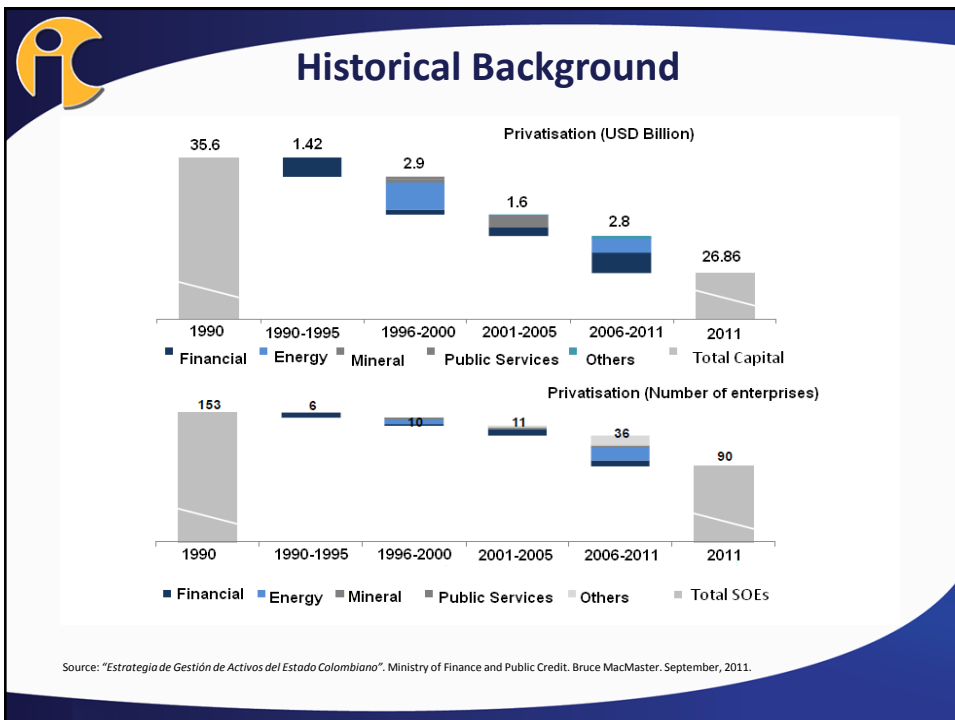
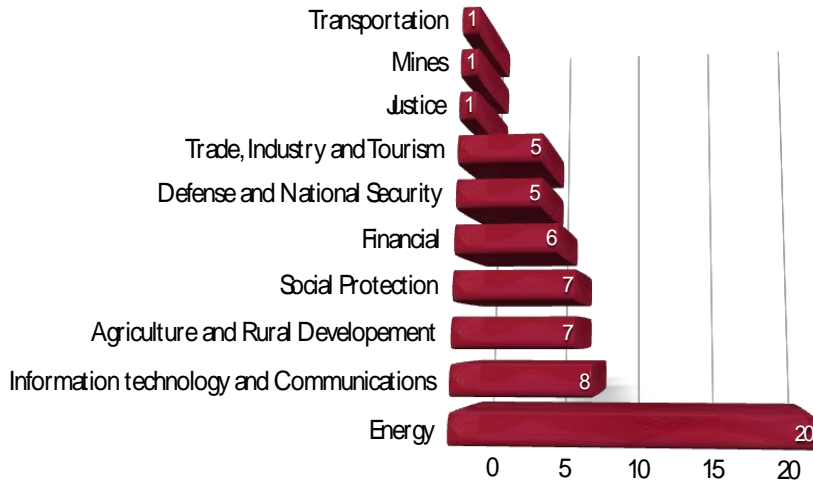


PRIVATIZATION, COMPETITIVE NEUTRALITY AND SOEs IN COLOMBIA

Pablo Márquez
Deputy Superintendent for Competition



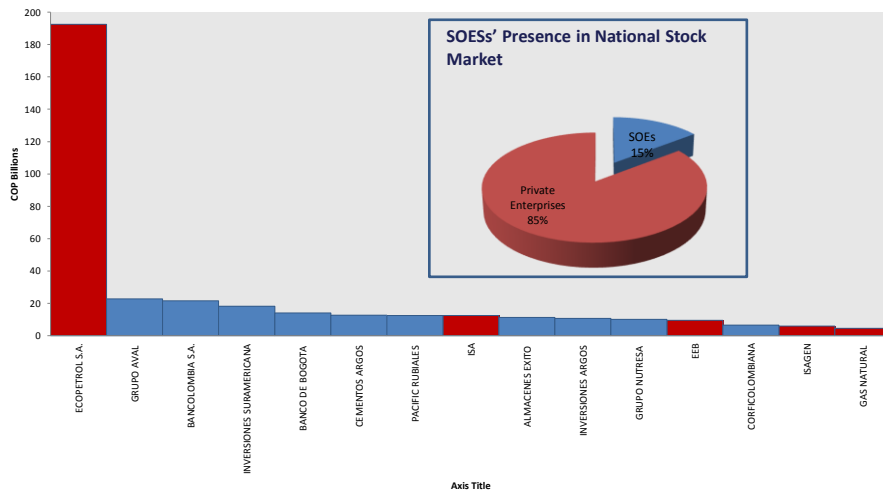
Nation's SOEs in the Decentralized Sector

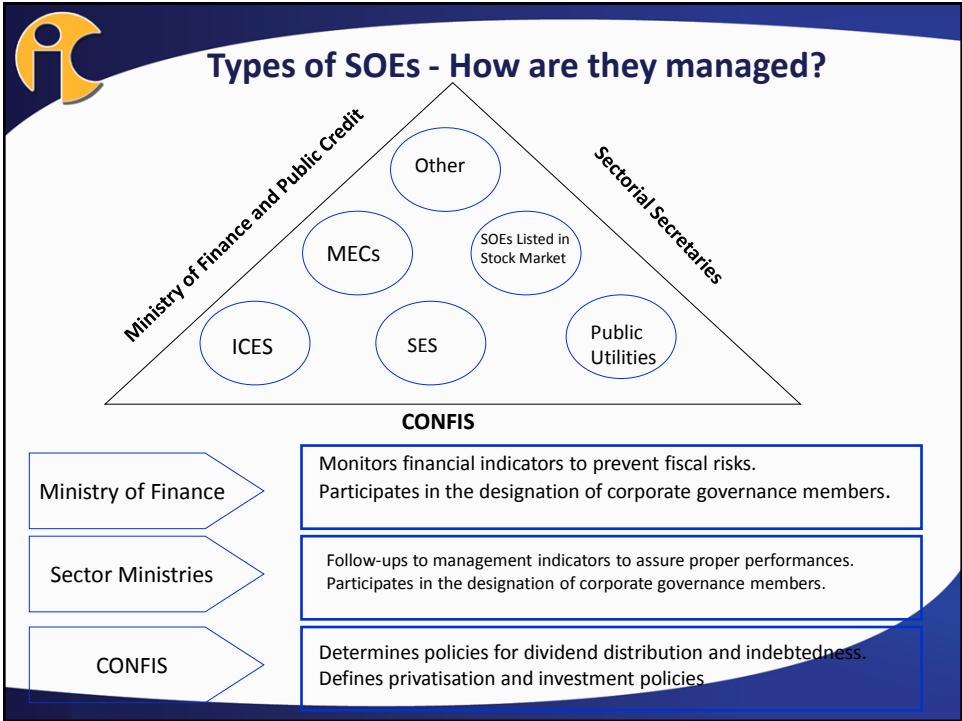


Source: "Empresas Industriales y Comerciales del Estado y Sociedades de Economía Mixta". Departamento Nacional de Planeación. 2011.

SOEs in the Decentralized Sector

Companies' Capitalisation in National Stock Market.
February 2012





**ACHIEVING NEUTRALITY
THROUGH COMPETITION
LAW: RELEVANT CASES**



Competition Law as a Tool to Achieve SOEs Competitive Neutrality

- Constitutional prohibition to carry out restrictive commercial practices.
 - SIC – Single competition authority in all sectors of economy.
 - Principle of no discrimination between public and private enterprises in competition matters.
 - Competition Authority treats all companies as equal without distinction.
 - SOEs **may not** use privileges conferred to them by the Colombian Constitution and other laws when competing with private companies.

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Restrictive Commercial Practices

- **SIC v SATENA (2003)**. Abuse of dominant position in several air transportation markets.
 - Granted discriminatory discounts in order to obstruct entry of entrant airlines and exploit its dominant position through prices.
- **SIC v EAAB (2011)**. Abuse of dominant position in the water distribution market in Bogotá.
 - Defined a strategy to charge decentralized aqueducts higher prices in order to drive them from the water sanitation and distribution market in the city of Bogotá.
- Other cases.

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Mergers Control: Cases

- COLSUBSIDIO, COMFENALCO VALLE, COMFENALCO ANTIOQUIA, COMFAMILIAR ANDI, CAFAM, COMPENSAR and PREVISORA VIDA – 2007.
 - Merger in the health insurance market; creation of large state owned health insurer to compete with private insurers.
- Privatization of State-Owned Power Companies - 2007.
 - Mergers in the electricity markets (generation, transport, distribution and commercialization of electricity)
- Privatization of State-Owned Power Companies - 2009
 - Mergers in the electricity markets (generation, transport, distribution and commercialization of electricity)
- Merger between *Bogotá Telecommunications Company* (ETB) and *Ingelcom Electronic Engineering and Telecommunications* (INGELCOM) – 2011.
 - Merger in the local and international telecom market.

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Competition Advocacy Nueva EPS Case

According to the Commission:

- Aimed to **eliminate a competitive disadvantage** for health insurance companies with larger number of elder affiliates.
- Proposal: Increase the UPC by 6% to all health insurance companies displaying a concentration greater than 37% in the age groups 9 to 14 (Over 50 years).

Superintendence's Assessment:

- The draft agreement was adequate, the characteristics needed for the application of the adjustment factor were present **only in one** health insurance company: NUEVA EPS (SOE) - (Tailored regulatory project).
- The Superintendence recommended the revision of the risk factor (6%) and of the criterion that permits its application (37% of the members must be over 50 years).
- Both elements should not become entry barriers to other health insurance companies presenting populations with similar age distributions.

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COMPETITIVE NEUTRALITY: CHALLENGES



Competitive Neutrality Challenges

Operational form of government business.

- There isn't a structural policy for separation of commercial and non-commercial operations
- It is required a policy regarding the optimal form of gov-buz; National Planning and Ministry of Finance
- There wasn't a regular review of government stake in business activities. PND-2011-2014 defines this as a 2014 objective.



Competitive Neutrality Challenges

Costs of commercial government activities

- There are Various legal structures: ICES, MECs, etc.
- Some commercial and non-commercial activities' costs remain integrated. There is no clear principle of separation of accounts of commercial and non-commercial activities.
- Each legal structure has a different regulatory framework. Private Law applies in some occasions. Public law applies to other structures.



Competitive Neutrality Challenges

Tax Neutrality

- In several cases there is no equal or equivalent treatment of public and private business activities.
- Incorporated and Unincorporated State enterprises get fiscal benefits.
 - *V. Gr.: Imports made by the Nation, territorial entities and decentralized entities for activities dedicated to provide public health services, education, food marketing, or the exploration and exploitation of mining and hydrocarbons are exempt from tariff. Article 7 of Decree 255 of 1992.*



Competitive Neutrality Challenges

Regulatory Neutrality

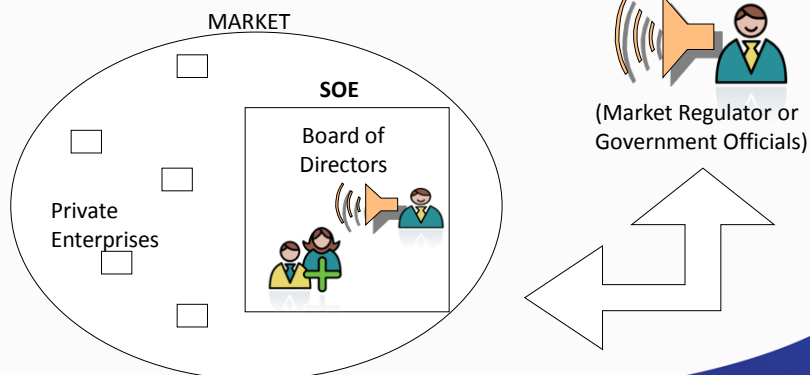
Government enterprises, in some cases, do not operate in the same regulatory environment as private enterprises (v. gr. National Health Insurer).

Competition advocacy tools are used to achieve that regulation be non-discriminatory.



Competitive Neutrality Challenges

- Contravention of OECD Guidelines on Corporate Governance of SOEs: Presence of the Market Regulator (or Government Officials) in Boards of Directors of several SOEs: v. gr. **ECOPETROL, EPM, NUEVA EPS**.





Competitive Neutrality Challenges

Debt Neutrality

Some State enterprises benefit from preferential access to credit (State's debt is ranked AAA for the financial system) due to government-backing.

Public procurement

Procurement policies and procedures are not competitive when there are SOEs participating in the market. State contracts with SOEs do not require to follow Public Procurement laws. State Contracts regulation frustrates the Governments' attempt to introduce competition in public procurement.



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