. (C 66), 15, 22*, further confirms that a genuine change in control—regardless of state ownership—constitutes a "concentration" under Article 3 of the Regulation. Specifically, "a merger or acquisition of control arising between two companies owned by the same State may constitute a concentration and, if so, both of them will qualify as undertakings concerned." *Id.* at 23, since mere common ownership does not create a single economic unit. Recital 12 of the Regulation reinforces this by requiring that, in the public sector, "calculation of the turnover of an undertaking concerned in a concentration needs [...] to take account of undertakings making up an economic unit with an independent power of decision, irrespective of the way in which their capital is held," *Id.* at 22. By analogy, when an SOE already enjoying statutory privileges acquires a private firm, that acquisition is treated as a distinct control-changing transaction fitting the definition of concentration and thus triggers the full merger-control review regime.

⁵² See Emilie Feldman & Exequiel Hernandez, *Synergy in Mergers and Acquisitions: Typology, Lifecycles, and Value*, 47(4) ACAD. MGMT. REV. 549 (2022), at https://faculty.wharton.upenn.edu/wp-content/uploads/2016/11/Synergy-in-Mergers_FeldmanHernandez.pdf.

⁵³ In the Philippines, "merger or acquisition agreements that substantially prevent, restrict or lessen competition [...] shall be prohibited" (Phil. Competition Act, § 20). Similarly, in Singapore, "mergers that have resulted, or may be expected to result, in a substantial lessening of competition [...] are prohibited (Sing. Competition Law, § 54).

This gap thus highlights a limitation within merger regulations: they are not equipped to address anticompetitive effects arising from unilateral government actions that favor certain enterprises. The laws are transaction-specific and do not extend to scrutinizing the competitive impact of state-conferred benefits unless those benefits are part of a merger or acquisition process. Consequently, the merger control framework cannot remedy the distortions in competition caused by the government's preferential treatment of an SOE.

2. Inapplicability of Cartel Rules

Cartel regulations remain a cornerstone of competition law, intended to combat collusive practices that undermine the integrity of market competition. These provisions target agreements among independent rivals that restrict trade or manipulate market conditions. Such agreements may involve price-fixing, market division, output restrictions, or bid-rigging.⁵⁴ Their essence lies in coordinated behavior among competitors, harming both consumers and other market participants.⁵⁵

Consider Indonesia's competition law—Article 11 explicitly prohibits price-fixing agreements between business actors. It states that:

Business actors shall be prohibited from entering into agreements with their competing business actors, with the intention of influencing prices by arranging production and or marketing of certain goods and or services, which may result in monopolistic practices and or unfair business competition.⁵⁶

The law defines “business actors” as individuals or entities that are either established and domiciled, or conducting economic activities, in Indonesia.⁵⁷

The important element in cartel provisions is the existence of an agreement between two or more independent business actors operating at

⁵⁴ See AUSTL. COMPETITION & CONSUMER COMM'N, CARTELS DETERRENCE AND DETECTION: A GUIDE FOR GOVERNMENT PROCUREMENT PROFESSIONALS 4 (2019).

⁵⁵ COMPETITION & CONSUMER COMM'N OF SING. (“CCCS”), GUIDELINES ON LENIENT TREATMENT FOR UNDERTAKINGS COMING FORWARD WITH INFORMATION ON CARTEL ACTIVITY 173 (2016).

⁵⁶ Indon. Competition Law, art. 11.

⁵⁷ Art. 1(5).

the same level of the market—that is, competitors.⁵⁸ These agreements are deliberate and reciprocal,⁵⁹ which reflect a mutual understanding to coordinate behavior for mutual benefit at the expense of competition. The legal prohibition targets this collusion because it replaces the uncertainty of competition with coordinated action, consequently leading to higher prices, reduced output, or diminished innovation.⁶⁰

In the context of a government granting favorable treatment to an SOE, the dynamics differ fundamentally from those addressed by cartel rules. The relationship between the government and the SOE lacks the mutual and voluntary agreement characteristic of cartel conduct. Cartel rules typically address agreements between independent competitors who collaborate to restrict competition through practices like price-fixing or market allocation. In contrast, when a government unilaterally confers advantages upon an SOE—such as subsidies, regulatory exemptions, or exclusive rights—it is not entering into a consensus with the SOE to manipulate market conditions jointly. The SOE, while being a business actor, receives these benefits as part of the government’s policy decisions but does not engage in a reciprocal arrangement with the government to restrict competition.

Cartel rules are concerned with horizontal agreements among competitors who, by virtue of their independent decision-making, choose to collude rather than compete.⁶¹ The legal provisions aim to deter and punish such collusion because it subverts the competitive process. In the case of government favoritism toward an SOE, there is no horizontal agreement. The SOE may benefit competitively from the government’s actions, but it does not collude with other market participants to restrict competition. Furthermore, even if the SOE were to agree with the government on certain terms, the nature of the government’s role transforms the analysis. The government’s actions are rooted in public policy decisions, not commercial agreements. The SOE’s acceptance of government conferred benefits does not equate to an agreement among competitors under cartel rules. There is

⁵⁸ Niamh Dunne, *Characterizing Hard Core Cartels Under Article 101 TFEU*, 65 ANTITRUST BULL. 376, 383 (2020).

⁵⁹ *Id.* at 385.

⁶⁰ See Hyo Kang, *Price-Fixing Cartels and Firm Innovation* (USC Marshall School of Business Research Paper, 2024 rev.), at <https://ssrn.com/abstract=3516974>.

⁶¹ For a thorough discussion of how cartels work, see Margaret Levenstein & Valerie Suslow, *Cartels and Collusion: Empirical Evidence*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ANTITRUST ECONOMICS* 450 (Roger Blair & Daniel Sokol eds. 2015).

no meeting of independent economic wills aiming to distort competition through coordinated conduct.⁶²

A different legal analysis arises if the favored SOE colludes with a private company to fix prices or allocate markets. In that event, cartel law would apply because there is now a horizontal alliance among distinct business actors, each acting as an independent competitor, coming together to manipulate competitive conditions. The mere fact that the SOE enjoys government conferred advantages does not immunize it from liability under cartel rules. NCAs, in such a scenario, would evaluate whether the SOE and the private firm have engaged in price-fixing, market partition, or other collusive practices. If so, then these behaviors fall squarely within the prohibitions against cartel arrangements. While unilateral favoritism by the state remains outside the scope of cartel provisions, any subsequent collaboration between the SOE and a private entity aimed at reducing competition triggers the usual legal tests for collusion.

Malaysia's Competition Act reinforces a similar interpretation. Article 4 prohibits horizontal agreements with "the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services."⁶³ An "enterprise" is defined under the law as any "entity carrying on commercial activities relating to goods or services,"⁶⁴ thereby excluding the government when it is not engaged in commercial activities. Singapore's Competition Act likewise excludes individuals or entities not involved in economic activity from its definition of "undertaking."⁶⁵ Article 34 prohibits "undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition."⁶⁶ As with Malaysia, sovereign government actions fall outside the definition of market participation under this framework.

Therefore, applying cartel rules to the government's favorable treatment of an SOE is legally untenable. Establishing a cartel offense typically requires several foundational elements as outlined in a European Commission's issuance:

⁶² See Caron Beaton-Wells & Brent Fisse, *The Cartel Offenses: An Elemental Pathology* 30 (U. Melb. Leg. Stud. Research Paper No. 414, 2009), at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1433608.

⁶³ Malay. Competition Law, art. 4(1).

⁶⁴ Art. 2.

⁶⁵ Sing. Competition Law, art. 2.

⁶⁶ Art. 34.

Cartels are agreements and/or concerted practices between two or more competitors aimed at coordinating their competitive behavior on the market and/or influencing the relevant parameters of competition through practices such as the fixing of purchase or selling prices or other trading conditions, the allocation of production or sales quotas, the sharing of markets including bid-rigging, restrictions of imports or exports and/or anti-competitive actions against other competitors.⁶⁷

In the scenario of government-conferred advantages, these essential criteria remain unfulfilled. The government does not act as a participant colluding with competitors; rather, it operates as a regulator and policy-maker, unilaterally granting benefits without engaging in a collusive arrangement. Without these foundational elements, the government's preferential treatment of an SOE cannot be characterized as a cartel offense.

The above analysis thus shows the fundamental shortcomings of cartel rules in addressing competitive distortions rooted in unilateral government actions. Cartel laws are designed to combat collusion among independent undertakings, not unilateral policies bestowing benefits on favored SOEs. Without the essential elements of a collusive agreement, invoking cartel provisions to challenge state-led distortions is both legally unsound and functionally ineffective. In the absence of collusion, these rules cannot restore competitive balance where favoritism entrenches the dominance of certain enterprises. Ultimately, cartel provisions offer no meaningful avenue for correcting the deeper structural imbalances caused by government favoritism.

3. Applicability of Abuse of Dominance Rules

Abuse of dominance provisions are better suited to addressing competitive distortions caused by government favoritism toward SOEs, but they still rely on concepts rooted in private conduct. These rules prohibit dominant firms from exploiting their market power in ways that harm competition and consumer welfare, such as by entrenching their dominance or unfairly excluding rivals.

Article 47 of Singapore's Competition Act explicitly prohibits any undertaking with market dominance from abusing its position in ways that

⁶⁷ *Commission Notice on Immunity from Fines and Reduction of Fines in Cartel Cases*, 2006 O.J. (C 298) 17, ¶ 1.

harm competition. In determining whether an undertaking is dominant, the CCCS considers the extent to which “dominant undertakings may either block rivals from competing against it or stop rivals from entering the market.”⁶⁸ Dominant firms are barred from engaging in conduct that unfairly restricts competition, such as predatory pricing, production limits, or imposing discriminatory terms on trading partners. Similarly, Section 15 of the Philippine Competition Act prohibits entities in a dominant position from engaging in conduct that substantially prevent, restrict, or lessen competition. The law lists specific behaviors that may constitute abuse, including predatory pricing, obstructing entry, or subjecting competitors to disadvantageous terms.⁶⁹ Dominance is assessed based on factors such as market share, existence of barriers to entry, existence and power of existing competitors, and competitors’ access to inputs, among others.⁷⁰

An SOE that receives favorable treatment from the government may achieve or strengthen a dominant position in its market.⁷¹ This dominance can result from exclusive rights granted by the state, substantial subsidies, or regulatory advantages unavailable to private competitors. These state-conferred benefits can elevate the SOE’s market power beyond what it would attain under normal competitive conditions. If the SOE leverages that dominance to engage in exclusionary or exploitative tactics, it risks violating abuse of dominance provisions. One illustration is predatory pricing, where goods or services are sold at below cost to eliminate competitors. Numerous competition statutes address predatory pricing specifically, because it can eradicate rivals before allowing the dominant firm to raise prices to regain losses.⁷²

Another example is the refusal to supply essential facilities. If the SOE controls infrastructure or inputs essential for competitors to operate—such as access to a port, network, or resource—and unjustifiably refuses to

⁶⁸ *How do I Recognize an Abuse of Dominance?*, COMPETITION & CONSUMER COMM’N OF SING. WEBSITE, May 7, 2025, at <https://www.cccs.gov.sg/anti-competitive-behaviour/abuse-of-dominance/how-do-i-recognise>.

⁶⁹ Phil. Competition Act, §§ 15(a)–(i).

⁷⁰ PHIL. COMPETITION COMM’N, ON ABUSE OF DOMINANT POSITION 3, at <https://www.phcc.gov.ph/file-manager/1/Anti-Competitive%20Behavior/PCC-MODULE-4-1.pdf>.

⁷¹ OECD, COMPETITION LAW AND STATE-OWNED ENTERPRISES—CONTRIBUTION FROM KOREA 2 (2018), at [https://one.oecd.org/document/DAF/COMP/GF/WD\(2018\)68/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2018)68/en/pdf).

⁷² Capobianco & Christiansen, *supra* note 3, at 18–19.

grant access, it can curtail competition.⁷³ This conduct is scrutinized under abuse of dominance rules because it can prevent competitors from entering or expanding in the market. Tying arrangements are also a concern.⁷⁴ An SOE might require customers to purchase an additional product or service as a condition of obtaining the desired good. This can foreclose market opportunities for competitors offering the tied product and can entrench the SOE's dominance in multiple markets.

Importantly, the government's role in conferring advantages does not shield the SOE from competition law scrutiny. The SOE, when operating in commercial markets, is considered an "undertaking" subject to competition laws, just like any private firm. The fact that its dominance is enhanced by state action does not absolve it from liability if it abuses that dominance. This principle is reinforced in international competition law practice. For example, EU's competition law, under Article 102 of the Treaty on the Functioning of the European Union, prohibits abuse of a dominant position by any undertaking, regardless of ownership.⁷⁵

The European Court of Justice ("ECJ") has affirmed this in several cases. In the *Régie des Télégraphes et des Téléphones (RTT)* case,⁷⁶ RTT—a Belgian public telecommunications operator with a legal monopoly—required prior approval for all telephone equipment, which effectively prevented the sale of certain products. The Court held that RTT, despite its state-granted monopoly, was an undertaking under competition law when engaging in economic activities. RTT's conduct was found to be an abuse of dominance because it extended its monopoly into the separate market of telephone equipment,⁷⁷ thereby impeding competition.

⁷³ See Paul Scott, *Unilateral Refusals to Supply and the Essential Facilities Doctrine Under New Zealand's Competition Law*, 49 VICTORIA U. WELLINGTON L. REV. 371 (2018).

⁷⁴ See Renato Nazzini, *The Evolution of the Law and Policy on Tying: A European Perspective from Classic Leveraging to the Challenges of Online Platforms*, 27 FLA. ST. U. J. TRANSNAT'L L. & POL'Y. 1 (2018).

⁷⁵ Treaty on the Functioning of the European Union [hereinafter "TFEU"], 2012 O.J. (C 326) 47 (2012), art. 102. The first clause of the said provision states that "[a]ny abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States."

⁷⁶ Case C-18/88, *Régie des Télégraphes et des Téléphones v. GB-Inno-BM*, ECLI:EU:C:1991:474 (Dec. 13, 1991).

⁷⁷ *Id.* at ¶ 24.

In the *Höfner and Elser v. Macrotron GmbH* case,⁷⁸ the German Federal Employment Agency held an exclusive right to provide recruitment services but failed to meet market demand. Private employment agencies, Höfner and Elser, were prevented from operating. The Court determined that the Agency, though a public entity, was an undertaking when offering placement services. By refusing to allow private agencies to operate and failing to satisfy demand, the Agency abused its dominant position under Article 102 TFEU.⁷⁹ The state-conferred monopoly did not exempt it from competition rules.

The two ECJ cases discussed only confirm that an entity's state-conferred monopoly does not immunize it from scrutiny: once it steps into the market, its conduct is judged under standard abuse-of-dominance doctrines. Even if an exemption or statutory prerogative initially created that monopoly, the exemption's disappearance—or the liberalization of that sector—converts favoritism into a raw source of market power subject to legal oversight.⁸⁰

That principle aligns with the broader point that abuse-of-dominance rules focus on an undertaking's behavior rather than the origin of its market power. An entity may have acquired its market power through subsidies, legal monopolies, or other forms of government favoritism. But if there is no longer a valid exemption in force, NCAs can assess whether the firm's dominance leads to exclusionary or exploitative practices harming rivals or consumers. This approach addresses the gap where SOEs remain dominant in the wake of dissolved legal privileges yet exploit that lingering advantage in ways that distort competition. When NCAs are allowed to evaluate such conduct under abuse-of-dominance provisions, the law ensures that no firm perpetuates anticompetitive power conferred by a now-defunct exemption.

Though many AMSs' competition laws contain abuse of dominance provisions, the problem of underreach remains evident. While these

⁷⁸ C-41/90, *Höfner and Elser v. Macrotron GmbH*, ECLI:EU:C:1991:161 (Apr. 23, 1991).

⁷⁹ *Id.* at ¶¶ 26–29.

⁸⁰ The EU notes that “[t]he use of State funds (i.e., State aid or foreign subsidies) does not amount to a standalone form of abuse but can nevertheless be abusive if it enables a dominant undertaking to engage in an abusive conduct (e.g., predatory pricing).” See OECD, *SUBSIDIES, COMPETITION AND TRADE—CONTRIBUTION FROM THE EUROPEAN UNION 6* (2022), at [https://one.oecd.org/document/DAF/COMP/GF/WD\(2022\)40/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2022)40/en/pdf).

provisions apply to firms that have become dominant, the substantive rules do not contemplate that dominance might arise from government-conferred advantages rather than market processes. The laws typically focus on how a dominant undertaking exploits or maintains its position, presupposing that its market power results from normal competitive dynamics. They do not explicitly consider scenarios where the state confers substantial benefits—subsidies, exclusive rights, or other special treatments—that artificially boost an undertaking’s market strength. In essence, the framing of abuse of dominance rules is still centered on private conduct. They presume dominance stems from a firm’s own strategy or structural market conditions, not direct state intervention. As a result, conduct that seems objectionable—such as a firm wielding market power fueled by government favoritism—may still escape scrutiny if it does not neatly fit the definition of abuse outlined in the statutes.

This underreach becomes evident when SOEs receiving government advantages use these state-induced resources to engage in activities that would be harder to label as “abusive” under traditional interpretations. For example, an SOE might not need to exclude competitors overtly; the mere existence of state-backed strength may deter entry or force rivals out. If the provisions do not recognize that such deterrent effects result from state support, the SOE’s elevated position might remain untouched by competition law. In other words, while abuse of dominance rules offer a more suitable legal basis than merger or cartel provisions, they still fail to acknowledge the specific mechanism—unilateral governmental conferral of benefits—that sets SOEs apart.

It is this very gap that calls for a carefully designed CNF. A CNF would incorporate explicit recognition that dominance can stem from government action and thus ensure that the substantive rules are calibrated to capture and correct these distortions. Reshaping the definition of abuse to include scenarios where market power is achieved or bolstered through state policies rather than market outcomes would enable the law to address the root cause of the distortion. This refinement would convert the currently underreaching legal apparatus into one capable of reaching and remedying the full range of anticompetitive behaviors, including those nurtured and sustained by government favoritism.

C. Absence of State Aid Control Mechanisms

State aid and subsidies hold the power to reshape competition by granting favored enterprises, particularly SOEs and PFPEs, advantages that

private competitors cannot match. Across ASEAN, national statutes do not generally include tools to review or regulate such preferential support, leaving a legal void where government favoritism persists unchecked. This shortcoming hinders the principles of fair competition, since it allows government-driven distortions that tilt markets in favor of specific actors. To illustrate how the lack of state aid control manifests in national laws, this discussion adopts a functional comparison of Indonesia, Malaysia, Singapore, and the Philippines by highlighting the provisions that enable SOEs to receive government support free from competition-based scrutiny.

Indonesia's legal framework permits significant state involvement in the economy through SOEs, as established by Law No. 19 of 2003, the governing law on SOEs.⁸¹ Articles 4(1) and (2) which cover state equity participation, authorize government capital injections through budgets, reserves, or other lawful sources, without mandating any evaluation of how this assistance might affect market competition.⁸² Although the law imposes procedural steps, it does not require transparency regarding the potential competitive disadvantages faced by private entities. SOEs can thus reinforce their market position, possibly at the expense of other businesses.

Article 66 further empowers the government to issue a "specific assignment" to an SOE for public service functions, yet the law neither ensures that the subsidy remains proportionate nor compels a competitive neutrality analysis.⁸³ An SOE may use surplus resources from these subsidized operations to bolster its commercial endeavors—commonly referred to as cross-subsidization—and gain a cost advantage that private rivals cannot replicate.⁸⁴ Indonesia's competition law, Law No. 5 of 1999, contains no provisions to address the effects of such state backing, because it exempts "actions and or agreements intended to implement applicable laws and regulations."⁸⁵ Any state-derived subsidy or privilege, provided through legally authorized means, is immune to antitrust oversight. Since the law presupposes that unilateral state conferrals lie beyond the scope of prohibited monopolistic conduct, there is no legal test to evaluate the

⁸¹ Law No. 19 of 2003 on State-Owned Enterprises (2003) (Indon.) [hereinafter "Indon. Law on SOEs"].

⁸² Art. 4(2). See Siti Maimunah et al, *How Does State Equity Participation Contribute to Performance of State-Owned Enterprises in Indonesia?*, 45(127) CUADERNOS DE ECONOMÍA 32 (2022), which notes that "[t]he capital injection into [Indonesian SOEs] is officially referred to as State Equity Participation."

⁸³ Art. 66.

⁸⁴ See Capobianco & Christiansen, *supra* note 3, at 20.

⁸⁵ Indon. Competition Law, art. 50(a).

distortion introduced by these conferrals. In effect, Indonesian SOEs may benefit from government capital or regulatory protection without incurring scrutiny based on competitive neutrality.

Malaysia's legal framework takes a similar stance, though it employs a different mechanism to facilitate government ownership and support for SOEs. The Minister of Finance (Incorporation) Act 1957 designates the Minister of Finance as a corporate entity with the power to acquire assets and shares on behalf of the government.⁸⁶ Nothing in the law obligates an assessment of whether these acquisitions undermine competition.⁸⁷ The text focuses on the mechanics of ownership, leaving the question of whether the market is unfairly skewed to other legislative or policy arenas.

The Promotion of Investments Act 1986⁸⁸ likewise empowers the government to grant tax exemptions, pioneer status, and investment allowances for selected industries, without examining the implications for market structure or competitor equality.⁸⁹ The authorities concentrate on stimulating economic development, ignoring the possibility that favored recipients might obtain an upper hand and drive out private sector challengers. While this system aims to accelerate investment, it lacks a mandatory filter for competition-based concerns, thereby enabling government officials to distribute advantages that private operators could never replicate on commercial terms. Malaysia's Competition Act 2010 does not step in to fill this void. Instead, it explicitly excludes commercial activities regulated by certain statutes—from communications and energy to aviation—where SOEs tend to be significant players.⁹⁰ Without a specialized state aid control framework, public funds and privileges can flow to SOEs with little to no requirement for a competitive impact review.

Singapore's statutes similarly allow the government to maintain substantial stakes in enterprises, largely through Temasek Holdings

⁸⁶ Act 375 (1957), arts. 3–4. Minister of Finance (Incorporation) Act 1957 (Malay).

⁸⁷ *See* art. 4.

⁸⁸ Act 327 (1986) (Malay.) [hereinafter “Promotion of Investments Act 1986”].

⁸⁹ Arts. 5–6. Article 5 of the Promotion of Investments Act of 1986 of Malaysia details the application process for pioneer status. Art. 6 governs the granting of pioneer status, and Art. 7 outlines the mechanisms for requesting a pioneer certificate.

⁹⁰ Malay. Competition Law, § 3(3). The law “shall not apply to any commercial activity regulated under the legislation specified in the First Schedule,” which includes sectors like communications and multimedia, energy, and aviation—areas where SOEs often operate and may receive subsidies.

(Temasek)⁹¹ and GIC Private Limited (GIC).⁹² The Companies Act of 1967, particularly through Sections 76 and 76A, addresses financial assistance for share acquisitions but fails to impose an obligation to assess whether government ownership or financing grants anticompetitive advantages. The Act focuses on corporate governance and safeguarding creditor or shareholder interests, not on competition matters. Meanwhile, government grants administered by agencies such as Enterprise Singapore provide financial assistance for targeted objectives, like productivity or innovation, without any formal mechanism to judge whether market fairness might be compromised.

Programs like the Enterprise Development Grant⁹³ or Productivity Solutions Grant⁹⁴ can supply generous funding to particular companies, including SOEs or GLCs, but they remain outside the realm of competition-based checks. The Competition Act itself excludes certain activities from Sections 34 and 47 when another regulatory authority has jurisdiction.⁹⁵ This “dual regulatory framework” means that specific industries fall under specialized agencies—like the Infocomm Media Development Authority for telecommunications—rather than the CCCS. The net effect is that state subsidies or preferential financing, even if extensive, might not be examined through a competition lens, because the legal framework never mandates the government to justify its support on neutrality grounds.

The Philippines exhibits a similar absence of state aid control despite having a governance scheme for GOCCs. The GOCC Governance Act of

⁹¹ Temasek Holdings is a Singaporean state-owned investment company established in 1974. Operating as a commercial entity, it manages a diversified portfolio of assets and investments globally. *About Us*, TEMASEK HOLDINGS WEBSITE, at <https://www.temasek.com.sg/en/about-us>.

⁹² GIC Private Limited is a sovereign wealth fund established by the Singapore government in 1981. It manages Singapore’s foreign reserves, investing in a diverse portfolio that includes equities, fixed income, real estate, and private equity. *Who We Are*, GIC WEBSITE, at <https://www.gic.com.sg/who-we-are/>.

⁹³ See *Enterprise Development Grant*, ENTERPRISE SINGAPORE, at <https://www.enterprisesg.gov.sg/financial-support/enterprise-development-grant>.

⁹⁴ See *Productivity Solutions Grant*, ENTERPRISE SINGAPORE, at <https://www.enterprisesg.gov.sg/financial-support/productivity-solutions-grant>.

⁹⁵ Sing. Competition Law, Third Schedule, ¶ 5:

“Goods and services regulated by other competition law.

5. The section 34 prohibition and the section 47 prohibition do not apply to any agreement or conduct which relates to any goods or services to the extent to which any other written law, or code of practice issued under any written law, relating to competition gives another regulatory authority jurisdiction in the matter.”

2011 sets out procedures for monitoring the financial health and accountability of SOEs but does not require an analysis of how public funds or subsidies may distort competition.⁹⁶ Section 5, which established the Governance Commission for GOCCs (GCG), empowers it to reorganize or privatize GOCCs and adopt guidelines for corporate ownership,⁹⁷ yet it does not direct the GCG to ensure that any government assistance remains competitively neutral. Subsidies mostly arrive through tax incentives,⁹⁸ including income tax holidays, a 5% gross income earned incentive, tax investment allowances, and export subsidies, among others.⁹⁹

Despite the extensive use of tax incentives and financial support to SOEs, there is a glaring absence of provisions in the GOCC Governance Act that require evaluation of the competitive effects of government assistance. The Act does not compel the GCG to assess whether subsidies or financial aid might distort the market or disadvantage private competitors. Similarly, the Philippine Competition Act does not extend its scope to examine government grants or public financing that might place private competitors at a disadvantage. Even if a GOCC obtains significant state backing, the law lacks a dedicated mechanism to explore whether that backing drives out other firms or impedes new entrants. The Expenditure Program each fiscal year further discloses the budgetary allocations to government corporations but remains silent on how these funds may affect competition across industries.¹⁰⁰

A functional comparison of these four jurisdictions highlights how national laws permit government interventions that favor SOEs or PFPEs without imposing competition-based oversight. Indonesia's statutory mandates, Malaysia's focus on ministerial ownership and investment incentives, Singapore's reliance on GLCs and sectoral exemptions, and the Philippines' broad range of fiscal subsidies all reflect regulatory environments where the question "Does this state support distort competition?" is never legally required. In some cases, laws define broad

⁹⁶ Rep. Act No. 10149 (2011), § 2(b). GOCC Governance Act of 2011.

⁹⁷ § 5(a).

⁹⁸ See Emmanuel Barnedo & Arlene Inocencio, *Impact of Subsidies on Market Competition in the Philippine Agriculture and Manufacturing Sectors*, 150 PHIL. J. SCI. 1169, 1170 (2021).

⁹⁹ *Id.*

¹⁰⁰ See Dept. of Budget & Mgmt. (DBM), XXXVII. *Budgetary Support to Government Corporations: M. Budgetary Support to Government Corporations - Others*, IN III FY 2025 NATIONAL EXPENDITURE PROGRAM 944–45, at <https://www.dbm.gov.ph/index.php/2025/national-expenditure-program-fy-2025>.

categories of “public interest” or “strategic sectors,” ensuring that competition authorities cannot challenge or even examine the assigned benefits. These arrangements intentionally or inadvertently weaken the role of competition law as a tool for market fairness. While each jurisdiction may adopt minor checks—like partial transparency in the budgetary process or internal guidelines to rationalize economic or developmental outcomes—none demands that government agencies or SOEs observe a principle akin to competitive neutrality. The underreach persists because the laws do not classify unilateral state measures as conduct subject to review by competition authorities.

To illustrate these legislative gaps more clearly, Table 2 below summarizes the relevant national laws, the mechanisms for government support, any explicit exemptions from competition oversight, and the presence—or absence—of formal state aid control.

Table 2. Overview of State Aid Control Gaps in Selected ASEAN Jurisdictions

| Governing Laws | Government Support Mechanism | Exemption from Competition Oversight | State Aid Control? |
|---|--|---|---|
| Indonesia | | | |
| Law No. 19 of 2003 on SOEs Law No. 5 of 1999 (Competition) | Capital injections from the State Budget, reserves, or other lawful sources. “Specific assignments” under Art. 66 allow SOEs to operate public service functions. SOEs may cross-subsidize by using surplus resources for commercial ventures. | Articles 50 and 51 of Law No. 5 of 1999 exclude conduct “intended to implement applicable laws,” covering state-bestowed privileges. There is no legal test for cross-subsidization or market impact. | None. No requirement to assess potential distortions from government-funded or mandated activities. |
| Malaysia | | | |
| Minister of Finance (Inc.) Act 1957 | Minister of Finance (Incorporated) can hold shares and assets in SOEs. | Commercial activities in sectors regulated by specialized laws (e.g., | None. No separate legal framework mandates a review of competition-based concerns |

| Governing Laws | Government Support Mechanism | Exemption from Competition Oversight | State Aid Control? |
|---|---|--|---|
| Promotion of Investments Act 1986 Competition Act 2010 | The Promotion of Investments Act grants tax exemptions, pioneer status, and investment allowances, focusing on economic development rather than competitive effects. | communications, aviation) remain outside the Competition Act 2010. MyCC cannot scrutinize conduct in these exempted industries. | when allocating subsidies. |
| Singapore | | | |
| Companies Act 1967 Competition Act (Cap. 50B) | Temasek Holdings and GIC maintain government stakes in businesses. Enterprise Singapore administers grants like EDG, PSG, etc., with no competition-focused criteria. | Part III of the Competition Act does not apply to government or statutory-body conduct (Section 33(4)). Third Schedule exempts services of general economic interest; sector regulators hold primary jurisdiction over utilities and telecoms. | None. Authorities do not verify if government capital or grants confer an unfair advantage over private rivals. |
| Philippines | | | |
| GOCC Governance Act of 2011 Philippine Competition Act | Subsidies are allocated through the national budget. The Fiscal Expenditure Program may channel equity or provide bridging funds to GOCCs. | Philippine Competition Act does not regulate government grants or subsidies. GOCC Governance Act emphasizes efficiency and prudential measures but omits competition-based assessments. | None. No mechanism to evaluate if state funding or incentives undermine market fairness or hurt private firms. |

Without a state aid control mechanism, each AMS effectively sanctions an uneven playing field. Public funds or regulatory privileges can push an SOE to control major swaths of a market or deter private firms from ever competing on equal terms. Though the government might portray these interventions as promoting economic growth or securing essential infrastructure, they can also give rise to entrenched monopolies. Private sector operators, lacking comparable access to subsidized capital or statutory mandates, may not survive in the face of artificially enhanced rivals. Consumers in turn may experience reduced choices or bear higher prices, and entrepreneurial dynamism may suffer if a newly established firm foresees no chance to oust a government-backed incumbent. The absence of transparency heightens these concerns, because the public rarely learns whether an SOE's expanded operations stem from cost efficiencies or from underlying government support. The intangible reputational costs for competition law also loom, since prospective investors may question the integrity of a marketplace where state-led distortions remain beyond legal challenge.

Analyzing these four AMSs, one finds notable parallels in how the law allows governments to direct resources toward SOEs, disregarding questions of market equity or neutral competition. While some approaches revolve around direct equity injections or state budgets, others revolve around wide-ranging tax exemptions, pioneer statuses, or preferential regulatory conditions. Each approach might be grounded in valid objectives, such as building strategic capacity or achieving welfare targets. However, the deficiency of an assessment mechanism for measuring the effect on private competitors or consumers remains consistent. NCAs in each jurisdiction—KPPU in Indonesia, MyCC in Malaysia, CCCS in Singapore, and the Philippine Competition Commission (“PCC”)—lack formal mandates to review or veto acts of government favoritism, especially when those acts fall under specialized legislation or policy spheres. The result is a parallel domain of government-driven conduct that competition law fails to regulate.

One consequence is that these jurisdictions rely on partial forms of accountability: parliamentary or congressional oversight, administrative audits, or policy reviews that may not align with competition principles. Although some governments push for reforms and cost-justification measures to improve fiscal discipline,¹⁰¹ none of those processes specifically

¹⁰¹ For example, in 2013, the Malaysian government raised fuel prices and introduced incentive-based regulation for electricity tariffs to ease the heavy fiscal strain of

weighs the anticompetitive potential of significant state-aid measures. The repeated absence of binding legal requirements for a competition test suggests that state-led market distortion is not deemed wrongful conduct under national statutes. It is, at most, an externality recognized in policy debates, but not a target for competition enforcement.

This scenario underscores the need for an ASEAN-level framework to address state aid to SOEs across the region. The legal regimes of Indonesia, Malaysia, Singapore, and the Philippines reveal a significant gap: no uniform obligations demand AMSs to assess how government support influences market structure. While domestic reform may offer partial solutions, a more effective and comprehensive approach would involve region-wide principles mandating that either each AMS or a centralized ASEAN body review and justify subsidies or preferential treatment. Such a framework could draw on global best practices from jurisdictions where NCAs or specialized bodies examine state aid for potentially distortive effects. In the absence of such oversight, the region's continued underreach will allow many anticompetitive outcomes driven by the government itself to evade legal scrutiny.

D. A Case Study on Energy Subsidies in Indonesia

Indonesia has a long history of providing energy subsidies, particularly for fuel, which have been central to its fiscal policy challenges. Beginning in the late 1970s, the government opted to subsidize fuel products as a means of maintaining affordable prices for the broader population.¹⁰² They cover electricity, fuel (diesel and gasoline), and liquefied petroleum gas, administered by public service obligations through SOEs such as PT Pertamina and PT PLN.¹⁰³ Even with partial reforms, the current framework stays regressive and exerts a notable toll on the budget. In 2022, expenditures

long-standing energy subsidies. While these reforms improved cost transparency, they did not assess the potential anticompetitive effects of aid measures. The focus remained on fiscal efficiency and targeted support, as evidenced by the expansion of the BR1M cash transfer program for low-income households. Thus, although fiscal reforms have improved budgetary discipline, they did not address market distortions arising from state-led subsidies. See JIHANE BERGAOUI, *FIVE KEY LESSONS FROM MALAYSIA'S 2014 SUBSIDY REFORM EXPERIENCE* (2014), at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/529931563517526581>.

¹⁰² AHYA IHSAN ET AL., *WORLD BANK, INDONESIA'S FUEL SUBSIDIES REFORMS 4* (2024), at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099748505212431959/idu1e31e5e531f16114baa1b62c1b3201c9c2e68>.

¹⁰³ *Id.*

on fuel and electricity subsidies reached 2.8% of GDP, up from 1.7% in 2021, influenced by rising global commodity prices.¹⁰⁴

SOEs in Indonesia receive significant advantages from the government, including capital injections and exclusive rights in key sectors. Under Article 4 of the Law on SOEs, the government may inject capital into SOEs through the state budget, capitalization of reserves, and other lawful sources.¹⁰⁵ This enables SOEs like Pertamina, the state-owned oil and gas company, to receive substantial financial support without any explicit requirement to assess whether such support distorts competition or confers undue advantages over private competitors. The law's silence on competitive impact allows SOEs to strengthen their market positions without considering competitive neutrality.

Pertamina holds a dominant position in Indonesia's oil and gas industry, controlling over 50% of the overall market.¹⁰⁶ In the upstream segment, it accounts for 52% of national oil production and 74% of natural gas output.¹⁰⁷ Despite the presence of private firms such as Chevron Indonesia, ExxonMobil Indonesia, and ConocoPhillips Indonesia, Pertamina's dominance remains unchallenged.¹⁰⁸ Government efforts to attract greater upstream investment often face high entry barriers due to the capital-intensive nature of the industry.¹⁰⁹

In the midstream segment, it holds over 60% of the market share, further strengthened by its 2018 merger with PT Perusahaan Gas Negara and Pertamina.¹¹⁰ In the downstream sector, it controls 93.2% of the market, supported by its 7,868 gas stations nationwide.¹¹¹ Private competitors such as Shell, Vivo, Mobil, and BP-AKR operate on a much smaller scale, constrained by Pertamina's extensive network and consistent government support which present a formidable barrier to entry for new players.¹¹²

¹⁰⁴ *Id.* at 8.

¹⁰⁵ Indon. Law on SOEs, art. 4(2).

¹⁰⁶ PROTÉMUS, OIL AND GAS INDUSTRY OVERVIEW 1, at <https://www.protemus.co.id/upload/industries/1698996859.pdf>.

¹⁰⁷ *Id.* at 3.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

Article 66 of the Law on SOEs allows the government to assign public service obligations to SOEs,¹¹³ but it lacks requirements for transparency or competitive neutrality in compensation. For example, Pertamina's role in expanding national energy infrastructure is supported by government directives and funding, without safeguards to ensure that the compensation Pertamina receives is proportionate and does not exceed what is necessary. This can lead to overcompensation, allowing Pertamina to use excess funds to cross-subsidize its commercial activities. With such sustained support, Pertamina can invest in expanding its operations domestically and internationally, further entrenching its market dominance.

Indonesia's Competition Law further exempts actions intended to implement applicable laws and regulations. This exemption means that any state aid provided under legal statutes escapes competition scrutiny. Article 50(a) of the law states that "agreements intended to implement applicable laws and regulations" are exempted.¹¹⁴ Moreover, Article 51 allows for monopolies or concentrations of activities in sectors "affecting the livelihood of society at large" and strategic state production branches, provided they are stipulated by law and implemented by SOEs or government-appointed institutions.¹¹⁵ This legal framework permits SOEs to hold exclusive rights or monopolies in certain sectors, insulating them from competition law enforcement.

The combined effect of these legal provisions is that SOEs can engage in anticompetitive conduct as long as it is authorized by other laws or government directives. This creates a legal environment where formal authorization takes precedence over the substantive impact on competition. As long as an SOE's anticompetitive conduct is backed by legal mandate, it is shielded from competition law enforcement. This approach raises significant concerns about market fairness and efficiency. When the law prioritizes formal legal authority over examining the competitive effects of SOEs' actions, it permits practices that can distort markets, suppress competition, create barriers to entry, or disadvantage private competitors. This can lead to reduced efficiency, higher prices, and fewer choices for consumers.

Possible abuse of dominance by SOEs is a pertinent issue in this context. Article 25 of the Indonesian Competition Law prohibits business

¹¹³ Indon. Law on SOEs, art. 66(1).

¹¹⁴ Indon. Competition Law, art. 50(a).

¹¹⁵ Art. 51.

actors from using a dominant position to determine trade conditions intended to prevent consumers from obtaining competitive goods or services, limit markets and technological development, or bar potential competitors from entering the market.¹¹⁶ However, due to the exemptions provided in Articles 50 and 51, these prohibitions have limited applicability to SOEs like Pertamina.

For example, Pertamina's pricing strategies in the downstream sector could potentially be considered predatory under Article 20,¹¹⁷ which prohibits selling goods or services at a loss or very low prices with the intention of driving competitors out of the market. Pertamina's ability to maintain lower prices is strengthened by government subsidies and capital injections. Private competitors, lacking similar support, struggle to compete on price, leading to a market where Pertamina's dominance is unassailable. The government's role in approving mergers that enhance Pertamina's market power further illustrates the underreach of competition law in addressing these issues. The 2018 merger between PT Perusahaan Gas Negara and Pertamina was intended to improve efficiency in the sector but had the effect of reducing competition. The lack of a legal requirement to assess the competitive impact of such mergers allows the consolidation of market power without scrutiny.

The lack of state aid control mechanisms allows government favoritism toward Indonesian SOEs to continue unchecked. No legal framework exists to evaluate the competitive impact of subsidies or to enforce competitive neutrality. As a result, private firms face significant disadvantages when competing against SOEs with legal monopolies and substantial government support. Already-high barriers to entry, such as intensive capital requirements and the need for specialized expertise, are further exacerbated by the government's support of SOEs.

The above case study reveals that Indonesia's legal framework permits SOEs like Pertamina to receive significant government support and

¹¹⁶ Art. 25(1).

¹¹⁷ Xie and Harjono observe that "CN 48 diesel sold by Pertamina continues to be subsidized at a fixed price of 5,150 Indonesian Rupiah (IDR)/liter, which is less than half the price of the next highest diesel fuel grade, CN 51." See Yihao Xie & Marietta Harjono, *The Retail Fuels Market in Indonesia* 9 (Int'l Council on Clean Transp., Working Paper 2020-23, 2020).

maintain dominant positions across critical sectors without adequate competition oversight. The combination of capital injections, exclusive rights, and legal exemptions from competition law allows SOEs to engage in anticompetitive conduct. The energy sector exemplifies these issues, where Pertamina's dominance is both a product of and reinforced by government policies. To promote market fairness and efficiency, there is a need for legal reforms that introduce state aid control mechanisms, ensure competitive neutrality, and limit exemptions for SOEs. Without such reforms, the principles of fair competition remain undermined, leading to reduced efficiency, higher prices, and fewer choices for consumers.

As the analysis shifts to the regional level in the next section, it examines how ASEAN's non-binding guidelines and institutional limitations fail to address similar distortions that transcend national borders. This examination makes clear that, without binding obligations or effective regional enforcement bodies, cross-border anticompetitive conduct remains unchecked. The persistent gap highlights the need for a robust CNF that can secure fair competition at the regional level.

III. SHORTCOMINGS OF ASEAN REGIONAL COMPETITION GUIDELINES

At the regional level, the Regional Guidelines remain ineffective in addressing government favoritism due to their non-binding nature and limited scope. While intended to promote competition policy harmonization among AMSs, they lack the enforceability needed to address the anticompetitive effects of government favoritism. Consequently, the Guidelines fail to prevent subsidies and preferential treatment from distorting the region's competitive environment. Without legally enforceable provisions or effective mechanisms to contest such distortions, the current framework cannot restrain government favoritism that transcends national borders. The following subsections analyze the absence of state aid control at the regional level, the lack of binding obligations on AMSs, and the institutional limitations that impede ASEAN's ability to counter these practices. A hypothetical case illustrates how these shortcomings weaken the Guidelines' ability to address government favoritism within ASEAN.

A. Non-Binding Nature and Limited Scope

The Regional Guidelines were conceived as a general framework to assist AMSs in formulating and implementing competition policies suited to

their unique national circumstances,¹¹⁸ but they “serve only as a reference and are not binding on the AMSs.”¹¹⁹ This declaration of non-binding status has profound legal implications. It indicates that, in the eyes of international law, AMSs have no binding obligation to incorporate, legislate, or apply the provisions contained in these Guidelines. ASEAN’s institutional framework does not include a procedure to compel adoption or impose penalties for disregarding the Regional Guidelines.

Their non-binding status represents a careful decision rooted in ASEAN’s traditional mode of regional collaboration, regularly referred to as the “ASEAN Way.”¹²⁰ This tradition stresses consensus-building, deference to sovereignty, and avoidance of interference in the internal affairs of AMSs.¹²¹ While these principles promote harmony and prevent conflicts among AMSs, they also limit the effectiveness of regional initiatives that require uniform implementation.

The primary objective of the Guidelines is to promote policy harmonization and facilitate cooperation rather than to enforce specific legal standards. They aim to encourage AMSs to recognize the importance of competition policy and to provide guidance on best practices. Under the Guidelines, competition policy is defined as “governmental measures that directly affect the behavior of enterprises and the structure of industry and markets.”¹²² This definition focuses on governmental action to shape market conditions, but it stops short of imposing legal obligations. The emphasis is on advocacy,¹²³ capacity building,¹²⁴ and voluntary implementation,¹²⁵ rather than on creating enforceable rules.

This voluntary approach leads to significant disparities in how competition laws and regulations are adopted and applied across the region. Some AMSs, like Singapore and Malaysia, have established comprehensive

¹¹⁸ REGIONAL GUIDELINES, § 1.2.1.

¹¹⁹ § 1.2.2.

¹²⁰ See Mely Caballero-Anthony, *The ASEAN Way and the Changing Security Environment: Navigating Challenges to Informality and Centrality*, INT’L POL. 1 (2022), at <https://doi.org/10.1057/s41311-022-00400-0>.

¹²¹ The concept of the “ASEAN Way” lacks a precise definition, but it is best exemplified in art. 20(1), ch. VII of the ASEAN Charter, which states, “[a]s a basic principle, decision-making in ASEAN shall be based on consultation and consensus.” ASEAN CHARTER art. 20(1).

¹²² REGIONAL GUIDELINES, § 2.1.1.

¹²³ Ch. 9.

¹²⁴ Ch. 8.

¹²⁵ § 1.2.2.

competition laws with dedicated enforcement agencies. Others, such as Cambodia and Laos, have made limited progress in implementing competition policies.¹²⁶ The lack of binding obligations permits AMSs to prioritize domestic policy objectives, which may include protecting national industries or favoring SOEs, over regional competition goals.

This divergence can perpetuate government favoritism and undermine the competitive process. For instance, if an AMS chooses not to enforce anticompetitive conduct by its national champions, it gains an unfair advantage in regional markets. The absence of uniform enforcement mechanisms allows such practices to persist without recourse under ASEAN's regional framework.

B. Lack of Provisions Addressing Government Favoritism

A salient underreach of the Regional Guidelines lies in their failure to address government actions that distort competition, such as subsidies or state aid favoring domestic enterprises. This gap diverges sharply from the EU's approach, where Articles 107 and 108 TFEU incorporate stringent mechanisms to regulate state aid.¹²⁷ These provisions empower the European Commission to examine and oversee any public support extended by Member States, thereby protecting the internal market from unfair distortions.

The ASEAN setting, however, sees no equivalent clauses within the Regional Guidelines that address or curb state-sponsored favoritism. Chapter 3 outlines the scope of competition policy, yet its focus stays on prohibitions against anticompetitive agreements (Section 3.2), abuse of dominance (Section 3.3), and anticompetitive mergers (Section 3.4). These sections concentrate on preventing private firms from engaging in anticompetitive behavior without covering the review of government measures that grant undue benefits to chosen enterprises, including SOEs.

Section 3.1.2 of the Regional Guidelines states that competition policy “should be an instrument of general application, i.e., applying to all economic sectors and to all businesses engaged in commercial economic

¹²⁶ Cambodia and Laos enacted their competition laws in 2021 and 2015, respectively.

¹²⁷ Art. 107 of the TFEU prohibits state measures that distort competition by granting advantages to certain companies, unless justified by specific exceptions. Article 108 outlines the procedures for notifying, assessing, and approving such state aid to ensure it complies with EU competition rules. TFEU, arts. 107–08.

activities [...] unless exempted by law.”¹²⁸ This language introduces a significant loophole. By allowing exemptions “by law,” the Regional Guidelines implicitly permit AMSs to enact legislation that shields specific entities or sectors from competition scrutiny. Governments can thus exempt SOEs or favored industries under national laws, which effectively place them beyond the reach of competition policy. Section 3.5 of Chapter 3 addresses exemptions or exclusions from the application of competition law. It acknowledges that AMSs may exempt certain industries or activities based on “strategic and national interest, security, public, economic and/or social considerations.”¹²⁹ This provision grants broad discretion to governments to exclude sectors from competition oversight. The absence of clear criteria or limitations on these exemptions allows for the possibility of arbitrary or protectionist measures that favor domestic enterprises at the expense of fair competition.

The Regional Guidelines do not likewise provide mechanisms to challenge or review such exemptions at the regional level. There is no requirement for AMSs to justify exemptions in terms of their impact on competition within ASEAN. Nor is there a regional body empowered to assess whether such exemptions are necessary or proportionate to the stated objectives. Under the current Regional Guidelines, there are no binding rules or enforcement mechanisms at the ASEAN level to address this issue. The Regional Guidelines’ non-binding status means that AMSs are not obligated to refrain from such practices. The lack of provisions on state aid or government subsidies means there is no legal basis within the ASEAN framework to challenge or regulate these subsidies.

This absence of state aid control at the regional level therefore creates a significant legal gap. It allows government favoritism to persist unchecked, even when it has cross-border effects that harm competition within the ASEAN market. Affected entities have no regional legal recourse to contest the subsidies. They cannot appeal to a regional competition authority, nor is there a mechanism for dispute resolution under the Regional Guidelines. This deficiency undermines the objectives set out in the AEC Blueprint, which aspires to create a highly “networked, competitive, innovative, and highly integrated and contestable ASEAN” that “supports fair competition.”¹³⁰ The lack of provisions addressing government favoritism curtails the development of a truly integrated ASEAN market. It

¹²⁸ REGIONAL GUIDELINES, § 3.1.2.

¹²⁹ § 3.5.1.

¹³⁰ ASEAN BLUEPRINT, *supra* note 11, at ¶ 2.

allows national interests to supersede regional competition goals, which only perpetuate market distortions and barriers to entry.

The absence of state aid control mechanisms contrasts with international best practices. In the EU, Article 107(1) TFEU explicitly prohibits state aid that “distorts or threatens to distort competition” and “affects trade between Member States.”¹³¹ The European Commission may investigate and demand repayment of unlawful aid. This arrangement preserves the internal market’s competitive equilibrium by ensuring that public interventions do not compromise fair rivalry. The omission of analogous measures diminishes the Regional Guidelines’ capability to tackle a vital component of competition policy. They fail to acknowledge that government measures can match, or even surpass, the competitive impact of private anticompetitive acts. Without instruments to oversee or contain state aid, the ASEAN competition framework remains incomplete.

The broad exemptions found in Section 3.5 of the Guidelines also raise questions about transparency and accountability.¹³² Since authorities can exempt activities on wide-ranging grounds, there is a real possibility that exemptions might be granted without thoroughly evaluating their purpose or effect on competition. The text imposes no obligation to consult stakeholders or publish detailed reasons for granting an exemption. That shortfall in procedural safeguards can result in obscure decision-making favoring certain enterprises without adequate justification.

C. Institutional Limitations

The institutional structures within ASEAN further limit the effectiveness of the Regional Guidelines in addressing issues like government favoritism. The ASEAN Experts Group on Competition (“AEGC”) functions as the primary forum for advancing competition policy throughout the region.¹³³ The Guidelines depict the AEGC’s main tasks as fostering

¹³¹ TFEU, art. 107(1).

¹³² REGIONAL GUIDELINES, § 3.5. For instance, under Section 3.5.1.1, “[p]rohibitions may not apply to any undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking, such as guaranteeing universal access to various types of quality services at affordable prices.”

¹³³ REGIONAL GUIDELINES, § 1.1.4. *See also Competition: Overview*, ASEAN WEBSITE, at <https://asean.org/our-communities/economic-community/competitive-innovative-and-inclusive-economic-region/competition>.

dialogue, sharing best practices, and enhancing the capacities of national competition authorities in AMSs.¹³⁴ However, the AEGC holds no enforcement mandate. It lacks the power to investigate, prosecute, or sanction cross-border anticompetitive practices or those rooted in government measures.

Chapter 4 of the Regional Guidelines focuses on the roles and responsibilities of NCAs. Section 4.1 specifies that these NCAs are tasked with implementing and enforcing national competition policies.¹³⁵ There is no provision for a supranational authority with the mandate to enforce competition laws across AMSs. This absence is significant. Without a regional enforcement mechanism, anticompetitive practices that affect multiple AMSs remain under the jurisdiction of NCAs, which may lack the incentive or ability to address them, especially if they involve government entities or policies.

While the Regional Guidelines encourage cooperation and coordination among AMSs, they stop short of establishing binding commitments or empowering any regional body to act against government favoritism. In Chapter 10, which deals with international cooperation, the Regional Guidelines suggest developing a “regional platform” for NCAs to exchange experiences and promote a common approach.¹³⁶ Section 10.3.5 explicitly states that “the platform shall not exercise any rule-making function, and no voting rules should be in place within the working groups, as the cooperation is based on consensus building.”¹³⁷ This means that the platform serves as a forum for discussion rather than a decision-making or enforcement body.

The reliance on consensus and voluntary cooperation aligns with ASEAN’s foundational principles but poses challenges for effective competition law enforcement. In situations where government favoritism affects multiple AMSs—for example, if an SOE receives subsidies that distort regional markets—there is no regional authority empowered to investigate or remedy the situation. Affected parties have limited options. They can appeal to the NCAs of the AMS in question, which may be unwilling or unable to act, or they can attempt to resolve the issue through diplomatic channels, which is often a slow and uncertain process.

¹³⁴ *ASEAN Experts Group on Competition (AEGC)*, ASEAN WEBSITE, at <https://www.asean-competition.org/aegc>.

¹³⁵ § 4.1.1.1.

¹³⁶ § 10.3.1.

¹³⁷ § 10.3.5.

The lack of supranational authority or binding dispute resolution mechanisms means that efforts to curb anticompetitive government actions depend entirely on the goodwill and voluntary compliance of AMSs. This creates a legal vacuum where cross-border anticompetitive practices can persist without effective challenge. It undermines the objectives of the AEC Blueprint, which envisions a “single market and production base” characterized by the free flow of goods, services, investment, and capital.¹³⁸ In practice, this institutional limitation has tangible consequences. Suppose an AMS grants preferential treatment to its national telecommunications operator by providing exclusive access to network infrastructure or imposing entry barriers for foreign providers. This policy, while advancing national objectives, distorts competition in regional communications markets, which would leave operators from other AMSs at a disadvantage. There is no regional competition authority to which they can present their grievances, and no binding dispute resolution process to enforce common rules. Such a gap stands in sharp contrast to other integration models, notably the EU, where supranational bodies can enforce competition laws and regulate state aid, thereby ensuring a level playing field within the internal market.

The Regional Guidelines, while a positive step towards promoting a competition culture in the region, have shortcomings in addressing government favoritism due to their non-binding nature, limited scope, and institutional limitations. The absence of enforceable provisions on state aid and the lack of a regional enforcement mechanism leave significant legal gaps that allow government actions to distort competition unchecked. Implementing a legally binding ASEAN CNF would directly address these concerns by obligating AMSs to ensure that government-owned and private enterprises compete on equal terms. Such a framework would regulate state aid and prevent preferential treatment of certain enterprises, thereby closing the legal gaps that currently permit government favoritism to distort competition.

D. Hypothetical Case: Cross-Border Favoritism in ASEAN’s Aviation Sector

To demonstrate how the Regional Guidelines fall short in countering government favoritism, imagine a cross-border aviation scenario where Vietnam grants substantial subsidies to its national airline. These subsidies equip the airline with the ability to offer drastically reduced fares and extend

¹³⁸ ASEAN BLUEPRINT, *supra* note 11, at ¶ 9.

its routes aggressively throughout ASEAN. That advantage enables it to undercut competitors and secure a greater market share. Such dominance may ultimately push airlines from other AMSs off certain routes or markets. The government's actions thus distort the competitive landscape in regional air travel. Other airlines, lacking comparable support, face an uphill struggle against subsidized fares. They may be unable to match the artificially low prices, expand their services, or maintain competitive positions—leading to possible monopolization by the subsidized carrier.

Under the current Regional Guidelines, no binding measures or enforcement mechanisms exist at the regional level to address scenarios such as government subsidies that skew competition. Vietnam, operating under the Regional Guidelines,¹³⁹ holds no legal obligation within ASEAN to refrain from subsidizing its airline, even if those subsidies alter the regional market. The Guidelines fail to include provisions regulating or scrutinizing state-driven conduct like subsidies or state aid that hinder competition. Chapter 3 concentrates on bans against anticompetitive agreements, dominance abuse, and anticompetitive mergers, staying focused on private conduct. No clause is in place to examine or restrain governmental interventions that hand undue benefits to specific enterprises. By contrast, the EU possesses explicit rules that prohibit Member States from granting state aid that disrupts competition or affects trade within the EU.¹⁴⁰ Through its legal apparatus, the EU can observe, evaluate, and limit government subsidies to avert harmful market imbalances.

In the hypothetical scenario, airlines from other AMSs have limited legal avenues to challenge the subsidies provided by Vietnam to its national airline. NCAs in other AMSs lack jurisdiction to act against the government of Vietnam. They cannot enforce their competition laws extraterritorially to address the subsidies that are causing competitive harm within their own markets. The AEGC, while facilitating dialogue and capacity building, lacks enforcement powers to address such cross-border anticompetitive practices arising from government favoritism.¹⁴¹ Chapter 10 of the Regional Guidelines discusses international cooperation but emphasizes that the regional platform is based on consensus building without rule-making authority.¹⁴² This means that the AEGC cannot impose obligations or take

¹³⁹ REGIONAL GUIDELINES, § 1.2.1.

¹⁴⁰ *See* TFEU, arts. 107-08.

¹⁴¹ *See* REGIONAL GUIDELINES, §1.1.4.

¹⁴² *See* § 10.3.5.

enforcement actions against AMSs engaging in practices that distort competition.

The Regional Guidelines also allow for exemptions and exclusions from competition policy. AMSs are permitted to exempt specific industries or activities from the application of competition law.¹⁴³ This broad exemption empowers governments to favor certain enterprises under the guise of public interest without facing challenges under the regional competition framework. The reliance on consensus and voluntary cooperation aligns with ASEAN's foundational principles, which emphasizes mutual respect for sovereignty¹⁴⁴ and non-interference in domestic affairs.¹⁴⁵ While these principles promote harmony, they also limit the effectiveness of regional initiatives that require uniform implementation. As a result, there is a significant legal gap within ASEAN's competition policy framework. The absence of binding rules and enforcement mechanisms at the regional level means that government actions like subsidies can distort competition without recourse. Affected parties cannot bring complaints before a regional competition authority, nor is there a supranational body with the mandate to investigate or remedy such distortions. This gap contrasts sharply with other regional integration models like the EU, where supranational institutions have the authority to enforce competition laws and regulate state aid across member states. The lack of similar mechanisms within ASEAN hampers the region's ability to address cross-border favoritism effectively.

The hypothetical case reveals that the Regional Guidelines have shortcomings in resolving cross-border favoritism resulting from government actions like subsidies. The non-binding nature of the Regional Guidelines,¹⁴⁶ coupled with the absence of provisions regulating state aid and the lack of a regional enforcement body, creates a legal void where government favoritism can distort competition without recourse. To address these shortcomings, ASEAN must strengthen its competition framework by introducing legally binding obligations on AMSs to enforce competition laws uniformly. Incorporating provisions that regulate government favoritism—such as state aid control mechanisms—would close the legal gaps that currently allow such practices to persist. Creating a supranational entity

¹⁴³ See § 3.5.1.

¹⁴⁴ ASEAN Charter, art. 2(2)(a).

¹⁴⁵ Art. 2(2)(e).

¹⁴⁶ See REGIONAL GUIDELINES, § 1.2.2.

empowered to enforce regional competition norms would provide the necessary authority to confront cross-border anticompetitive conduct.

By establishing a legally binding CNF, ASEAN can ensure that SOEs and private firms compete on equal terms. This step is vital for reaching the region's ambition of a robust economic community with "a single market and production base."¹⁴⁷ Without these measures, the ASEAN competition policy's effectiveness will remain limited, and the goal of an integrated, competitive ASEAN economy will be difficult to achieve. Even with stronger substantive rules, institutional circumstances pose other hurdles. Oversight requires sufficient capacity, coordination, and comprehensive mandates at both the national and regional levels—none of which can be presumed. The ensuing discussion examines these institutional gaps by considering how constrained mandates, limited resources, and the absence of supranational enforcement mechanisms hamper the creation of a fully competitive ASEAN market.

IV. INSTITUTIONAL WEAKNESSES HINDER EFFECTIVE ENFORCEMENT OF COMPETITION LAWS

Institutional limitations at both national and regional levels significantly hinder the effective enforcement of competition laws against government favoritism within ASEAN. These weaknesses, as highlighted in this section, manifest in the restricted mandates and capacity constraints of NCAs and the absence of regional enforcement mechanisms. These institutional shortcomings are not mere theoretical constructs but are reflected in day-to-day enforcement challenges. Domestic agencies often find themselves unable to investigate government-driven distortions, while at the regional level, the lack of a supranational enforcement authority leaves cross-border issues unresolved. The divergent legal frameworks of AMSs further complicate matters, making it harder to achieve consistent and effective actions against government favoritism.

A. Limitations of NCAs

NCAs in AMSs often face restricted mandates that prevent them from fully addressing government favoritism. Many of these agencies lack the authority to investigate or challenge actions and policies originating from the government itself. Their jurisdiction is typically confined to the conduct

¹⁴⁷ ASEAN BLUEPRINT, *supra* note 11, at ¶ 9.

of private enterprises, thus leaving a regulatory blind spot when anticompetitive practices stem from state policies or involve SOEs. For instance, some NCAs are explicitly prohibited from scrutinizing government measures or are required to defer to other governmental bodies on matters involving public entities.¹⁴⁸ This limitation means that even if an SOE engages in anticompetitive conduct, the NCA may be powerless to act if the behavior is sanctioned or mandated by government policy. The inability to address favoritism rooted in state actions undermines the effectiveness of competition law enforcement and allows distortions in the market to persist unchallenged.

Investigating and prosecuting SOEs presents a unique set of challenges for NCAs in the ASEAN region. One primary challenge is the political influence and state interests associated with SOEs. In many AMSs, SOEs are integral to national economic strategies and hold significant political clout.¹⁴⁹ This influence can create pressure on NCAs to refrain from aggressive enforcement actions against these entities. The political sensitivity surrounding SOEs often leads to reluctance in pursuing cases that could be perceived as undermining national interests or government policies.

Empirical evidence underscores this issue. According to Svetlicinii, only Indonesia, with its long history of competition law enforcement, routinely applies competition rules to SOEs.¹⁵⁰ There are individual cases involving SOEs in Malaysia, Singapore, and Vietnam. However, the rest of the jurisdictions, including Brunei, Laos, and Myanmar, show no enforcement activity in this area. This absence can be partly attributed to the early stages of establishment of their NCAs and the inherent challenges in

¹⁴⁸ For example, while the Malay. Competition Law governs all commercial activities within Malaysia, Section 3(3) specifies exclusions that narrow its applicability. These exclusions are detailed in the First Schedule, which lists specific legislations such as the Communications and Multimedia Act 1998 and the Energy Commission Act 2001, exempting regulated sectors from the Competition Act's provisions. For instance, Telekom Malaysia Berhad operates under the Communications and Multimedia Act 1998 and is therefore exempt from the Competition Act 2010.

¹⁴⁹ The OECD observes that “[w]hile the importance of SOEs varies across the region, ASEAN member states are ‘among the most widely cited examples of a proactive use of SOEs for development ... with key companies in the network industries controlled by the state and assigned roles in fostering development since the early days of independence.’” See OECD, COMPETITIVE NEUTRALITY REVIEWS: SMALL-PACKAGE DELIVERY SERVICES IN ASEAN 38 (2021), at <https://www.oecd.org/competition/fostering-competition-in-asean.htm>.

¹⁵⁰ See Alexandr Svetlicinii, *The State-Owned Enterprises under the ASEAN Regional Competition Policy: Insights from the European Competition Network*, 11 KLRI J.L. & LEGIS. 6, 31 (2021).

taking action against government-favored entities. The diversity in competition laws and the coexistence of both purist and mixed regimes in ASEAN create challenges for businesses in their efforts to comply with competition laws, and complicate enforcement against SOEs.¹⁵¹

Capacity constraints further impede the enforcement efforts of NCAs. Limited resources, insufficient staffing, and a lack of specialized expertise make it challenging for these agencies to carry out thorough investigations or to pursue complex cases involving government favoritism. For example, Cambodia's new competition authority may struggle with enforcement due to resource limitations.¹⁵² Despite the passage of competition legislation, the authority may lack adequate funding and trained personnel to implement the law effectively. This situation could hamper its ability to monitor markets, investigate anticompetitive practices, and enforce compliance, particularly when dealing with sophisticated or well-resourced entities like SOEs. These constraints are not unique to Cambodia. Several AMSs face similar challenges, where NCAs operate with minimal budgets and limited technical expertise.¹⁵³ Inadequate capacity-building initiatives exacerbates these issues,¹⁵⁴ leaving agencies ill-equipped to address anticompetitive practices, especially those involving government favoritism. Addressing these issues is salient within the context of the first strategic goal of the ASEAN Competition Action Plan (ACAP) 2016-2025—to establish “effective competition regimes” in all AMS.¹⁵⁵

¹⁵¹ Chew, *supra* note 1, at 83. Chew explains that “[p]urist regimes are dedicated to preserving the competitiveness of markets. Mixed regimes, on the other hand, incorporate other rules that, though possibly related to competition, are not strictly for the purpose of protecting competition. These rules may pursue other objectives, such as consumer protection and fair trade.” See Chew, *supra* note 1, at 82.

¹⁵² The Cambodia Competition Commission was established on February 17, 2022, pursuant to the Royal Government of Cambodia's Sub-Decree No. 37 ANKr.BK on the Organisation and Functioning of the Cambodia Competition Commission.

¹⁵³ Barbora Valockova, *EU Competition Law: A Roadmap for ASEAN?* 10 (EUC Working Paper No. 25, 2015, 2015).

¹⁵⁴ ASEAN is of the view that “[t]he AMS are at various stages of development in terms of competition law implementation and enforcement. The [capacity-building] needs of the agencies are divergent and will continue to differ.” See ASEAN SECRETARIAT, ASEAN CAPACITY BUILDING ROADMAP FOR COMPETITION (2021-2025) ¶ 4 (2022).

¹⁵⁵ ASEAN SECRETARIAT, ASEAN COMPETITION ACTION PLAN 2016–2025 3 (2016) [hereinafter “ACAP 2016-2025”], at https://www.asean-competition.org/file/post_image/New%20ACAP%202025%20and.

An updated ASEAN Competition Action Plan 2025 is now available after the five years of implementation. ASEAN SECRETARIAT, ASEAN COMPETITION ACTION PLAN 2025 (2021), at <https://www.asean-competition.org/read-publication-new-acap-2025-and-implementation-schedule-2021-2025>.

Another significant hurdle is access to information. SOEs may not be as transparent as private companies, making it difficult for NCAs to gather necessary evidence. They may actively conceal critical information, and when they do disclose information, challenges related to the “quality, reliability, and timeliness of [that] information” frequently arise.¹⁵⁶ The lack of transparency impedes the investigative process and weakens the ability of NCAs to build strong cases against SOEs engaged in anticompetitive conduct. The political influence of SOEs also means that NCAs may face resistance not only from the entities under investigation but also from other parts of the government. In some cases, there may be an implicit expectation that NCAs should protect national champions or avoid actions that could disrupt key sectors of the economy.¹⁵⁷ This expectation can lead to a lack of institutional support for rigorous enforcement, further constraining the effectiveness of competition law. For example, in countries where SOEs dominate essential industries such as telecommunications, energy, or transportation, taking enforcement action against these entities could have significant economic repercussions. NCAs may be reluctant to intervene in such cases and fear negative impacts on the economy or repercussions from political leaders.

The challenges are compounded by the diversity in competition laws across ASEAN. The existence of both purist regimes, which strictly separate competition law from other policy considerations, and mixed regimes, which integrate competition policy with industrial or other economic policies, creates inconsistencies.¹⁵⁸ Businesses operating across the region face difficulties in understanding and complying with varying legal requirements. For NCAs, this diversity makes coordination and mutual assistance more complex, particularly when dealing with cross-border anticompetitive practices involving SOEs.

¹⁵⁶ SUNITA KIKERI & RUXANDRA BURDESCU, WORLD BANK, ENHANCING GOVERNMENT EFFECTIVENESS AND TRANSPARENCY: THE FIGHT AGAINST CORRUPTION 98 (2020), at <https://www.worldbank.org/en/topic/governance/publication/enhancing-government-effectiveness-and-transparency-the-fight-against-corruption>.

¹⁵⁷ The ASEAN posits that “[i]ndustrial policy considerations may also justify provisions which severely limit the application of competition law, e.g. by developing ‘national champions’ or providing protection to the domestic sector (‘infant industry’ protection).” See ASEAN SECRETARIAT, GUIDELINES ON DEVELOPING CORE COMPETENCIES IN COMPETITION POLICY AND LAW FOR ASEAN 13 (2012), at https://asean-competition.org/file/post_image/Regional%20Core%20Competencies.pdf.

¹⁵⁸ See Chew, *supra* note 1, at 82.

B. Absence of Regional Enforcement Mechanisms

At the regional level, ASEAN has no supranational authority capable of enforcing competition rules across member states or tackling market distortions that span the region. Its long-standing principles of non-interference and respect for sovereignty constrain the potential for centralized oversight or intervention.¹⁵⁹ Anticompetitive practices that impact multiple AMSs consequently lack a regional body with the mandate to investigate or impose sanctions. Introducing a harmonized competition policy within ASEAN is thus a high-reaching goal, but it carries many complexities. The diversity of AMSs' economic conditions and legal frameworks adds further layers of difficulty. Although region-wide competition norms could foster open and fair markets, their capacity to address government favoritism toward SOEs remains uncertain.

Fundamental to ASEAN's regional competition policy is the ACAP 2016–2025. This plan enumerates strategic actions intended to achieve a “competitive, innovative, and dynamic ASEAN with an effective and progressive competition policy.”¹⁶⁰ It stresses the significance of AMSs maintaining comprehensive competition statutes by 2025, aligning with the AEC Blueprint 2015's objective to “introduce competition policy in all [AMSs] by 2015.”¹⁶¹ This task extends beyond legislative enactment; it demands the creation of competent NCAs for effective enforcement. For example, Cambodia and Laos, newer members with developing legal infrastructures, have made strides in adopting competition laws in line with the ACAP's goals. Cambodia enacted its competition law in 2021, while Laos did so in 2015, aiming to adhere to regional standards. Recognizing that mere legislation without effective enforcement mechanisms is insufficient, the ACAP also encourages the review and amendment of “existing competition regimes” to address anti-competitive practices more robustly.¹⁶²

An important component of the ACAP is the emphasis on “greater harmonization of competition policy and law in ASEAN.”¹⁶³ This harmonization seeks to minimize discrepancies that could curtail cross-border trade and investment. While Singapore has a well-established competition regime under its Competition Act 2004, other AMSs like Cambodia are still refining their legal frameworks. The ACAP aims to bridge

¹⁵⁹ See ASEAN Charter, art. 2(2).

¹⁶⁰ ACAP 2016-2025, *supra* note 155, at 2.

¹⁶¹ ASEAN BLUEPRINT, *supra* note 11, at ¶ 41.

¹⁶² ACAP 2016-2025, *supra* note 155, at 3.

¹⁶³ Strategic Goal 5 of the ACAP. See ACAP 2016-2025, *supra* note 155, at 10.

these gaps through capacity-building initiatives. Capacity building is facilitated through workshops, training programs, and knowledge-sharing platforms coordinated by the AEGC. These efforts enhance the technical expertise of NCAs, equipping them to tackle complex cases, including those involving SOEs. The AEGC has organized numerous activities to “strengthen the capacities of competition-related agencies in the areas of institutional building, law enforcement, and advocacy.”¹⁶⁴

Despite progress under the ACAP, certain limitations curtail its effectiveness in addressing the competitive advantages enjoyed by SOEs. A notable limitation is the non-binding nature of the Regional Guidelines. Unlike the EU, which operates under a legal framework allowing supranational enforcement of competition laws, ASEAN adheres to the principle of non-interference and consensus.¹⁶⁵ This approach means that regional agreements and guidelines lack enforceability unless AMSs choose to incorporate them into national legislation. The Regional Guidelines provide a framework but do not impose legal obligations. AMSs may adopt provisions selectively or interpret them differently, which could lead to inconsistent application. Vietnam, for example—while aligning some aspects of its Competition Law of 2018 with the Regional Guidelines—continues to grant preferential treatment to its SOEs, reflecting national priorities over regional commitments.¹⁶⁶

Another significant limitation is the absence of a supranational enforcement authority within ASEAN. Unlike the European Commission, which can enforce competition laws across member states, ASEAN lacks a centralized body with the power to investigate or sanction anticompetitive practices region-wide. Enforcement relies entirely on NCAs, which may face domestic pressures or lack the capacity to act against powerful SOEs. In Indonesia, its NCA operates independently¹⁶⁷ but may encounter challenges when investigating SOEs with significant political backing. Without a regional authority to support or coordinate such efforts, the overall effectiveness of competition enforcement weakens.

Recognizing these limitations, ASEAN has initiated efforts to enhance regional cooperation in competition policy. Platforms for

¹⁶⁴ AEGC, *supra* note 134.

¹⁶⁵ See ASEAN Charter, art. 20(1).

¹⁶⁶ See BINH & QUANG, *supra* note 6.

¹⁶⁷ OECD, ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN INDONESIA-2019 5 (2020), at [https://one.oecd.org/document/DAF/COMP/AR\(2020\)46/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2020)46/en/pdf).

information sharing and exchanging best practices among NCAs have been established. The ASEAN Competition Enforcers Network (ACEN) facilitates collaboration through “mutual understanding of [NCAs] enforcement goals,” information-sharing among NCAs, and “facilitating cooperation on mergers and acquisitions with a cross-border dimension.”¹⁶⁸ Through ACEN, AMSs can share experiences in handling cases involving SOEs, building collective expertise. The Grab-Uber merger case exemplifies this cooperation. In March 2018, Grab, a ride-hailing service founded in Malaysia, acquired Uber’s Southeast Asian operations, becoming a dominant player in the regional market. This merger prompted investigations by various ASEAN NCAs due to concerns over reduced competition and its impact on consumer prices. More importantly, the merger saw “[NCAs] cooperate on the case.”¹⁶⁹

Despite these collaborative efforts, obstacles remain that hinder deeper integration. National sovereignty concerns and the diversity of legal systems make it challenging to harmonize competition laws fully. Political will varies among AMSs, especially when national interests tied to SOEs are at stake. Thailand’s reluctance to subject its SOEs to rigorous competition enforcement reflects domestic priorities. The country’s exemption of SOEs from certain provisions of the Trade Competition Act underscores the tension between national interests and regional integration goals. Disparities in economic development and institutional capacities mean that some countries may prioritize economic growth over competition enforcement. Myanmar, focusing on attracting foreign investment and developing its economy,¹⁷⁰ may be less inclined to enforce competition laws strictly against its SOEs.

While ASEAN’s regional competition policy is a step in the right direction, it faces substantial limitations in addressing the advantages held by SOEs. The lack of a supranational body and the non-binding status of its guidelines make achieving uniform application of competition laws across

¹⁶⁸ *ASEAN Establishes Competition Enforcers’ Network, Regional Cooperation Framework, and Virtual Research Centre*, ASEAN SECRETARIAT WEBSITE, Oct. 11, 2018, at <https://asean.org/asean-establishes-competition-enforcers-network-regional-cooperation-framework-and-virtual-research-centre>.

¹⁶⁹ *Id.*

¹⁷⁰ In 2016, Myanmar enacted the Myanmar Investment Law (“MIL”) [Pyidaungsu Hluttaw Law No. 40/2016 (2016) (Myan.)] to “attract more investment from both foreign and domestic businesses.” See Geoffrey D. Chin, *2020 Investment Climate Statements: Burma*, U.S. STATE DEPT. WEBSITE, at <https://2021-2025.state.gov/reports/2020-investment-climate-statements/burma>.

AMSs difficult. Efforts toward regional cooperation, such as information sharing and capacity building, are valuable but may fall short of resolving deep-rooted challenges. These obstacles necessitate a more robust and binding framework, coupled with political commitment from AMSs. The absence of binding enforcement mechanisms means that anticompetitive practices transcending national boundaries continue to fall short of being effectively addressed. This limitation undermines the goal of creating a competitive and integrated regional market, as envisioned in the AEC Blueprint. Without regional mechanisms to coordinate actions or compel compliance, government favoritism and anticompetitive conduct can persist, and would continue to curtail the development of a truly integrated ASEAN market.

Institutional weaknesses at both national and regional levels significantly impede the effective enforcement of competition laws against government favoritism within ASEAN. NCAs often lack the mandate and capacity to address anticompetitive practices rooted in government actions. At the regional level, the absence of supranational enforcement mechanisms and the principle of non-interference restrict the ability to tackle cross-border distortions. Addressing these institutional weaknesses requires a concerted effort to expand the mandates of NCAs, enhance their capacity, and establish regional enforcement mechanisms. Harmonizing competition laws and promoting coordination among AMSs are essential steps toward effective collective action against government favoritism. Without such measures, the objectives of fair competition and an integrated ASEAN market remain elusive.

V. CONCLUSION AND RECOMMENDATION

Despite the broad coverage of national competition laws across ASEAN and the existence of the Regional Guidelines, government favoritism toward SOEs and PFPEs remains largely unaddressed. The laws appear comprehensive on paper, targeting cartels, mergers, and abuse of dominance. In practice, they do not extend their scrutiny to unilateral state actions that confer market-distorting benefits. This omission reflects a deeper structural blind spot: the favored enterprise often exploits privileges that do not fall under traditional notions of anticompetitive conduct. Public mandates such as subsidies or exclusive rights simply do not meet established definitions of prohibited conduct. The result is an environment where government-owned enterprises shielded by state authority receive competitive advantages that are rarely scrutinized. While one might assume

that abuse of dominance provisions could correct this oversight, these rules still revolve around anticompetitive conduct of private entities. No statutory mechanism addresses unilateral government actions that entrench SOEs in monopolistic or dominant positions. Traditional concepts like collusion or price-fixing do not capture a situation where an SOE relies on statutory mandates or specialized regulations to suppress rivals. This conceptual gap leaves no effective legal avenue to confront state-supported favoritism, thereby allowing distortions and uneven playing fields to endure across ASEAN markets. Private companies may remain locked out of vital sectors, while consumers bear the cost of reduced innovation and competition.

At the regional level, the ASEAN Guidelines on Competition Policy have done little to remedy this shortfall. Originally conceived to promote cooperation and consistency in competition policy, they ultimately lack the force necessary to curb government favoritism toward SOEs and PFPEs. Their non-binding nature and limited scope mean that they can neither impose binding standards on AMSs nor require uniform implementation. Even though these Guidelines encourage best practices and offer a common vocabulary for national competition regimes, they do not create an enforceable framework capable of reining in state-sponsored privileges that distort market conditions across ASEAN. This shortfall undercuts the broader thesis that SOEs and PFPEs enjoy substantive exemptions from competition scrutiny. While regional documents emphasize the importance of fair markets, they do not address the core issue: unilateral conferral of competitive advantages through subsidies or exclusive mandates. National competition laws, for the most part, concentrate on private conduct but fail to capture government-led distortions that often lie outside definitions of “antitrust prohibitions.” The Regional Guidelines do not fill that gap, since they neither compel states to submit their SOEs to open competition nor sanction favoritism hidden behind public-interest objectives.

These weaknesses are compounded by the institutional limits within ASEAN. No supranational authority can intervene when, for example, an SOE in one AMS expands regionally under special privileges. The AEGC is restricted to soft cooperation, and the Regional Guidelines offer only voluntary norms. Cross-border distortions that harm private competitors or consumers in multiple jurisdictions go largely unchallenged, as the Regional Guidelines provide no binding dispute resolution or formal process for reviewing state aid. In effect, each AMS can continue to protect domestic champions under the cloak of national policy, knowing that neither ASEAN nor any regional entity is empowered to require compliance or ensure redress. This reality leaves NCAs struggling to enforce even nominally robust

laws where unilateral government action is involved. Most NCAs are equipped to confront private collusion or mergers, not legislated monopolies or preferential financing authorized at the highest levels of government. The Regional Guidelines, meanwhile, do not supplement these agencies with legal tools to investigate or prosecute favoritism across borders. Instead, they rely on consensus-driven cooperation, which preserves the sovereignty of AMSs but fails to deter state-led market distortions that undermine the region's move toward an integrated, rules-based community. A robust CNF is thus indispensable to close the gap, in the form of an ASEAN legal instrument that imposes binding obligations on AMSs. By treating unilateral government actions that confer competitive advantages as included within the scope of competition policy, the framework would expand enforcement to cover state-aid practices and mandated monopolies. The 2019 ASEAN Economic Dispute Settlement Mechanism, which entered into force on 20 June 2022, can be incorporated into this instrument to provide a binding process for resolving intra-ASEAN competitive neutrality disputes. This legally binding model would ensure that substantive rules on transparency, subsidies, and state-granted exclusivity become mandatory, not merely aspirational. Once embodied in a regional instrument, the CNF would empower NCAs to hold public and private entities alike to consistent standards, reinforcing the principle of competitive neutrality. In so doing, ASEAN would move from guidelines that merely encourage cooperation toward a robust regime that enables fair, open, and dynamic markets across the region.