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Regulatory frameworks for reforms of state-owned enterprises in Thailand and Malaysia

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ADB Working Paper Series

REGULATORY FRAMEWORKS FOR REFORMS OF STATE- OWNED ENTERPRISES IN THAILAND AND MALAYSIA

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Abstract

This paper studies the experience of regulatory reform of state-owned enterprises (SOEs) in Thailand and Malaysia. It explores the trends of regulatory reforms relating to the creation of privatization, liberalization, and competition. The paper focuses on the development of the regulatory reforms of SOEs in major sectors (airlines, energy, and telecommunication) in Thailand and Malaysia. It argues that, while having active plans for regulatory reforms, the implementation of these reforms may not successfully fulfill the aims in terms of the efficiency of SOEs. The regulatory reforms face challenges regarding the political economy, regulatory barriers for sectoral restructure, and regulatory intervention approaches in both countries. The paper concludes by proposing possible developments of the regulatory frameworks for the reform of SOEs.

Keywords: privatization, regulation, Thailand, Malaysia

JEL Classification: K230

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1. INTRODUCTION

State-owned enterprises (SOEs) play a significant role in providing public goods and services such as utilities and infrastructures. They also play a considerable role in promoting a country's national agenda, such as providing employment opportunities, promoting national corporates and implementing socioeconomic and industrial policy. Since the state is a significant owner of SOEs, the latter enjoy a monopolistic position in the market and have a competitive advantage vis-à-vis other private enterprises. This creates many unintended market consequences such as inefficiency, nontransparency, and weak governance. Various regulatory and institutional frameworks for reforming SOEs have been adopted by countries around the world in order to stimulate competition, increase efficiency, and improve the level of their performance. However, the outcomes of these reforms are rather mixed. In Asia, for example, many SOEs are still operating less efficiently due to their complacent position in the market leading to poor performance. Against this backdrop, this paper aims to explore the experience of regulatory reform of SOEs in Thailand and Malaysia and the challenges that the countries are or have been facing in undertaking such reform. The paper will be divided into five main parts. The second part explores the international perspective of regulatory frameworks, designed to incentivize reforms of SOEs. The third part explores the experience of Thailand and Malaysia in constituting their regulatory frameworks for the reform of SOEs. The fourth part discusses and analyzes the approach of Thailand and Malaysia toward the reform of SOEs as well as issues and challenges associated with such reform. The fifth part concludes the paper and provides some recommendations regarding better regulatory frameworks for the reform of SOEs.

2. INTERNATIONAL PERSPECTIVE OF REGULATORY FRAMEWORKS AND DESIGN FOR REFORMS

2.1 Privatization, Liberalization, and Competition

State-owned enterprises (SOEs) are considered to be a main driver of economic development and are involved in pivotal national sectors such as energy, mining, infrastructure utilities, and financial services. The reasons for SOEs maintaining their status in these sectors include: supporting national economic and strategic interests; maintaining the national security of ownership control; serving specific public goods or services where the market cannot deliver; performing the role of natural monopoly; and maintaining a state-owned monopoly in cases where market regulation is inefficient (OECD 2018). However, during the period between 1980 and the present day there have been waves of SOE reform aimed at ensuring that SOEs can perform in an efficient manner. These waves can be seen in periods of privatization, liberalization, and market competition.

In the initial stage of reform, countries paid more attention to the word “privatization” or “corporatization” with the objective of increasing the efficiency of SOEs. The UK government policy on privatization embarked on the important step of privatizing infrastructure utilities (Beasley 1997; Young 1987), which then contributed to the international movement directing countries to set their privatization policy in order to reform their SOEs between 1980 and 2000 (Card, Blundell, and Freeman 2007). In the UK, the government carried out a privatization program on major utility entities such as British Telecom (BT) in 1984 and British Gas in 1986, and the program later expanded to various SOEs in all economic sectors (Rhodes et al. 2014). Many of the privatizations

contributed to market creation where before the nationalized SOEs had operated as an actual or near monopoly (Rhodes et al. 2014). In the international privatization arena, many countries adopted a policy following the UK's footsteps. The EU countries adopted a privatization policy with similar aims of making their SOEs more efficient and building up a market, previously monopolized by SOEs (Clifton et al. 2006). The EU privatization paradigm was slightly different from the British model of privatization in that the privatization matched the development of EU members and the EU economy (Bortolotti and Milella 2006; Clifton et al. 2006). The privatization policy later spread globally with the objectives of improving inefficient SOEs and raising government budgets (Boutchkova and Megginson 2000; Debab 2011).

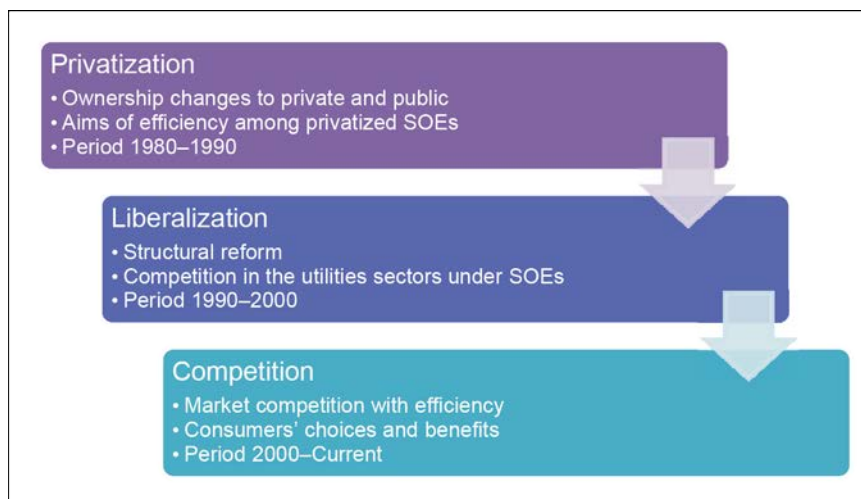
However, the policy on privatization was later transformed to liberalization. The aim of the adoption of liberalization was to ensure that new enterprises were able to enter the market, which had previously been monopolized by the SOEs. The trend of liberalization tended to mix with privatization during the period 1990–2010, but the liberalization was the preferred policy in countries implementing reforms on SOEs. According to Newbery (1997), privatization of the infrastructure of SOEs is a policy dealing with ownership rather than control. In contrast, the liberalization policy aims to facilitate further improvements in performance compared to privatization alone (Newbery 1997). The privatization and liberalization policies are closely linked but they adopt a different approach. Privatization permitted strategic investors to purchase control over national SOEs and such privatization may lead to a change from public monopoly to private monopoly when new market entrants are under tight control (Pisciotta 2001). Privatization thus differs from liberalization in that the latter commonly focuses on competitive entry under market orientation (Pisciotta 2001).

Examples in the United States include the adoption of liberalization to open access to gas pipelines and the dismantling of AT&T, thereby making long-distance calls a more competitive market (Newbery 1997). The UK also liberalized its telecommunication networks by permitting a new company, Mercury, to enter the market and compete with the privatized British Telecom (Moon et al. 2006). Similar liberalization policies were adopted to increase the number of market entrants and enhance efficiency in various infrastructure sectors in both developed and developing countries. Pollitt (2009), in his study on electricity liberalization in Southeast Europe, showed that there was a separation of transmission and distribution infrastructures in order to establish market competition for all customers (Pollitt 2009). Hulsink (1999), in his research on privatization and liberalization in European telecommunications, presents the general view of the telecom reform in the UK, the Netherlands, and France that after privatization, liberalization was a vital policy aimed at ensuring market creation and market entry in the telecom sectors (Hulsink 1999). Bowen (2000), in his research relating to the airline industry in Southeast Asia, shows that Singapore, Malaysia, Thailand, and the Philippines did implement privatization of their national airline carriers and these countries later adopted the international liberalization route with new entrant airlines (Bowen 2000). What can be seen is that liberalization is the later stage of the plan after the initial step of privatization and liberalization impacted the main characteristic of political-economic changes in the last two decades between 1990 and 2010 (Keune et al. 2008; Newbery 1999).

The reform phenomenon moved toward a focus on market competition purporting to create an efficient and competitive dynamic of economic sectors. From 2000 up to the present day, reforms of SOEs maintained their path of liberalization directed at a restructuring toward market competition. The 2001 OECD report on restructuring SOE utilities for competition shows that the implementation of liberalization concentrated on the restructuring of infrastructure industries by a structural separation of the competitive

and noncompetitive components of industries (OECD 2001). An example of the structural separation of energy utilities is that the government required a separation of electricity generation, distribution, transmission, and retail sectors (Kirby et al. 1995). In the EU, energy separation was adopted through the liberalization of unbundling toward market competition (EU Commission 2006; Pollitt 2007). Based on the EU liberalization policy, many countries have followed a similar liberalization path of energy separation. The countries concerned are Belgium, Ireland, Italy, the Netherlands, New Zealand, Norway, Portugal, Spain, Finland, England and Wales, Australia, and Brazil (OECD 2001). Liberalization is also applied to other infrastructure services, namely telecommunications, airlines, and postal services, in these countries (OECD 2016b). Through liberalization that creates competition in infrastructure utilities, consumers can choose the infrastructure suppliers offering the best conditions and can achieve higher efficiency under consumer-friendly competition (EU Commission 2018a). What can be seen at this point is that there is a connection between liberalization and competition. Liberalization aims to facilitate the restructure of infrastructure utilities in order to generate market competition. The reform trends of liberalization and competition thus differ from those of privatization. Privatization mainly focuses on the change of public ownership to private ownership with the objective of achieving SOE efficiency, while liberalization is aimed at restructuring infrastructure utilities to competitive market conditions. The current global reform trends then pay more attention to maintaining market competition rather than creating competition through liberalization. The following Figure 1 presents an overview of reform trends in infrastructure utilities based on privatization, liberalization, and competition.

Figure 1: Trends and Overlap Policy on Reform of SOEs under Privatization, Liberalization, and Competition



Sources: Authors.

2.2 Regulatory Frameworks for Reforms

Regulatory frameworks are important factors, establishing and directing the reform of SOEs in various sectors. Although there are slight differences in meaning, the paper defines law and regulation with a similar meaning in terms of governmental rules, obligating and controlling reform. With reform based on privatization, liberalization, and market competition, there are three aspects of regulatory frameworks: 1) regulatory

framework for privatization; 2) regulatory framework for competition; and 3) regulatory framework of competition.

Regulatory framework for privatization refers to the changes in laws that obligate the sales of SOEs and make SOEs take on the form of corporates in the market economy. The changes in law are generally aimed at reducing the burden of government budgets from inefficient SOEs and ensuring that privatized or corporatized SOEs operate in an effective manner. At this point the difference between the words “privatization” and “corporatization” has to be clarified. The word “privatization” means obligating or changing SOEs to become private enterprises. The word “corporatization” means obligating or changing SOEs to become a form of entrepreneurial entity but government may hold some portion of the shares of SOEs. Nevertheless, it should be noted that in this paper the words “privatization” and “corporatization” are considered to be similar ideas in that the reform by governments aim to make SOEs become private corporates in order to ensure organizational efficiency. One example of this is that British Telecom (BT) had been privatized by the passing of the Telecommunications Act 1984. The Telecommunications Act 1984 compelled BT privatization by removing BT’s monopoly over telephone services and by setting up the telecom regulator – the Office of Telecommunications (OfTel) (Parker 2004; Rhodes et al. 2014). Through the Telecommunications Act, BT was privatized by an initial public offering (IPO) during between 1984 and 1993 (Rhodes et al. 2014). In Germany, the Treuhandgesetz 1990 (Law on Privatization) established the Treuhandanstalt, a public trust that was positioned as the main agency directing the privatization of public enterprises in Germany (Beijer 2018; Schmidt 1995). The Treuhandgesetz (Law on Privatization) listed the transformation of ownership and required the creation of many business entities with the ability to compete in the market. What can be seen is that the legal and regulatory changes contributed to the implementation of privatization and corporatization of public enterprises. The changes led to a significant transformation of public entities to become private companies. The changes also altered the utility sectors from public monopoly toward liberalization.

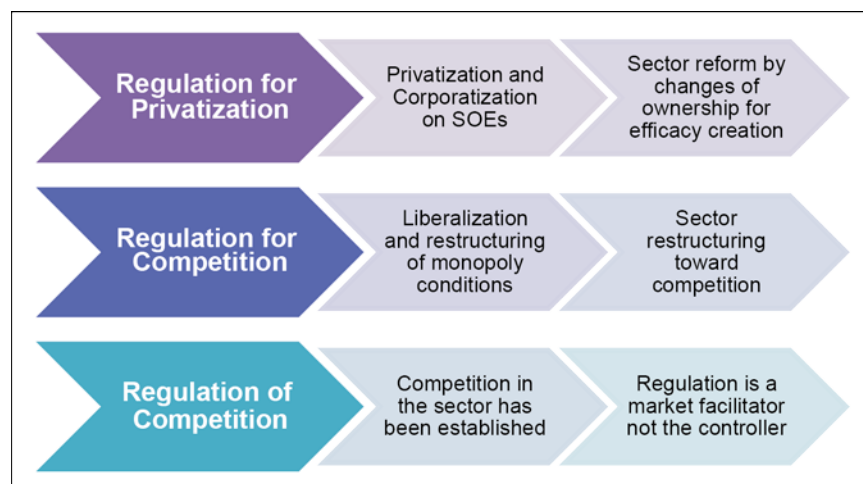
Regulatory framework for competition refers to the passing of laws that constitute a restructuring and a market open to liberalization objectives. According to Levi-Faur, “regulation for competition” occurs when governments aim to reform economic sectors toward market competition (Levi-Faur 2003). The regulation for competition generally obligates structural changes and incentivizes new entrants to join the liberalized market. Thus, regulation for competition is a procedure to obligate sectoral regulators to implement sectoral restructuring toward liberalization with a unified regulatory regime (Jordana and Levi-Faur 2005). The regulation for competition can be classified as *ex ante* rules that transform a monopoly utility market to market competition. In the EU, the EU Commission adopted directive 2002/21/EC on the telecoms regulatory framework, which contributed to the removal of market restrictions and an open-access regime for interconnection arrangements among companies in EU telecommunications (EU Commission 2018b; Levi-Faur 2004). To restructure and liberalize telecommunications, the EU Commission later adopted a package of five directives and two regulations (EU Commission 2018b). The directives and regulations were purported to progress restructuring telecommunication toward market competition. In the Republic of Korea, the government adopted the Telecommunication Business Act 1983 and the Information and Telecommunication Construction Business Act 1997 in order to restructure telecommunication sectors by reducing the dominant position of the Republic of Korea’s public enterprise, Korea Telecom, and open licensing for new market entries (Kim 2016). The adoption was the result of the government’s intention to restructure the telecom sector to market competition by moving away from being a state-run monopoly and opening up the market to the new entrants of SK Telecom and LG U+ (Kim 2016;

Tcha et al. 2000). The Republic of Korea's energy sector has also followed a similar restructuring with the adoption of legislation obligating changes to SOEs and opting for competition in both electricity and gas (Lee 2011).

Regulatory framework of competition refers to making sure that laws and regulations facilitating restructuring do not hamper the dynamic of market competition. Laws and regulations for restructuring SOEs may at some point become a competition hindrance rather than a competition creator. The situation where laws and regulations become a competition hindrance occurs when the laws and regulations create market barriers and interference to market competition. The laws and regulations for competition would then have to be changed to "laws and regulations of market competition." Levi-Faur (1999) states that regulation for competition differs from regulation of competition in the degree of market intervention by state authorities (Levi-Faur 1999). The regulation of competition relies on market competition and gives authoritative power to competition agency, while regulation for competition relies primarily on a sectoral regulator to reform and restructure the infrastructure sectors (Jordana and Levi-Faur 2005). The regulation of competition is a light-handed approach to regulation, used when there is mature market competition and the regulation will focus only on preventing anti-competitive behaviors in the market (Bertram and Twaddle 2005; Levi-Faur 1998). An example from the UK is that the regulation for the energy sector is changed to a light-handed approach regulation and letting the market competition be the sector controller (OFGEM 2008). Black et al. (2009) show that transferring energy regulation from an intervention approach to a light-handed approach would yield effective sectoral development through competitive efficiency (Black et al. 2009). The regulation of competition has also been utilized in the Australian airport sector. The aim of adopting the regulation of competition under a light-handed approach in the Australian airport sector is to avoid regulation that directly controls the pricing of airport services and allows the benefits of facilitating greater negotiation between airports and users (Arblaster 2017).

What can be derived from Sections 2.1 and 2.2 of this paper is that within the reform of SOEs through privatization, liberalization, and competition there are always changes of regulatory frameworks that obligate all of those reforms. Figure 2 shows the correlation between the reforms and the changes of laws and regulations described above.

Figure 2: Regulatory Frameworks for Reforms



Sources: Authors.

3. REGULATORY FRAMEWORKS OF SOES IN THAILAND AND MALAYSIA REGULATORY FRAMEWORKS OF SOES IN MALAYSIA

The Government of Malaysia announced its policy to reform SOEs through privatization with the adoption of “Privatization Guidelines 1985.” The guidelines were followed by the passing in 1991 of the Privatization Master Plan (PMP), whose objectives were to reduce government budget burdens, increase economic efficiency, and facilitate economic growth (Nambiar 2009). The Master Plan identified 234 privatization proposals and 109 privatization projects were implemented (Tan 2008). Most of the SOEs in Malaysia have been set to be under the reforms through privatization and liberalization. In order to comply with the research limitations, this paper focuses on the reforms of SOEs in the telecommunication, energy, and airline sectors. The reason for focusing on these sectors is that the Malaysian government sees these sectors as reform pioneers and these sectors are critical economic sectors that have been controlled by Malaysian SOEs.

3.1.1 Malaysia Telecommunication Regulatory Reform

The Government of Malaysia passed the Telecommunications Service (Successor Company) Act 1985, which led to a change of corporate name from JTM to Syarikat Telekom Malaysia Berhad (STM) in 1987 (Nambiar 2009). STM was directed toward a privatization program in 1990 by an initial public offering (IPO) and was listed as the corporate name Telekom Malaysia on the Kuala Lumpur Stock Exchange (Partridge et al. 1995). The IPO was the result of the government’s legal obligation to initiate a privatization project in telecommunications. After the IPO on the stock exchange, the Telekom Malaysia (TM) was able to raise significant investment funds. After the privatization, the telecommunication sectors were restructured with permission for new entrants.

Later, the passing of the Communications and Multimedia Act 1998 contributed to the establishment of a telecom regulator and to creating innovative competition in the telecommunication sector. With the passing of the act, the Malaysian Communication and Multimedia Commission (MCMC) has broad regulatory authority to shape the telecom market toward liberalization and competition (Cheung 2011). With the rapid technological advancement of spectrum and mobile telecommunication, Malaysia’s telecommunication has been liberalized with the introduction of market competition under regulatory governance of the Malaysian Communication and Multimedia Commission. The government introduced the National Telecommunication Policy 1994–2020, which focuses on the initiatives for competition within industry and the R&D activities in telecommunication technologies (Ramlan et al. 2013). An overview of the current telecommunication market in Malaysia shows that it comprises: the Axiata Group as regional cellular operator; Digi.Com as a Malaysia-focused cellular operator; Maxis Bhd as the largest Malaysian cellular operator according to subscribers; Telekom Malaysia (TM) as the dominant fixed-line operator in Malaysia; and TIME dot Com Bhd as a data-centric, fixed-line telephone telecommunication (DBS Group Research 2016). It can be seen that the regulatory reforms following privatization and the passing of the new communication act led to the situation where the monopoly position of SOE-Telecom Malaysia was diluted and the market was reshaped into a competition. However, TM continues to have a virtual monopoly in the fixed-line services market given its scale and scope, vertical integration, and limited prospects for further market evolution by competing operators (MCMC 2008). TM also continues to be the monopoly provider in

the provision of the broadcasting transmission service. Entry into this service is difficult due to physical and technical barriers (Lee 2002). The proposal to introduce preselection, which allows customers to select their long-distance carrier in advance and access codes, has also been dropped. One of the reasons for this is to protect the interests of TM (International Telecommunications Union 2002). The government's tender for high-speed broadband was not open to the public, and since it is considered an important service to the nation it was awarded exclusively to Telekom Malaysia based on a public private partnership (PPP) agreement between TM and the government. TM currently controls more than 90% of the local loop and there is no obligation on TM to unbundle its local loop to competitors. The MCMC as the regulator aims to introduce rules for accounting separation among vertically integrated operators. The rules will then facilitate more market competition by reducing cross-subsidies and potential abuse of market power (MCMC 2012).

3.1.2 Malaysia Energy Regulatory Reform

The Malaysian government initiated reform in the energy sector by establishing a privatization program with the aim of opening the sector to liberalization. In the electricity sector, the Malaysian National Electricity Board (NEB), the monopoly SOE in the supply of electricity during the 1980s, was put under a privatization program. In 1990, the Electricity Supply (Successor Company) Act 1990 (Act 448) was passed. The act established the corporation of Tenaga Nasional Berhad (TNB) to replace the NEB and floated the shares of the TNB on the Kuala Lumpur Stock Exchange (Tenaga Nasional Berhad 2018). However, the government still owns the majority of shares at 70%.

The privatization program contributed to the establishment of three interconnected electricity companies. The regulatory reform was followed by the government's decision to allow a new independence power producer (IPP) in 1992 (Singh 2018). The participation of the IPP in the electricity sector helped alleviate the sole responsibility of power generation from the TNB and created a sharing electricity power pool that prevented any further blackouts in Malaysia. The increase of independent power producers (IPPs) in the market reduced the dominant roles of the TNB and led the way to electricity liberalization and competition (Wisuttisak and Rahim 2018). Later, the government passed the Energy Commission Act 2001, establishing the Energy Commission, and the Malaysian government ceased its policy of electricity liberalization due to the experience of the electricity crisis in California (US) in 2000 (ERIA 2017). Thus, the current electricity structure in Malaysia is still mainly under the control of three vertically integrated SOEs – Tenaga Nasional Berhad (TNB), Sabah Electricity Sdn. Bhd., and Syarikat SESCO Berhad (ERIA 2017). The TNB remains the largest electricity generator in Malaysia. It still holds a monopoly in the transmission and distribution markets, thereby limiting competition at the wholesale and retail levels. By this, Malaysia still maintains SOEs' monopoly position by utilizing the Single Buyer Market Model in managing the electricity supply in the country. A single buyer entity is established to manage the procurement of electricity and related services in Peninsular Malaysia (Malaysia Energy Commission 2018). One of the functions of the single buyer is to facilitate competition in the generation market and "ensure that it negotiates the terms and conditions of generator contracts in a fair and balanced manner that does not unreasonably discriminate against any party and ensures fair and reasonable terms and conditions for participation in the generation sector for all parties" (Malaysia Energy Commission 2018).

In the oil and gas sector, Petroleum Nasional Berhad (PETRONAS) was established with the enactment of the Petroleum Development Act 1974. PETRONAS is a sole national corporation with exclusive legal rights, powers, liberties, and privileges of exploring, exploiting, winning, and obtaining petroleum whether onshore or offshore in Malaysia (MPC 2016). PETRONAS has a privilege as an SOE and is able to report directly to the Prime Minister. In other words, PETRONAS acts as both a market player and a regulator in the oil and gas sector (Mehden and Troner 2007; PETRONAS 2018). While government aimed to implement the policy of liberalization in the oil and gas sectors, the policy was not conducted according to the aim. PETRONAS is still a monopoly SOE in oil and gas businesses. Nevertheless, the government has embarked on a gas business liberalization plan under the Gas Supply Act 1993 (Act 501). Malaysia had amended its Gas Supply Act (Gas Supply Act [Amendment] 2016), setting up third-party access to the gasification, transmission, and distribution system infrastructure. The amendment increases competition further, which strengthens the effectiveness and efficiency of the Malaysian gas sector (Hashim 2016).

3.1.3 Malaysia Airlines Regulatory Reform

With the privatization policy in 1985, Malaysian Airlines was privatized by way of an initial public offering (IPO) (ICAO Secretariat 2007). Some 40% of the shares of Malaysian Airlines were sold to the public and the government remained the majority shareholder (ICAO Secretariat 2007). After privatization, Malaysian Airlines transformed its operation to a business orientation but there was still political interference in the newly privatized Malaysian Airlines (Jomo and Syn 2005). In 2005, the Malaysian government had to buy back all of Malaysian Airlines' shares due to it being on the brink of bankruptcy as a result of the financial crisis (Doraisami 2005). Malaysian Airlines had kept operating with financial losses for years from 2007 to 2014 with large government subsidies. The government passed the 2014 Malaysian Airlines System Berhad (Administration) Act (MAS Act) purporting to replace Malaysian Airlines with a new entity, Malaysia Airlines Berhad. The act required the airline to implement a new business model so as to create an effective, efficient, and seamless transition from Malaysian Airlines. Section 5 of the act appoints a professional administrator to manage MAB toward a profitable level. Importantly, Sections 11 and 12 of the act provide moratorium privilege to MAB for 12 months with a possible extension of another 12 months. Nevertheless, MAS could not make an upturn from its financial losses and the government, via the Kasana National Bhd, had to give significant financial support to MAS. The Kasana National Bhd is the strategic investment fund of the Malaysian government and it takes control over most SOEs in Malaysia (Khazanah Nasional Berhad 2018). Malaysian Airlines seems to have faced financial difficulty for years due to its inefficient operation and to the increasing aviation competition under the ASEAN open sky policy (Das 2018; Forsyth et al. 2006). As a result of the implementation of the open sky policy there are increase of market competition and many carriers, the premium and low-cost airlines entering the airline market in Malaysia. However, the competition led to financial trouble for Malaysian Airlines and the Malaysian government had to take action by providing significant financial subsidy.

3.1 Regulatory Frameworks of SOEs in Thailand

In 1957, Thailand was under the control of the military government under American advisory economic policies with the aim of reducing state intervention by relying on SOEs' monopoly and encouraging private investment (Unger 1998). The government then directed its policy industrialization and private investment by passing the Investment Promotion Act in 1960 and 1962 (Unger 1998), while there was

clear evidence of market openness with the government's law supporting private participation, market concentration, and collusive business conduct (Paopongsakorn 2002). The SOEs controlled the Thai economy with their political relationships and performed the roles of both market regulators and market operators.

The Thai economic crisis in 1997 downgraded Thailand from an economic tiger to a poor country with high international debt. The government had to adopt reform policy in 1998 so as to deal with public debt and to fundamentally reform SOEs. In 1998, the government announced the Master Plans for Privatization of SOEs laying down strategies for SOEs to stay partially or wholly under state control (Dempsey 2000). Thailand's privatization strategy primarily involved the divestment of public enterprises for private investments and transferring ownership from the public to the private sector (Dempsey 2000). In the privatization policy all regulatory reforms were set to facilitate the implementation of privatization. The government enacted the State Enterprises Corporatization Act 2542 (1999), obligating various SOEs to join the privatization program. The focus of the reform will be on sectors similar to those in Malaysia, namely telecommunications, energy, and airlines. These are critical economic sectors and the Thai government initiated its regulatory reforms of those sectors as the pioneer sectors for privatization and commercialization.

3.2.1 Thailand Telecommunication Regulatory Reform

Before 1998, the telecommunication sector in Thailand was under duopoly control by the Telecommunication Organization of Thailand (TOT) and the Communication Authority of Thailand (CAT) (World Bank 2008). The TOT and the CAT acted both as service operators and regulators supervising their concessionaires (World Bank 2008). In 1998, the Telecommunication Master Plan was adopted to create privatization and liberalization. In 2000, the Thai government implemented privatization of both the TOT and the CAT by IPO on the Thai stock exchanges but the privatization was put on hold as there was political uncertainty as a result of the change of government in 2006. Due to the political uncertainty, the Thai government adopted corporatization of the TOT and the CAT without trading their shares to the public. The corporatization of both entities was carried out by establishing both of them as private companies but all the company shares were under government control. Within the period of reform of the telecommunication sector, the government carried out a significant liberalization process by approving various mobile service providers to compete in the telecommunication market. The mobile providers then competed fiercely with the SOEs. Additionally, a vital reform of the telecommunication sector occurred in 2004 with the establishment of the National Telecommunications Commission (NTC) by the 1997 Constitution. The National Broadcasting and Telecommunications Commission (NBTC) was established with the power and duties to regulate the frequency, broadcasting, and telecommunications businesses (NBTC 2018). As a result of the establishment of the NBTC, there regulations passed that contribute to the liberalization and competition in the telecommunication sector. The regulation leads to interconnection of services among telecom companies and they can compete in providing cheaper prices with a more efficient service for consumer choices. The current mobile service providers with market shares are the following: AIS company (43.7%), TRUE Company (29.4%), DTAC Company (24.07%), CAT (1.91%), and TOT (0.08%) (NBTC 2017). The Internet broadband providers with a market share are the following: TRUE Internet Company (38.4%), TOT (16.7%), 3BB company (33.2%), and AIS wireless network company (6.3%) (NBTC 2017). Thus, the Thai SOEs after their corporatization and sectoral liberalization reduced their market power and became smaller market players under market competition.

3.2.2 Thailand Energy Regulatory Reform

In 1998, the Thai government established the National Energy Policy Office (NEPO), which had duties as a planning agency for energy liberalization, including oil, gas, and electricity (Greacen and Greacen 2004). The NEPO proposed a plan to conduct structural reform of the oil and gas sector by unbundling gas transmission and distribution functions under the control of the SOE-Petroleum Authority of Thailand (PTT). With reference to the plan, the government adopted the Royal Decree Stipulating Time Clause for Repealing the Law Governing PTT, BE 2543 (2010). This royal decree was to remove the government-owned status of the PTT. The government also passed the Royal Decree Stipulating Powers, Rights, and Benefits of PTT PCL, BE 2543 (2001), which contributed to privatization via IPO of the PTT on the Thai stock exchanges. However, the privatization reform of the PTT did not adhere to the NEPO plan in that the government did not adopt structural separation of the gas sector and the establishment of access to essential gas pipeline facilities. The government only implemented privatization of the PTT by initial public offering of PTT's shares on the Thai stock exchange without the structural separation (Wisuttisak 2012a). Although there were some market participants, the privatized PTT PCL maintained its dominant position. Currently, PTT PLC is considered a national energy champion and has become the largest listed company on the Thai stock exchanges.

With regard to electricity, the Thai government through the NEPO later adopted the privatization plan of SOE electricity in 1999 (Wisuttisak 2012b). The privatization contained a step plan of privatization and liberalization of the electricity sector toward competition. The plan was to create entity separation in the electricity generation, transmission, distribution, and retail so as to ensure that vertical connection would not affect the liberalization process in the sector (Wisuttisak 2012b). However, the Thai government revised the plan to implement privatization by adhering to an "Enhanced Single Buyer" that would confer the monopoly power of electricity purchasing in Thailand to the privatized EGAT. Nevertheless, in 2006 some activists challenged the privatization plan in the Thai administrative court with the argument that the decrees were unconstitutional and could create a private monopoly in the electricity sector (Wisuttisak 2012b). The administrative court decided that privatization was unconstitutional. The court contended that the liberalization of electricity should be implemented under the establishment of the energy regulatory commission (ERC). Later, in 2008, the Energy Industry Act, B.E. 2550 (2007) was passed to establish the Energy Regulatory Commission (ERC 2018). However, since the establishment of the ERC, there has been a lack of progress in the privatization and liberalization of SOEs.

3.2.3 Thailand Airline Regulatory Reform

The reform of Thai airline sectors initiated by the Cabinet decision to privatize Thai Airways in June 1991 led to the initial public offering of Thai Airways' shares on the Thai stock exchange. With the IPO listing, Thai Airways was renamed Thai Airways International Public Company Limited. Nevertheless, the Ministry of Finance still controls more than 50% of the share. The privatization of Thai Airways contributed to the increase in organizational efficiency as the company was released from the red tape system under Thai bureaucratic procedures. Thai Airways enjoyed a prosperous period from 1995 to 2008 and started to encounter a downturn by facing financial difficulty (Aumeboonsuke 2015). This was because the privatization came with stepping toward airline liberalization and the Thai government started to open up for new entrant airlines (Oum et al. 2010). The liberalization seemed to be an external factor that created structural reform of the Thai airline industry. More airline companies entered the Thai airline market. The liberalization is also similar to the Malaysian airline industry with the ASEAN regional

policy of ASEAN open sky (Tan 2013). The policy led to openness among airline industries with the increase of airline companies in both low-cost and standard services (ASEAN 2018). With its huge organizational operation, Thai Airways was not able to speedily accommodate greater competition from other airlines. The overall reforms of the Thai airline industry are that the government adopted regulations for privatization with the advent of liberalization in the ASEAN region. What can be seen is that airline SOEs are reformed toward greater liberalization with market competition.

This section has shown that Malaysia and Thailand have established their privatization and reform of SOEs program as a result of the changes to the regulatory framework. An overview of the SOEs' reform implementation can be found in Table 1 below.

Table 1: Regulatory Framework and SOE Reform in Malaysia and Thailand

	Thailand	Malaysia
Telecommunication	SOEs have been corporatized and market competition has been established. This is due to the rapid technological changes in mobile and Internet services. SOEs become small market players. Private companies enter and compete in the market. The regulatory framework for this sector can be considered as the step of "Regulatory for market competition."	SOEs have been privatized. The SOEs still have a dominant position over landlines. But the sector has transformed to competition due to the rapid technological changes in mobile and Internet services. Private companies enter and compete in the market. The regulatory framework for this sector can be considered as the step of "Regulatory for market competition."
Airline sector	The SOE Thai Airways has been privatized but is faced with financial loss due to the politically inefficient management and fierce competition from the ASEAN open sky policy. The regulatory frameworks for this sector can be considered as the step of "Regulatory for market competition." The SOEs are faced with a competitive market system with many airlines competing in the market.	The SOE Malaysia Airlines has been privatized but has to deal with financial loss due to inefficient management and fierce competition from the ASEAN open sky policy. The regulatory frameworks for the sector are considered as the step of "Regulatory for market competition." The SOEs are faced with a competitive market system with many airlines competing in the market.
Energy sector	The SOE -PTT in oil and gas has been privatized and listed on the stock market but the PTT still maintains its near monopoly position in oil and gas. The SOEs in electricity have not been privatized due to the political uncertainty and the court decision to overturn the implementation of privatization. The regulatory framework for this sector can be considered "Regulatory for privatization" with the lack of market competition.	The SOE PETRONAS has not been privatized and has a privilege as a monopoly SOE. But the government has opened third-party access for the gas market. The SOE TNB in electricity has been privatized but the government owns the majority of shares at 70%. The TNB still vertically oligopolizes the market with other SOEs. The regulatory framework for this sector can be considered as "Regulatory for privatization" with the lack of market competition.

4. CHALLENGES OF REGULATORY REFORM OF SOEs IN THAILAND AND MALAYSIA

This paper reviews the international perspectives on regulatory frameworks for the reform of SOEs. The second part discusses regulatory reforms of SOEs in the energy, telecommunication, and airline sectors. This part of the paper analyzes Thailand's and Malaysia's approach to regulatory reform as well as issues and challenges associated with the reform.

4.1 Regulatory Frameworks for Privatization and SOEs' Influence over Political Economy

The experience from Thailand and Malaysia shows that governments use SOEs as a key economic and political driver. The governments resort to SOEs for operating infrastructure utilities such as the energy, telecommunication, and airline sectors. The governments can mandate SOEs to satisfy people's demand for mass infrastructure utilities. The governments also use the SOEs to ensure infrastructure certainty, which is a key factor for their economic development (Nikomborirak 2017). In utilizing SOEs for economic purposes, the governments rely on SOEs' operations in order to sustain their economic growth. The reliance relationship between governments and SOEs becomes a main feature for government policy on economic development. Similarly, in terms of political consideration, the Thai and Malaysian governments also employ their SOEs to ensure that their political positions are recognized by the wider public (Zanuddin 2007). One example is that the governments use the SOEs to provide low energy tariffs to ensure political recognition, whether the low prices would cause a business loss to the SOEs or not. Governments always proclaim that SOEs are political organizations and posit the idea of political acceptance among people.

Thus, under reliance relationships, SOEs can gain important bargaining power over political economy. This is why the regulatory frameworks for privatization in Thailand and Malaysia were designed and implemented by maintaining the majority of shares for government control. The regulatory framework for privatization in Malaysia and Thailand might look successful in changing the status of state agencies toward a private enterprise. Nevertheless, the regulatory frameworks for privatization to some extent safeguard the government controls under the shadow of privatization. The reform based on the changes of regulation so as to implement the privatization of SOEs was not purely aimed at creating efficiency but mixed government and SOEs' political and economic influences. The regulatory frameworks for privatization in this sense may be under a political connection among government, SOEs, and business groups (Acharya 2018). The regulations for privatization were too centralized under interest groups having patron-client networks with the governments (Neumann 2002; Tan 2008). The worst situation happens where the government designed the regulatory frameworks for privatization by giving favors to some businesses groups (Estrin and Pelletier 2018). The situation happens in the initial stage of adopting regulatory frameworks of privatization in the energy sector in Thailand (Wisuttisak 2012b). The example from Malaysia is where there is a situation of cronyism in privatized enterprises. Some groups of Malay Bumiputeras were given priority to shares of privatized enterprises and were able to access capital and subsidies to buy the shares (Johnson and Mitton 2003).

In addition, the regulatory framework for privatization was also affected by the political economy in setting up boards or management levels of the privatized SOEs. Thailand

and Malaysia face similar problems in appointing politically affiliated individuals, including former high-ranking politicians, on the boards of SOEs, which contributed to an important source of conflict of interest and heightened corruption risks (Banchanon 2017; OECD 2016a). What can be seen is that the regulatory frameworks for privatization did not contribute to the SOE's efficiency gain because the frameworks were designed to benefit some private interest groups. Nevertheless, the paper notes that the regulatory frameworks for privatization are an important initial step in both Thailand and Malaysia for building up possible changes in the energy, telecommunication, and airlines sectors.

4.2 Regulatory Frameworks for Competition and SOEs

Thailand and Malaysia had similar paths of regulatory reforms by aiming to open up the infrastructure sectors, which were previously under monopoly control by SOEs. The regulatory frameworks for market competition were established in the energy, telecommunication, and airline sectors in Thailand and Malaysia. The frameworks were to enable additional market entries and obligate structural changes by removing entry barriers and restriction where SOEs were previously dominated in all infrastructure sectors. Nevertheless, in practice, regulatory frameworks do not establish liberalization and competition because the SOEs, after their privatization, remain the dominant firms. The examples from Thailand and Malaysia are in energy sectors where privatized SOEs still occupy the dominant position with the support of governments (Quiggin 2007).

With regard to oil and gas markets, while having a plan on regulatory frameworks for privatization, regulatory frameworks for competition have not been established. The SOEs in Thailand and Malaysia dominate the markets. This is because the Thai and Malaysian governments prefer to build up a national energy champion but pay less attention to market competition in their national oil and gas markets. The privatized PTT PCL as a national champion has enormous support from the Thai government to control the oil and gas market in Thailand (Wannathepsakul 20015; Wisuttisak 2012b). In Malaysia, PETRONAS is still the national firm controlling upstream and downstream oil and gas production, transportation, and retail (Rahim and Liwan 2012). Thus, the challenges are that the regulatory framework for competition does not meet competition objectives due to the governments' preference to maintain the dominant position of the SOEs with a view to crafting their national champions. The regulatory frameworks for competition at this point face a limbo situation where governments cannot differentiate the SOEs' interest from the national interest. In other words, the regulatory frameworks for competition conceal state intervention by a national champion in the name of competitiveness and marketization (Cerny 1997).

In a different situation where the SOEs' dominant positions were removed by liberalization, the regulatory frameworks for competition also face an issue with government subsidies. The subsidies are to make sure that the SOEs survive after privatization and liberalization. Nevertheless, the subsidies can become an unfair budgetary support to SOEs in competing with other market participants (Capobianco and Christiansen 2011). Both Thailand and Malaysia can be classified as being in a comparable position where their privatized SOEs in airlines face financial losses but the governments keep providing budget support to the airlines. Therefore, the regulatory framework for reform of SOEs in Thailand and Malaysia seems to face potential challenges. The design and implementation of the frameworks were not able to constitute the transformation of SOEs toward efficient operation. There is an issue regarding the dominant SOEs in the energy market and there is also the issue of governments having to inject financial support into inefficient privatized SOEs.

4.3 Regulatory Framework of Market Competition and SOEs

The regulatory framework of market competition still cannot be established in either Thailand or Malaysia. The regulatory frameworks for SOE reform in Thailand and Malaysia are still at the stage of “*regulatory framework for competition*” and find difficulty in being transformed toward “*regulatory framework of competition*.” Governments in both countries still rely on an interventionism approach for their regulation over energy sectors with less room for market competition. An example is from the energy sector where SOEs enjoy their dominant position with few small competitors in the energy sector. In the energy sectors, the experience from Thailand and Malaysia shows that the regulatory framework for competition is rarely implemented for building up liberalization and competition in the sectors. The SOEs with high political influence are able to bargain with the government and retain their dominant control over the infrastructure sector both in Thailand and Malaysia.

Furthermore, the regulatory frameworks of market competition normally require a light-handed approach to regulation under competitive neutrality. The concept of competitive neutrality is that governments should not act or regulate any economic sectors with favors or preference for any enterprises, especially SOEs (Capobianco and Christiansen 2011). The governments, in stepping toward the regulatory frameworks of market competition, have to refrain from a role of regulatory intervention or from providing subsidies to SOEs. However, the experience from Thailand and Malaysia, as reflected in Section 3 of this paper, shows that governments are not aware that they should facilitate the system of competition in the reformed sectors such as telecommunications and airlines. Both Thai and Malaysian governments provide a significant amount of support while knowing that the privatized SOEs are inefficient in competing with other market participants. The regulatory frameworks of competition can be readily established but the governments seem to confuse their role in supporting competition with their role in supporting SOEs. Thus, the reform of SOEs in Thailand and Malaysia does not reach the step of regulatory framework of market competition. The governments are at the halfway point in their thinking in supporting liberalized competition or championing their SOEs (Painter and Wong 2005). The Thai and Malaysian governments seem to consider the words “too big to fail” in giving support to their SOEs.

5. CONCLUSION AND POLICY RECOMMENDATION

The paper reviews international perspectives on regulatory reforms of SOEs. The paper shows that privatization, liberalization, and competition are the main factors in driving the reform of SOEs. Privatization is to improve SOEs’ efficiency. Liberalization is needed for restructuring and opening markets for new entrants. Competition is important to ensure that the SOEs and new entrants adopt an efficient business approach. According to international experience, the government usually passed laws and regulations in order to establish these three factors. The governments have to adopt laws and regulations for privatization leading to changing the status of SOEs to private ones. After privatization, governments normally pass regulation for competition. The regulation would be implemented for restructuring and opening markets previously monopolized by the SOEs. The regulation for competition should be transformed later to regulation of market competition, which is a light-handed approach to regulatory frameworks. The light-handed approach is to ensure that governmental laws and regulations do not hamper the process of competition in the markets.

The paper also explores the experience of the reform of SOEs in Thailand and Malaysia. The wave of reform in energy, telecommunication, and airlines looks similar with small

differences. The similarity is that their energy sectors are still under the control of SOEs with less room for market competition. While there was a set plan to liberalize the energy sector, the plan was not successfully implemented. In the telecommunication sector, the regulations for privatization were adopted in Thailand and Malaysia. The regulations led to changes in SOEs and to competition from many private participants. The privatized SOEs in telecommunication sectors have to face rapid technological changes and the swift rise of competition. A similar situation can be found in the regulatory reform of national airlines. Thai Airways and Malaysia Airlines encountered a similar position of having to face fierce airline competition under the ASEAN air liberalization policy.

The paper also discusses the experience of regulatory reforms in Thailand and Malaysia. The regulatory frameworks in Thailand and Malaysia were successfully implemented but the political economy of the reliance relationships between the governments and SOEs persists. In Thailand and Malaysia, the regulatory frameworks for privatization were implemented without transparency and benefited some interest groups. The regulatory frameworks for competition in Thailand and Malaysia also face issues of favoring the dominant position of SOEs and the issue of government subsidies for inefficient SOEs. The issues lead to the lack of a step to establish a regulatory framework of market competition under light-handed governance.

In light of the details above, the paper proposes some recommendations aimed at facilitating the regulatory framework for the reform of SOEs in Thailand and Malaysia. The recommendations are as follows:

Establishing regulatory frameworks with the objective of building up market competition. In establishing regulatory frameworks for reform, it has to make sure that regulatory frameworks are to create a national economic interest that is largely different from SOEs' interest. Governments in developing countries with political concerns tend to adhere to the idea that the development of SOEs is a national economic development. However, the important point of long-term reform is to create competitive efficiency rather than SOE efficiency. This is due to the fact that competitive efficiency can generate better results SOEs' monopoly efficiency. The privatized SOEs that yield profits are normally able to maintain their dominant status in controlling infrastructure sectors. The profits seem to represent efficient development of privatized SOEs, but in another aspect, the profits are conferred from their dominant position. Thus, this paper recommends that all regulatory frameworks for the reform of SOEs must focus on market competition and refrain from giving regulatory support to SOEs.

Issuing regulatory frameworks expediting the performance of SOEs. The important factors for improving SOEs' performance are the removal of corruption, and the reduction of mismanagement and incompetent staff; the appointment of competent management bodies without political interference; the encouragement of a competitive work culture by hiring and retaining talented individuals (Kim and Zulfiqar Ali 2017). Therefore, it is important to transform regulatory frameworks that can derive the factors above. An example is that the Thai and Malaysian governments should focus on crafting a regulatory framework under "performance-based regulation," which connects goals, targets, and measures to utility performance or executive compensation (Littell et al. 2017; Albon 2000).

Building transparency of regulatory framework for reform. The regulatory frameworks should be implemented with transparency. The regulatory process from drafting, passing, and implementing should be under public scrutiny. There should also be the use of regulatory impact assessments (RIAs) for regulating the reform of SOEs. These RIAs can be an important mechanism for creating effective regulation that is widely accepted by the public. The RIAs require government to discuss with all

stakeholders who will be impacted by a regulation and it can lead to clarity and transparency of the regulation. The use of RIAs also helps avoid regulatory failure arising from unnecessary regulation, or failing to regulate when regulation is needed (OECD 2017). With clarity and transparency, the regulatory framework for the reform will be recognized and accepted by the wider public.

Adopting regulatory framework with competitive neutrality. The regulatory framework must ensure that there is a fair level playing field for all market participants. According to the World Bank's "Toolkit on Corporate Governance of State-Owned Enterprises," the regulatory framework should be passed in order to eliminate differences between the rules governing SOEs and other companies and to ensure that SOEs operate on the same level of competition as private participants (World Bank 2014). The regulatory frameworks for reform should be drafted with adherence to the competitive neutrality principle (Capobianco and Christiansen 2011). The principle is to ensure that the government with its ownership over SOEs does not subsidize the SOEs, resulting in unfair market conditions. One example is that the regulatory framework should be drafted so as to institute the state's ownership, which is separate from government activities that could obstruct market competition (Kim and Zulfiqar Ali 2017).

In conclusion, the experience from Thailand and Malaysia shows that SOEs remain vital economic entities under socioeconomic development. However, the SOEs also undermine economic efficiency with their uncompetitive circumstances. The regulatory reforms should focus on building up market competition, which indirectly forces SOEs to improve their operation toward efficiency. The governments should neglect regulations that create anti-competitive support for SOEs and give more attention to regulations that build free and fair competition in all economic sectors.

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