LEGAL ISSUES OF COMPETITIVE NEUTRALITY IN ETHIOPIAN STATE-OWNED ENTERPRISES: A GLOBAL PERSPECTIVE

ALEMAYEHU YISMAW DEMAMU
PhD Student, Zhejiang Gongshang University
Lecturer of Law, University of Gondar
yismaw1980@gmail.com

Abstract *– Competitive neutrality is driven to ensure State-owned Enterprises operate on a level playing field while meeting public service obligations. It aims to enhance fair competition and efficient resource allocation in the economy. Globally, there are various guidelines, such as the OECD Guideline and the World Bank Toolkit on Corporate Governance of State-owned Enterprises that emphasise the importance of competitive neutrality in corporate governance of State-owned Enterprises. Many countries have also incorporated this concept into their national laws. Ethiopia has enacted several laws that endorse the fair competition of State-owned Enterprises in the market. However, there are concerns that the laws are not good enough to ensure competitive neutrality in the market. They have also been far from contemporary developments in the subject. Accordingly, this article investigates the Ethiopian competitive neutrality legal framework, and further, appraises it in light of the OECD guideline, the World Bank toolkit, and best national practices. The article finds that the legal framework involves legal issues, as well as does not grapple with the principles of competitive neutrality, as adopted in international recommendations and best practices of countries. It is not complete enough to ensure the competitive neutrality of State-owned Enterprises in the country. Therefore, this article suggests that the government should further reform the legislation and strengthen the competitive neutrality of State-owned enterprises.*
Keywords*: Competitive Neutrality; Legal Issues; Objectives; State-owned Enterprises.*

INTRODUCTION

Competitive neutrality requests SOEs to compete on a level playing field in the market. It underlines SOEs obtain no competitive advantages solely on account of their state ownership. Arguably, SOEs have opportunities or incentives to obtain competitive advantages. In every corner, SOEs undertake both commercial and non-commercial objectives. But it happens that their non-commercial objectives become at stake. In such cases, the state, deliberately or not, departs from competitive neutrality principles and imposes conditions or obligations that put SOEs at a competitive advantage. This situation would seriously affect the competitiveness of private enterprises. It would also ultimately affect the sustainability of SOEs. Over the past periods, several countries have taken steps to introduce the concept of competitive neutrality in their domestic legal systems. In this regard, Australia takes the front line. Australia has undergone a comprehensive reform of the role of the state in the economy and created a greater competition environment in its legal system since the 1990s. Later, it was joined by international institutions such as the OECD. In 2004, the OECD held its first in-depth discussion on the preferential treatments extended to State-owned Enterprises (SOEs) and their implications on the market function (OECD Principles of Corporate Governance, 2004). Since then, the OECD held multiple serious discussions on the topic. In 2012, the OECD compiled OECD recommendations, guidelines, and best practices on competitive neutrality and transformed them into national practices and regulations to ensure a level playing field in the market (OECD, 2012a).

Ethiopia currently lacks a formal policy document on competitive neutrality. Despite this, the country has enacted several laws, including the Public Enterprises Proclamation No. 25/1992, Commercial Code, Trade Competition and Consumers Protection Proclamation No. 813/2013, Federal Income Tax Proclamation No. 979/2016, Value Added Tax Proclamation No 285/2002, Excise Tax Proclamation No 1186/2020, Customs Proclamation No. 859/2014, Federal Government Procurement and Property Administration Proclamation No.649/2009, Investment Proclamation No.1180/2020, Investment Regulation No. 4747/2020, Federal Civil Servants Proclamation No. 1064/2017, and Labor Proclamation No.1156/2019. These laws incorporate rules to regulate the different aspects of market competition. Nevertheless, there are concerns that these laws incorporate rules that grant competitive advantages for SOEs over private firms. They involve legal gaps that create room for SOEs to receive subsidies and other financial aid from the state. Yismaw (2015) explains that the Commercial Bank of Ethiopia has been subsidized by the government. Birhan (2019) argues that the Commercial Bank of Ethiopia imports

capital goods, such as cars with duty-free securing a letter written by the Ethiopian Investment Commission. SOEs do have a preference in public procurements. SOEs do have a monopoly in some investment sectors, such as the manufacturing of weapons and ammunition and international Air transport. Kibre (2015) argues that the Ethiopian Grain Trading Enterprise has a monopoly to import and distribute critical production inputs (fertilizer), consummation goods (edible oil, sugar), and strategic commodities (coffee, cement). Yet, no SOE has been declared bankrupt despite the failure to operate. Also, there are questions about whether the aforementioned laws cope with the contemporary global development of competitive neutrality, or if they should be improved. Yet, no comprehensive legal study was conducted on the competitive neutrality of SOEs in the country. Cognize of this fact, this article aims: First, to investigate the global legal practice of competitive neutrality in SOEs. Second, to examine the legal framework and issues of competitive neutrality in Ethiopian SOEs. Third, to appraise the Ethiopian legal framework in light of the global one and point out similarities and differences for further reform and action.

The article adopts a combination of three research approaches. It employs a doctrinal approach to examine the global legal practice of competitive neutrality. It particularly analyses the OECD Guideline on Corporate Governance of State-owned Enterprises (the OECD guideline), the World Bank Toolkit on Corporate Governance of State-owned Enterprises (the World Bank Toolkit), and the national laws of some countries. Also, the article utilizes a doctrinal approach to appraise the Ethiopian legal framework and determine the legal issues involved therein. This builds on the analysis of the relevant primary and subsidiary legislations of the country. Moreover, the article adopts a comparative approach to examine the position of Ethiopian laws of competitive neutrality with the global one. The doctrinal and comparative approaches are further corroborated by a qualitative analysis of books, book chapters, journal articles, research reports, and working papers.

The article structures the rest of its parts in five sections. Section one explores the concept of competitive neutrality. Section two examines the global practices of competitive neutrality of SOEs. This section analyses the OECD Guidelines, World Bank toolkit, and best practices of countries on competitive neutrality of SOEs. Section three scrutinizes the legal framework and issues of competitive neutrality of SOEs in Ethiopia. Section four appraises the similarities and differences between the Ethiopian competitive neutrality legal frameworks of SOEs and the global one. Section five determines the problems and challenges Ethiopian SOEs incur due to the current competitive neutrality scheme in the country. The article concludes with a conclusion and suggestions to improve the current competitive situation.

1. The Concept of Competitive Neutrality

The concept of competitive neutrality was initially introduced in Australia in the 1990s. The concept was then recognized widely in the United States, Europe, and other multilateral organizations (García-Herrero & Ng, 2021). Now, competitive neutrality has become an increasingly relevant concept in the world. Competitive neutrality necessarily relates to the behaviour of economic actors in the market. The market often involves several different economic actors that compete with each other: mainly state-owned and privately owned actors. The economic actors operate businesses and behave as differently as their identity. Thus, competitive neutrality aims to ensure fair competition for all these economic actors. It targets to maintain equal treatment of SOEs and private companies in terms of factor acquisition, access permits, business operations, public procurement, access land, access capital and other curia factors in the market (Xioabin Lin *et al*, 2023).

Capobianco and Christiansen (2011) explain that several definitions exist concerning competitive neutrality. Countries do have different perceptions and employ various definitions of competitive neutrality. This implies that competitive neutrality is a fluid concept with no common understanding. Despite this, scholars often adopt the OECD conception of competitive neutrality, which this article also adheres to. The OECD states that "competitive neutrality occurs where no entity operating in an economic market is subject to undue competitive advantages or disadvantages" (OECD, 2012b). This definition underlines that SOEs should not be granted 'undue' competitive advantages or disadvantages. Competitive neutrality is not first about getting competitive advantages or disadvantages. SOEs are not marked as violating competitive neutrality because they obtain advantages or suffer disadvantages. For example, SOEs may obtain compensation for countervailing non-commercial obligations. This compensation is not a violation of competitive neutrality. Competitive neutrality rather prohibits 'undue' advantages or disadvantages, such as getting incumbency advantages. Additionally, the definition implies that SOEs must operate 'in an economic market.' Competitive neutrality, in principle, applies to commercial entities competing in the market. Competitive neutrality aims to ensure

competing or potentially competing SOEs and private entities are subject to the same external environment in the market. It holds SOEs and private firms operate within the same set of rules; thereby, affiliating with the state gives no competitive advantages (Negara, 2023). It guarantees all firms with all forms of ownership control are on equal feet and treated equally.

Similarly, the Australian Treasury (1996) provides that competitive neutrality requires government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership. The implementation of competitive neutrality policy arrangements is intended to remove resource allocation distortion arising out of public ownership of significant business activities and to improve competitive processes (Sebastian Zwalf, 2017). The definition indicates there should be fair competitiveness between SOEs and private sector. SOEs should not operate with competitive advantages over private firms as a result of their public ownership Admittedly, SOEs and private entities are inherently different, *inter alia*, in terms of ownership control. SOEs are owned or controlled by the state. As a result, the state systematically creates a different favourable external environment, such as regulatory, financial, and reporting than private enterprises. This situation distorts the level playing field of SOEs and private firms in the market. It allows SOEs to enjoy a variety of competitive advantages over private enterprises and, also incur some competitive disadvantages (Rennie, 2011).

Moreover, Competitive neutrality embraces a wide area of competition fields in the market. The main blocks are limited to subsidy, debt, tax, public procurement, natural monopoly and exclusive rights, bankruptcy proceedings, and transparency and accountability. These competitive fields potentially determine the fate of economic actors in the market. They demand efficient regulation and follow-up of the appropriate body.

2. A GLOBAL PRACTICE OF COMPETITIVE NEUTRALITY OF STATE-OWNED ENTERPRISES

State-owned Enterprises should not obtain an edge due to government control. They should compete fairly observing the rules of the market. Concerning competitive neutrality, Principle III of the OECD guideline recommends that "consistent with the rationale for state ownership, the legal and regulatory frameworks for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities." This OECD principle conveys two basic elements of competitive neutrality: i) it states that the legal and regulatory frameworks of SOEs shall ensure 'a level-playing field' in the market, which is consistent with competitive neutrality. It demands SOEs shall not gain net competitive advantages over their private sector competitors. ii) the competitive neutrality framework must be compatible with the rationale for state ownership. The state should develop a competitive legal framework 'with a view to its impact on overall economic performance, market integrity, and the incentive it creates.' The states may establish competitive legal and regulatory frameworks consistent with political priorities, economic performance, and market integrity.

Also, the World Bank Toolkit recommends:

SOEs operate on a level playing field with the private sector. Creating a level playing field means ensuring that SOEs have neither an advantage nor a disadvantage on account of their ownership compared to private companies in the same market. It also requires that the participation of SOEs in economic activities does not distort competition in the market. (World Bank toolkit, 2014).

Therefore, states shall establish a non-discriminatory market environment in their country. The competitive laws and practices should ensure collimate coverage, applicability, transparency, or implementation between SOEs and private enterprises. SOEs shall operate, to the extent possible, under the same legal and regulatory environment of private enterprises.

Additionally, countries enact laws to ensure SOEs undertake non-commercial objectives on a level playing field. These laws cover several crucial components of competitive neutrality. However, these laws do not meet the intended purpose, which is ensuring fair competition in the marketplace (Capobianco and Christiansen, 2011). In several instances, SOEs gain privileges and immunities in pursuing their tasks. This can be noticed, for example, in SOEs' subsidy and debt, tax, public procurement, bankruptcy proceedings, monopoly and exclusive rights, and employment conditions.

2.1. Subsidy and Debt

The OECD guideline under Principle III (F) recommends that SOEs should have access to debt and equity finance based on market conditions consistent to private firms. SOEs relations with all financial and non-financial institutions, including other state-owned companies should be based on pure commercial grounds. They should access credit and rate of return on the same market terms as the private sector.

They should not also gain any indirect financial support, such as preferential financing and trade credit, as well as the provision of inputs, including energy, water, and land at favourable prices and conditions. In most countries, laws rein in outright subsidies, state aid, and other forms of financial assistance for SOEs. SOEs access financial and non-financial institutions on the same market terms as private enterprises. In New Zealand, the Commerce Act 1986 requires the crown to make an explicit disclaimer that it does not guarantee the repayment of debt of SOEs (OECD, 2012c). In the United Kingdom, SOEs are prohibited from borrowing in open markets. Article 3 of the National Loans Act 1968 requires that SOEs obtain loans from the National Loans Fund (NLF); thereby, preventing any implicit guarantee by the government and ensuring the loans are extended on commercial terms. Similarly, in Spain, the Royal Decree 1379/2009 stipulates that any SOEs' preferential access to financing will be estimated and ultimately compensated to the treasury.

However, the laws of some countries recognize some exceptions and exemptions. They allow SOEs obtain outright state subsidies, credit with favourable interest rates, explicit or implicit government guarantees, and other preferential treatments to sustain their operation, maintain jobs, or meet other socio-economic objectives. For example, in the United States, Section 410 of the Postal Reorganization Act of 1970 guarantees the US Postal Service an immunity from antitrust liability for conduct undertaken at Congress' command. In Burkina Faso, Mali, and Mauritania, the legal and regulatory frameworks are not strong to ensure competitive neutrality. SOEs have access to loans on easy terms, as well as gain state guarantees or approval of loans, direct subsidies, and other indirect benefits, including subsidized fuel or electricity (Bouri et al., 2010).

2.2. Tax

The state should ensure SOEs are governed by tax laws such as corporate income tax, Value-Added Tax (VAT), property tax, registration, and other special taxes, as are applicable to private firms. The OECD International VAT/GST guideline recommends SOEs pay VAT and incur compliance costs equivalent to private firms. (Principle 2.2 & 2.6). Consistently, most countries have applied tax laws to SOEs (OECD, 2012c). They collect most of their revenue from taxing SOEs. In the EU, Article 3 of the VAT Directive 2006/112 prescribes that SOEs should pay VAT "where their treatment as non-taxable persons would lead to significant distortions of competition." Similarly, in Australia, the Australian Competitive Neutrality Guidelines 2004 provides that tax neutrality should be maintained between SOEs and potential private competitors. Also, Article 2(1) of the Norway VAT Act of 27 May 2016 No. 14 proclaims all SOEs pay VAT and employs a VAT compensation system for all SOE purchases.

Notwithstanding this, some countries exempt SOEs from paying taxes. In Finland, the Income Tax Law exempts statutory corporations from paying tax (OECD, 2012c). In Switzerland, the Swiss Railway is relieved from paying taxes and granting insurance (SR/RS 742.31 (SBBG/LCFF/LFFS) (1998), Article. 21). In Gambia, some SOEs are exempted from paying taxes. For example, Section 31 of the Gambia Civil Aviation Act 2018 provides that the President can exempt the Civil Aviation Authority from paying taxes. Also, Section 26 of the Gambia Ports Act of 1972 prescribes that the Port Administration Authority does not pay income tax, import duties, and other taxes determined by the Ministry of Finance.

2.3. Public Procurement

The OECD guideline under Principle III (G) recommends SOEs, either as bidder or procurer, participate in competitive, non-discriminatory, and transparent procurement process. The state should not set forth legal and non-legal requirements that favour SOEs in the selection process. Most countries enact and implement public procurement policies and laws. In the EU, Recital 4 of the EC Directive on Contracts for Public Works, Public Supply, and Public Service provides that members shall ensure the participation of SOEs in public contract tender awards does not cause any distortion of competition on private tenderers. In Australia, Sections 5.3 and 5.4 of the Common Wealth Procurement Rules (CRRs) prohibit any discrimination between SOEs and private enterprises. It provides that tenders shall be treated equitably based on legal, commercial, technical, and financial requirements. Similarly, the Australian Competitive Neutrality Guidelines 2004 provides all agencies conducting the tendering process to request bidders declare compliance with the competitive neutrality principles. In Niger, Article 15 of Ordinance 86-001 of January 10, 1986, indiscriminately regulates the participation of SOEs in the procurement process. Moreover, most countries recognize compliant handling mechanisms in the procurement process. Articles 1 and 2 of the EC Directive 2007/66/EC require countries to allot adequate time before the signature of the contract to ensure tenderers or bidders obtain adequate time to consult information, review the decision, and request a review of the proceedings, if necessary. Notwithstanding this, in some countries, SOEs continue to benefit from preferences in the public procurement process. Besides, members of the private sector have made some worrisome claims about SOEs in the procurement process

that involves illicit practices, including corruption, bid rigging, abusive related party transactions, and other unethical behaviours (OECD, 2012c).

2.4. Bankruptcy proceedings

Principle III (E) of the OECD guideline recommends that SOEs should not be exempted from the application of bankruptcy law. Creditors should be allowed to bring claims and initiate insolvency proceedings against SOEs. Similarly, the World Bank Principles for Effective Insolvency and Creditor/Debtor recommends countries apply general bankruptcy law on SOEs(Part C(3). Following this, most countries enforce bankruptcy laws on SOEs. Some of these countries apply general bankruptcy laws for SOEs. Serbia, for instance, enforces the 2009 General Bankruptcy Act to regulate the bankruptcy of SOEs. Some countries adopt special bankruptcy laws to SOEs. For example, China adopted the Law of the People's Republic of China on Enterprise Bankruptcy in 2006, and Indonesia Bankruptcy Law No. 37 of 2004. However, in these countries, most SOEs are not practically subjected to bankruptcy proceedings (Capobianco and Christiansen, 2011). Some other countries, legally and practically, keep SOEs from bankruptcy proceedings. These countries introduce a specific system to protect the assets of SOEs from the claims of creditors. For example, the bankruptcy laws of Turkey and Belgium provide that the assets of SOEs cannot be seized (Avc, 2014).

2.5. Natural Monopoly and Exclusive Right Neutrality

The 1997 OECD Report on Regulatory Reform and its Recommendations specifies that countries shall maintain competitive neutrality, especially in energy, utilities, transport, and communications (OECD, 2012a). Nevertheless, in many countries, SOEs have exclusive or monopoly rights in postal services, utilities, and other universal services. For example, in Canada, Section 14 of the Post Canada Corporation Act grants Canada Post a statutory monopoly over the collection, transmission, and delivery of letter mail within Canada. The Indonesian Competition Law under Article 51 recognizes SOEs to have a monopoly over the production and marketing of goods and services affecting the livelihood of society at large. In China, SOEs have a monopoly in key sectors such as telecommunications, banking, electricity, petroleum, railroads, and aviation (Fox, 2008). In the Gambia, Section 7 (2) of the Gambia Ports Act of 1972, as well as sections 15 (1) and 17 (1) of the Electricity Act of 2005 allow SOEs to have an exclusive right to operate port facilities, and transmit and distribute electricity respectively.

2.6. Employment Condition

SOEs shall create similar employment condition, as it is in private firms. Principle III (E) of the OECD guideline commends countries to refrain from applying laws that unduly discriminate and affect the competitiveness of SOEs in the labour market. Notwithstanding this, countries employ different laws to govern the employees of SOEs. Some countries implement civil service laws: hence, employees do have a civil servant (public sector) status. For example, in Bulgaria, the Civil Servants Act (promulgated in 1999 and last amended in 2016) prescribes the rights and responsibilities of employees of SOEs. Thus, employees do have the public sector status. Other countries apply employment laws so that employees have private-sector status. In New Zealand, the State-Owned Enterprises Act 1986 and Employment Contract Act 1991 transformed the status of employees from the public sector, which involves strict protection to more flexible and incentivized employment conditions of the private sector (Powell & Spicer, 1989). Some other countries follow a hybrid approach applying both civil servants and employment laws to regulate employees of SOEs. In these countries, employees have a multifaceted status and are under different treatment. While corporatizing SOEs, for example, France applies the general employment law and civil servants law to handle employment matters. It implements employment law to some portions of SOEs: hence, employees acquire new private status. The country also applies civil servant law to other SOEs' where employees continue holding their old civil servant status (World Bank toolkit, 2014). Moreover, in many countries, SOEs face restrictions and do not have adequate autonomy and flexibility to hire, remove, lay off, and pay market prices for employees.

3. THE LEGAL FRAMEWORK AND ISSUES OF COMPETITIVE NEUTRALITY IN ETHIOPIAN STATE-OWNED ENTERPRISES

State-owned enterprises operate in markets where private companies compete or have the potential to compete. For the competition to be fair and beneficial, the market must be open and provide a level playing field for all parties involved. This requires appropriate competitive policies and laws that regulate every aspect of the market. Ethiopia has not developed a competitive neutrality policy yet. Although there is no policy, the country has enacted laws that ensure a neutral and healthy environment in the market. These laws are scattered over a wide area of competitive neutrality. They incorporate

rules to ensure SOEs undertake commercial and non-commercial objectives on a level playing field. The competitive framework, among other things, includes the following laws:

3.1. Trade Competition and Consumers Protection Law

The Trade Competition and Consumers Protection Proclamation No. 813/2013 is one of the most noticeable competition laws in the country. The proclamation aims to ensure businesses operate commercial activities on a level playing field and fair competition. The proclamation requires SOEs to observe good market practices. Articles 5 and 7 of the proclamation proscribes SOEs from abusive market dominance, including agreements or concert practices that affect competitive and fair market practice. Article 8 of the proclamation also prevents SOEs from unfair competition practices, such as dishonest, misleading, deceptive, and others practices that harm or are likely to harm the business interest of a competitor. This includes any act that causes or is likely to cause confusion, possession and disclosure of information of another business without getting consent, false or unjustifiable allegation, false or equivocal information, and obtaining or attempting to obtain confidential business information. Article 9 of the proclamation further stipulates that SOEs must not enter into an agreement or arrangement of merger that causes or is likely to cause a significant adverse effect trade competition in the market.

Notwithstanding this, the Trade Competition and Consumers Protection Proclamation No. 813/2013 regulates limited traits of competitive neutrality in the market. It focuses on market dominance, unfair competition, and mergers that adversely affect trade competition. It does not regulate other fundamental subjects that would provide SOEs competitive advantages. For example, the proclamation prescribes nothing about state outright subsidy, grant of loan, guarantee of debt, and other financial assistance. This creates a loophole for SOEs to receive preferential treatment from the state and gain a competitive advantage. Moreover, SOEs practically receive direct subsidies and financial aid from the government either in kind or cash (The US State Department investment climate statement, 2022). SOEs easily access financial and non-financial institutions and get foreign exchange and loans with favourable market rates and conditions (IMF, 2020). Also, SOEs obtain either explicit or implicit state guarantees of debts, which reduces the cost of borrowing and enhances their competitiveness against their rivals in the market. They obtain preferential treatment and privileges. For example, the Commercial Bank of Ethiopia has been exempted from buying government treasury bonds, meeting the limitation on shares of long-term portfolios, and observing the limitation on shares of revolving credit facilities, which private commercial banks should do. The bank has also the privilege to opening letters of credit for government offices, paying civil servant salaries, and processing export trade (Yismaw, 2015). These privileges and preferential treatments are often provided based on internal directives, or established practices between SOEs and the government (Birhan, 2019). In some cases, SOEs get cross-assistance from other SOEs. For example, Article 6(7) of Regulation No. 83/2003, which is the enabling act of the Development Bank of Ethiopia, specifies that the bank guarantees loans and other financial obligations of SOEs.

3.2. Tax Laws

Tax laws regulate the tax neutrality, which is the other building block of competitive neutrality in the country. The Public Enterprises Proclamation No. 25/1992, which is the main SOE law, stipulates that the relevant laws concerning taxes and duties shall apply to SOEs. These relevant laws are the income tax, value-added tax (VAT), excise tax, and customs duty laws. The Public Enterprises Proclamation No. 25/1992 under article 30(1) further provides that SOEs should pay taxes but does not influx other laws that exempt SOEs from paying taxes or entrust SOEs with different rights. This implies that the proclamation has no problem with laws that give preferential tax treatment and privileges to SOEs. To start with, Article 19 of the Federal Income Tax Proclamation No.979/2016 imposes business income tax on SOEs. The proclamation indiscriminately imposes a flat tax rate of 30% business income tax on SOEs as private enterprises. It also recognizes SOEs exercise the whole entitlements and duties of private undertakings. The proclamation places SOEs in an equal field with private enterprises and ensures competitive neutrality.

The Value Added Tax Proclamation No 285/2002 under Articles 3(1) and 7(1) also levies a flat rate of 15 % VAT on SOEs for consumption goods like private undertakings. The proclamation invariantly exempts SOEs and private firms from paying VAT on some identified transactions. In principle, the VAT proclamation requests the buyer (consumer) of goods and services to pay the VAT to the seller (supplier). However, VAT Directive No.27/2002 entrusts SOEs a right different from private undertakings used to have in the market. The directive entrusts SOEs the right to withhold the VAT payment for a month. This stipulation inappropriately favours SOEs and deviates from the competitive neutrality principles. The Excise Tax Proclamation No. 1186/2020 imposes an excise tax on SOEs that manufacture and import goods as well as supply services (Article 6). The proclamation also relieves SOEs from paying excise tax

on certain legally identified goods and services as private firms. Moreover, Article 4 of the Customs Proclamation No. 859/2014 incorporates provisions that are equally applicable to SOEs and private firms that engage in the import, export, and transit of goods. The proclamation requires SOEs to abide by the rules alike private firms. Overall, the excise and custom duty proclamations hardly recognize preferential treatment and exemptions to SOEs. They are consistent with the principle of competition neutrality. But, practically, SOEs enjoy preferential treatment, including quick access to customs clearance and duty-free privileges. For example, the Commercial Bank of Ethiopia imports capital goods such as cars with duty-free with a letter issued by the Ethiopian Investment Commission (Birhan, 2019).

3.3. Public Procurement and Property Administration Law

The Federal Government Procurement and Property Administration Proclamation No.649/2009 incorporates detailed public procurement provisions to ensure competitive neutrality in the procurement process. The proclamation under Article 3(1) stipulates that its rules apply to all federal government offices' procurement and property administration practices. The proclamation specifically governs the procurement of a public body that uses public funds. A public body is one, which is partly or wholly financed by the federal government budget and public institutions of like nature. Accordingly, the proclamation governs the procurement process of SOEs that are partly or wholly financed by the federal government. It grants a competitive advantage to SOEs. Also, SOEs practically gain preferential treatments and privileges. For example, federal public bodies prefer SOEs over private enterprises to conclude procurement agreements. They request bidders to produce CPOs issued by SOEs, such as the Commercial Bank of Ethiopia.

3.4. Bankruptcy Law

Bankruptcy Law is crucial to ensure SOEs operate in a fair competition in the market. Article 40(1) of the Public Enterprises Proclamation No. 25 /1992 stipulates that the provisions of bankruptcy law shall apply mutatis mutandis to declare the bankruptcy of SOEs. This provision connotes the bankruptcy law would govern the bankruptcy proceedings of SOEs as the case in private companies. But Article 40(2) of the proclamation further provides that the court may follow a summary procedure to declare the bankruptcy of SOEs. Additionally, Article 589(3) of the bankruptcy law reads that "without prejudice to the special laws", the bankruptcy proceeding referred to in the law applies to SOEs. In this context, the public enterprise proclamation is a special law and its stipulation on bankruptcy proceedings of SOEs prevails over the bankruptcy law. As a result, the court may set summary proceedings for bankruptcy of SOEs different from private firms. Although this seems a preferential treatment to SOEs, it ultimately benefits all of the actors in the market. The summary procedure aims to kick away as early as possible bankrupt SOEs from the market and avert any possible harm that may happen. Despite this, practically, SOEs receive preferential treatment concerning bankruptcy. So far, in the country, no SOEs have been declared bankrupt. The government provides SOEs outright subsidies, loans, and other financial assistance to continue operation despite their failure.

3.5. Investment Laws

Investment laws are the other competitive neutrality framework in the country. Ethiopia has replaced the previous investment law with the new Investment Proclamation No.1180/2020 to increase the efficiency and attractiveness of investment and competitiveness of the national economy. This new proclamation stipulates that enterprises, in any legal form, may invest in authorized sectors in the country. Article 6(2) of the proclamation however mentions that private undertakings may not individually undertake some investment activities, unless in joint investment with the government. To this end, Article 3 of the Investment Regulation No. 4747/2020 determines that private undertakings may not participate, unless in joint investment with the government in the manufacturing of weapons, ammunition, and explosives used as weapons or to make weapons, import and export of electric energy, international air transport services, bus rapid transit, and postal service. On the contrary, the above laws allow SOEs to individually invest, as SOEs are already owned by the government and the government has a monopoly over the mentioned investment activities. They systematically guarantee SOEs' monopoly and exclusive rights in these investments. Moreover, practically, SOEs are exclusively undertaking these investment activities. The Ethiopia Air Lines, for instance, is the only SOE which engages in international air transport service in the country. Additionally, SOEs do have a monopoly on some other areas where the private sector is competitive. Elias (2017) argues that SOEs are the major importer of chemical fertilisers and pesticides. Kibre (2015) argues that the Ethiopian Grain Trading Enterprise has a monopoly to import and distribute critical production inputs (fertilizer), consummation goods (edible oil, sugar), and strategic commodities (coffee, cement). This situation affects the neutrality and health of the market environment.

3.6. Employment Laws

Employment laws are the other strand of competitive laws. Ethiopia applies the Labour Proclamation No.1156/2019 to the employment situation in private undertakings. Also, it applies the Federal Civil Servants Proclamation No. 1064/2017 to govern employment relationships in the public sector. Concerning SOEs, Article 16(1) (d) of Public Enterprises Proclamation No. 25/1992 provides that the "general manager shall employ, assign and dismiss employees of SOEs under the internal regulations of the enterprise and the appropriate law…". In this provision, the clause 'appropriate law' refers to both labour law and civil servant law as they are the only ones to regulate employer-employee relationships in the country.

In Ethiopia there are three forms of SOES: departmental undertakings, statuary corporation, and share company. Statuary Corporation and Share Company SOEs have independent legal personalities from the state. They have administrative and financial autonomy. Also, they hire and administer employees based on Labour Proclamation No.1156/2019 and their employees have the private sector status. On the other hand, departmental undertakings SOEs have independent legal personality, but they are financed by the government budget which passes through the normal national budget process, as well as subject to the same audit process of government offices. They hire and dismiss employees based on the Civil Servants Proclamation No. 1064/2017: hence, employees have public sector status. For example, the enabling laws of the National Lottery Administration and Drug Fund and Pharmaceuticals Supply Agency require the general manager to employ and administer employees based on Federal Civil Service law. Therefore, the above laws establish discriminatory, and further, complex employment relationships in SOEs. Most SOEs could not practically establish an attractive employment environment. They introduce a low salary scale, low incentive mechanisms, conservative employment terms, poor working conditions, and so on. This complicated employment condition constrains SOEs' competitiveness in the labour market.

4. THE SIMILARITIES AND DIFFERENCES OF COMPETITIVE NEUTRALITY OF ETHIOPIAN STATE-OWNED ENTERPRISES WITH GLOBAL PRACTICE

The OECD guideline and the World Bank toolkit recommend states to adopt legal and regulatory frameworks that ensure the competitive neutrality of SOEs in the market. Also, countries develop competitive policies and laws suited to their political priority, economic performance, and market integrity. Accordingly, the policy and laws of most countries rein in the state's outright subsidy, favourable lending conditions, guarantee of debt, and other forms of financial assistance to SOEs. In Ethiopia, the Trade Competition and Consumer Protection Proclamation No. 813/2013 regulates limited aspects of trade neutrality, such as market dominance, unfair competition, and mergers that would adversely affect the trade competition. The proclamation keeps silent on various crucial matters, including state subsidies and favourable debt that provide SOEs competitive advantages over private enterprises. This gap creates room for SOEs to practically receive outright subsidies, debts, debt guarantees, and other state financial assistance from the government, unlike the common practice around the globe.

Concerning tax, the OECD International VAT/GST guideline recommends SOEs pay VAT and incur compliance costs equivalent to private firms. Accordingly, most countries under their tax laws levy taxes on SOEs as they do to private enterprises. In Ethiopia, the Federal Income Tax Proclamation No.979/2016, Value Added Tax Proclamation No 285/2002, Excise Tax Proclamation No. 1186/2020, and Customs Proclamation No. 859/2014 indifferently impose a business income tax, VAT, excise tax, and customs tax on SOEs as thy levy to private enterprises. However, the VAT Directive No.27/2002 privileges SOEs to withhold VAT payments differently from private undertakings. Moreover, SOEs practically enjoy tax exemptions, including excise and customs tax for capital goods.

Turning to public procurement, the OECD guideline recommends SOEs participate in a competitive, non-discriminatory, and transparent procurement process. It requires states to avoid legal and non-legal requirements that give SOEs undue advantage in the selection process. Also, most countries adopt public procurement policies and laws that ensure the competitive neutrality of SOEs. These procurement frameworks stipulate the selection process benchmarks only legal, financial, commercial, and technical requirements. Yet, Ethiopia has no public procurement policy. The country has indeed enacted a law, which is the Public Procurement Proclamation No.649/2009. This proclamation however privileges SOEs to have better opportunities in the procurement process. Moreover, government offices pragmatically prefer to enter into transactions with SOEs than private enterprises.

Relating to bankruptcy proceedings, the OECD guideline recommends states apply bankruptcy law to SOEs as they do to private companies. It requires states to ensure creditors can bring claims and initiate

insolvency proceedings against SOEs. Similarly, the World Bank Principles for Effective Insolvency and Creditor/Debtor recommends states apply general bankruptcy law to SOEs. Nationally, most countries apply either general bankruptcy laws or specific bankruptcy laws to the bankruptcy proceedings of SOEs. Similarly, in Ethiopia, Proclamation No. 25 /1992 stipulates that the provision of the bankruptcy law shall apply mutatis mutandis to the bankruptcy of SOEs. Accordingly, the general bankruptcy law applies to the bankruptcy of SOEs as applicable to private firms. However, practically the government provides SOEs outright subsidies, loans, and other forms of financial assistance to continue operating despite their failure. As a result, no SOE has been declared bankrupt in the country so far.

Regarding natural monopoly or exclusive rights, the 1997 OECD Report on Regulatory Reform and its Recommendations specifies that states shall maintain competitive neutrality, especially in energy, utilities, transport, and communications. Nevertheless, most countries entrust SOEs with exclusive rights over utilities, postal services, and other universal services. In recent years, however, countries have increasingly liberalised many investment sectors traditionally monopolized or dominated by SOEs. In Ethiopia, the Investment Proclamation No.1180/2020 and Regulation No. 474/2020 prescribe that private undertakings, unless in joint investment with the government may not participate in the manufacturing of weapons, ammunition, explosives used as weapons or to make weapons, import and export of electric energy, international air transport services, bus rapid transit, and postal service. Thus, contrary to the OECD principle and the recurrent global trend, SOEs are systematically allowed to exclusively invest in some identified investment activities.

Concerning employment conditions, the OECD guideline commends countries to refrain from applying laws that unduly discriminate and affect the competitiveness of SOEs in the market. Also, many countries apply employment (labour) laws to hire and administer employees in SOEs like private firms. In these countries, employees of SOEs do have private sector status. Nevertheless, Ethiopia applies a mix of labour and civil servant laws to regulate the employment conditions of SOEs. The country applies the Labour Proclamation No.1156/2019 to employees of statutory corporation and share company SOEs, which is similar to private companies. Equally, it applies the Federal Civil Servants Proclamation No. 1064/2017 to departmental undertaking SOEs, which is functionally equal to employees of government offices. Hence, the employment situation in Ethiopian SOEs is more complicated than it is in private companies.

5. PROBLEMS AND CHALLENGES OF COMPETITIVE NEUTRALITY OF ETHIOPIAN STATE-OWNED ENTERPRISES

Ethiopia has enacted laws that govern the competitive neutrality of SOEs. These laws attempt to ensure SOEs pursue their objectives on a level playing field with private enterprises. However, these competitive neutrality laws involve gaps, and sometimes, disparities with the practice on the ground. They extend preferential treatments and privileges to SOEs over private enterprises in the market. They also deviate from the OECD guideline, the World Bank instruments, and best national practices. This situation makes SOEs face problems and challenges.

Firstly, SOEs lost trust and confidence in the market. The private sector and the people perceive SOEs as political institutions that serve the policies of the government. This situation drained the competitive capacity of SOEs.

Secondly, most SOEs cannot repay their debts and are now in default. They faced a high accumulation of debt. This vacillation disturbs the micro and macro economy balance of the country.

Thirdly, the board and management lost motives to develop effective strategic plans and be vibrant to achieve the objectives of SOEs.

Fourthly, SOEs could not compete enough with the private sector in the labour market to hire senior, professional, and skilled board members, managers, and employees that would enhance the quality of decisions and performance of SOEs.

CONCLUSION AND THE WAY FORWARD

Ethiopia has not developed a comprehensive competition policy yet. It has no clear guidelines about the role of SOEs in the market. Nevertheless, the country has enacted laws that attempt to create a level competition field for SOEs. These laws however do not ensure the competitive neutrality of SOEs in the market. The Trade Competition and Consumer Protection Proclamation creates room for the state to provide outright subsidies, loans, guarantees of debt, and other forms of financial assistance for SOEs. The VAT directive privileges SOEs to withhold VAT payments. The investment laws guarantee SOEs monopoly rights in certain investment areas. The laws that govern the employment conditions

complicate the status of workers in SOEs. The public procurement proclamation favours SOEs in the procurement process. Also, SOEs practically gain procurement advantages over private enterprises. No SOE is declared bankrupt in the country. Therefore, Ethiopia shall adopt a comprehensive competition policy that coherently guides the competitive neutrality of SOEs in the market. The country shall amend its existing laws and ensure the competitive neutrality of SOEs.

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