MAKING MARKETS WORK FOR DEVELOPMENT THROUGH EFFECTIVE COMPETITION POLICIES: RECENT EXPERIENCE FROM THE WORLD BANK GROUP IN EAST ASIA PACIFIC

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I. INTRODUCTION

The World Bank Group ("WBG") has two goals: eliminating extreme poverty by the year 2030, and building what we call "shared prosperity" – focusing especially on the needs of the bottom 40 percent of each country's income distribution. Achieving those twin goals will require vigorous economic growth – along with job creation on a vast scale. To employ and empower the poor, the global economy must create 600 million new jobs by the year 2027, according to World Bank research. And 90 percent of those jobs must be created in the private sector.[2] Therefore, ensuring that markets can function with flexibility and an in a healthy manner– free from the anti-competitive practices that can stifle dynamism and suppress growth – is a key part of our work, as a development institution.

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[2] See generally Klaus Tilmes (2015) "Does competition create or kill jobs?" WBG external web resources.Available at:http://blogs.worldbank.org/psd/does-competition-create-or-kill-jobs.

Within the broad agenda of institutional priorities, East Asia-Pacific[3] is without a doubt one of the regions where client countries have significantly increased their demand for WBG's advisory services and analytical work that contributes to better understand the effects of competition policies. Accounting for nearly two-fifths of global economic growth, East Asia constitutes one of the main growth drivers of the world economy.[4] However, the region is highly heterogeneous in terms of economic development, with countries ranking at the top of the world in income levels per capita like Australia, Hong-Kong, Japan and Korea – while other at remain at the bottom –i.e. Timor, Cambodia and Laos.[5] On the one hand, growth rates of GDP are among the highest in the world, with an expected GDP growth for the region of 6.5 percent in 2015[6] and region exports representing 28 percent of world exports in real terms in 2014. On the other hand, East Asia Pacific faces huge infrastructure needs on account of rapid urbanization and as many as 142 million people have no access to power. In this setup, an estimated 379 million people lived in poverty in 2014,[7] and were vulnerable to falling back into extreme poverty.

Therefore, inclusive growth in East Asia has the potential to change global poverty. Building on the global practice and studies conducted by the WBG, this article presents some practical experience on how to promote pro-competition policy reforms within East Asia that help countries achieve their development goals.

II. SHAPING WELL-FUNCTIONING MARKETS THROUGH COMPETITION POLICY[8]

[3] This classification follows the regional division used by the WBG according to which East Asia Pacific

[4] See WBG Press Release, October 4, 2015 "Growth in East Asia Pacific Likely to Moderate But Still Remain Solid, Says World Bank Report." Available at:http://www.worldbank.org/en/news/press-release/2015/10/04/growth-in-east-asia-pacific-likely-to-moderate-but-still-remain-solid-says-world-bank-report.

[5] Compared to Singapore, the country in the region with the largest GDP per capita (PPP adjusted), Timor-Leste is 3 percent, while Cambodia is 4 percent and Lao PDR is 7 percent. Data from World Bank Development Indicators series "GPD per capita, PPP at (current international $)" for year 2015.Available at:http://databank.worldbank.org/data/.

[6] Data from World Bank Development Indicators, series "GPD growth (annual percent)" for year 2015, country "East Asia & Pacific." Available at:http://databank.worldbank.org/data/reports.aspx?source=2&country=EAS.

[7]Data from World Bank Development Indicators series "Exports of goods and services (constant 2010 USD $)" for year 2015.Available at:http://databank.worldbank.org/data/.

[8] The text of this section is based on the offering of the Trade & Competitiveness Global Practice of the WBG on Competition Policy: "Making Markets Work for Development through Effective Competition Policies." Available at:http://www.worldbank.org/content/dam/Worldbank/document/Trade/Trade_Competition.pdf. Moreover, the section builds on other documents produced by the WBG on competition Policy including Kitzmuller, Markus; Martinez Licetti, Martha. 2012. *Competition policy : encouraging thriving markets for development.* Financial and private sector development; note no. 331. Washington, DC: World Bank. http://documents.worldbank.org/curated/en/778181468328582034/Competition-policy-encouraging-thriving-markets-for-developmentand Goodwin, Tanja K.; Pierola Castro, Martha D.. 2015. *Export competitiveness: Why Domestic Market Competition Matters. Public policy for the private sector*; Note no. 348. Washington, D.C. :WBG. http://documents.worldbank.org/curated/en/432141468189538318/Export-competitiveness-Why-Domestic-Market-Competition-Matters.

In recent years, some developing countries have successfully reformed their rules affecting the business environment– including their competition regulatory frameworks. Yet markets in many developing economies are still not functioning smoothly, private-sector participation is restricted and consumers' choice remains restricted in terms of price and quality.

- Many markets underperform due to entry barriers and anti-competitive behavior by a few dominant players. Although more than 120 countries have enacted competition laws, the lack of effective enforcement allows anti-competitive practices to persist.
- Even though many countries have opened up to international trade, regulatory frameworks in many developing economies are more restrictive of competition. This is especially true in the "non-tradable" and service sectors.
- Anti-competitive practices are many times allowed, supported or even created by the public bodies themselves. In many countries there are regulatory frameworks that support statutory monopolies, discriminatory treatment favoring dominant incumbents and lack of competitive neutrality.

The case of East Asia-Pacific is paradigmatic in this sense. Both developed as well as less developed Asian countries have adopted domestic antitrust laws, set up competition Authorities and pledged to promote competition at the regional level in Fora such ASEAN and APEC, yet the levels of competition in key markets remain relatively low.

First, less developed countries and emerging markets in the region present a particular set of characteristics that have the potential to shape and influence market outcomes. In some cases, these characteristics may constitute challenges for the development of a level playing field in which firms can thrive on their own merits, and consumers can benefit with better goods and services. The direct participation of the state in the economy is significant. According to the OECD, State Owned Enterprises ("SOEs") account for 30 percent of GDP in China, 38 percent in Vietnam and 25 percent in Thailand,[9] while Malaysia and Singapore have some of the largest SOEs in the world[10]and have opted to promote a model of SOE internationalization and portfolio diversification.[11] Private investment in key industries remains

[9] See OECD (2010): "Policy Brief on Corporate Governance of State-Owned Enterprises in Asia," at page 5. Available at:http://www.oecd.org/daf/ca/corporategovernanceofstate-ownedenterprises/45639683.pdf.

[10] The Numbers of the KhazanahNasionalBerhad ("Khazanah"), largest Malaysian sovereign wealth fund, give an idea about the magnitude of the government presence in the economy: in 2015, it controlled more than 30 companies in 14 different sectors throughout more than 15 countries; its adjusted net worth amounted to RM109 billion, around 10 percent of the Gross Domestic Product of Malaysia. RM1,156.9 billion at current prices. See for Malaysian GDP, see Malaysian Department of Statistics at https://www.statistics.gov.my/index.php?r=column/ctwoByCat&parent_id=99&menu_id=TE5CRUZCblh4ZTZMODZIbmk2aWRRQT09. For Khazanah, see the company's official website at http://www.khazanah.com.my.

[11] See Ministry of Trade and Industry of Singapore (2002). "Report of the Entrepreneurship and Internationalization Subcommittee." Economic Review Committee, page 20. Available at:https://www.mti.gov.sg/ResearchRoom/Documents/app.mti.gov.sg/data/pages/507/doc/6%20ERC_EISC.pdf.

limited. This is the case of electricity distribution in Indonesia[12] and Thailand,[13] oil and gas in Vietnam,[14] airlines in Singapore,[15] or even rice in Malaysia.[16] Concentration is high in important sectors, especially in banking and network industries, e.g. telecommunications in the Philippines,[17] China[18] and Indonesia;[19] banking in Indonesia and Malaysia,[20] including in market segments not subject to natural monopoly characteristics. Finally, some countries such a Myanmar just started opening their economy, and in certain economies many sectors still remain closed to new investment.

Second, antitrust enforcement remains limited in a number of countries in the region. The Philippines just passed a competition law in 2015 after many years in the making. However, this law delays enforceability against anti-competitive practices for two years until 2017.[21] Broad exclusions and exemptions from antitrust scrutiny in several antirust frameworks makes it difficult to tackle anti-competitive conducts effectively. For instance, in Vietnam, hard core cartels are not prohibited if the market share of the participants remain below 30 percent and even those above 30 percent might still be exempted on the basis of reasons not strictly related to the overall efficiency of the agreement;[22] In Thailand, with SOEs exempted from

[12]Electricity distribution in Indonesia is carried out by SOE PreusahaanListrik Negara (PLN). Source: http://www.indonesia-investments.com/business/indonesian-companies/perusahaan-listrik-negara-pln-soe/item409.
[13]Electricity distribution in Thailand is run by the Electricity Generating Authority of Thailand. Source: http://www.egat.co.th/en/index.php?option=com_content&view=article&id=140&Itemid=178.
[14] The main SOE in the market is the State-Owned Company Limited-Vietnam Oil and Gas Group (also known as Vietnam Oil and Gas Group). More information at:http://english.pvn.vn/?portal=news&page=detail&category_id=8&id=1056.
[15] The government of Singapore owns 55.46 percent of shares of Singapore Airlines through Temasek Holding, an investment company. More information at: https://www.singaporeair.com/en_UK/us/about-us/information-for-investors/shareholding-info/.
[16] The main firm in the domestic market, Padiberas NasionalBerhard ("BERNAS"), has the monopoly to import rice to Malaysia.
[17] In the Philippines there are two main operators in the cellular market, Smart Communications INC (41 percent) and Globe Telecom (34 percent), according to the National Telecommunication Commission. See the Annual Report 2014 of the National Telecommunication Commission, pages 15 and 16. Available at:http://ntc.gov.ph/wp-content/uploads/2015/10/reports/Annual_Report_2014.pdf.
[18]The telecommunication industry in China is dominated by three firms: China Telecom, China Unicom and China Mobile. The largest in the mobile market is China Mobile (see https://www.budde.com.au/Research/China-Telecoms-Infrastructure-Operators-Regulations-Statistics-and-Analyses.
[19] The main telecommunication firm in Indonesia is PT Telekomunikasi Indonesia Tbk ("Telkom"), with a market share between 45-50 percent of mobile subscribers. See http://www.indonesia-investments.com/business/indonesian-companies/telekomunikasi-indonesia/item201.
[20] For Indonesia, the banking industry is dominated by fourth banks: Bank Mandiri, Bank Rakyat Indonesia, Bank Central Asia ("BCA") and Bank Negara Indonesia ("BNI"). See Ernst and Young "Indonesian banking industry: challenging yet promising" page 10. Available at:http://www.ey.com/Publication/vwLUAssets/EY-Indonesian-banking-industry-challenging-yet-promising/$FILE/EY-indonesian-banking-industry-challenging-yet-promising.pdf. For Malaysia the main banks according to assets, are Maybank, CIMB and the Pubic Bank Berhad. See http://www.relbanks.com/asia/malaysia.
[21] See Section 53 of the Competition Law of the Philippines, Republic Act No. 10667 from July 2015. Available at:http://www.gov.ph/2015/07/21/republic-act-no-10667/.
[22] See Competition Law No. 27/2004/QH11, Article 10.

competition scrutiny, major players in key sectors characterized by strong SOE presence would be able to abuse their market power and engage in collusive behavior.[23] Finally, implementation appears to be somehow scattered with just a few final decisions in Malaysia, Vietnam and Indonesia and none in Thailand.

Within this context, fostering competitive markets in the region shall necessarily go beyond competition law and enforcement. Instead, it requires to leverage the synergies among different mechanisms and instruments designed to reduce and eliminate impediments to well-functioning markets that arise from public policy interventions and restrictive business practices at the sector and economy level.

From the WBG's perspective, an effective competition policy framework should be based upon two complementary pillars: (1) fostering pro-competition regulations and government interventions; (2) developing the necessary measures to guarantee competitive neutrality in markets and promote effective economy wide enforcement of competition law. These pillars, summarized by Figure 1, rely on an effective institutional set up that is able to foster and guarantee healthy market conduct.

Figure 1. A Comprehensive Competition Policy Framework

FOSTERING COMPETITION IN MARKETS	
PRO-COMPETITION REGULATIONS AND GOVERNMENT INTERVENTIONS: **OPENING MARKETS AND REMOVING ANTI-COMPETITIVE SECTORAL REGULATION** **(Pillar I)**	**EFFECTIVE COMPETITION RULES AND ANTITRUST ENFORCEMENT** **(Pillar 2)**
Reform policies and regulations that strengthen dominance: restrictions to the number of firms, statutory monopolies, bans towards private investment, lack of access regulation for essential facilities.	Tackle cartel agreements that raise the costs of key inputs and final products and reduce access to a broader variety of products
Eliminate government interventions that are conducive to collusive outcomes or increase the costs of competing: controls on prices and other market variables that increase business risk	Prevent anti-competitive mergers
Reform government interventions that discriminate and harm competition on the merits: frameworks that distort the level playing field or grant high	Strengthen the general antitrust framework to combat anti-competitive conduct and abuse of dominance

[23] Section 4.2 of the Competition Act of Thailand B.E. 2542 (1999).

levels of discretion	Control state aid to avoid favoritism, ensure competitive neutrality, and minimize distortions on competition*

*Source: Adapted from Kitzmuller M. and M. Licetti, "Competition Policy: Encouraging Thriving Markets for Development" Viewpoint Note Number 331, WBG, August 2012. *This sub-topic is included under Pillar 2 since it comprises economy-wide rules. However, it could be considered to be a separate pillar since it is often developed outside of rules on anti-competitive behavior of firms and merger control.*

Building on this approach, this article presents some examples on how the competition policy agenda can be strengthened in the region taking into consideration previous and current work conducted by the WBG and the respective countries. These examples illustrate the connections between the analytical, convening and implementing layers of competition policy reforms and shed light on how the two pillars of a comprehensive competition policy framework (figure 1) have been and can be implemented in practice.

III. PILLAR 1: OPENING MARKETS AND REMOVING ANTI-COMPETITIVE SECTORAL REGULATION

A key lesson learnt from the experience of the WBG in promoting effective competition policies across less developed economies ad emerging markets is that the lack of an antitrust regulatory framework or significant gaps in the existing one, should not preclude embedding competition principles in key markets of the economy through sector-specific lenses.

Interventions under Pillar 1– which focuses on promoting pro-competition regulations and government interventions- comprise regulation of network sectors to simulate competitive market outcomes; initiatives to infuse competition principles in different public policies (e.g. public procurement, trade, investment, and industrial policies); and the development of competition assessments as well as regulatory impact assessments of procedures, regulations or policies in order to understand their impact in a sector and to identify more pro-competitive alternatives.

The work in the Philippines shipping sector illustrates how even prior to the adoption of a competition law, modifying anti-competitive regulatory provisions improved logistics performance and benefited exporters.

Paving the Way for Competitive Domestic Shipping in the Philippines[24]

The national agribusiness sector was confronted by the twin challenges of increased internal demand due to a growing population and unrealized export potential of its agricultural products. Among the factors preventing the cost competitiveness of the Philippines agricultural products was the country's weak logistics system, particularly for inter-island

[24] This section builds on the content of the Trade & Competitiveness Project Brief "Paving the Way for Competitive Domestic Shipping in the Philippines."

shipping across the Philippines' archipelagic geography.

Domestic shipping in the country was generally more expensive than in Malaysia or Indonesia: the average port-to-port cost per nautical mile in the Philippines was USD $1.47, higher than Indonesia's USD $0.77 and Malaysia's USD $1.36. In the East Asia region, the Philippines trailed behind its neighbors in various logistics performance and connectivity indices.[25]

Among the causes of the poor state of the domestic shipping industry appeared to be a number of limitations to market competition. Few operators served most shipping routes, with over 40 percent of routes served by a single operator. Therefore, it was clear that removing competition constraints and enhancing the competitiveness of shipping companies could result in greater efficiency, increased capacity, improved quality of ships and shipping services, as well as lower costs and freight rates that would help boost the export potential of Philippine agricultural products.

The WBG's Trade and Competitiveness Global Practice helped the Philippine Department of Transportation and Communications, the Maritime Industry Authority, and the Philippines Ports Authority to remove the regulatory barriers to competition in the domestic shipping sector and supported the government's efforts to:

- Revamp the application process for obtaining a license (a certificate of public convenience) to operate a shipping service in the Philippines, in order to remove the opportunity for incumbent firms to contest the entry of new firms on domestic routes.
- Reshape the Philippine regulations that required domestic vessels to undertake all dry-docking and ship repair requirements in domestic shipyards, even if foreign shipyards were available to conduct the same services for up to one-third of the costs.
- Review regulations that made short-term chartering costly in many cases, including those that restricted vessel importation and those that imposed tax payments for chartered vessels.
- Review the dual role of the Philippines Port Authority—operator and regulator—by setting up concession fee systems that eliminate the conflict of interest stemming from the government benefiting from fee increases for port services.
- Enhance transparency on available industry data by establishing a single maritime database connecting the Maritime Industry Authority, the Philippine Ports Authority, and the Coast Guard to facilitate government regulation and private sector planning.

The Philippines project captures the hands-on approach of the Competition Policy cluster of the WBG regarding actual implementation of pro-competition reforms which have already

[25] LLanto, G. & E. Basilio (2005) "Competition Policy and Regulation in Ports and Shipping," Research Paper Series No. 2007-04, Philippine Institute for Development Studies.

shortened the average processing time for licensing vessels from an average of 40 to 20 days and resulted in estimated cost savings of up to USD $300,000 for each large vessel. Moreover, conservative estimations on the impact of amending the domestic shipping regulations point to an additional USD $18 million in investment in the domestic shipping sector.

This project exemplifies the potential to achieve significant results and shape competitive market outcomes either within suboptimal competition regulatory frameworks or even absent any framework at all as in the case of the Philippines. Moreover, this sector specific work became an entry point to better understand the conditions of Philippines markets and cemented a larger engagement on competition policy in the country.[26]

IV. PILLAR 2: EFFECTIVE COMPETITION RULES AND ANTITRUST ENFORCEMENT

Effective economy wide competition rules, including those tackling competitive neutrality, paired with a functional competition authority can significantly complement economic market regulation, as discussed under Pillar 1. Therefore, interventions under Pillar 2 support countries in developing the necessary regulatory and institutional tools to ensure effective competition enforcement, not only regarding antitrust but also the control of state aid to avoid favoritism, ensure competitive neutrality and minimize distortions on competition. Given, the market characteristics in East Asia Pacific, the synergies among these topics will be key for shaping competitive market outcomes.

The analysis of the competition-related commitments of the Trans-Pacific Partnership ("TPP") confirms the need to connect competition enforcement and competitive neutrality in order to foster open markets and limit anti-competitive behavior, either from private or public operators. Additionally, the TPP emphasizes the role of sector-specific regulation to embed competition principles in the market, thus connecting the 2 pillars of an effective competition policy framework.

Building Better Functioning Markets for Trade and Investment in the Pacific Rim through Competition Policy Commitments[27]

The TPP, signed on February 4, 2016 after several years of negotiations, constitutes an explicit recognition that effective implementation of trade related commitments demands a pro-

[26] Since 2015 the WBG has actively supported the passing of the competition law as well as later on the set up of the Philippines Competition Commission.

[27] This section is broadly based on the text of Martinez Licetti et al. (2017) "The implications of the Trans-Pacific Partnership for competition policy in Latin America: Can Deep and Comprehensive Trade Agreements promote deeper and more comprehensive competition policies?" Ed. Kluwer International, forthcoming. The section also builds on the findings of country specific analysis of the implications of the TPP for Malaysia and Vietnam, among others.

competitive environment that fosters open markets and penalizes anti-competitive behavior.[28]

The agreement requires parties not only to establish and enforce a procedurally fair and transparent competition law framework (Chapter 16) but also to level the playing field between public and private operators (Chapter 17), advising for measures able to implement competition throughout all economic sectors. At the same time, the TPP requires parties to promote pro-competition regulatory environments in key sectors for the economy such as telecommunications (Chapter 13), financial services (Chapter 11) and public procurement (Chapter 15). In this sense, the TPP presents itself as an opportunity to foster effective national competition policies covering both horizontal and vertical perspectives.

Shortly after the signature of this agreement a number of client countries, both parties as well as non-parties to the TPP, requested the assistance of the WBG to better understand the implications of the various chapters of the text. The work of the Competition Policy Cluster focused on how deep and comprehensive trade agreements such as the TPP can promote more effective competition policies. This approach supports the role of the TPP as a key tool to foster competition on the merits in key sectors as well as economy-wide in the Pacific Rim and beyond.[29]

Read in conjunction, horizontal chapters like the ones on Competition Policy and SOEs together with vertical chapters on Telecommunications and Financial Services offer the basic elements to build comprehensive competition policy frameworks that account for the necessary interplay between antitrust and regulation. In this sense, the sector specific chapters reinforce the promotion of competition by setting regulatory frameworks that eliminate entry barriers and foster a level playing field between public and private operators as well as between national incumbents and firms from other TPP parties.

One of the key aspects of the TPP when it comes to antitrust enforcement is that instead of promoting substantive convergence by defining the notion of anti-competitive practices,[30] the Competition Chapter of the TPP focuses on formal commitments necessary to ensure procedural fairness and thus further support transparency and enhanced collaboration among authorities. Interestingly, this is not the case on consumer protection matters where

[28] Twelve countries signed the agreement: Australia, Canada, Japan, Malaysia, Mexico, Peru, United States, Vietnam, Chile, Brunei, Singapore and New Zealand. See the full text of the agreement made available by the Office of the United States Trade Representative at:https://ustr.gov/tpp/.

[29] The purpose of the work was to provide *ex-ante* guidance on the scope of application of TPP commitments and the potential risks associated with non-compliance. Authoritative interpretation of the text of the TPP can only be provided by the dispute resolution panel set up and consulted following the legal means provided by the treaty itself as complemented by the principles of International Public Law.

[30] For instance, Article X-01.5 of the Comprehensive Economic and Trade Agreement ("CETA") between the EU and Canada, an instrument that has significantly influenced the drafting of Chapter 17 of the TPP does provide guidance in terms of substance by defining "anti-competitive business conduct" as means anti-competitive agreements, concerted practices or arrangements by competitors; anti-competitive practices by an enterprise that is dominant in a market; and mergers with substantial anti-competitive effects.

the parties define what conduct will be considered fraudulent or deceptive.[31]

Given this procedural focus, a large number of TPP parties seem to be fairly aligned with the competition related commitments under Chapter 16, at least on paper. It shall be noted that when it comes to procedural fairness actual implementation can only be assessed on a case by case by basis and even the most advanced competition authorities often face allegations regarding breach of due process allegations.[32]

What some considered a missed opportunity to foster a (somewhat utopic) substantive convergence might become the secret of the TPP success. The focus on procedural convergence might be instrumental to emphasize the importance of procedural fairness as a minimum common denominator for workable competition policy frameworks not only among TPP parties themselves but within the region. This approach is confirmed by the significant efforts of the International Competition Network ("ICN") to encapsulate and promote procedural fairness in antitrust investigations.[33]

And even more so, substantive aspects of competition obligations under Chapter 16 could potentially be drawn from the text of the TPP itself since the commitment under the TPP goes beyond simply having a competition law and requires the objective of this law to be the promotion of economic efficiency and consumer welfare. In this sense, substantive provisions offering broad exclusions from the scope of application of the law, potentially prohibiting pro-competitive practices on the basis of a structural definition of dominance or allowing for non-efficiency based exemptions could raise concerns regarding compliance with Article 16.1.2 of the TPP.

In addition, the TPP is also the first Free Trade Agreement ("FTA") that seeks to address comprehensively the commercial activities of SOEs competing with private companies in international trade and investment. Even though the chapter's commitments build on principles from the World Trade Organization ("WTO") and previous U.S. FTAs, notably the Canada-EU Comprehensive Economic and Trade Agreement ("CETA"), the TPP significantly expands the scope of commercial consideration and non-discrimination commitments as it advances on the control of distortive public support and subsidies through non-commercial assistance obligations. In other words, the chapter works to promote competitive neutrality and non-distortive public aid support.

More specifically, under Chapter 17 of the TPP, SOEs and designated monopolies should be bound to compete on the basis of quality and price rather than benefitting from discriminatory

[31] See article 16.6, Chapter 16, TPP.
[32] See Anne MacGregor and BogdanGecic (2012), "Due Process in EU Competition Cases Following the Introduction of the New Best Practices Guidelines on Antitrust Proceedings" *Journal of European Competition Law & Practice*, Vol. 3, No. 5, pages 425 and 437; Douglas H Ginsburg and Taylor M Owings (2015), "Due Process in Competition Proceedings," *Competition Law International*,Vol 11 No 1, pages 40-41.
[33] See generally the *ICN Guidance on Investigative Process*: Text available at:http://www.internationalcompetitionnetwork.org/uploads/library/doc1028.pdf.

regulation and distortive subsidies. Basically, the obligations established by the SOE Chapter and designated monopolies tap on three main commitments by TPP parties: (i) avoiding discrimination and applying commercial considerations by SOEs, including a limitation for designated monopolies to engage on anti-competitive practices; (ii) parties must NOT concede non-commercial assistance capable of causing adverse effects or injury to the interests of another Party, meaning to economically support SOEs in terms more favorable than those commercially available; (iii) parties must offer an impartial regulatory and institutional framework for SOEs, yet making them accountable for their actions in other TPP countries.

The TPP obligations crystalize basic concerns of TPP parties regarding the threat and potential market distortions that heavily subsidized national public champions may bring about when competing internationally. This framework leverages the experience of the implementation of the competitive neutrality principle[34] by some of the TPP parties, notably, Australia and the U.S.

To that end, these obligations shall be read in a broader regional and international framework than the TPP itself since they will affect other trading partners having a significant number of SOEs competing in the markets of TPP parties, both from the region, notably the case of Brazil, as well as beyond such as China, India or Russia. First, these benefits can become a sort of standard to influence and be replicated across international trade agreements currently under negotiation. Second, while direct claims on non-discrimination and commercial considerations can only be made by TPP parties, the other two (non-commercial assistance and impartial regulator) will indirectly benefit any (private/public) firm from a non-TPP party competing in a market covered by TPP obligations.

Moving forward, the spirit of the TPP as a tool to increase economic integration in the region should be the guiding principle in designing policy options that will enable signatory countries to fully leverage the benefits of enhanced trade and investment. In other words, the economic rationale of the horizontal and vertical chapters of the TPP read in conjunction aims at opening markets for the benefit of trade by eliminating either behavioral or regulatory constraints to competition and removing privileges either for public or private operators thus fostering effective national competition policy frameworks.

These vertical obligations –aimed at fostering pro-competitive sectoral regulation as described under Pillar 1 *supra* – are essential to guarantee a comprehensive competition approach to trade in the context of significant carve outs in horizontal commitments, especially given the extensive exceptions applied to the SOE Chapter and some strategic activities eventually excluded from the scrutiny of national competition laws. Therefore, even those firms escaping the scrutiny of the SOE or the Competition Policy Chapter of the TPP,

[34] The principle of competitive neutrality which, as first proposed in Australia, requires that government business activities do not enjoy net competitive advantages over their private sector competitors simply by virtue of their public ownership. For a detailed discussion, see generally 2011 OECD Working Paper on "*Competitive Neutrality and State-Owned Enterprises*."

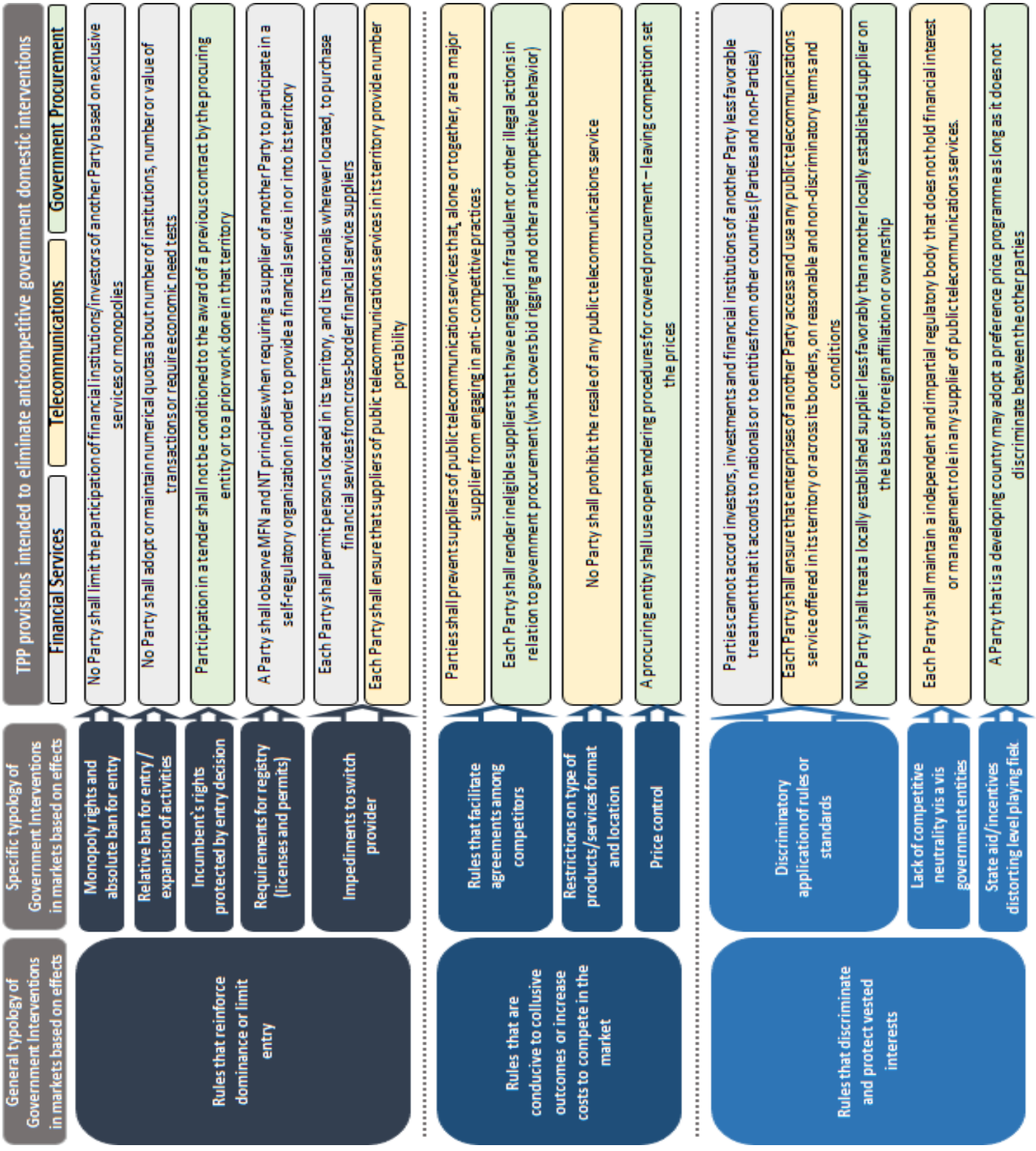
may be caught by the obligations established under the sector-specific chapters.

Interestingly, the rationale behind sector-specific commitments of the TPP is to foster the removal of policies and rules that are harmful to the development of competition. Using the WBG's Market and Competition Policy Assessment Toolkit ("MCPAT") framework, Figure 3 shows how sectoral commitments on the financial services, telecommunications and procurement sectors have been designed to eliminate rules that (i) reinforce dominance or limit entry, (ii) are conducive to collusive outcomes or increase costs to compete in the market and (iii) discriminate and protect vested interests. In this sense, the TPP explicitly advances on a comprehensive approach to competition by setting rules that intend to eliminate those regulations having harmful effects on competition.

Specifically, and as example, following the Financial Services Chapter, each Party shall not limit market entry by adopting or maintaining quotas about number of institutions, number or value of transactions or require economic need tests.[35] In other words, the TPP commitments are avoiding that parties impose conditions that constitute either an absolute or a relative ban for market entry which in turn will have the general effect of reinforcing dominance or limiting entry. Similarly, the Telecommunication Chapter demands from each Party independent and impartial telecommunications regulatory bodies that do not hold financial interests or operating/management roles in any supplier of public telecommunications services.[36] Such commitment addresses potential lack of competitive neutrality vis-a-vis government entities. Therefore, this commitment intends to mitigate the anti-competitive effects of those rules that discriminate or protect vested interests as identified by the WBG MCPAT. Finally, the Government Procurement Chapter requires parties to adopt measures that fight corruption and fraudulent behavior in public procurement process, which, by nature, implies a prohibition of bid rigging.[37] This type of commitment is intended to counteract rules that facilitate agreements among competitorsin the sense of the MCPAT and therefore have the general effect of being conducive to collusive outcomes or increase the costs to compete in the market.

[35] See Article 11.5, Chapter 11, TPP.
[36] See Article 13.6.1, Chapter 13, TPP.
[37] See Article 15.18, Chapter 15, TPP.

Figure 3 –How TPP sector specific obligations foster the removal of government interventions that harm competition



Therefore, beyond a mere analysis of compliance the work of the Competition Policy Cluster of the WBG has focused on how to capitalize the TPPCompetition Policy Provisions in order to shape market outcomes. As expected, many signing parties are fairly compliant with certain aspects of the TPP, such as the establishment of procedural fairness rules in the enforcement of competition laws. However, the competition policy implications of the TPP go far beyond this chapter. Indeed, the competition policy implications of the TPP go beyond the text of the TPP itself. Understanding and evaluating these provisions can contribute to a country's efforts on building markets that work for development.

V. FINAL REMARKS

This article has presented a few practical examples on how the approach of the WBG can contribute to countries efforts on achieving better developmental outcomes in the East Asia and Pacific Region. From the impact of a sectoral reform in the Philippines absent a competition law to the analysis of the competition policy dimension of a mega-regional trade agreement as the TPP, the approach of the WBG on Competition Policy is targeted to meet the needs of less developed economies and emerging markets from a very practical perspective and considering their respective context.

In this sense, the experience in East Asia Pacific shows that there is significant room for competition policy tools to support the development agenda by opening markets, fostering private sector development and unlocking investment, in a region that has the potential to change the face of global growth, in the "Century of Asia."