



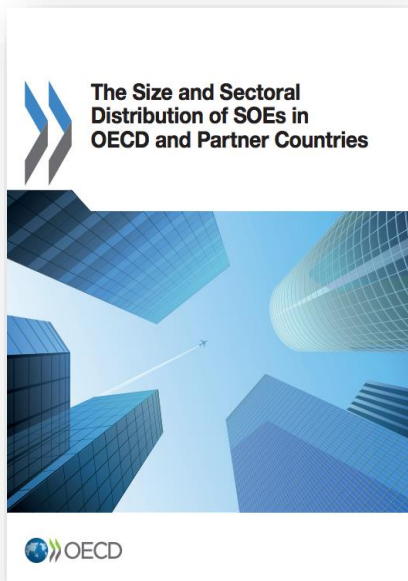
THE CONCEPT OF COMPETITIVE NEUTRALITY – THE INTERNATIONAL EXPERIENCE

AN OECD PERSPECTIVE

Antonio Capobianco
Acting Head of Division
OECD Competition Division



Background on the SOE dataset



- Third edition of a recurrent review of the characteristics of national state-owned enterprise sectors, by the Working Party on State Ownership and Privatisation Practices.
- Covers 40 countries, mainly in the OECD area but also, for the first time, Argentina, Brazil, China, India and (partially) Saudi Arabia.
- Examines the size of SOEs – by company value and employment – and their distribution by sector and corporate form.
- Also examines state minority shareholdings in listed companies, including an inventory of individual enterprises.

Definition of “SOE” uses the scope of applicability of the *OECD Guidelines on Corporate Governance of State Ownership Enterprises*, which is based on entities’ corporate forms, commercial orientation and degree of state ownership and control.



Snapshot of main findings

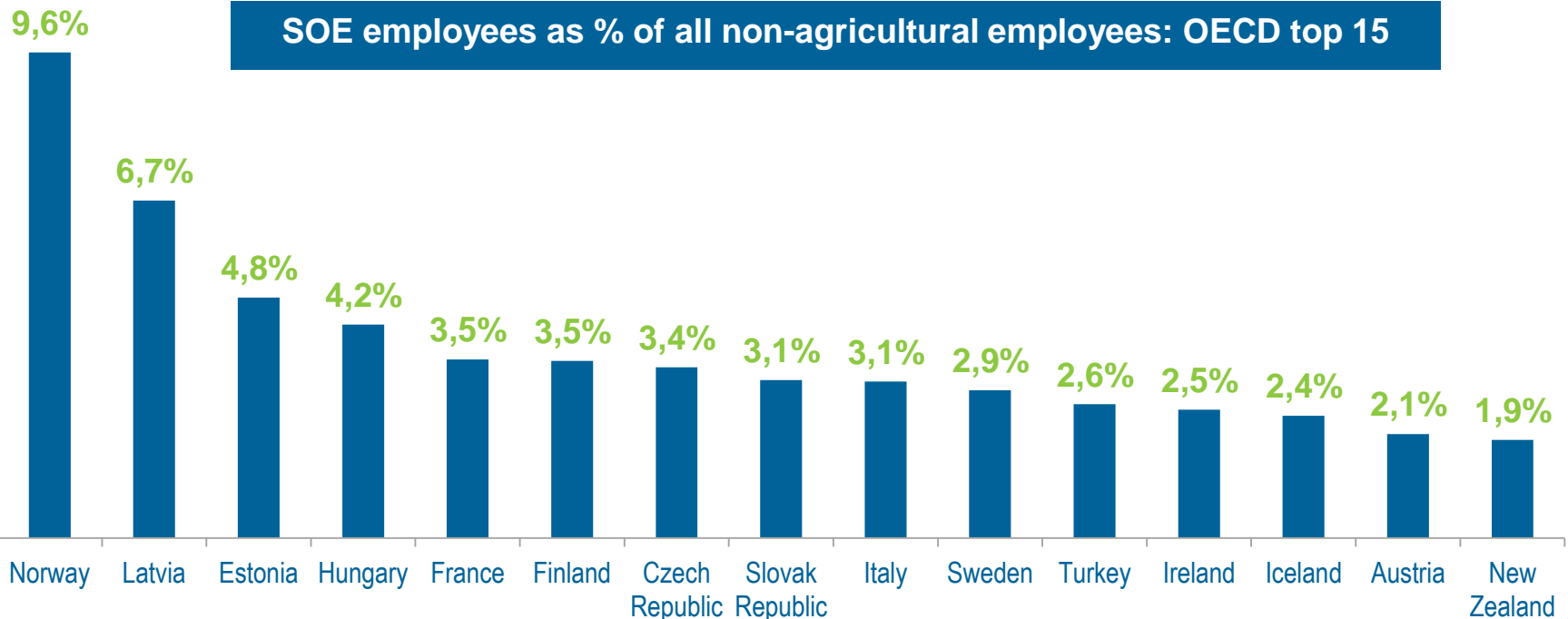
- Taking China aside for a moment, governments in the sample area are the full or majority owners of **2 467 commercially-oriented enterprises** valued at USD 2.4 trillion and employing over 9.2 million people.
- In China alone, the central government owns **51 000 SOEs**, valued at USD 29.2 trillion and employing approximately 20.2 million people.
- China is the largest SOE sector by number of SOEs. followed by Hungary (370 SOEs), India (270), Brazil (134), the Czech Republic (133), Lithuania (128), Poland (126) and the Slovak Republic (113).
- Governments in the sample area (outside of China) hold **minority shareholdings** in 134 listed companies valued at USD 912.3 billion and employing 2.8 million people. While not considered SOEs *per se*, minority shareholdings can provide insights into the changing landscape of state involvement in the corporate economy.

Source: OECD (2017), *The Size and Sectoral Distribution of State-Owned Enterprises*, OECD, Paris. Note: Figures exclude China.



SOEs represent on average 2-3% of national employment in OECD area

Among OECD countries, the largest SOE sectors as a percentage of employment (a more useful comparison than by absolute values) are found in Norway, Latvia, Estonia, Hungary, France, Finland, the Czech Republic, the Slovak Republic and Italy.

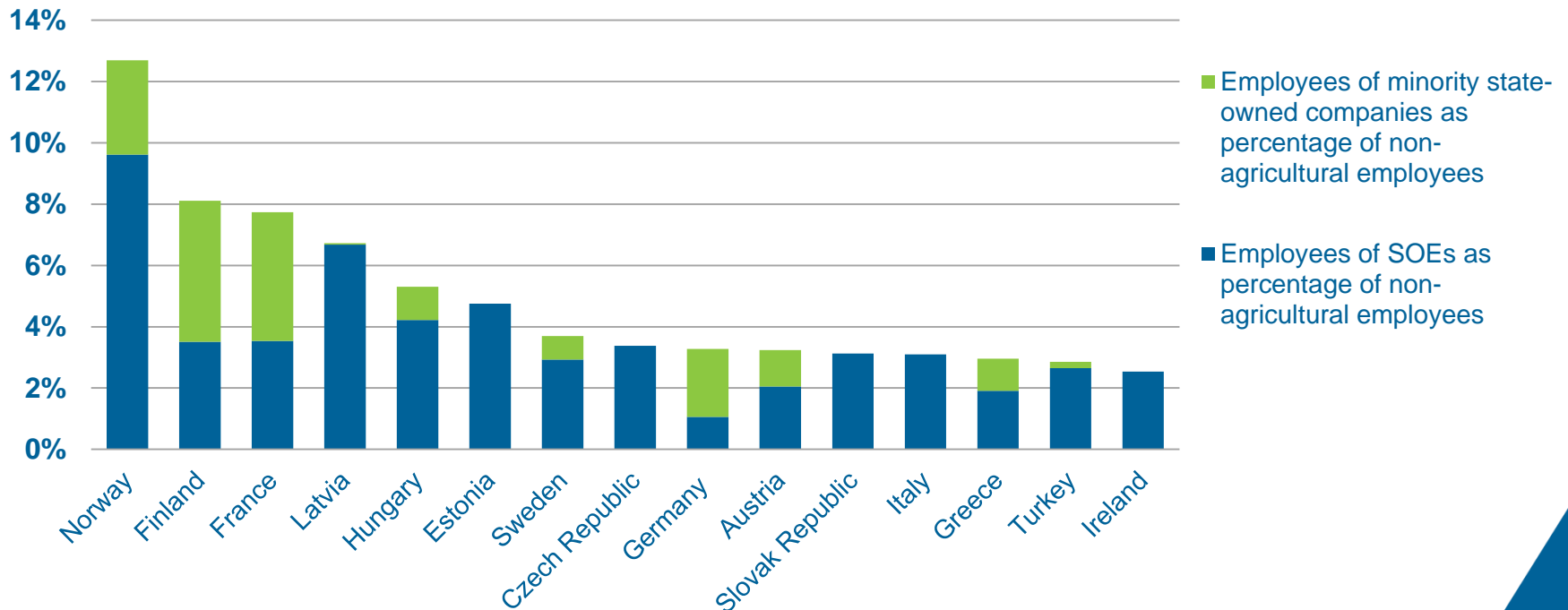




Employment share rises when minority shareholdings are included

When the analysis is expanded to include **minority-owned listed companies**, employment share rises considerably in some countries (e.g. Norway, Finland and France). Germany and Greece replace Iceland and New Zealand in the league table.

Employees of SOEs and state minority-owned companies as % of national employment: OECD top 15

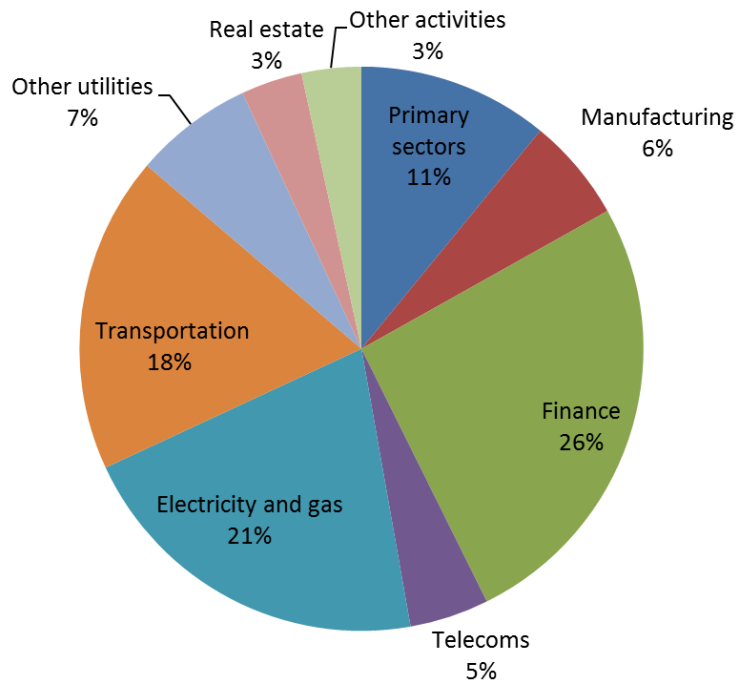




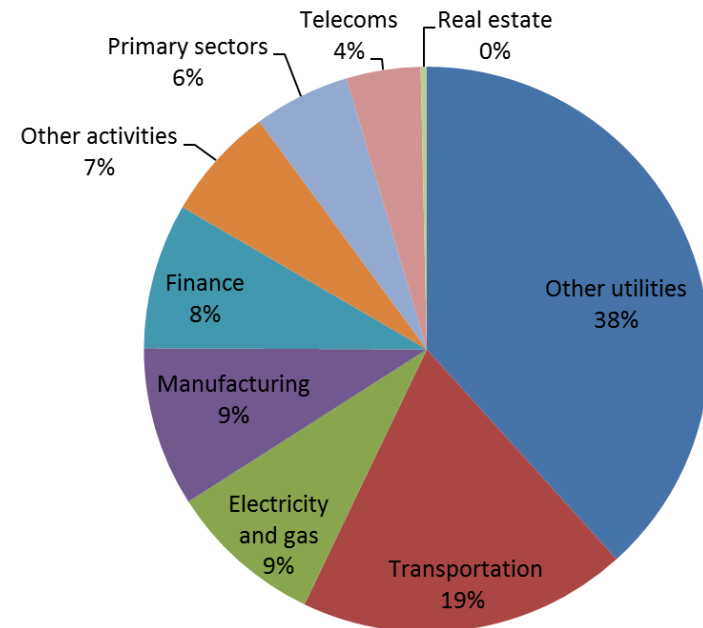
SOEs are highly concentrated in the network industries

The electricity and gas, transportation, telecoms and other utilities sectors account for 51% of all SOEs by value and 70% by employment. Finance is the largest individual sector, at 26% of SOEs by value.

Sectoral distribution of SOEs by value



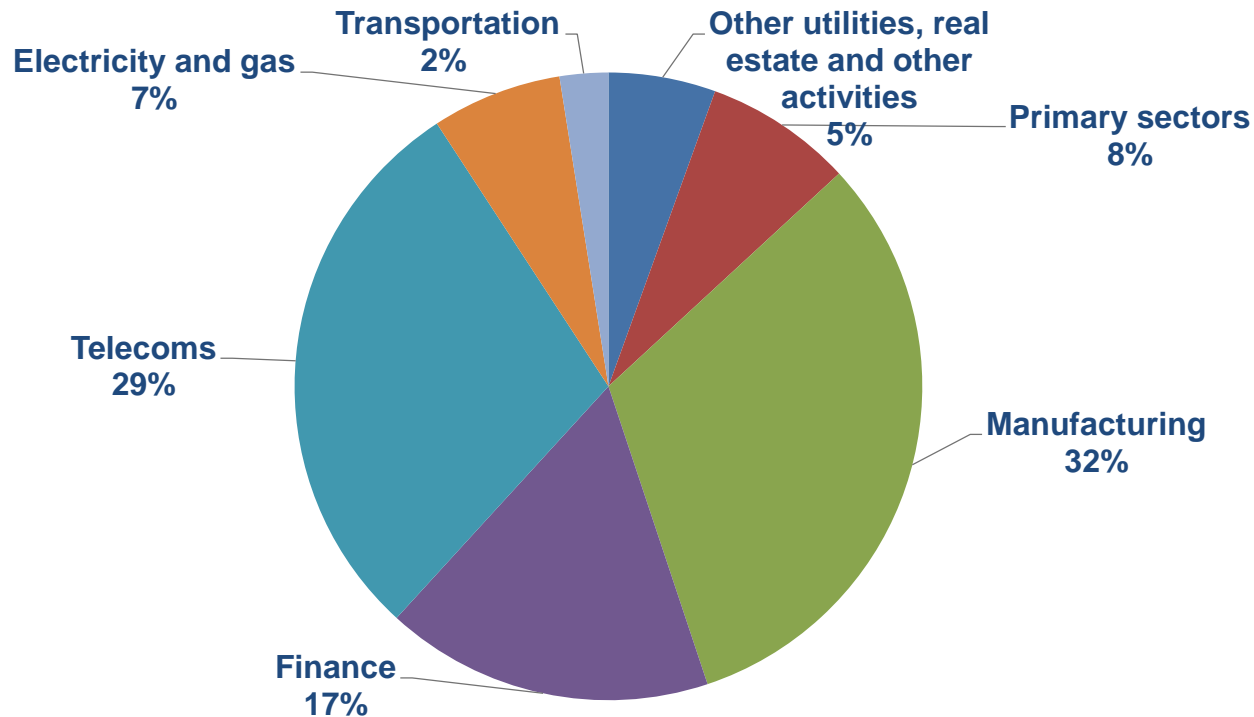
Sectoral distribution of SOEs by employment





State minority shareholdings

Most **state minority-owned companies** by value are found in the manufacturing sector (32%), followed by telecoms (29%) and finance (17%). Minority shareholdings could indicate intent to relinquish state control in these sectors or temporarily shore up failing companies.





Importance of SOEs in modern economies

The world's largest 10 SOEs in the business (year 2012-13 - USD billion)

Global rank*	Company	Sector	Domicile	Market value	Sales	Assets
1	ICBC	Banking	China	237.3	134.8	2813.5
2	China Construction Bank	Banking	China	202.0	113.1	2241
8	Agricultural Bank of China	Banking	China	150.8	103.0	2124.2
10	PetroChina	Oil & Gas	China	261.2	308.9	347.8
11	Bank of China	Banking	China	131.7	98.1	2033.8
17	Gazprom	Oil & Gas	Russia	111.4	144	339.3
20	Petrobras	Oil & Gas	Brazil	120.7	144.1	331.6
26	Sinopec-China Petroleum	Oil & Gas	China	106.9	411.7	200.0
29	China Mobile	Telecom	Hong Kong	213.8	88.8	168.7
30	ENI	Oil & Gas	Italy	86.3	163.7	185.2

Source: OECD (2014); *Forbes 2000

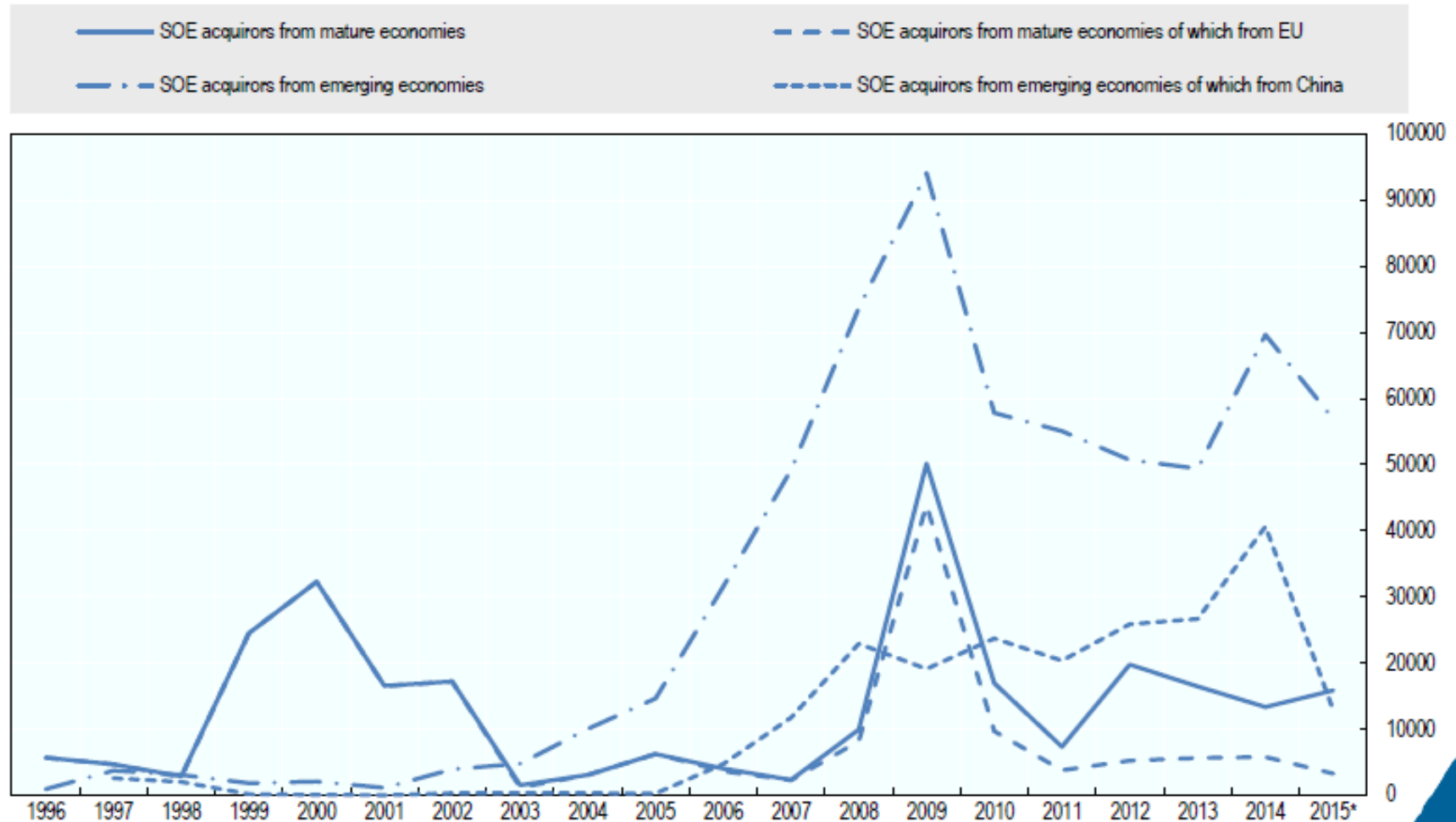


SOEs are going global – A few facts

- 22% of the world's largest 100 firms are state controlled companies – this is the highest percentage in decades
- SOEs operate in sectors important to international supply chains, such as public utilities, manufacturing, metals and mining, and petroleum
- There has been a surge of SOE-led international M&A activity observed over the last 10 years
- These trends are likely to continue in the foreseeable future



SOEs as targets and acquirers of IM&A by deal value (USD million), 1996 - 2015

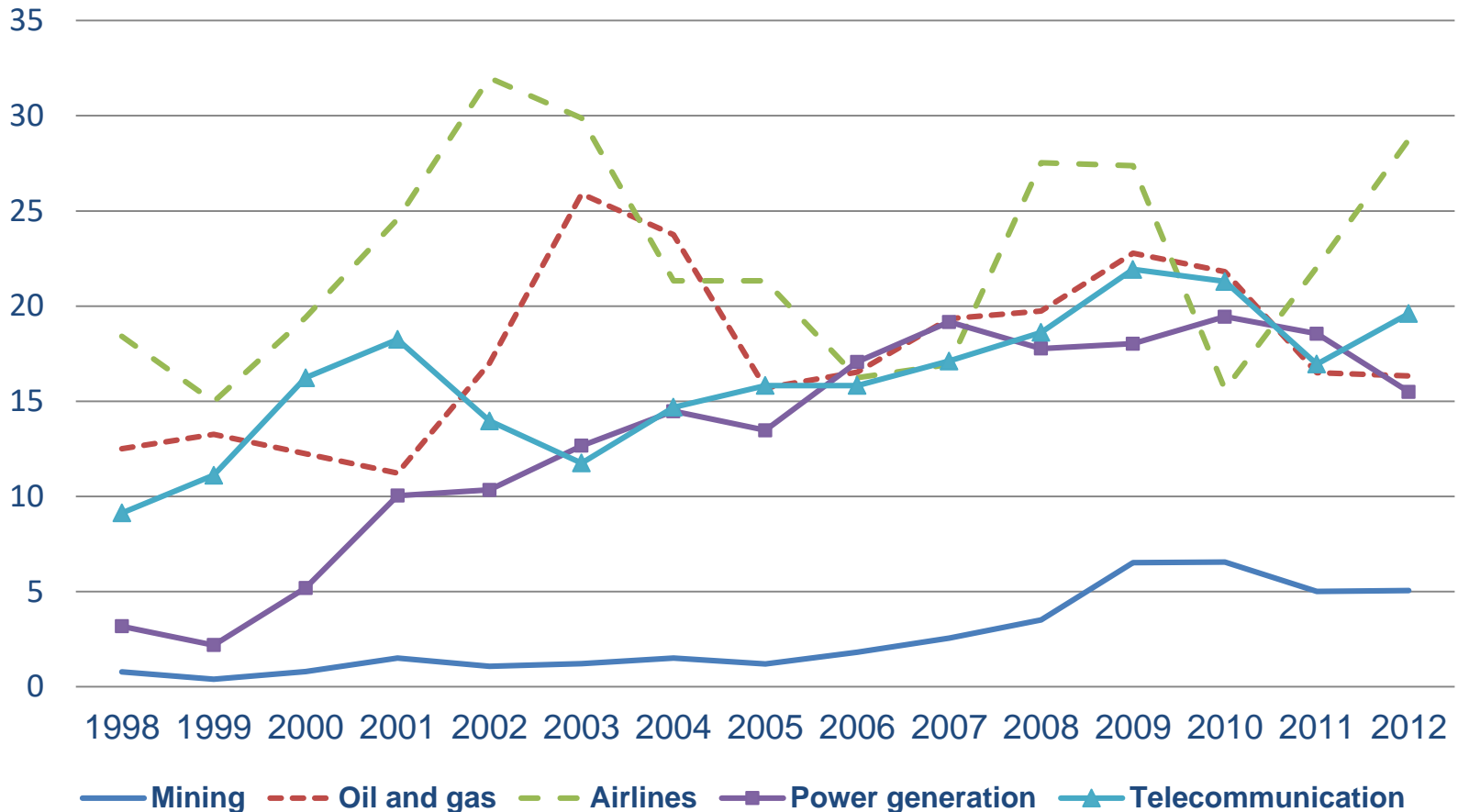


Source: Author calculations based on Dealogics IM&A data, 2015.



SOEs international M&A by sector

Share of international M&As with a state-owned acquirer
(% of deal numbers)





Concerns about the internationalisation of state-owned enterprises

SOEs may induce their government owners to grant them certain advantages, ranging from:

- Privileged market position
- Soft loans
- Outright subsidies
- Regulatory exemptions
- Fiscal advantages
- State backing
- No bankruptcy

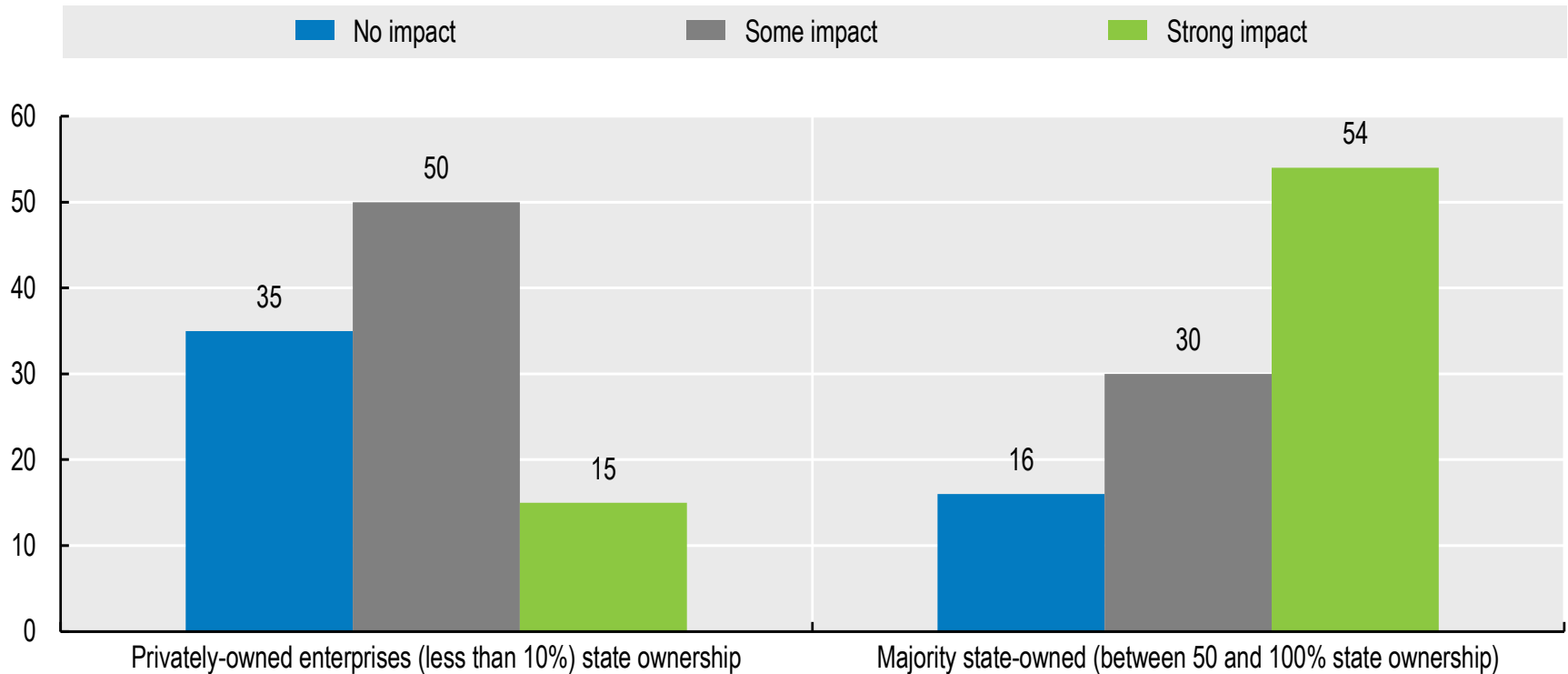


SOE as global competitors – Some perceived concerns

- SOEs may not always operate on a level playing field
- Compensation and special advantages granted by governments in return for public policy obligations at home can have harmful spill-overs effects
- Asymmetric contestability in home markets for foreign competitors



Business perceptions concerning preferential treatment granted to foreign competitors



1. Preferential treatment is defined as government measures or actions, which affect costs or prices of commercial enterprises and which are extended only to certain specific enterprises or groups of enterprises.
2. Own government is defined as the government of respondent's country of headquarters.

Source: OECD Business Survey on State Influence on Competition in International Markets.



Competition issues arising from SOEs

Why do we worry?

- Many SOEs provide products and services in competition with private sector businesses, or in areas where private sector businesses could potentially compete.
- Anticompetitive harm may be even greater when caused by SOEs, due to the privileges conferred upon them and the high reliance of customers on their goods/services
- Public policy goal may be pursued through SOE, but to be balanced against consumer welfare loss due to competition harm
- Could SOE purpose be achieved through less competition-restrictive means through:
 - Competition enforcement
 - Regulatory intervention



Competition issues arising from SOEs

Competition concerns arise where SOE has:

- a. **Incentives** to behave anti-competitively
 - SOEs not necessarily profit-maximising entities.
 - Looking for economies of scale and scope: more concerned about expanding sales and revenues even if raise costs and do not generate profits
 - Sense of immunity, government protection and assistance
- b. **The ability** to behave anti-competitively
 - Deep pockets and no bankruptcy
 - Softer budget constraints because of (a) the possibility of infusion of government cash; and (b) cheaper financing due to perceived gov't guarantees;
 - Enjoy a number of privileges ...

Consequence: Un-level playing field and risk of competition distortions between state-owned and privately-owned rivals



Application of competition law to SOEs: *General principles*

- ⇒ SOEs may harm competition and consumer welfare in the same way (or more) as private enterprises
- ⇒ Competition laws should, and generally do, apply to both private and state-owned enterprises, subject to limited exceptions

Essential features of competition law:

Ownership neutral

&

Nationality neutral

It applies to any entity that engages in economic activity **regardless of** its ownership or legal form.

It applies to any economic activity with anti-competitive effects in the jurisdiction **regardless of** nationality or place or establishment



Application of competition law to SOEs: *Exemptions and defenses*

Exemptions: formal exclusion from the law

- SOE may be formally exempted/immune from the application of competition rules, usually when provide general public services (postal services, railways, health care, etc.)
- Exemptions should be accompanied by proportionate and appropriate regulation to minimize risks of market distortions.

Defenses: exclusion of liability on a case-by-case basis

- State action defense: no antitrust liability if challenged conduct (whether by SOE or private enterprise) is determined by lawful public measures
- Strict interpretation and conditions (case law):
 - Must result from clearly articulated, affirmative state policy and active state supervision (US); must be required by the state with no room for autonomous action or appreciation (EU)

Consequences: overall enforcement is barred or limited (e.g. lower fines)



Competitive Neutrality Frameworks: *Australia*

In 1995, the government adopted a unified National Competition Policy, which included a competitive neutrality framework to ensure SOEs and private companies were competing on a level playing field:

- corporatising all SOEs
- reforming anti-competitive legislation
- structural reforms
- privatization of SOEs.

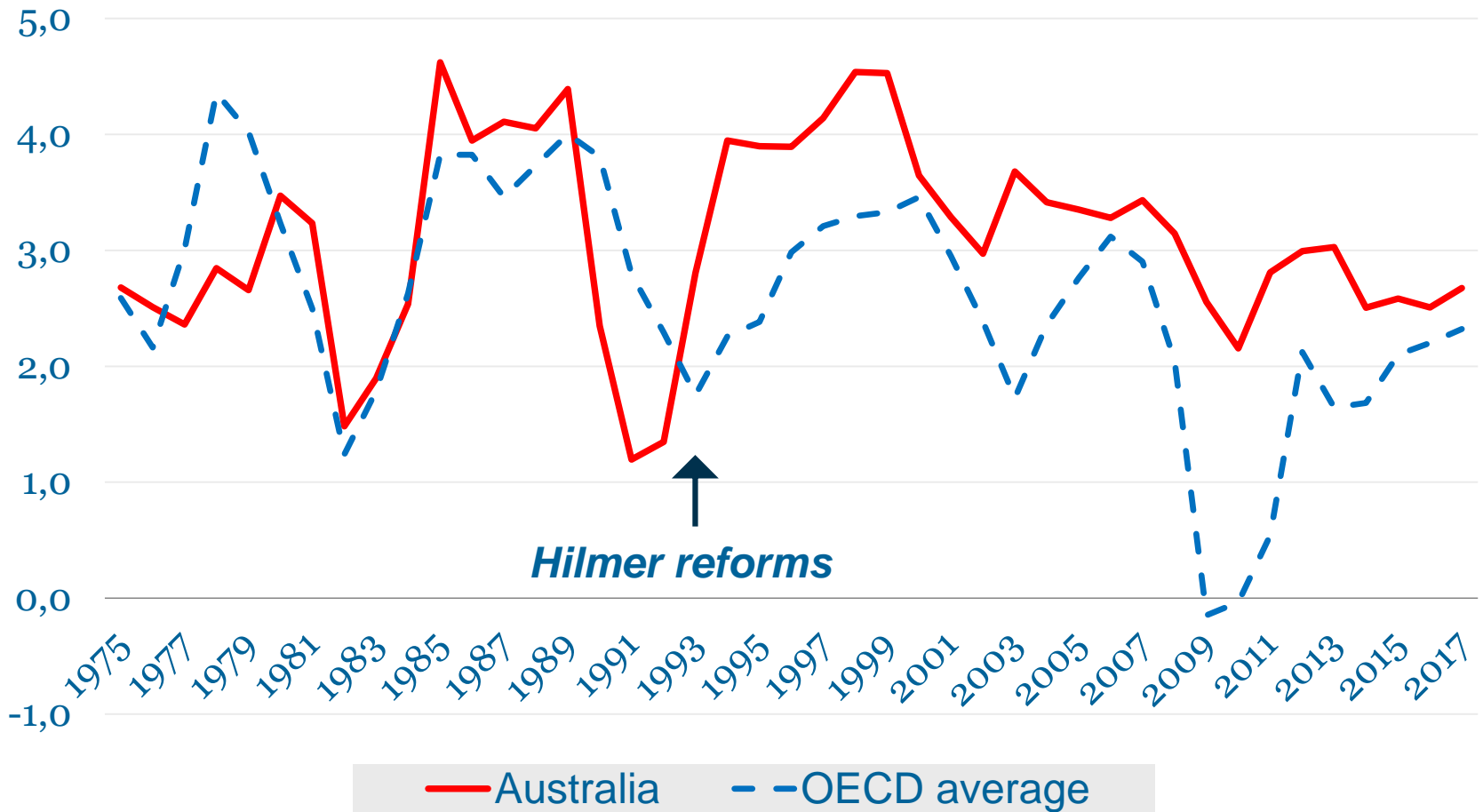
Australia's "experiment" with competitive neutrality was a landmark achievement in its journey of economic modernisation.

Australian SOEs now perform better, are more transparent and more accountable.

Public services are provided to consumers at better quality and better prices.



Competitive Neutrality Frameworks: *Australia*



Note: Gross domestic product (expenditure approach) – annual growth rate, three-years moving average.
Source: OECD statistics, National accounts, 1. Gross domestic product (<https://stats.oecd.org/>)



Competitive Neutrality Frameworks: *Other jurisdictions*

- European Union - with state aid and transparency rules
- Scandinavian countries - competition laws preventing all market participants from receiving competition-distorting public support
- Italy and Spain - competition agencies have been given the power to challenge in court any regulations that distort competition and the level playing field.



Competitive Neutrality Frameworks: *Some key principles*

- Separating ownership from regulation, to ensure there are no conflicts of interests between the state's role as owner, shareholder and policy maker
- Ensuring SOEs operate in the same legal and regulatory environment as private competitors;
- Ensuring high standards of transparency and disclosure where SOEs combine economic activities with public policy objectives;
- Making sure SOEs face debt and equity finance conditions consistent with the rest of the market.
- Ensuring transparent and non-discriminatory public procurement processes.



Competitive Neutrality Frameworks: *The building blocks*

1. Streamlining government business – either in terms of its structure or corporate form – can have an impact on the playing field.
2. Identifying the costs of any given function and developing appropriate cost allocation mechanisms promote transparency and disclosure.
3. Government business activities operating in a commercial and competitive environment should earn rates of return (ROR) like comparable businesses.



Competitive Neutrality Frameworks: *The building blocks*

4. Where the performance of public policy functions is required by government businesses, adequate, transparent, and accountable compensation should be provided.
5. To ensure competitive neutrality government businesses should operate, to the largest extent feasible, in the same tax and regulatory environment as private enterprises.
6. Debt neutrality remains an important area to tackle if the playing field is to be levelled.
7. To support competitive neutrality, procurement policies and procedures should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency.



Concluding remarks

- ❖ The concept of SOE encompasses a broad range of entities united by the common feature of government control.
- ❖ Due to their privileged position SOEs may negatively affect competition and should be subject to similar competition rules as private enterprises.
- ❖ It is important to ensure that SOEs public service responsibilities are consistent with a level-playing field.
- ❖ Enforcing competition rules against SOEs presents enforcers with particular challenges.
- ❖ Developing a domestic competitive neutrality framework deliver better performing, more transparent and more accountable SOEs.
- ❖ Competitive neutrality ensures that public services are provided to consumers at better quality and better prices, by entities that do it best – be it government or private actors



High Level Points on Competition in Publicly Funded Services

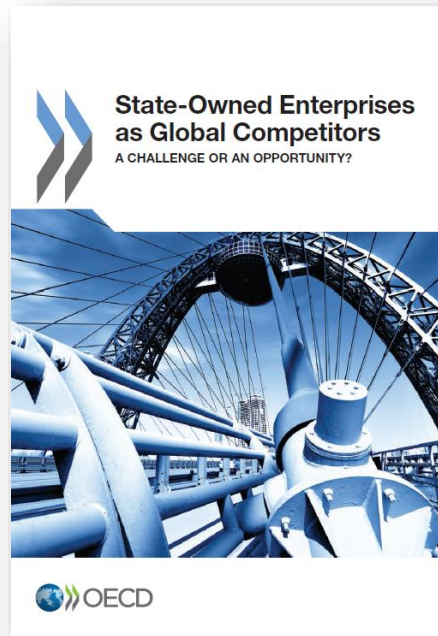
- The use of competition in publicly funded markets is quite widespread
- While mistakes have been made and problems remain these can often be traced to the details of the market regulation.
- Competition agencies can play a key role in advocating for pro-competitive regulations that will use competition to achieve the objectives that policymakers have in these markets.
- Competitive neutrality is one of the key challenges in public service markets – this is the issue that you focus on today – but there are a number of other key issues including things like: market-fit and cream-skimming.



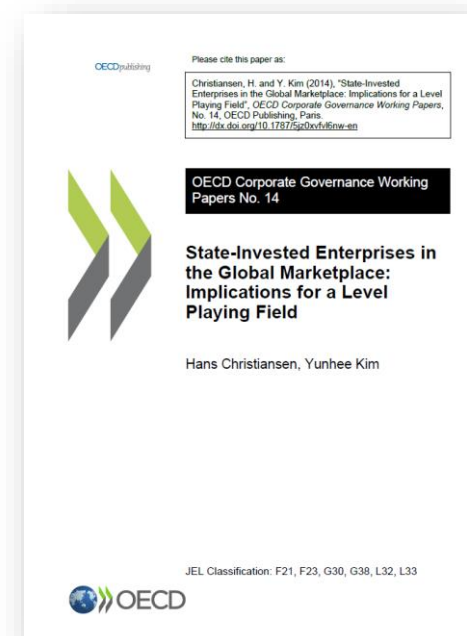
OECD main references



Business and Finance Outlook (OECD 2017)



State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity? (OECD, 2016)



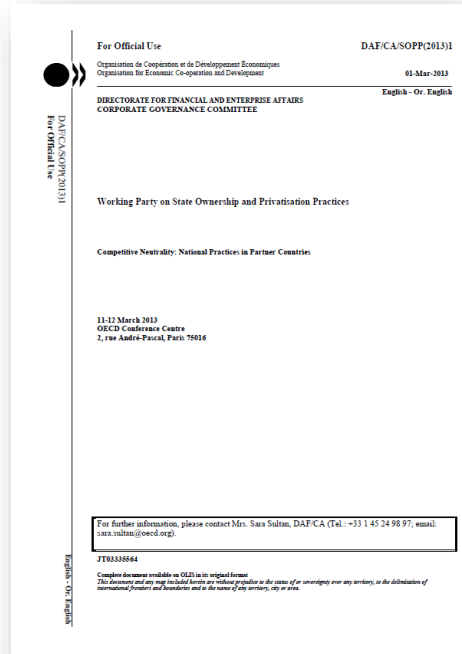
State-Invested Enterprises in the Global Marketplace: Implications for a Level Playing Field, Working Paper (OECD, 2014)



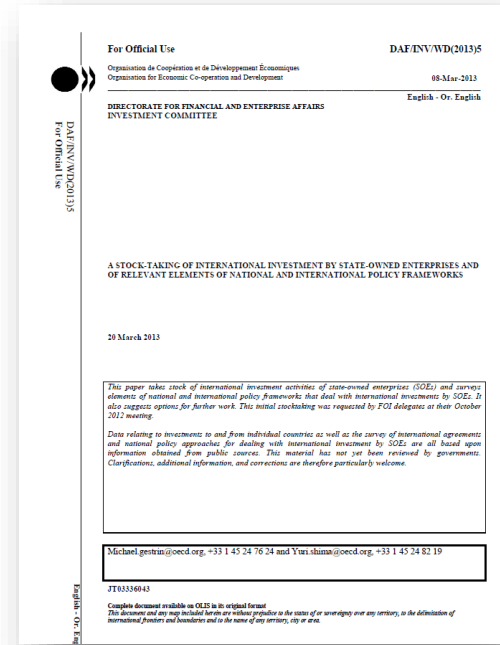
OECD main references



The Size and Sectoral Distribution of SOEs in OECD and Partner Countries, Publication (OECD, 2014)



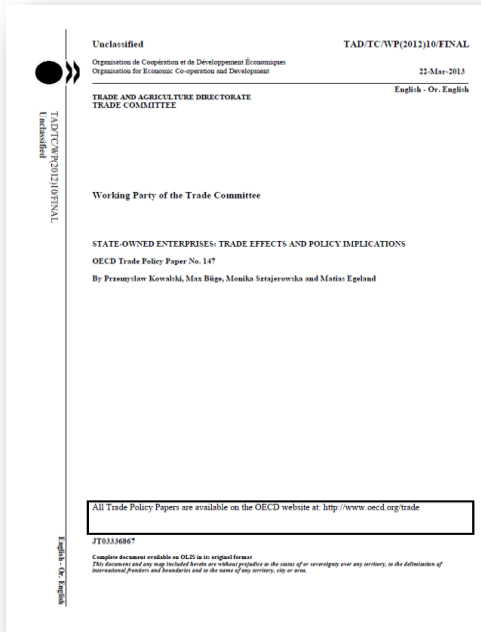
Competitive Neutrality: National Practices in Partner Countries, Background Report (OECD, 2013)



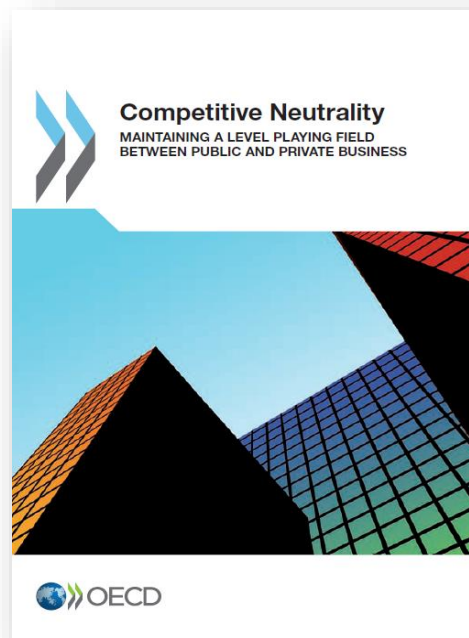
A Stock-Taking of International Investment by State-Owned Enterprises and of Relevant Elements of National and International Policy Frameworks, Background Report (OECD, 2013)



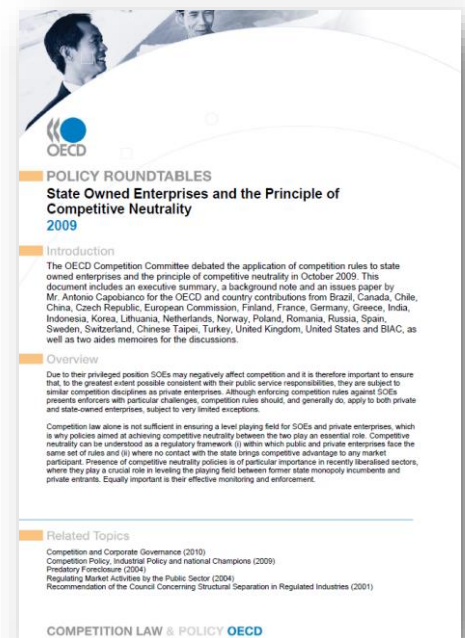
OECD main references



**State-Owned Enterprises:
Trade Effects and Policy
Implications, Working
Paper (OECD, 2013)**



**Competitive Neutrality:
Maintaining a Level
Playing Field between
Public and Private
Business, Publication
(OECD, 2012)**



**State-owned
enterprises and the
principle of
competitive neutrality
(OECD, 2009)**

oe.cd/comp-neutrality

Thank you for your attention!

Antonio Capobianco

antonio.capobianco@oecd.org